

§ 5 Outlook: the prospects of globalisation

I. The threat to globalisation posed by the rise of nationalist populism and global "bullies"

- the threat to globalisation posed by the rise of anti-globalist nationalist populists in the West
 - USA, Germany, France, Netherlands, Hungary, Slovakia, Argentina etc.
 - an anti-globalism based on propaganda & lies but nevertheless successful in parts of the society that are receptive to it
- the threat to globalisation posed by the rise of global "bullies"
 - the efforts of the USA, Russia and China to control or manipulate globalisation in the national interest (e.g. by politically targeted import and export restrictions)
 - the efforts of the USA, Russia and China to replace the rule based, multilateral intern. order with a tripolar, hegemonic world order with bilateral vassal relationships (→ Part 3, § 7)
 - the attempts of Russia (under VLADIMIR PUTIN) to violently restore the Soviet empire (war of aggression against Ukraine, hybrid war against European states, threats against former Soviet republics etc.)
 - the assaults of the USA (under President DONALD TRUMP) on public international law (illegal tariffs, kidnapping of the President of Venezuela, threats against Canada and Greenland, war of aggression against Iran etc.)
 - threats and encroachments of China (under President XI JIPING) against Taiwan, the Philippines, Vietnam, Malaysia
 - the assault of Iran and Yemen's Houthis against the freedom of the seas in the Strait of Hormuz and the Bab al-Mandab Strait (with severe consequences on global trade)

II. The need to reorganise globalisation in order to stabilise it

1) The need for a comprehensive reform of international economic law

- see **Part 1** of the course
- in particular: the need to reform the World Trade Organisation
 - the need to overcome consensus-based decision making, esp. for adopting new agreements
 - the need to restore the functioning of the Appellate Body, which has been blocked by the USA since 2019
 - the need to reform the criteria for the privileged status of "developing country" (which presently still applies to China)
- in particular: the need to reform investor-to-state dispute settlement mechanisms
 - to ensure that states keep the means for effective environment, climate and public health protection
 - the need to establish a Multilateral Investment Court (MIC)
- in particular: the need to reform international tax law
 - to ensure that major global economic players pay their fair share of tax

2) The need for global minimum regulation for digital products and services, including AI

- see above, § 4 II.2 (slide 4)
- since in the globalised world, individual states are hardly in a position anymore to enforce appropriate own regulations on digitalisation
- the need for global minimum standards for the *protection of privacy* in the digital world
- the need for global minimum rules *against the abuse of a dominant position* on the market by software companies, social media providers and AI providers
- the need for global minimum rules on the obligation of platforms to take *effective precautions* against hate speech, cyberbullying, fake news and disinformation campaigns
- the need to establish *strict liability* (liability without fault) of social media providers for any illegal or encroaching content on their platforms (with recourse against the responsible user)

3) The need for a sound legal framework for international aid and cooperation in the event of pandemics, natural disasters and catastrophic consequences of climate change

- unlike in the era of the solitary loner state, nowadays states provide generous support to each other, even globally, in the event of natural disasters and pandemics
- so far, help from states outside the own geo-region is largely the result of spontaneous political coordination; a sound global legal framework is still missing
- in 2024, the UN General Assembly decided to *prepare a Treaty on the Protection of Persons in the Event of Disasters (PPED Treaty)* until 2027
 - the Treaty shall be based on draft articles presented by the International Law Commission in 2016
 - it could also regulate aid and cooperation in case of disasters caused by climate change
- in 2025, the World Health Organization has adopted a *WHO Pandemic Agreement* to strengthen global collaboration in pandemic prevention, preparedness, and response
 - which will be open for signature and ratification after the completion of an important annex

4) The need for strong multilateral institutions and confidence-inspiring, effective and reliable dispute resolution and enforcement mechanisms in the law on globalisation

- under the prevailing international treaties, the institutions mostly play a coordinating rather than politically decisive role, with decisions made by consensus
- the prevailing treaties mostly provide for weak dispute resolution mechanisms without international courts, and there are no effective enforcement mechanisms

III. The need to reorganise globalisation to ensure a fairer distribution of benefits

- globalisation must benefit all parts of society, not only a small circle of elites, businesses and professionals
- where this is not the case but a fairer approach is possible without disruption, globalisation should be *reorganised* appropriately by international and national regulation
 - e.g. regulations that favour small local cooperatives of palm oil farmers over large agribusinesses
 - to develop appropriate concepts may require intensive scientific research, interdisciplinary collaboration and a broad international public debate, involving not only economic stakeholders but also the civil society
- where this is not possible, *social justice* may need to be ensured *by compensatory measures* in favour of those who lose out in globalisation or do not benefit from it
 - if this is neglected, these parts of society may turn into anti-globalists in the long term

IV. The need to ensure effective human rights protection in the context of globalisation

1) The need to insist on full respect and enforcement of human rights as a legal precondition for accepting a state as a partner in international trade and economic cooperation

- see for more details special material on human rights in international economic relations from the course Human Rights and Globalization
- the globalised world recognises *human rights as universal values of mankind*
 - historical challenges such as historical and cultural relativism and the "Asian values" doctrine have faded away
- nevertheless, there will always be a risk of serious disregard for h.r. in individual states.
- globalisation has strengthened h.r. rights in multiple ways
 - via development, better funded public institutions, cross-cultural dialogue & exchange of experiences and the need for states who depend on the global market to maintain a good intern. reputation

- but it has also brought new h.r. problems
 - an international race to the bottom with regard to labour standards
 - extreme forms of exploitation (child labour, human trafficking, workers kept in slavery-like conditions)
 - violations of the rights of indigenous peoples
- to live up to the universal values, international partners must make full realisation of h.r. a prerequisite for accepting a state as a partner; there are several options:
 - to require ratification of the core global h.r. treaties before concluding a trade agreement
 - to include an "essential elements" clause on h.r. in a trade agreement (an instrument used by the EU)
 - to suspend membership of states with systematic h.r. violations in intern. financial transaction systems such as SWIFT
 - to suspend travel connections to places with systematic h.r. violations (kills tourism)
 - to oblige domestic enterprises in due diligence laws to screen their intern. supply chain for h.r. violations
- the problem of the *human rights blindness of the World Trade Organization*
 - a traditional lopsided focus on trade liberalisation that disregards its impact on labour standards and h.r.
 - the need to add a labour rights and human rights clause to the WTO agreements

2) The need to regulate and enforce the responsibility of businesses in the field of human rights

- see for more details special material on human rights, business & development in the globalised world from the course Law and Development
- h.r. do not bind private actors directly but only have an indirect horizontal effect (via criminal law, private law, labour law & admin. law)
- internationally operating *enterprises have a political & ethical responsibility* in the field of h.r., since their activities can have a strong impact on them
 - they must not only refrain from violating h.r. themselves but also ensure that no h.r. violations by others occur in the manufacturing processes in their supply chain
- the present approaches to implement this responsibility are unsatisfying
 - mainly raising awareness and self-commitment (also binding agreements with foreign social partners)
 - UNHRC resolution "Guiding Principles on Business and Human Rights" of 2011 (not legally binding)
 - *human rights due diligence laws* in some states oblige bigger domestic enterprises to screen their foreign suppliers and document it, but these laws and their approaches are very heterogeneous
- the *need for a global international treaty on business and human rights*
 - which defines global standards for all internationally operating enterprises from all and in all states
 - a UNHRC working group is preparing it since 2015 (with third revised draft from 2021), but political consensus has not yet been reached

V. The need to support globalisation losers to adapt to the realities of the globalised world

- a largely ignored problem: *globalisation produces not only winners but also losers*
 - people who lose their job or business or must adapt to less favourable conditions because of the foreign competition, or experience a serious decline of their home region
 - this happens in all countries from which industry relocates to countries with lower production costs
- globalisation losers must be offered a perspective, to prevent them from supporting radical political movements
 - many supporters of far-right populist movements (e.g. of Donald Trump's MAGA movement) have lost out or are afraid to lose out from globalisation and are no longer willing to recognise its benefits
- to avoid serious disruption, globalisation should be flanked by *professional development and retraining measures* to support those who have lost out to find a new career or business path
 - this could be financed by a (small) national or international *globalisation tax*

VI. The prospects for globalisation under such a legal framework

- DISCUSSION: towards a golden age (instead of decline) of globalisation?