

Research fields and theses

My research interests currently comprise foundational questions of international law, especially its history, constitutionalisation and de-constitutionalisation, global governance, the status of humans in international law, tasks and methods of international legal scholarship, and global animal law. I submit the following theses:

Global Constitutionalism and Global Governance

- The erosion of national constitutional law by the intensive case of governance activity of international organisations, increasing international regulation and extraterritorial effects of state action can and should be compensated by acknowledging global constitutional law which constitutes, channels and limits these governance activity ("compensatory constitutionalism"). The discourse of global constitutionalism must integrate more than before non-European legal cultures in order to remain attractive in the currently shifting global order.
("Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures", *Leiden Journal of International Law* 19 (2006), 579-610; "The Globalization of State Constitutions, Chapter 10", in: Janne Nijman/André Nollkaemper (eds), *New Perspectives on the Divide between National and International Law*. Oxford: Oxford University Press 2007, 251-308; *The Constitutionalization of International Law*, expanded paperback edition with new epilogue. Oxford: Oxford University Press 2011, 437 p. (together with Jan Klabbers and Geir Ulfstein); "The Merits of Global Constitutionalism", *Indiana Journal of Global Legal Studies* 16 (2009), 397-411; "Are we Moving towards Constitutionalization of the World Community?", in: Antonio Cassese (ed.), *Realizing Utopia: The Future of International Law*. Oxford: Oxford University Press 2012, 118-135; Fragmentation and Constitutionalization, in: Anne Orford/Florian Hoffmann (eds), *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press 2016), 1011-1031; Takao Suami, Anne Peters, Dimitri Vanoverbeke and Mattias Kumm (eds), *Global Constitutionalism from European and East Asian Perspectives* (Cambridge: Cambridge University Press 2018)).
- The current geopolitical constellation, with the rise of states without a deeply rooted rule-of-law-tradition, the erosion of democratic states from within, and ongoing rampant human rights violations by states and business actors is leading to a trans- and international **deconstitutionalisation**. The new techniques which notably courts and tribunals have developed in a 'spirit of systemic harmonisation' (*Al-Dulimi*), in order to coordinate the various subfields of international law, accompanied by a proper politicization of international law and governance institutions, are a form of **procedural** constitutionalisation ("The Refinement of International Law: From Fragmentation to Regime Interaction and Politicization", *I-CON* 15 (2017), 671-704). The spread of **due diligence** obligations mirrors the current international legal trend of reinforcing procedural obligations (as opposed to substantive standards). Due diligence compels states to establish institutions and procedures for risk management and helps to hold states accountable. On the other hand, the focus on mere due diligence risks to dilute legal obligations and thereby to weaken the international legal order (Heike Krieger/Anne Peters/Leonhard Kreuzer (eds), *Due Diligence in the International Legal Order* (Oxford: OUP 2020)).

- In the new era of globalisation fatigue, a number of trends point towards the emergence of a “more social” international law in which a cross-border social responsibility for individuals is legally acknowledged. By **absorbing the global social question**, global constitutionalism can mitigate its neo-liberal tilt, and would be rescued from being reduced to a project to deepen the power of capital (Anne Peters, “Global Constitutionalism: The Social Dimension”, in: *Global Constitutionalism from European and East Asian Perspectives* (Cambridge: CUP 2018), 277-350).
- Fundamental legal norms of the European Union can and should be qualified as the constitution of the EU (independent of the lack of a formal constitutional document). This European constitution acquires its legitimacy mainly through the test of time, by its output (i.e. legal and political outcomes in the European public interest), less through its genesis and through input by the European citizens in elections and referendums (*Elemente einer Theorie der Verfassung Europas* (Berlin: Duncker & Humblot 2001) 889 p.).

Global democracy

- The democratization of public international law and of global governance is possible and necessary in order to complement the indirect democratic legitimation via national parliaments and governments (“dual democracy”) (“Dual Democracy”, in: Klabbers/Peters/Ulfstein, *Constitutionalization 2011*, 263-341).
- A general principle of transparency has emerged as a foundational principle across all special fields of international law, beginning with international environmental law. The function of transparency in international law is similar to its role in national public law: Transparency allows for public criticism of the exercise of international governance. The principle of transparency bolsters the quality of international law as public law, as a law constituting and channelling power or authority, in the public interest and under control of the public. The transparency of international institutions and of their law-making and implementation procedures can therefore mitigate the democratic deficit of international law which arises from the lack of a world parliament, of democratic legislative procedures, and of options for direct votes by citizens (*Transparency in International Law*. Cambridge: Cambridge University Press 2013, paperback 2018 (ed., together with Andrea Bianchi)).
- Territorial referendums are, when they are free, fair, peaceful and conducted under international observation, a necessary but not sufficient procedural element for the exercise of a people’s right to self-determination. Thereby, they can contribute to the legalisation of territorial changes. also in the event of a unilateral secession of a region from a state (*Das Gebietsreferendum im Völkerrecht: Seine Bedeutung im Licht der Staatenpraxis nach 1989*. Nomos: Baden-Baden 1995).

Individuals as primary persons under international law

- The well-being of humans, their security and their rights constitute the foundation and the limits of state sovereignty. Humanity, not sovereignty is the *Letztbegründung* of international law. (“Humanity as the A and Ω of Sovereignty”, *European Journal of International Law* 20 (2009), 513-544).
- Individuals enjoy direct international rights and have obligations which rank below the fundamental human rights, for example in international labour law, refugee law, international humanitarian law, and so on. Recognising these legal positions and the international legal personhood of humans which underlies them, allows us to qualify the

individual as an original and in normative terms “primary” subject of international law which is not only derived from and subordinate to states. Shifting the foundation of international law from states to humans is a paradigm change in international law. (*Beyond Human Rights: The Legal Status of the Individual in International Law* (Cambridge: Cambridge University Press 2016); *Europäische Menschenrechtskonvention: Mit rechtsvergleichenden Bezügen zum deutschen Grundgesetz*, 2nd ed. C.H. Beck: München 2012, 316 p. (with Tilmann Altwicker).

- Corrupt acts or omissions can under certain conditions be qualified as an actual violation of international human rights. This framing can contribute to closing the implementation gap of the international anti-corruption instruments and can usefully complement the predominant criminal law-based approach. (“Corruption as a Violation of International Human Rights”, *European Journal of International Law* 29 (2018), 1251-1287).

Global history of international law

- The history of international law can be rewritten with the help of global history approaches. These approaches render us more sensitive to the problem of Eurocentrism in the development of international law and in its historiography. They allow us to recognise better and to appreciate more the extra-European influences. (*Oxford Handbook of the History of International Law*, Oxford: Oxford University Press 2012, 1228 S. (ed. with Bardo Fassbender); “The Journal of the History of International Law: A Forum for New Research”, *Journal of the History of International Law* 16 (2014), 1-8 (together with Emmanuelle Tourme Jouannet).

Epistemic nationalism, multiperspectivism, bottom-up universalisation

- International legal scholarship tends towards epistemic nationalism: Scholars often espouse standpoints which result from their pre-formation in their national legal system and/or which lie in the national interest of their home state. International legal scholarship should problematize and tackle this phenomenon.
- The decentralised, fragmented, politicised, and frequently inconsistent character of public international law has become especially visible in the current phase of global power shifts. This promotes the cultural, political and methodological pluralism of approaches by international legal scholars. This pluralism should be used as a heuristic device in order to allow for a decentralisation and interrogation of our observer standpoint. Starting from a moderate culture-based moral relativism, a procedural and discursive “bottom-up” universalisation of international law should be sought. International legal scholars should aim, for universal intersubjective comprehensibility, allowing scholars with diverging geographical, educational, or theoretical background to understand an argument or a research finding – regardless of sex, nationality or religion.
- One task of international legal scholars is to pursue a constructive and “realist” utopia. This means that scholars should maintain a sufficient and critical distance to legal practice. (“Die Zukunft der Völkerrechtswissenschaft: Wider den epistemischen Nationalismus”, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 67 (2007), 721-776; “Rollen von Rechtsdenkern und Praktikern – aus völkerrechtlicher Sicht”, *Berichte der deutschen Gesellschaft für Völkerrecht*, Band 45 (Heidelberg: C.F. Müller 2012), 105-173; “Realizing Utopia as a Scholarly Endeavour”, *European Journal of International Law* 24 (2013), 533-552; “International Legal Scholarship Under Challenge”, in: Jean d’Aspremont/Tarcisio

Gazzini/André Nollkaemper/Wouter Werner (eds), *International Law as a Profession* (Cambridge: Cambridge University Press 2017), 117-159; "Triological International Law", in: Anne Peters/Christian Marxsen (eds), *The Max Planck Dialogues on the Law of Peace and War – Introduction to the Series* (Cambridge: Cambridge University Press 2019), XI-XXV; "The Rise and Decline of the International Rule of Law and the Job of Scholars", in: Heike Krieger/Georg Nolte/Andreas Zimmermann (eds), *The International Rule of Law: Rise or Decline?* (Oxford: Oxford University Press 2019), 56-65.

Global animal law

- Global animal law should be established and developed as a research field, in order to maintain animal protection standards which are undermined by globalisation, outsourcing and the mobility of production sites. This research might investigate new concepts such as fundamental rights of animals, a citizen status of animals, or the sovereignty of wild animals over national resources. The new research field can draw inspiration from numerous neighbouring disciplines in the course of the animal turn in the social sciences and humanities. ("Global Animal Law: What it is and why we need it", *Transnational Environmental Law* 5 (2016), 9-23; "Tierwohl als globales Gut: Regulierungsbedarf und -chancen", *Rechtswissenschaft* (2016), 363-387; (ed) *Studies in Global Animal Law* (Heidelberg: Springer 2020); *Animals in International Law*, Collected Courses of The Hague Academy of International Law - Recueil des Cours Vol. 410 (Leiden: Brill 2020), 95-544 (*Livre de poche* forthcoming 2021); Anne Peters/Kristen Stilt/Saskia Stucki (Hrsg.), *Oxford Handbook of Global Animal Law* (Oxford: OUP forthcoming 2023).