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BEYOND HUMAN RIGHTS

A paradigm change is occurring in the course of which human beings are becoming the primary international legal persons. In numerous areas of public international law, substantive rights and obligations of individuals arguably flow directly from international law. The novel legal status of humans in international law is now captured with a concept borrowed from constitutional doctrine: international rights of the person, as opposed to international law protecting persons. Combining doctrinal analysis with current practice, this book is the most comprehensive contemporary analysis of the legal status of the individual. *Beyond Human Rights*, previously published in German and now revised by the author in this English edition, not only deals with the individual in international humanitarian law, international criminal law, and international investment law, but it also covers fields such as consular law, environmental law, protection of individuals against acts of violence and natural disasters, refugee law, and labour law.

ANNE PETERS is Director at the Max Planck Institute for Comparative Public Law and International Law Heidelberg (Germany), and a professor at the Universities of Heidelberg, Freie Universität Berlin, and Basel (Switzerland). She has been a member of the European Commission for Democracy through Law (Venice Commission) in respect of Germany (2011–2015) and served as the President of the European Society of International Law (2010–2012). Her current research interests relate to public international law, including its history, global animal law, global governance and global constitutionalism, and the status of humans in international law.

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BEYOND HUMAN RIGHTS

The Legal Status of the Individual in International Law

ANNE PETERS
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TRANSLATED BY JONATHAN HUSTON

Revised and updated by the author

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PREFACE TO THE GERMAN EDITION OF 2014

The topic of this book has concerned me for more than ten years. In December 2000, I held my trial lecture in Basel on the *LaGrand* case, which had not yet been decided by the International Court of Justice. I delivered my inaugural lecture – entitled "The Rise of the Individual in International Law" – in November 2002, which was attended by friends, colleagues, and supporters (not least of all Jost Delbrück and his wife Gesa). I have learned quite a bit more since then. But this is not the only reason I am happy that I never published that inaugural lecture. Far more important is that over the course of the past decade, the international legal position of the individual has become dramatically stronger. Intensive judicial and codification activity has set out and determined more and more individual rights and duties. This phenomenon has not only quantitative but also qualitative significance. A paradigm shift, which has been called the humanization of international law, has taken place. The basic thesis of this book – namely that the individual is an original (and not only a derivative) subject of international law and the owner of international individual rights – aims to give this topos of humanization a doctrinal and empirical legal foundation.

Chapters 1–3 and 17 began with the study "Das subjektive internationale Recht", which was published in *Jahrbuch des öffentlichen Rechts der Gegenwart* (59 (2011), 411–456); however, I have substantially further developed and modified my findings. I would like to thank the publisher for the kind permission to reuse these parts. Shorter remarks on the international legal position of the individual as the most important member of the international constitutional community can be found in my Chapter 5 of *The Constitutionalization of International Law* (Oxford: Oxford University Press 2009 (rev. ed. 2011), 157–179), the book being co-authored with Jan Klabbers and Geir Ulfstein. Sections from a preliminary version of Chapter 11 have been included in an article I wrote together with my Basel colleague, Sabine Gless

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(Verwertungsverbot bei Verletzung der Pflicht zur Belehrung nach Art. 36 WÜK? *Der Strafverteidiger* 31 (2011), 369–377).

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I dedicate this book to Heiner, Charlotte, and Johannes.

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PREFACE TO THE ENGLISH EDITION

Since the finalization of the German edition in 2013, the international political and legal system has been changing. The trend of "humanization" of international law (Chapter 1) may have slowed down or stopped, while State sovereignty may have become more important again. This may have to do with the recognition that strong and well-functioning States are needed to protect human rights, that the basic "Westphalian" principles such as territorial integrity and the prohibition on the use of force have been violated and thus need to be re-emphasized, and that non-Western States and cultures which have their own views on the meaning of human rights are in economic and political terms on the rise.

For the English edition, I tried to accommodate these changes and challenges, notably in Chapters 1 and 17. At other places, I clarified some passages and inserted new literature and case law. In particular, I thoroughly revised Chapter 8 on the responsibility to protect, and on protection of persons in the event of disaster in order to accommodate the final articles of the ILC on the latter topic, and a certain sobering about R2P. I also quite intensely revised Chapter 10 on rights and duties of investors so as to reflect the rising concern about the imbalance of the regime. In Chapter 14 on human rights and other rights, I was able to refine my thoughts on refugee rights and on labour rights. I added a section on the postmodern critique of rights in Chapter 17. These revisions not only seek to incorporate the current evolution of the relevant law, but are also owed to reviewers' comments on my English draft manuscript, to important comments by Giulio Bartolini and Tommaso Natoli on Chapter 8, and to lucid observations by Evelyne Lagrange, Julie Maupin, Dalia Palombo, and the participants of my Max Planck research seminar on Chapter 10. I have further benefited from comments by Alessandro Bufalini on reparations in Chapter 6, by John Quigley on consular protection in Chapter 11, by Franz Ebert on labour rights in Chapter 14, and by James Hathaway on refugee rights in the same Chapter.

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Thanks to generous funding of the Max Planck Society I was able to recruit a brilliant translator, Dr Jonathan Huston. It proved to be a challenge to find the adequate expressions for doctrinal constructs originating from German legal doctrine and theory. Most of them have to some extent been used in international law, but often mainly by international lawyers with a German basic legal education. Of course, this made me reconsider the usefulness of such concepts for international law. And although the German origins of my legal training will probably remain visible to readers, I am confident that – in a joint enterprise with the translator – I have managed to communicate the ideas to an international audience. This endeavour then is, hopefully, an example for the potential enrichment of international legal scholarship through the hybridization of national background traditions and understandings. In this context, I would like to thank my student research assistants for their diligent work, notably for checking the English translations or English original versions of books quoted.

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