Ressourcenallkation im Recht
Fachbereich Rechtswissenschaft
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Inhalt eines Abstracts (min. 3 Seiten)

Das Abstract soll das eigene Forschungsprojekt umreißen. Dies dient einerseits dazu, das Forschungsprojekt **für Dritte begreifbar** zu machen. Andererseits stellt es **für einen selbst** einen **Arbeitsplan** dar, entlang dessen das eigene Projekt verwirklicht werden kann. Es ist also kein Selbstzweck, sondern ein Mittel zur Projektentwicklung. Als Teil dieser Entwicklung ist das Abstract inhaltlich **notwendigerweise unfertig**. Es kann noch nicht die Ergebnisse vorwegnehmen, die erst in der weiteren Ausarbeitung entstehen werden. Umgekehrt werden einzelne Aspekte des Abstracts später auch nicht mehr Teil der Ausarbeitung bleiben. Damit das Abstract zu einem sinnvollen Zwischenschritt für das eigene Forschungsprojekt wird, ist es notwendig, nicht zu knapp und zu oberflächlich zu bleiben. Dem dient der Richtwert, dass das Abstract **mindestens 3 Seiten lang** sein soll. Erst dann beginnen sich die Ausarbeitungen in den einzelnen Gliederungspunkte aufeinander auszuwirken. Zum Beispiel kann die Ausarbeitung der Gliederung zeigen, dass die Forschungsfragen anders oder enger gefasst werden muss.

Anm. Die folgenden Gliederungspunkte des Abstracts sind optional und Abweichungen in der eigenen Arbeit willkommen.

Arbeitstitel

Der Titel der Arbeit soll möglichst aussagekräftig sein. Er kann außerdem, wie es manche Zeitschriften/Stipendiengeber*innen fordern, durch Schlüsselbegriffe ergänzt werden, die das Arbeitsgebiet umreißen.

I. Einleitung

In der Einleitung sollte es vor allem überzeugend dargelegt werden, was der **Forschungsanlass** ist. Was spricht dafür, dass gerade dieser Bereich besonders interessant ist? Was führt dann (zB Einschränkung auf einen handhabbaren Bereich/auf ein besonders repräsentatives Problem) zur konkreten Fragestellung?

II. Forschungsfrage

Die Forschungsfrage sollte **so präzise wie möglich** formuliert werden. Aus ihr können sich untergeordnete Forschungsfragen ergeben, die idealerweise auch den Gang der Untersuchung strukturieren. Nachfolgend ist zur Orientierung aus *Lieblich*, How to Do Research in International Law?, ein Abschnitt einkopiert, der unterschiedliche Typen von Forschungsfragen darstellt.

III. Forschungsstand/eigene Vorarbeiten

Die eigene Forschungsfrage soll in Bezug auf den Forschungsstand und ggf., soweit vorhanden, eigene Vorarbeiten ins Verhältnis gesetzt werden. Die Ausführungen zum Forschungsstand sollen einen Überblick über vorhandene Forschung verschaffen, sodass die eigene **Fragestellung eingeordnet** werden kann.

IV. Methodik

An dieser Stelle sollte sowohl der **juristische** methodische Ansatz dargelegt werden (geht es zum Beispiel um eine Fallanalyse? Steht euer Projekt in einer bestimmten juristischen

Tradition/knüpft an eine spezifische Theorie an? Wird ein **interdisziplinärer** Ansatz gewählt? Wenn ja, welcher? Warum ist das für die Bearbeitung der Fragestellung methodisch eine überzeugende Wahl?

V. Vorläufige Gliederung (ggf. mit Zeit- und Arbeitsplan)

Es ist ein Überblick über die Gliederung zu geben, der sich zB an untergeordneten Forschungsfragen orientieren kann. Daraus ergibt sich im Besonderen die **Schwerpunktsetzung** sowie die **Argumentationsstruktur**. Soweit ein Zeit- oder Arbeitsplan erstellt werden soll, bietet es sich an, diesen auf die einzelnen Gliederungspunkte zu beziehen.

VI. Mögliche Ergebnisse/Ausblick

Abschließend ist festzuhalten, welche **Antworten** auf die Fragestellung erwartet werden. Außerdem kann benannt werden, welche Folgefragen sich nun sinnvollerweise an die geleistete Forschung anknüpfen könnten.

VII. Literaturverzeichnis

Abschließend ist ein Literaturverzeichnis anzufügen. Dieses umfasst nicht nur Quellen, die im Abstract zitiert werden, sondern auch solche, die für die spätere Arbeit als wichtig betrachtet werden.

Auszug aus: *Lieblich*, How to Do Research in International Law?, abrufbar unter:

https://ssrn.com/abstract=3704776

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2 Research Questions

A Types of Research Questions: Descriptive, Normative and Critical

Finding a research question will be one of the most important and challenging parts of your research. Every research has a question at its basis. The research question is simply the question that your research seeks to answer. In all fields of legal scholarship there are basically three families of research questions: descriptive research questions; normative research questions; and critical research questions. Very broadly speaking, descriptive questions seek to tell us something about the legal world as it is. Normative questions ask what *ought* to be the state of things in relation to law. Critical questions seek to expose the relations between law and power, and, as I explain later, are somewhat in the middle between descriptive and normative questions. In truth, there is a lot of interaction between all three types of questions. But for our sake, we keep it simple, and as a starting point for research, it's better to think about research questions in these terms. Thinking clearly about you research question will help you frame your work, structure your paper, and look for relevant sources.

Descriptive research questions are questions about the state of things as they are. Much of traditional international legal scholarship is descriptive in the sense that it seeks to describe "the law" as it is, whether in abstract (e.g., "what is the content of the Monetary Gold principle in international adjudication?"), or in relation to a specific situation. For instance, in their excellent writing on(Yemen, Tom Ruys and Luca Ferro look at the Saudi-led intervention in the civil war, and ask whether that intervention is lawful.[2] From a theoretical standpoint, this type of research can be broadly described as *positivist*, in the sense that it looks only into legally relevant sources (the *lex lata*), as autonomous bodies of knowledge. We can call such questions *descriptive doctrinal research questions*, since they seek to analyze and describe the doctrine from an internal point of view. Of course, some doubt whether it's at all possible to describe authoritatively what the law "is," beyond very basic statements, without making any normative judgments about what "the law" *should* be. It could even be said that the mere decision to discuss law as an autonomous sphere is a value-laden choice. These and related critiques have been levelled against doctrinal scholarship for over a century by legal realist and critical approaches, both domestically and internationally.[3] This resulted in the gradual marginalization of such research questions, at least in the US. Yet, from a global perspective, doctrinal research into international law remains a central strand of research.

Doctrinal questions are not the only type of descriptive research questions. Descriptive questions can also follow the tradition of Law and Society approaches. This type of research looks at the law from the outside, and is mostly uninterested in legal doctrine *per se*, but rather in law's interaction with society. Historically, the emergence of this way of thinking relates to the insight, first articulated by legal realists, that law does not exist in an autonomous sphere, and gains meaning only with its actual interaction with society. Research questions of this type might ask whether and when law is effective, how people think

about the law, or how judges make decisions. For instance, in her recent book, Anthea Roberts asks whether international law is truly "international," by looking at how it is studied in different parts of the world.[4] We can also include in this type of scholarship research that seeks to explain law from a historical point of view. For example, Eyal Benvenisti and Doreen Lustig inquire into the interests that shaped the origins of modern international humanitarian law (IHL), and argue that the law was shaped more by the interests of ruling elites than by humanitarian impulses.[5] For the purposes of this guide, we call such research questions : these are *socio-legal research questions*.

Normative research questions, in general, ask what the law *ought* to be, whether in general or in a specific instance. For instance, in "The Dispensable Lives of Soldiers," Gabriella Blum asks what ought to be the rules for the targeting of combatants in armed conflict.[6] As she suggests, these rules should consider the specific threat they pose, and not only their legal status as combatants. The difficulty in normative questions – and from my own experience, this is one of the major challenges for students in their first research papers – is that to answer them, we need *external parameters for assessing law*. In other words, we need a theory on what is considered "good," in light of which we can present an argument about what the law should be. Otherwise, we run into a classic problem: we cannot draw from facts alone (what law "is") what *ought* to be (what law should be).[7] It is here where theory plays a key role. Normative legal theories are there to help us articulate our benchmarks for assessing what law should be. Returning to Blum's article as an example, she uses insights from ethics to consolidate her point. She argues from an ethical, *extra-legal* vantage point, that since soldiers' lives have moral worth, law should be understood in a manner that best reflects this moral idea.

Now, there is a myriad of normative approaches to (international) law, which I will not address here. A good place to start on theories of international law, including normative ones, is Andrea Bianchi's excellent and accessible book on international legal theories.[8] Just to get you a sense of things, older natural law theories would simply identify law with morality, and would inquire into morality – either as handed down by God or as exposed by reason – in order to ascertain law.[9] In newer scholarship, it's much more common to use ethics as a way to criticize positive law, or to read moral standards into the interpretation of law itself – in accordance with the moral theory to which we subscribe.[10] This, for instance, is Ronald

Dworkin's approach, when he urges to interpret law "in its best light."[11] In international law, for instance, a notable example for such thinking is Thomas Franck's theory of legitimacy and international law.[12] Franck argues that legal rules should have certain characteristics, such as clarity and coherence, in order to enjoy a "compliance pull" that induces state compliance. If, for instance, we would adopt Franck's theory, we would assess law in light of his standards of legitimacy.

Normative theories can also be utilitarian. The best known example for such way of thinking, of course, is law and economics.[13] Another family of instrumental normative theories can be roughly described as policy approaches to international law. In the simplest sense, policy approaches ask what the law should be, in terms of its ability to bring about good policy consequences. The New Haven School of international law, for instance, analyzed international law from the point of a global standard of human dignity.[14] It is safe to say that almost all current scholarship on international law, especially in the US, utilizes policy approaches, even if not explicitly.[15] To sum this point, when framing normative research questions, we should be aware that at some point, we will need to commit to a yardstick through which to assess our normative conclusions.

Critical research questions inquire into the power relations that shape law, or into the relations between law and politics in the broad sense of the term. In this sense, they aim to be descriptive: they seek to describe law as a product of power relations, and the manner in which law conceals and neutralizes political choices.[16] Like normative scholarship, critical research questions also rely on theories ("critical theories"). For instance, Martti Koskenniemi seeks to describe how the structure of the international legal argument collapses into politics, using insights from Critical Legal Studies (CLS).[17] Aeyal Gross inquires whether the application of international human rights law might harm rather than benefit Protected Persons in occupied territories, on the basis of theoretical tools from CLS and Legal Realism.[18] Anthony Anghie asks how colonialism shaped the origins of international law, on the basis of postcolonial theory (and

specifically in international law, Third World Approaches to International Law).[19] Ntina Tzouvala considers whether and how the 19th century standards of civilization in international law continue to live on in the system through its capitalist underpinnings, by applying Marxian analysis.[20] From a feminist approach, Fionnuala Ní Aoláin explores what are the gendered aspects of the law of occupation.[21] It should be emphasized that critical research questions are also normative in the deeper sense: by seeking to expose power relations, they imply that something is wrong with law. Some critical research proceeds, after exposing power dynamics, to offer solutions – and some simply conclude that the project of law is a lost cause.

It is crucial to understand that both normative and critical research questions usually have descriptive sub-questions. For instance, Blum's normative claim is that the current rule on targeting combatants is no longer tenable, and should be changed. But to do so, she first has to give a proper account of the current understanding of law. And that is, of course, a descriptive question. The same applies to critical questions. Good critical scholarship should be able to give a valid account of its object of critique. For example, in Tzouvala's piece, a significant part offers a description of the standards of civilization, before the main critique is applied.

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[2] Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT'L & COMP. L.Q. 61 (2016).
[3] Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809 (1935).

[4] ANTHEA ROBERTS, IS INTERNATIONAL LAW INTERNATIONAL? (2017).
[5] Eyal Benvenisti & Doreen Lustig, *Monopolizing War: Codifying the Laws of War to Reassert Governmental Authority, 1856–1874* 31 EUR. J. INT'L L. 127 (2020).
[6] Gabriella Blum, *The Dispensable Lives of Soldiers*, 2 J. LEG. ANALYSIS 115 (2010).
[7] For an explanation see SCOTT J. SHAPIRO, LEGALITY 47-49 (2011).
[8] ANDREA BIANCHI, INTERNATIONAL LAW THEORIES: AN INQUIRY INTO DIFFERENT WAYS OF THINKING (2016).
[9] See EMER DE VATTEL, THE LAW OF NATIONS Bk. I Ch. IV §§38 –39 (Béla Kapossy & Richard Whatmore eds., 2008)
[10] *See, e.g.*, ADIL AHMAD HAQUE, LAW AND MORALITY AT WAR (2017)

[11] RONALD DWORKIN, LAW'S EMPIRE (1986).
[12] Thomas Franck, *Legitimacy in the International System,* 82 Am. J. Int'l L. 705 (1988)
[13] Jeffrey L. Dunoff & Joel P. Trachtman, *Economic Analysis of International Law*, 24 YALE J. INT'l L. 1 (1999).
[14] W. Michael Reisman, *The View from the New Haven School of International Law*, 86 AM. SOC'Y INT'L L. PROC. 118 (1992)
[15] See Harlan G. Cohen, *Are We (Americans) All International Legal Realists Now? In* CONCEPTS ON INTERNATIONAL LAW IN EUROPE AND THE UNITED STATES (Chiara Giorgetti & Guglielmo Verdirame, eds., forthcoming).
[16] Martti Koskenniemi, *What Is Critical Research in International Law? Celebrating Structuralism*, 29 LEID. J. INT'L L. 727 (2016).
[17] Martti Koskenniemi, *The Politics of International Law*, 1 EUR. J. INT'L L. 4 (1999).
[18] Aeyal M. Gross, *Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?* 18 EUR. J. INT'L L. 1 (2007.)

[19] Antony Anghie, *Francisco de Vitoria and the Colonial Origins of International Law*, 5 SOC. & LEG. STUD. 321 (1996).
[20] Ntina Tzouvala, *Civilization*, *in* CONCEPTS FOR INTERNATIONAL LAW: CONTRIBUTIONS TO DISCIPLINARY THOUGHT 83 (Jean d'Aspremont & Sahib Singh eds., 2019).
[21] Fionnuala Ní Aoláin, *The Gender of Occupation*, 45 YALE J. INT'L L. 335 (2020).