

# § 1 The world order of states

## I. The divided planet and its rudimentary legal world order

### 1) The principle of the territorial state

- Legally, neither our planet nor the people living on it constitute a unity. Mankind is divided into numerous distinct communities (*peoples*) which form independent (*sovereign*) governing entities (*states*). Each state is allocated a delimited portion of the earth's surface (*state territory*), over which it has exclusive power to rule (*state power*), but to which its authority is generally restricted (*territorial principle*).
- Unlike in medieval Europe and other parts of the world in the past, the concept of rule by virtue of higher law (*sovereign/public power*) refers essentially to the rule of the sovereign governing entity (the state) over the territory over which it has control (the state territory). A sovereign public power (not derived nor dependent) can only be obtained by states.
- This system is not a matter of course but the prevailing system since the 17<sup>th</sup> century. It is presently universally recognized and nowhere called into question.

### 2) Public international law as rudimentary legal world order

- Instead of one comprehensive integrated global legal order there is a plurality of coexisting heterogeneous legal orders of the individual states.
- However, public international law, the law constituting the world order of states and regulating the rights, obligations and relations of the states, serves as a *universally recognized rudimentary legal world order*. It builds on a prominent role of the territorial state in law and politics.

## II. The prominent role of the territorial state

### 1) Self-determination of peoples and sovereignty of the state

- Each people is free to follow its own political and ideological principles, giving effect to its own cultural characteristics, within its own state order (*right to self-determination*). People living on the same territory and not satisfied with the prevailing state order or the performance of their state can form a new people and establish a new state which is organised to their ideas (example: Indonesia 1945).
- Each state enjoys *sovereignty*. This is the *underived and independent legal capacity to act in internal and external affairs*, which is only subject to a few basic restrictions under public intern. law but otherwise *unlimited*. It includes
  - the (quasi-) unlimited public power of the state
  - the control of the state over all other public power exercised on its territory
  - a (quasi-) unlimited constituent power within the state;
  - recognised restrictions: prohibition of war, genocide, slavery, ethnical cleansing and other huge-scale extreme human rights violations.
- Sovereignty is absolute. It cannot be shared, divided, in transition or in suspense.

### 2) The ultimate responsibility of the state

- Sovereignty comes along with the ultimate *responsibility* of the state before the citizen *for the comprehensive fulfilment of all public functions on its territory*. This includes the final responsibility for the results - or missing results - of the activities of other territorial collectivities and international institutions on its territory. If they are not satisfying, the state must reorganise the concerned sectors. This may include to associate with other states for a more efficient fulfilment of certain tasks.

- If the state delegates tasks to international institutions it keeps its ultimate responsibility. It must account for delegating but also for not delegating tasks and even for not creating stronger international institutions that may perform more efficiently. Likewise, it must not only account for participating but also for not participating in a process of geo-regional integration or for not supporting it more actively.
- Thus, the ultimate responsibility of the state can cause it to participate in associations of states but also to leave an association in order to join or create a better one.

### III. Concept and nature of the state

#### 1) The elements of a "state" in the sense of public international law

- the THREE ELEMENTS DOCTRINE of GEORG JELLINEK (Allgemeine Staatslehre, 1900, p.128 ff.)
  - a) **State territory**
    - only territorial collectivities can be a state
  - b) **State people**
    - the totality of the citizens of the state
    - can be but does not need to be a "nation" in the ethnical sense
    - a *community of common destiny* [Schicksalsgemeinschaft]
  - c) **State power**
    - must be real
    - must not vanish permanently (→ failed state)

#### 2) Sovereignty as a consequence, not precondition of the status as a state

- a state is not a state because it is sovereign but sovereign because it is a state

#### 3) The different basic understandings of the state

- totalitarian and liberal (e.g. theories of power, MACCHIAVELLI, CARL SCHMITT)
- philosophical and religious (e.g. Islamism)
- social contract doctrines (e.g. THOMAS HOBBS, JOHN LOCKE, JEAN-JACQUES ROUSSEAU)
- new approaches of the 20<sup>th</sup> century (HANS KELSEN, RUDOLF SMEND, HERMAN HELLER)
- the state as a legal person (OTTO VON GIERKE; prevailing opinion, except in UK)

#### 4) The different forms of state according to the general theory of state

- differentiation according to the historical basic models: monarchy and republic
- differentiation according to the form of government: monocracy/despotism, aristocracy/oligarchy and democracy/ochlocracy
- differentiation according to the vertical structure: unitary state and federal state

### IV. The development from the solitary loner state to joint markets and inter- and supranational cooperation and integration

#### 1) The old order of solitary loner states

- strongly secured borders, little international and no transnational cooperation

#### 2) The inability of the individual states to meet the challenges of our time

- transnational crime, international terrorism, powerful global enterprises, globally organised tax evasion, transnational pollution, climate change...
- a problem in particular to smaller states

### **3) The states exploring new ways under the rule of public international law**

- see **diagram 1**
- direct cooperation through international treaties (bilateral and multilateral)
- international cooperation in conventional international organisations
- supranational cooperation in supranational organisations
- integration and intensive coordinated cooperation in a supranational union/Staatenverbund (→ EU)
- in future close integration into geo-regional federal unification states?

## **V. The world order of states in the 21st century: open and integrated statehood and a plurality of associations of states**

### **1) Open statehood [offene Staatlichkeit] and integrated statehood [integrierte Staatlichkeit]**

- open statehood: intensive multilateral international, supranational and also transnational (transfrontier inter-regional) cooperation, including free trade arrangements, the delegation of sovereign powers to supranational and transnational institutions and the integration in systems of mutual collective security (such as UN, NATO)
- integrated statehood: participation in processes of comprehensive supranational geo-regional integration with common policies, an internal market, free movement etc. (so far only in Europe, in the future possibly also in Latin America, Africa, Southeast Asia)

### **2) A plurality of legal forms of cooperation and associations of states**

[Staatenverbindungen]

- see diagram 1

### **3) Perspective: Will the world order of states persist in times of globalisation and climate change?**