

§ 3 Associations of states under public international law

I. General aspects

- associations *based on international treaties* which create them, establish their institutions, grant and define their competences and regulate their relations with their member states
- depend on the collective will of their *member states as masters of the treaty* (who can at any time eliminate or modify them or withdraw competences by terminating or amending the founding treaty)
- the *competence of competences* [Kompetenz-Kompetenz], i.e. the political decision about the competences of the association, always stays with the member states (but the competence of authoritative interpretation of competence clauses in the treaty may be attributed to institution of the association)

II. Historical associations of states

- interconnections without legal personality
- personal union (only example today: Commonwealth Realms), real union and protectorate (in history)

III. The confederation

1) The concept of uniting sovereign states in a federal association of states

- uniting with selected partners in a *new general political community* based on federalism
 - membership affects states as a whole, not just some policies
 - unity in diversity
 - mutual loyalty and mutual solidarity in case of threats, attacks or disasters
- members keep status as states in the sense of public intern. law
- usually only few competences which concern the state as a whole (foreign policy, defense)

2) Characteristic features

- exclusivity (state cannot be member of different confederations)
- sovereignty of the member states
- limited competences, weak institutions, difficult (often unanimous) decision-making

3) Examples

- ASEAN, CIS, African Union, Benelux-Union
- numerous historic examples (e.g. ancient greek confederations, USA 1777 - 1788, German Confederation 1815 - 1866, Confederate States of America 1861 - 1865)

4) Advantages and disadvantages

- little restrictions of the political independence of the member states
- member states better protected against threats emanating from third countries
- not very efficient in the performance of public functions

IV. The international organisation

1) The concept of sectoral institutionalised cooperation for a specific purpose

- states cooperate in and via *common institutions which make own decisions* (and monitor compliance), to achieve a coordinated, more efficient fulfilment of public functions
- focus on the specific tasks, not on the general relations between the member states

2) Characteristic features

- usually highly *specialised* and limited to a small range of homogenous competences
- can have numerous member states; state can be member of many organisations
- *member states legally obliged to implement the organisation's decisions* on their territory

3) Examples

- UN system (UN, FAO, IAO, WHO, UNESCO, IMO etc.)
- geo-regional organisations (Council of Europe, OSCE, ASEAN, AU, OAS etc.)
- economic organisations (WTO, OECD, World Bank, Mercosur, Eurasian Econ. Union etc.)
- other specialised organisations (NATO, OPCW etc.)

4) Advantages and disadvantages

- more efficient than the uncoordinated direct intern. cooperation but still a cumbersome and unreliable way
- an intern. organis. can also be a confederation

V. The supranational organisation

1) The concept of supran. fulfilment of public tasks via supran. public power

- an intern. organis. of a special kind *directly exercises public power in the member states*, to avoid the unreliability and delays of the intermediate step of national implementation and, thus, to achieve a more efficient and homogeneous fulfilment of public functions
- the supranational public power, following its own rules, is identical in all member states

2) Characteristic features

- citizens and authorities in the member states are *directly bound by the supranational regulations and indiv. decisions*; this presupposes the opening of the national legal system for their *direct applicability* (→ *open statehood*)
- execution and enforcement of the supran. decisions must not be obstructed by domestic law; in the EU, in case of conflict EU law prevails (→ *primacy* of Union law)

3) Examples

- European river commissions, Eurocontrol, European Patent Office
- European Communities (now: European Union)

4) Advantages and disadvantages

- the by far most efficient form of intern. cooperation
- unsuitable for states unwilling to accept restrictions of the exercise of their sovereignty
- supranational measures not limited by domestic constit. principles and fundamental rights

VI. The supranational union / "Staatenverbund" ["compound of states"]

1) The European Union as first representative of a new form of organisation

- an association of states without historic precedent, not invented but emerged as result of many developments, reforms and compromises
- sophisticated institutional system, far-reaching competences, comprehensive exercise of supran. public power, highly developed legal system with powerful court of justice, legal framework for a geo-regional internal market, own currency, own citizenship

2) The debate on the legal nature of the European Union

- the state-centred "*Staatenverbund*" doctrine of the German Federal Constitutional Court - Maastricht judgement of 1993 (BVerfGE 89, 155), Lisbon judgement of 2009 (BVerfGE 123, 267)
- the "unconventional" approach of some scholars: Union, states, Treaties & constitutions as a "compound of states and constitutions"
- the union-centered approach of a general theory of the "*supranational union*"

3) The supranational union as a dynamic non-state but state-like organisation of supranational geo-regional integration

- more than an intern. or supran. organisation, a confederation or a combination of both but not yet a federal state
- accomplishes its integrative function primarily by legislation and regulation (but also serves as institutional framework for intergovernmental cooperation and habitat for the substantive integration law)
- a *dynamic* form of integration

4) The status of the member state in the supranational union

- the *unaffected sovereignty* of the state
 - no "shared sovereignty" since sovereignty is absolute and therefore indivisible
 - unlimited public power (including the legal power - not the right! - to break Union law)
 - unlimited legal capacity at public international law
 - ultimate control over all public power exercised on the state territory
 - comes along with the ultimate responsibility [Letztverantwortung] of the state (→ slide 1)
- the member states as the "masters of the treaties"
 - only as collectivity, when amending the founding treaties
- the basic duty to respect, implement, execute and enforce Union law (→ art. 4(3) EU Treaty)
- high requirements and long, complicated procedure for accession (cf. art. 49 EU Treaty)
- right to secession (with option of secession agreement, art. 50 EU Treaty)

5) The European concept of integration through law

- integration based on law and the respect for law but no coercive powers of the Union
 - demanding requirements for the implementation and execution of Union law in the member states
- rule of law as a fundamental value of the Union (art. 2 EU Treaty)
 - effectiveness (*effet utile*) as dominant criterium when dealing with Union law
- prominent role of the European Court of Justice
- strong characteristic features of European Union law: autonomy, unity, *direct effect* in the member states and *primacy* (in application) over national law

6) The supranational union - a suitable form of organisation for geo-regional integration in Southeast Asia?

- your opinion: _____