

§ 3 The development from the solitary loner state to international trade, joint markets, multilateral inter- and supranational cooperation, integration and globalisation

I. The old order of solitary loner states

- Most states on this planet regard themselves as *nation states* (states sustained by a nation).
 - A *nation* is a community of people which is, according to historical, ethnic, cultural and/or linguistic criteria, homogeneous in itself and clearly distinguishable from others.
 - The concept of the nation state is based on the *doctrine of the nation*, a powerful political ideology that emerged in Europe and North America in the late 18th century, had a huge impact on the planet in the 19th and 20th centuries, caused two world wars and numerous other wars and still continues to influence political thinking in the 21st century.
- Only a few states are conceived as multi-ethnic states (most prominent example: Soviet Union). Some recognise the internal ethnic-cultural diversity but build a nation on top of it (most prominent example: Indonesia, which strives for "unity in diversity" and uses an artificial national language plus regional languages).
- The classical nation state, as it dominated until the end of World War II, carried out almost all its public functions on its own. It focused solely on its own "nation". It only cared about its own citizens but not about anything that happened beyond the borders of its territory. In the era of nation-states, a *nation-state-centred mindset* prevailed in politics, law, public administration, science, and in the minds of the citizens.
 - Today, in many states far-right populist movements try to revive it.
- Key phenomena of this era include
 - strongly secured borders
 - restrained international mobility
 - little international cooperation, almost no international coordination
 - uncoordinated parallel development of solutions for common problems in several states
 - no transnational (transfrontier inter-regional) cooperation
 - little international help in the event of natural disasters or emergencies

II. The inability of the individual states to meet the challenges of our time

- The decades following World War II saw a triumph of technology and a rapid economic growth in numerous countries that transformed life and civilisation fundamentally. They brought new chances but also new challenges that quickly overwhelmed the capabilities of individual states. This process is still going on and even accelerating.
- Challenges that the individual state is unable to meet:
 - transnational crime (esp. transnational economic crime, drug and arms trafficking, later also cybercrime)
 - international terrorism
 - globally organised tax evasion
 - undue influence of powerful global enterprises
 - transnational pollution
 - man-made climate change
 - global spread of invasive species (who may also bring new diseases)
 - pandemics (→ bird flu, Covid-19)
 - recently: new threats to democracy in the era of digitalisation
- Today, an increasing globalisation and geo-regionalisation of challenges is evident. The individual state, in particular the classical nation-state, is increasingly out of its depth in a growing number of areas.

- Technical progress in most high-tech areas even requires a global market to fund it.
 - If we still lived in the limited world of the solitary loner state, many innovative products that we take for granted, from smartphones and mRNA vaccines to AI, would not exist.
- An overdue debate: Can states with less than 300 to 400 million inhabitants still be effective and resilient today?

III. The states exploring new ways under the rule of public international law

- see Diagram 1

1) States seeking alternatives to merging into a larger, more capable state

- A practical solution to ensure that the state can meet the challenges of our time would be to merge several small states into a larger, more capable state.
 - This has happened in North America 1788 (when the USA transformed from a confederation into a federal state) and in Germany 1871 (when the German states formed the German Empire). It may happen again one day in Europe (maybe in the 2040s?).
 - To allow this solution whilst maintaining maximum independence of the uniting states, the Americans JAMES MADISON, ALEXANDER HAMILTON and JOHN JAY invented in their "Federalist Papers" (1787/88) a new form of organisation: the federal state.
 - The federal state is the closest possible association of states (a state itself), but grants the federated states a special constitutional status (ordinary public power under the federal constitution, constitutional autonomy, autonomous self-organisation, guaranteed competences and basic finances etc.).
- However, in the history of the world order of states, this solution has not become popular, since *in the federal state only the federation enjoys the status of a sovereign state* in the sense of public international law, while the federated states are merely "states" in the sense of state law (non-sovereign "states" with an elevated constit. status). Merging into a unification state inevitably implies to give up the merging state's sovereignty. Until today, the states, esp. nation-states, are not prepared for that but prefer to seek alternatives:

2) Direct cooperation through international treaties

- Soon after World War II, intern. cooperation intensified - through informal consultation (a first step), intergovernmental conferences (not very effective) and, more and more, international treaties.
- International treaties are a *legally binding* instrument. They are regulated in detail in the Vienna Convention on the Law of Treaties of 1969.
 - International treaties are registered under art. 102 UN Charter at the United Nations Secretariat and published in the United Nations Treaty Collection (UNTC). In September 2026, its print version, the United Nations Treaty Series, comprised 3.444 volumes.
- Besides the classical *bilateral treaties*, a growing number of *multilateral treaties* was concluded. This allowed for a wider geographical range of the cooperation and greater equality among the partners.
 - In September 2026, the United Nations Treaty Collection (UNTC) comprised 704 multilateral treaties.
 - Today, the USA (under Donald Trump), Russia (under Vladimir Putin) and China (under Xi Jinping) prefer again the old practice of bilateral agreements, because it enables them to act more as hegemonic powers.
- However, intern. treaties *need to be implemented* at the domestic level, in order to take full effect. If this does not happen, they are useless. This renders this instrument cumbersome, effortful and prone to failure.

3) International cooperation in conventional international organisations

(intergovernmental organisations)

- The decades after World War II also saw a *boom of international organisations*.
- Definition: International organisations are associations of states (with own legal personality) established by an international treaty for the joint pursuit of specific objectives; they

are designed to be permanent, operate on the basis of equality of states, have at least one *common organ*, and are thereby capable of forming and expressing a *will of their own*. In the advanced versions, member states are obliged under the founding treaty to accept the organisation's decisions as binding and implement them within their domestic legal order.

- This ensures a certain degree of coherence and coordination in the performance of public tasks, but generally does not restrict the states's ability to act internally.
 - Unless the national constitution provides otherwise, *domestic laws and measures that contravene the organisation's decisions are neither void nor inapplicable*.
 - The organisation's decisions have *no domestic effect as long as the domestic legal act to implement them is lacking*.
- This cumbersome and unreliable approach is not very effective for tasks that require a guaranteed swift, uniform and effective course of action of the states. Nevertheless, today it is the most common approach of the states to meet the challenges of our time.
 - In 2026, there is an estimated number of 300 to 500 intergovernmental organisations, including 15 specialised agencies of the United Nations.

4) Supranational cooperation in supranational organisations

- The search for new approaches also led to the creation of supranational institutions, i.e. bodies and organisations under public international law that are entrusted with the performance of special tasks through the *exercise of supranational public power*, especially supranational regulative power, on the territory of the participating states. The states "transfer" sovereign rights to the supranational institutions, enabling them to exercise public power directly over the citizens and public authorities in all states without assistance from domestic authorities - no implementing domestic legal act is necessary.
 - Most important examples: the *European Communities* (European Coal and Steel Community [1951], European Economic Community [1957] and European Atomic Energy Community [1957], which later formed the European Union. Other examples: *Eurocontrol* (a European flight control organisation, 1960), *European Patent Organisation* (1973). Predecessors were *river commissions*, who regulated already in the 19th century the ship traffic on the European rivers Rhine and Danube.
- The mission of supranational organisations is limited to narrowly defined special tasks. However, the supranational measures can achieve a *high degree of effectiveness*, since they are *exactly the same* and apply from exactly the same time *everywhere* on the territory of all states, without the delays or distortions brought by a national implementing act. They combine the advantages of direct sovereign intervention with those of an expanded territorial scope of action. However, as this effectively limits the influence of the individual state on its own territory, this solution has not become popular outside Europe.

5) Geo-regional integration in a non-state but state-like supranational union/ "Staatenverbund"

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

- In the 1980s, the European Communities, later European Union, evolved into the *first and, to date, only representative of a new form of organisation* under public intern. law that extends far beyond a specialised supranational organisation: a geo-regional general *organisation of integration* that unites its member states into a new, comprehensive political community and exhibits the characteristics of both, a *supranational organisation and a confederation*, while transcending both, yet without crossing the threshold into statehood.
 - Unlike the federal state model, this new form of organisation was *not invented but emerged*, as a result of numerous developments, reforms and compromises, in the process of European integration.

- The main features that distinguish the European Union from any other organisation under public international law, are:
 - a sophisticated institutional system with federal and unitarian elements
 - far-reaching competences
 - comprehensive exercise of supranational public power in numerous areas
 - a highly developed legal system with a powerful court of justice
 - a legal framework for a geo-regional internal market
 - an own currency
 - an own citizenship

b) The debate on the European Union's legal nature: "compound of states" ["Staatenverbund"], "compound of states and constitutions" or supra-national union?

- There has been for decades a lively debate about the legal nature of the European organisation of integration.
- The most important approaches are:
 - aa) 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)
 - an approach welcomed but also criticised by constitutional courts of other EU member states
 - an approach that overemphasises the importance of the states and neglects the independent role of the European organisation of integration
 - strange: the use of an untranslatable German term to describe a European phenomenon...
 - bb) the "unconventional" approach of some scholars: Union, states, Treaties and constitutions as a constitutional unity
 - an approach that combines heterogeneous elements that do not go together (like "fish & bicycle"...)
 - cc) the union-centered approach of a general theory of the supranational union
 - ARMIN VON BOGDDANY (1993 ff.), THOMAS SCHMITZ (2001)
 - an approach that focuses on the European organisation of integration itself, its independent role and significance

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

- The supranational union is a new, non-state but state-like form of organisation, situated *in the triangle between supran. organisation, confederation and federal state*.
- It has emerged as a special form of organisation for a process-oriented supranational geo-regional integration, which may one day (though not necessarily) lead to the formation of a geo-regional federal state.
- This form of organisation could also serve geo-regional integration in other regions of the planet, yet since it comes with a loss of influence of the individual state (and its government), interest in the Global South has been low.

6) Transnational cooperation

- In the wake of international and supranational cooperation, also transnational cooperation (transfrontier inter-regional cooperation between neighbouring regional and local territorial collectivities) has developed.
 - It developed in particular in *cross-border regions* that form contiguous settlement areas with strong economic and social connections, a common cultural background, shared natural environments without natural boundaries or historically developed relationships.
 - Prominent examples: Meuse-Rhine Euroregion (Aachen - Liège - Maastricht), Greater Region Sar-Lor-Lux (Saarland - Lorraine - Luxembourg)
 - In some cross-border regions there is even cross-border local public transport. In some it is not always clear which state you are in when you travel.
 - Note that transnational cooperation is always "international" but can be nonetheless very provincial!

- In the early days, transnational cooperation was often informal (and probably not always totally legal under national administrative law), but nowadays it is provided for in international treaties.
 - See, for example, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 1980.

7) Development of a global international economic system

- (→ see Part 1 of the course)

IV. The intensification of global trade and international cooperation into a phenomenon of globalisation

- International cooperation (→ III.2-4) and global trade (→ Part 1 of the course) have intensified
 - both in terms of quantity and quality
 - in a long historical process, first slowly, with interruptions, then rapidly (after 1989)
 - supported by a certain rise of the rule of law in many countries and in international relations into a new phenomenon that finally has changed the economy, the society and the lives of many people almost everywhere on the planet: globalisation.

1) Definition of globalisation

- Note that there is no universal scientific definition of globalisation
 - the presented definitions depend on the scientific discipline, the subject of the research and the perspective adopted
- Proposed definition for the purpose of this course:
Globalisation is the historical *process of increasing worldwide interconnectedness, interdependence and intensification of relationships* among economic actors, individuals, societies, institutions and states in a growing number of fields, particularly in economics, politics, science, culture, environment and communication.
 - As a result of this process, geographical distances lose their significance (space-time compression) and events in one part of the world can have tangible effects on distant regions of the planet.

2) Early stages respectively precursors of globalisation

- Various chronological classifications of globalisation and its precursors are discussed. The following is based on the smart classification by PETER VANHAM at the World Economic Forum 2019:
- **trade on the silk road** (1st century BC to 5th century AD, 13th to 14th centuries)
 - trade of silk via overland routes, from China to Rome
- **trade of spices through the islamic world** (7th to 15th centuries)
 - primarily by sea
- **Age of discovery** (15th to 18th centuries)
 - discovery of America
 - trade of luxury goods (esp. spices) by the sea
 - early imperialism
- **Globalisation 1.0** (19th century to 1914)
 - enabled by the 1st Industrial Revolution (1780 to mid-19th century)
 - trade of textiles and industrial goods
 - for a long time dominance of the United Kingdom
- **Globalisation 2.0** (1945 - 1989)
 - enabled by the 2nd Industrial Revolution (1870 - 1910s)
 - rise of major exporting nations (US, Germany, Japan, trade within Soviet Union)

3) The general, broad and rapid advance of globalisation since the end of the Cold War

- See again the classification by PETER VANHAM at the World Economic Forum 2019:
- **Globalisation 3.0 (1989 - 2010s)**
 - enabled by 3rd Industrial Revolution (1960s to 1990s)
 - rise of global supply chains
 - dominance of USA, EU, Japan, rise of China
- **Globalisation 4.0 (since late 2010s)**
 - enabled by 4th Industrial Revolution (2000s to 2010s)
 - dominance of USA challenged by China
 - "negative globalization" expands too, through global climate change

V. Globalisation and geo-regionalisation

- Definition: Geo-regionalisation is a process similar to globalisation, or even more intense, that is confined to a group of neighbouring states, often sharing a common cultural or civilisational background, within a contiguous region of the world.
- Unlike globalisation in its current form, geo-regionalisation *can also* involve the *integration* in an *organisation of integration* that is not, from the outset, limited to a few specific tasks, but orientated towards a common future of the participating states and their citizens.

1) The advanced process of geo-regionalisation in Europe

- dominated by the European Union as a European supranational union (→ § 3 III.5) and the connected European Economic Area and Schengen Area, but also the Council of Europe

2) The process of geo-regionalisation in other parts of the world

- predominantly economic cooperation, but also cooperation in other areas
- prominent examples:
 - Eurasian Economic Union (EEU)
 - Russia, Belarus, Kazakhstan
 - conceived as an Eurasian organisation of integration
 - Mercado Común del Sur (Mercosur)
 - Argentina, Bolivia, Brazil, Paraguay, Uruguay, Venezuela; 7 associated states
 - Economic Community of West African States (ECOWAS)
 - Benin, Cabo Verde, Côte d'Ivoire, Ghana, Guinea, Guinea Bissau, Liberia, Nigeria, Senegal, Sierra Leone, Gambia, Togo
 - economic and political cooperation, peacekeeping
 - a West African organisation of integration
 - Common Market for Eastern and Southern Africa (COMESA)
 - 21 Eastern and Southern African states
 - Association of Southeast Asian Nations (ASEAN)
 - Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor Leste, Vietnam
 - economic and political cooperation
 - strongly intergovernmental
 - a (weak) Southeast Asian organisation of integration
 - African Union (AU)
 - 55 African States
 - economic cooperation (own free trade area), political cooperation, peacekeeping, human rights protection
 - Organization of American States (OAS)
 - 35 American states

3) Globalisation and geo-regionalisation as complementing, not competing phenomena

- Both can sometimes solve problems that cannot be solved at the other level.
- Whilst in many parts of the world, integration is possible at the geo-regional level, due to shared values and a common cultural and civilisational background, the idea of a global integration of humankind remains, for the time being, utopian.

VI. The world order of states in the 21st century: cooperative, open and integrated statehood, global trade and a plurality of legal forms of cooperation and associations of states in a globalised world

- The world has changed significantly since the old time of the solitary loner states:
- *Cooperative statehood*: States no longer attempt to handle all tasks on their own, but instead cooperate with other states and international institutions.
- *Comprehensive global trade*: States no longer attempt to produce all essential goods themselves but rely on an international division of labour and trade accross the globe.
 - Domestic industries rely on *complex global supply chains* that can even include just-in-time production in other continents.
- *Open statehood* [offene Staatlichkeit]: States delegate sovereign powers to supranational and transnational institutions, open up to the exercise of supranational and transnational public power on their territory and even join systems of mutual collective security (UN, NATO etc.).
- *Integrated statehood* [integrierte Staatlichkeit]: States participate in processes of comprehensive supranational geo-regional integration with common policies, an internal market, free movement etc.
 - At present only in Europe but in the future possibly also in Africa, Latin America, Southeast Asia.
- How does this actual reality fit into the state's sovereignty under public international law in the world order of states?