

§ 1 Introduction

I. International and supranational cooperation and integration in the world order of states

1) Background: the world order of states

a) The principle of the territorial state

- Neither our planet nor mankind constitute a legal unity. Instead, numerous distinct communities (*peoples*) 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*).
- In this system, rule by virtue of higher law (*public power*) is the rule of the state over its state territory. The state can delegate the exercise of its power. Only a state can have a *sovereign* public power that is underived and not dependent on anyone else.

b) Public internal law as rudimentary legal world order

- On this planet, there is not one comprehensive global legal order but a plurality of coexisting heterogeneous legal orders of the individual states.
- However, public international law (the law of the states) serves as a universally recognized rudimentary legal world order.

c) The prominent role of the sovereign territorial state

- Each state enjoys *sovereignty*: the basically *unlimited, underived and independent legal capacity to act in internal & external affairs* (with few restrictions under public intern. law).
- Sovereignty 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 and other gross human rights violations
- Sovereignty is absolute. It cannot be shared, divided, in transition or in suspense.

2) The development from the solitary loner state to joint markets and inter- and supranational cooperation and integration

- the old order of solitary loner states: strongly secured borders, little cooperation
- the inability of the individual states to meet the challenges of our time
 - intern. terrorism, transnational crime, powerful global enterprises, transnational pollution, climate change...
- the states explore new ways, based on public international law (→ **diagram 1**)
 - direct cooperation through international treaties
 - international cooperation in international organisations
 - (with own organs that take decisions that are binding for the member states)
 - supranational cooperation in supranational organisations
 - (who exercise public power directly on the territory of their member states)
 - in Europe integration in a supranational union (→ EU)
 - (a non-state but state-like organisation of geo-regional integration; see § 1 II.2, § 2 I)

II. Two distinct European organisations with different functions: Council of Europe and European Union

1) The Council of Europe: an international organisation for the promotion of human rights, rule of law and democracy in Europe

- a pan-European organisation of 46 member states
- based in Strasbourg
- legal basis: Statute of the Council of Europe of 1949
- legal nature: classical international organisation
- mission: to promote human rights, rule of law and democracy in Europe, in particular by preparation of pan-European international treaties
 - most important achievement: preparation of the *European Convention on Human Rights* and its protocols
- organs: Committee of Ministers and Parliamentary Assembly, served by a Secretariat
- has own Commissioner for Human Rights
- hosts the European Commission for Democracy through Law (Venice Commission), a high-profile multinational advisory body on questions of up-to-date free and democratic, rule of law-based constitutionalism

2) The European Union: a non-state but state-like geo-regional organisation of integration, performing on a large scale public missions by the exercise of supranational public power in its member states

- a more exclusive organisation of currently 27 European states
- based mainly in Brussels
- legal basis:
 - Treaty on European Union (EU Treaty)
 - Treaty on the Functioning of the European Union (FEU Treaty)
 - Charter of Fundamental Rights of the European Union (ChFR)
 - Treaty establishing the European Atomic Energy Community
- legal nature: CONTROVERSIAL (see infra, § 2 I)
- not just a specialised organisation for certain functions but an *organisation of integration* with a *sophisticated institutional system*, which unites its members to a *new general political community*
- performs *on a large scale* a broad variety of public missions in almost all policy fields, mainly by the *exercise of supranational regulative power*
- accomplishes its integrative function primarily by legislation and regulation, but also serves as
 - institutional frame-work for intergovernmental cooperation (Common Foreign and Security Policy)
 - habitat for the substantive integration law (for the European internal market and currency)
- all in all, more than an international or supranational organisation, a confederation or a combination of both, but *not yet a federal state*