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ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
AU	African Union
BIRPI	United International Bureaux for the Protection of Intellectual Property
BUC	Berne Convention
CARICOM	Caribbean Community
CDL	European Commission for Democracy Through Law (also: Venice Commission)
CEFTA	Central European Free Trade Agreement
CETA	EU-Canada Comprehensive Economic and Trade Agreement
CLARE	Congress of Local and Regional Authorities (of the Council of Europe)
CM	Committee of Ministers (Council of Europe)
CMEA	Council for Mutual Economic Assistance (also called: Comecon)
CoE	Council of Europe
CONGO	Conference of Non-Governmental Organizations
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CSCE	Conference for Security and Cooperation in Europe
CSR	Corporate Social Responsibility
EAW	European Arrest Warrant
EC	European Communities
ECB	European Central Bank
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECOSOC	UN Economic and Social Council
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EEA	European Economic Area
EEC	European Economic Community
EEMU	European Economic and Monetary Union
EFTA	European Free Trade Association
EPPO	European Public Prosecutor's Office
ESCB	European System of Central Banks
EU	European Union
EURATOM	European Atomic Energy Community
FAO	UN Food and Agriculture Organization
FIFA	Fédération Internationale de Football Association
FINA	Fédération Internationale de Natation
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GDR	German Democratic Republic
GFR	German Federal Republic

HIPO	Hungarian Intellectual Property Office
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development (member of the World Bank Group)
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICRC	International Committee of the Red Cross
ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association (member of the World Bank Group)
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation (member of the World Bank Group)
IGO	Intergovernmental Organization
ILA	International Law Association
ILO	International Labor Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
INGO	International Non-Governmental Organization
IOC	International Olympic Committee
ITO	International Trade Organization
ITU	International Telecommunications Union (formerly: International Telegraph Union)
ITUC	International Trade Union Confederation
JEFTA	Japan-EU Free Trade Agreement
MDG	Millennium Development Goals
MFN	Most Favored Nation (national treatment principle)
MIGA	Multilateral Investment Guarantee Agency
MNC	Multinational Corporation
MS	Member States
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organization
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights (OSCE)
OECD	Organization for Economic Cooperation and Development
OEEC	Organization for European Economic Cooperation
OLAF	European Anti-Fraud Office
OPEC	Organization of the Petroleum Exporting Countries
OSCE	Organization for Security and Cooperation in Europe
OSCE	Organization for Security in Cooperation in Europe
PACE	Parliamentary Assembly of the Council of Europe
SALT	Strategic Arms Limitation Talks
SC	Security Council

SDG	Sustainable Development Goals
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TiSA	Trade in Services Agreement
TPP	Trans-Pacific Partnership
TRIMs	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UCC	Universal Copyright Convention
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNEP	United National Environmental Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations International Children's Emergency Fund
UNIDO	United Nations Industrial Development Organization
UNWTO	United Nations World Tourism Organization
UPOV	International Union for the Protection of New Varieties of Plants
UPU	Universal Postal Union
USA	United States of America
V4	Visegrad Four (Countries)
V4	Visegrad Four (Countries)
WWI	World War I
WWII	World War II
WFP	World Food Program
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization
WWF	World Wildlife Fund

PROLOGUE

REFLECTIONS THROUGH THE EYES OF A DIPLOMAT

To duly appreciate the UN, we must know that this organization is **universal** not only because each and every country becoming independent requests admission into it, but also because, practically, it covers all areas of human activity. The principal organs, subsidiary bodies, specialized agencies, functional committees, funds and programs, related organizations and other organs of the UN cover everything our earthly population deals with, wherever they live in the world. Without them, life on the planet would stop. The UN adopts such cross-border rules and regulations, provisions and standards which entangle our world. I usually refer to a simple example of somebody sending a letter from, let us say, Montevideo, which will safely arrive to the addressee in Nairobi. Or if somebody gets on a plane in Budapest, it safely lands in Jakarta. Nobody will wonder about these events, we consider them self-evident, even though a serious, meticulous, internationally agreed upon work lurks behind the scenes. And as the world develops, through the advancement of science and technology, this process will not stop.

However, contrary to the popular belief, the UN is not a world government, but a common, **voluntary intergovernmental organization** of the present 193 member states. The Security Council is its only organ where legally binding resolutions are adopted in questions related to international peace and security, under an established decision-making mechanism. However, even in this body, decisions are made by the member states. The General Assembly which is the plenary forum of the UN, adopts only non binding recommendations that are 'resolutions' only in their names. Consequently, the realization, implementation of the resolutions adopted by the world organization is dependent on the political will and willingness of the member states. If a draft resolution is adopted by the majority vote of the General Assembly, no legal procedure could be initiated against those member states in minority which voted against it. Obviously, ignoring the political or moral significance of a decision raises other kinds of questions. In sum, the Secretary-General of the world organization may advise, help, inform, warn, but does not and cannot determine what Kiribati or Canada will or won't do.

Those who spend a few years on an official assignment at the headquarters of the world organization will return home as slightly different persons. This is because between the walls of the only truly universal institution they find themselves in a world which they did not really know before. Not only because they have to face the most important problems of the international life on a daily basis, and this process is getting faster as globalization advances. It was not a coincidence that at the turn of the century, Secretary-General Kofi Annan used the term 'global village' to refer to our planet. But because this job is being done in a unique human environment, with the permanentpresence of a large number of diplomat colleagues in every hour of the day. **Diplomacy** is just one out of the countless other professions, but the multilateral activity in the framework of the UN – due to the great number of actors, the many topics, the unpredictable schedules due to the constantly emerging new international events – offers a rather particular landscape to the observer. We might say that we see a big, busy stage, where the mostdiverse forms and expressions of mentalities, temperaments, perceptions and habits appear right in front of our eyes. Fortunately, there are many attentive, friendly, open, jovial, good-humored diplomats who are not afraid – beyond the official rhetoric – to share their personal opinions with others in certain professional questions on the basis of a personal confidential relationship established with some colleagues. However, there are some who are not capable of saying anything other than what is contained *expressis verbis* in the instructions received from their governments. And then, there are those who visibly are not willing to engage in discussions with others, are rigid, distant, introverted and

consider themselves as the only custodians of truth. Obviously, it is hard to find a common language with the second, and especially the third category of people. For them, more efforts and attempts might be necessary to become – if possible – less lofty, and to recognize that they are not surrounded by idiots and ignorants. Might I add – and this already pertains to the realm of psychology – that often these career diplomats do not know how they behave, they might have inherited such a habit, such a behavior from their ancestors. Therefore, the only thing to do is to let them know in an appropriate and intelligent way that there are other types of conduct which might bring more professional benefits for them.

In the above context, it is often said that a **real diplomat** is one who walks about with a rigid, inexpressive face. However, how much more of a human feeling it is to be connected to those who preserve their abilities to react naturally and let their emotions, joys or sadness roam free. We can see politicians or diplomats who struggle to hide their feelings and emotions during public appearances and events, and this generally creates a positive effect on the bystanders. I am convinced that for diplomats to be able to navigate in the big issues of international events realistically and with a clear mind, they have to be aware of the human implications – the sufferings, the injustices and the brutalities, all forming an integral part of a given issue – that hide behind each and every political or security conflict. They must remain sensitive to every circumstance affecting the everyday life of people and nowadays must not be contented with analyses and summaries which ignore the human factor. This cannot be in contradiction with the so-called classic diplomatic activity which, naturally, must take into account the objective facts and dry reality. In my work, I could conclude that among the people working in the field of international relations many proved not to be emotionless, empty robots, and I hope their number will continue to grow.

In the hallways of the UN, we meet colleagues from every corner of the world. Some of them come from a country, the government of which might not necessarily have good relations with another country. In such a situation, too, it is useful to avoid the traps of dogmatic thinking. Maintaining correct relations with such colleagues is fully possible, which does not exclude at all sharing our problems, our official concerns with them in an appropriate way and environment. On the other hand, we might meet colleagues whose governments have the best possible relations with us, but we still cannot have a friendly, open communication with them. Thus, the quality of **intergovernmental relations** does not automatically reflect the **relationship among diplomats**.

In my opinion, diplomats can be **effective and get results** if they have proper autonomy, i.e. if the 'Center' (that is, the Ministry of Foreign Affairs) does not define even the tiniest details of the work to be done by the foreign missions and its employees. If such instructions determine word-by-word what the members of a missions should do, if they are flooded with orders coming from the top, this might carry the risk of 'forcing them into a straightjacket' and might cripple their initiative and innovative abilities. In this context, it can be noted that there is a possibility to question the instructions coming from home in case a given mission, embassy, consulate, etc. disagrees with something. These might be issues of administrative, economic or political character. For such feedbacks to happen, it requires the addressees of the central instructions to wholeheartedly identify with their tasks, and have the courage to debate the correctness of the central decision. A constructive and not judicious discussion might put an end to such differences of views. However, there is no roadmap to handle such situations, and their emergence and management will largely depend on the personal attitudes of the actors involved.

It should also be added that in our world, the collection, forwarding and exchange of information have little to do with the former, 'classical' mechanisms of information flow which dominated the world of diplomacy before the start of the **information revolution** at the end of the last century. The new generation of diplomats can have no idea how a foreign mission maintained contacts earlier with its home authorities or even with its own employees when these left the building of their mission. Cell phones and the Internet dramatically changed and facilitated the connections practically with

the whole world. In a certain sense, this has changed the every-day life of diplomacy, completely overturning the former frameworks, and opened unimaginable horizons in the field of personal and professional contacts. From this point of view, the UN had also been transformed into a field of endless and immediately transmittable sources of information, where their proper handling, grouping and forwarding became a new task.

In the world organization, where the diplomat takes his/her seat at the table not with one colleague but with more partners during **informal consultations** or **negotiation**s, the positions and opinions must be presented clearly, focusing on the essentials, avoiding never-ending monologues and being able to put an end to his/her presentation. When it comes to **conferences** or other **official sessions**, the proper presentation of standpoints is even more significant. If it is a previously prepared speech, it must be read in a proper, audible way, without jabbering, focusing less on the reading and more on the content of the message being delivered, bearing in mind that the structure of the written and oral language is different. (As for me, meticulousness and circumspection are not very far from my professional approach: when preparing my speeches, I usually could not avoid multiple corrections and amendments until the day I had to take the floor.This led to a situation in which, as the President of the General Assembly was calling upon Hungary as the next speaker on his list, I was on my way to the pulpit in between the benches of the various delegations, holding my speech in my hands, and I was still introducing some changes to the text I was going to deliver.

However, if we speak in an improvised way, without previously prepared texts, we must be careful to say things in a coherent fashion and with the right emphasis to enable the audience to follow the **message of the speech**. If this is not happening, even the best messages, contents are harmed, weakened and rendered ineffective. We might also add that a less sympathetic message to many, presented in an attractive packaging, could still captivate an audience, even those who would not necessarily agree with its content. It did happen to me as well at a UN General Assembly session that during a high-level representative's speech, with which I agreed, I almost fell asleep, while another high-ranking leading politician drew the attention of the audience in a masterly way with such a text that was not at all my cup of tea, but it was impossible not to listen to.

Of course, for the proper presentation of our point of view in a consultation room or from the pulpit, diplomats and politicians are also required to master appropriate language skills and vocabularies which are necessary for a more effective activity. In communicating with colleagues arriving from the four corners of the world, choosing the proper foreign language could also ease making connections and establishing friendlier relations. Diplomats should also carry out their tasks aware of the necessity to build ties with the **civil society** and local and international NGOs. On the one hand, this might represent a bridge between the peoples of different countries, might let others get to know a given people's history, culture, language, way of thinking. On the other hand, it might spread the notion that diplomacy is not an extra-terrestrial profession, but an activity which could positively influence everyone's way of living and help establish a better future. For diplomats, it is quintessential to have an established image about the world in geographical and historical terms, so that, for instance, they could place the countries of their colleagues on a map. This is especially relevant in the world organization where representatives of 193 countries are meeting with each other on a daily basis at various platforms. In contrast to bilateral diplomatic mission where most of the work is being done between the walls of the embassies, at the UN most of the activities do not take place in their respective missions but in the building of the world organization. For that reason, it is important to know who came from which part of the planet, which can also facilitate the establishment of contacts and finding a common voice.

Countless funny and saddening cases could be mentioned, which show that there is room to grow in this aspect. In the '90s, one country's permanent representation sent a diplomatic note to the postal address of the Hungarian UN mission, which was addressed to the Ambassador of Romania, and at the

bottom of the note, the mission of Lithuania was the addressee... When the UN General Assembly voted for Slovenia's Security Council membership at the end of the '90s, after the results were announced publicly, it turned out that Slovakia got some votes as well, a country which did not run for SC-membership. Complete ignorance was revealed when a UN security staff member came up to me and asked if I was the Mongolian Ambassador... Of course, the annoying ignorance, the lack of knowledge and attention do not stop here, but spread outside the walls of the world organization as well. For instance, a world famous weekly magazine named Yugoslav (sic!) Archduke Ferdinand as the victim of the 1914 Sarajevo homicide. The postal services of an important European country, issuing first-day cover stamps on the occasion of the 2004 enlargement of the European Union, forgot to indicate the common borders of three newly joined countries – the Czech Republic, Slovakia and Hungary – on the stamps showing the new map of the Union.

Undoubtedly, our Security Council membership was the most exciting professional experience during my one-and-a-half-decade-long stay in New York. **Hungary**, as a joint candidate of the Eastern-European regional group, was **elected to the Security Council as a non-permanent member** for a two-year period in 1992-93. The first interesting fact about this event was that following the 1955 admission of Hungary to the UN, we became a member of this body only once, in 1968-1969. Towards the end of the last century, we landed there for a second time. Excluding the five permanent members of the SC, it is rare for most of the member states to be elected into this extremely important organ of the UN, and this is more and more so, considering the growing membership of the world organization and the composition of the Security Council, limited to 15 countries. In our case, almost a quarter of a century has passed between our two memberships.

The second interesting fact about our presence in the SC was that it practically coincided with those huge, earthquake-like geopolitical changes, which created a multipolar international order after a bipolar world. We could roam free in our foreign policy and could begin our Western integration activities. This meant an enormous change compared to our former, first SC-membership which was tied to the Cold War era, including the entry in 1968 of the Warsaw Pact troops into Czechoslovakia. This obviously imposed strict limitations on Hungarian foreign policy. The early '90s, this professionally highly active transitional period saw the beginning of the reform process of the Security Council. After several decades, the fossilized structure of this body was brought into question due to vast international changes. Among the aims of the reform process was to make this body a more open one from

the closed club it was before, with a more flexible working order. It is very telling that while in the previous 'calmer' period, in 1987, 20 formal SC sessions were held, in the more and more tumultuous world, in 1992, 129 such sessions were called. The number of the other, unofficial consultations of the SC was 43 in 1987, jumping to 188 in 1992. As for the total duration of the SC sessions, it amounted to 23 hours in 1987, compared to 212 hours in 1992. The number of resolutions adopted was 13 in 1987, and 74 in 1992. These data show spectacularly how the international stage began to buzz in those years.

The third interesting fact about our Security Council work was that, ironically, we landed in the SC right at the time when the central question of the debates became the disintegration of Yugoslavia and the problems related to the bloody civil war there. Problems which directly affected our country for many reasons, and, because of geography and history, among the 15 members of the Security Council, we knew more than anyone else what exactly is 'South Slavia'. (It should be noted here – as another unexpected twist of fate – that we sat together in the body for a year with Austria, elected into the SC from the Western-European regional group. That Austria with which we constituted the Austro-Hungarian Monarchy, and which played a central role concerning Bosnia and Herzegovina in those times. Understandably, the standpoints of Vienna and Budapest regarding the disintegration of Yugoslavia coincided.) Consequently, in the two years we have spent in the SC, we had a lot to say, the testimony of which are the speeches delivered in unofficial closed consultations and in formal sessions

of the SC, as well as in the General Assembly Xand at other non-UN conferences and meetings. The truth is that, in an ideal case, I could refer to the close intensive information channels between "the Center", and our UN Mission in New York, but unfortunately it would not be true. The Hungarian SC team 'got the job done' based on its own inventiveness, circumspection, information gathering, I could say, practically independently from Budapest. In a topic which was affecting our country so deeply, I could not take this situation as an acceptable one. I had the general impression that at home people did not realize or understand the importance of the SC membership, even though this crisis on the agenda of the Security Council was one compared to which no other conflict could have gotten closer to the borders of Hungary. However, this situation had a positive side as well, which I have mentioned before: we were not overwhelmed by instructions of when and what to say or not to say at all. In short, we could carry out our duties with a great extent of autonomy, paying of course attention to regularly inform the competent officials at home about our work, the proposals we submitted and the standpoints we expressed.

As a special event, it is also worth mentioning that one of our initial experience as fresh SC members was the first ever Security Council Summit in UN history at the end of January 1992, where 13 out of the 15 members were represented at the level of heads of state or government. American president G. H. *Bush*, French president *Mitterand*, Russian president *Yeltsin*, British Prime Minister *Major*, King *Hassan II* of Morocco, etc. were there. In lieu of our then sick Prime Minister, *József Antall*, our country was represented by our Minister for Foreign Affairs who had to leave the room for a short period during the session to meet with the press. He asked for me to take his seat in the first row. As I looked around the horseshoe-shaped table, I knew that I could not fly any higher in diplomacy, and will not have the chance to be surrounded by such a famous highest-ranking company in a distinguished environment.

The **official**, **formal activity** of the Security Council takes place around the horseshoe-shaped table well-known from the TV-screens, in a room open for every UN member state. Here, under the guidance of the monthly rotating SC presidency, the members of the body can deliver speeches, vote and adopt resolutions. However, an open, critical debate is taking place in a smaller room in the proximity of the Security Council chamber, behind closed doors, in informal consultations which play an indispensable role in the operation of the body, and where only the SC members and one or two staff members of the UN Secretary-General can be present. The confrontation and discussion of different standpoints and opinions, the meticulous elaboration and editing of draft resolutions, argumentations regarding each and every word or expression take place in these meetings where no written documents are released. In addition to this, of course, countless other bi- and multilateral informal meetings might take place anywhere between the members of the body to clarify the standpoints. After such background work, a formal session of the Security Council can take place where votes – yes, no, abstention – are cast and decisions are made.

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The events that took place in the former Yugoslavia are a huge and bitter lesson for the whole international community to this day. For those Hungarian diplomats who spent two years in the Security Council meetings and who, before and after that, could directly follow in the center of the world organization the related developments, this story had become a continuous, heavily digestible frustration. On the one hand, I also had to face the fact that at the end of Europe's bloodiest century such tragic, horrible events could occur that I have kept in my memory as events of the past never to be repeated. And all this in Europe, along our borders! I had to wake up to the fact that people, wherever they may live, are still vulnerable, and a well-designed and skillfully presented rhetoric could poison their minds, seduce them and, in extreme cases, turn them into modern-day Frankensteins. Do we know how long the healing and

recovery process will take? On the other hand, we had to see that the international community – such as the UN, the EU, NATO – was unable to adequately respond to the dramatic challenges, it failed to adapt to arising new situations and could not handle the rather complex situation in former Yugoslavia in an appropriate way. What further contributed to this incapacity to act was the world's unpreparedness to cope with the fact that, right after the major political and military changes and, in addition, with a Gulf War ended with a successful and positive outcome, a cruel and bloody conflict erupted in the heart of Europe that would immediately overwhelm the "new world order" which was previously announced at the highest political level. In the wake of a successful UN military operation in the Middle-East against those violating the international legal order, those in the world organization, confronted with another, this time seemingly unmanageable conflict, quickly renamed the situation as the "new world disorder". What also contributed to this arising situation was the –continuing – vulnerability of democratic societies to authoritarian regimes, impulsive warlords and illegal paramilitary groups, and the exposure of these societies to blackmail by them, as well as their **ignorance**, **lack of knowledge** regarding Yugoslavia's historical, geographical, geopolitical and cultural background, i.e. the parameters of the concrete situation there. If I would have asked the members of the Security Council at the beginning of our membership in this body about the difference between Slovakia, Slovenia and Slavonia, I would probably not have got an exact answer. Another example for such ignorance was a casual statement to me of the mission leaders of one of the SC's European permanent members, according to which Bosnia is merely a 'Titoist invention'.

These uneasy circumstances defined how the Security Council attempted to handle this bloody European crisis. On my part, I felt that our presence in the SC was, actually, a professional gift, a great opportunity, and us being there meant that we needed to talk and to actively participate in the debates regarding any question on the agenda, such as Somalia, Cambodia, Central-America, Rwanda, Karabakh, Haiti, Mozambique, Iraq, Angola, Libya, etc. But, especially, on the crisis in former Yugoslavia. We had lots of things to say on this issue, including many critical remarks. In the spring of 1992, at an official meeting of the Security Council, we supported that all foreign armed forces should leave Bosnia, and declared that the SC is witnessing an open territorial conquest which seeks to forcibly regroup persons belonging to an ethnic group into one nation-state, and if everyone would follow this logic, the whole of Central- and Eastern-Europe would soon become the scene of a new apocalypse. At the end of 1992, in our speech before the UN General Assembly, we expressed our deep bitterness and growing concern in connection with the disregard of the UN resolutions concerning former Yugoslavia, and said that we can state without exaggeration that the Bosnian tragedy is a disgrace for Europe and the whole world.

In remarks made in March 1993 regarding a draft SC presidential statement submitted by the permanent members (!) of the body regarding the Yugoslav crisis, we declared that the draft speaks of everything, except what triggered its submission, and that, unfortunately, there is an ever deeper gap between the requirements of the present situation and what we should have done before or are doing now. On other occasions, we expressed our bad feelings concerning the delays X and the constant uncertainty surrounding the consultations of the Security Council. At one of the official meetings of the SC, we reaffirmed again that the way our world is reacting to the crisis in former Yugoslavia will not be one of the bright pages of contemporary history, but rather one of mourning, destruction, complacency and incapacity.

I acquired a personal experience and witnessed concrete examples of the erroneous concept of UN peacekeeping when in April 1993 a six-member fact-finding commission of the Security Council traveled to Bosnia for an on-site inspection of the situation prevailing on the ground, and became itself the object of grotesque conditions. The memories of our visit, among others in the surrounded and besieged Srebrenica, will stay with me forever. I will never forget the terrible contrast I felt there on a hill surrounding the town locked in a picturesque valley: on one side, the blooming spring in its full

splendor, and on the other side, the view of the Serbian blockade of tanks and cannons. And when a foreign TV correspondent put his microphone in front me and inquired about my experiences, I was so much under the influence of emotions that I needed to gather all my strength to talk coherently. Nobody knew back then how the calvary of Srebrenica will end... It is precisely the existence of such a situation that finally led to hostage-takings of UN peacekeepers in Bosnia in 1994-95, to the deliberate firing at the positions of the Blue Helmets and at the planes flying on UN missions. I note that, at the same time, the ongoing peacekeeping operations in Rwanda also led to catastrophic consequences due to the unpreparedness of the UN Blue Helmets and the shortcomings of their mandate, which resulted in a terrible genocide in this African country.

At the end of December 1993, me and my colleagues at the mission were taken aback by a strange feeling. Our two-year-long Security Council membership came to an end! We had a mixed state of mind. On onehand, we gained an unforgettable, irreplaceable set of professional experiences, we sat in the first rows of the international diplomatic conflict management, and all this in the period of a severe crisis which mostly affected us among the SC members. We knew that after New Year's Eve, our fax machine which until then had been inundating us with various SC materials, drafts, presidential information, amendment proposals, agendas and background materials, will go silent. Phone calls will become scarce, and our presence will cease in the "witches' kitchen" of the UN. So far, we knew that upon our return from the UN building to our mission even at night, we should go to our offices instead of our bedrooms to write reports without delay about the latest developments in the Security Council. This was the only way to ensure that the news arriving from New York would be on the tables by the start of the office hours the next morning in Budapest (GMT+1). Had we not done so and 'relaxed', and only compiled our materials in the Manhattan morning hours, the information we would send could only be read in the Hungarian Ministry of Foreign Affairs at 3 pm in the afternoon. On the other hand, we felt relief. Now, as mere outside observers, we got rid of the stress a SC membership comes with, having in mind in particular the two years we left behind, shook off the pressure of following day by day the hell and brutality of the Yugoslav crisis and the burden of actively participating in the relevant discussions. After the beginning of the new year, 1994, we could calmly go to sleep, and did not need to be on standby at any time of the day for ad hoc events, consultations or sessions.

In addition to the above-mentioned ambivalence, we irreparably had the feeling of getting out the mainstream, the sad, melancholic mood of 'degradation'. This professional grief was slightly alleviated by the fact that I think, – even though it is hard to foresee – if Hungary will be again elected a non-permanent member of the Security Council anytime in the future, it is hard to imagine that a Hungarian diplomatic team will need to be working during a severe international crisis so directly affecting our country like the one of 1992-93. As I have said in a lecture I gave at New York University in June 1994, in a conflict where the division of Bosnia was carried out by nationalist propaganda, aggression, murder, ethnic cleansing, deportation, violence against women, destruction of irreplaceable cultural treasures. And I added that, unfortunately, we will have to live with the consequences of an imperfect and fragile peace in this highly insecure region of Europe. In sum, fate has led us to bear witness and be participants of exceptional and unique events from a Hungarian perspective.

The Permanent Mission of Hungary to the UN operated for a long time on East 75th Street in Manhattan, near Central Park, in an older, classic townhouse. In June 1991, we inaugurated our brand-new mission building on East 52nd Street. I will not dwell on its internal structure, I sent my written opinion to the 'Center', containing a number of critical observations. However, I would definitely like to mention here that, for the sake of the general state of mind of the staff and the sanctity of the families' privacy, it is not wise to establish a '*kolkhoz*' (collective cooperative in Russian), where offices and private apartments are bound together in a common building. As a result, we come across the same faces not only during the office hours, but 24 hours a day in the corridors, in the laundry room, in the elevator, in the garage, everywhere. However, knowing full well that this foreign ministerial decision

of the ’80s regarding the establishment of such coexistence had nothing to do with the subsequent UN events, we can state, looking back, that this living under the same roof extremely increased the effectiveness of the Hungarian team’s work and made things simpler during our two-year

SC membership in 1992-93. Commuting between the mission and the UN building, handling unexpected and urgent administrative tasks, writing and forwarding reports to the ‘Center’ without delay, the movement of staff and administrative personnel, and even going for a quick bite to our private apartment was highly facilitated by this cohabitation.

In January 1994, our Security Council membership was closed at our mission with a cheerful musical evening celebration, where we said goodbye to those SC colleagues and UN staff with whom we lived through the events of these two years. The text of the invitation card also suggested that it would not be a standard diplomatic reception, the participants got certificates in which we solemnly granted them the title of honorary members of the Hungarian UN delegation “along with all the privileges and immunities this status entails”. The evening was opened with a speech written in typical ‘UN lingo’, full of grotesque references to ongoing international events at that time, such as the decision of the Haitian Parliament not to accept more refugees from Florida, or the end of the Muslim attack on the Belgrade safe area as a result of the determined and principled standpoint of the Security Council...

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I cannot speak of my life spent in **New York** without mentioning the terrorist attack on **September 11, 2001.**

On September 8, I arrived back to New York from Budapest, and the next day I was invited to a small town located across New York on the other side of the Hudson River to the ceremonial opening of a Peace Plaza. This memorial was raised to commemorate the victims of the exploded TWA Flight in 1989. In my speech, I warned the audience that international terrorism is unequivocably present in the world, it is a global problem, does not know national borders, and we have to go a long way before mankind gets to its final destination. At that time, no one knew that two days later this goal would be far more distant than ever before. On 11 September, on a Tuesday morning, I learned about what happened in our mission’s office. Shortly afterwards. I had to hurry to the not so distant UN building where every year, timed to the beginning of the incoming session of the General Assembly of the world organization, the UN Secretary-General, in the presence of the ambassadors of the member states, rings the small pagoda’s peace bell in the park of the UN building. The already assembled mission leaders were engaged in lively discussions about the developments. Then came the news that the UN security services strongly recommended Secretary-General *Kofi Annan* not to leave his residence. Meanwhile, UN police officers started to evacuate the 38-floor world organization building, people rushed out the gates. The policemen announced through megaphones that all non-essential UN personnel should go home. The air in the park was already boiling, the assembled diplomats, puzzled, were still waiting, but after about half an hour, it became clear that there would be no peace bell ringing and the UN Secretary-General would not come.

I returned home. Earlier, arriving to the UN, the 2nd Avenue showed its usual face, but on my way back, walking on foot to the Hungarian UN mission, I saw that the avenue was full of people. There was no more car traffic. One could not ignore the expressions of confusion, hesitation, uncertainty and fear on the faces of those who forced to leave their workplaces. I have never seen anything like this on such a massive scale. By the time I arrived back to our mission, both towers of the World Trade Center have collapsed. The usual daily routine of the world organization and of the UN missions was

completely overturned. And Manhattan was gradually filled with a unique smell resembling that of burning rubber, and there was no escape from that, it stayed with us everywhere throughout the city for a week or two. It was shocking to see that the city, known in the world as "*the city that never sleeps*", has changed in an unthinkable way, it became empty, and I confess that this unusual sight conjured up strange and alarming emotions in me during my walking tours and cycling trips in those days. I felt that I was witnessing extraordinary and unimaginable events.

As for the reaction of the New Yorkers, I saw emerging in those distressing days a unique and positive manifestation of their behavior and state of mind. The people of the Big Apple have shown an example of civic discipline and determination, as well as a more promising, hopeful face of mankind in this complicated world. Meanwhile, I was going aroung the city, taking photos and making videos, aware that later they would become valuable and impressive documents of another time. In fact, if I look at them these days, I still get goosebumps. Such a wave of upsetting events is very rarely given in life.

The events in New York have fundamentally subverted the UN calendar. The so-called high-level segment which starts the annual session of the General Assembly, during which state leaders of the world take the floor, was postponed from September to November. The headquarters of the world organization began to resemble a besieged fortress, the UN building and its park was surrounded by multiple police cordons, the avenue in front of it was closed to traffic, and huge trucks loaded with sand placed across were blocking the road.

The 2001 session of the UN General Assembly began its work in substantially changed psychological circumstances. The shocking catastrophe has had a serious effect even on the speakers of the high-level segment. Already on the day after the terrorist attack, on September 12, the Security Council adopted a resolution on the event by consensus, then in the following days the plenary meeting of the General Assembly acted likewise.

In the General Assembly debate on the issue of international terrorism, 174 states asked for the floor, which was unprecedented. In my speech, I called the September attack against the United States a 'final wake-up call', referring to the fact that the international community has been dealing with the threat of international terrorism for a long time, but it still took us by surprise. (It shall be noted here that since September 2001 there have been so many shocks and brutalities in the world that the New York events could be considered as some kind of an overture. Therefore, in hindsight, I would have said to the people that "*you ain't seen nothing yet*".) In this General Assembly speech, I wanted to emphasize that the fight against terrorism shall encompass every human activity, involving diplomacy, military-security measures, administration of justice, intelligence, economic-financial, social and humanitarian efforts. I found it important to add that the fight against terrorism must most definitely reject any theses on the collision between various religious beliefs and cultural traditions, cheap demagogy, extreme nationalism and racism.

It was an honor for me to have been elected in this dramatic period, during the 2001-2002 session of the UN General Assembly, to chair the First Committee on disarmament and international security questions, a seat to be filled at that time by the Eastern-European regional group. Since the September 11 terrorist attack was closely linked to the agenda of this committee, the general mood suggested that the activity of the First Committee, just as that of the General Assembly session, would be different from the previous ones. I ended up disappointed, because the various national and regional interests surfaced no less intensely than before. Therefore, many official and informal consultations were necessary to finally adopt a short committee resolution and, subsequently, another one approved by the General Assembly, which reaffirmed the commitment to the global fight against terrorism and a multilateral international cooperation to achieve this objective. It was disappointing that the member

states were unable to get rid of certain habits and show a more flexible attitude concerning the questions of **global fight against international terrorism** even in such an extraordinary situation. (And from a professional point of view, it was also disappointing for me to have been called back to Budapest during that GeneralAssembly period, finishing my UN assignment, precisely when our country held the chair of president – whose term extends till next September – in a General Assembly Committee which was most directly affected by such extraordinary circumstances full of international challenges.)

I now return to my previous remarks regarding the **drafting of diplomatic texts**, which is an extremely time-consuming job, requiring patience, and where each word, expression or comma requires the support of the participants. The significance of this regarding the afterlife of an adopted text and its interpretation in concrete situations is shown by the text of UN Charter elaborated in 1945. The document stipulates that armed force shall not be used, save in the common interest. The document also includes that the UN cannot intervene in matters, which are essentially within the domestic jurisdiction of any state. Obviously, formulations such as 'common interest' or 'essentially' open the field for possibly different, contradictory interpretations in conflict situations. The Hungarian and Austrian missions also sensed this, when in the spring of 2000, they submitted a joint proposal in the General Assembly to adopt a resolution regarding the protection of holy places. It was general knowledge that churches, synagogues, mosques and other religious buildings are threatened and destroyed all over the world. The idea seemed self-evident, but still, countless drafting stages needed to be held to produce a text that could be accepted by everyone. So that the resolution should be about protecting such holy places that are used according to their original function, that is to say, they would not turn into machine-gun nests, firing positions. And that the text should condemn violence against holy places as such, meaning that the holy places are entitled to protection if used for the purpose they were originally built for. This resolution was adopted by the General Assembly – after lengthy negotiations – without a vote, by acclamation, and an extremely high number of countries, 115 out of the then 189 member states, joined as co-authors.

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In light of the dramatic events of the '90s, it became more and more urgent to respond to what the international community should do if human rights are severely, systematically and massively violated in a country. Then UN Secretary-General Kofi Annan gave such answers that defied taboos and opened new horizons for the future operation of the world organization. In 1998, the Secretary-General declared that in case of genocide, crimes against humanity and war crimes, the world has to intervene to protect the civilian population. In 1999, in connection with the Bosnian tragedy, he castigated the misjudgments, the erroneous conclusions and the dramatic omissions of the UN, which led to enormous human casualties, to immeasurable psychological damages, to the misery of masses of refugees and physical destruction. The Secretary-General rejected the **unthinking neutrality** shown by the UN

peacekeepers. His conclusion was that the principle of national sovereignty should be set aside if it hinders the obligations of the Security Council under the Charter to maintain international peace and security. Furthermore, he expressed the view that concerns regarding human rights prevail over the principle of non-intervention in the Charter. I think it is superfluous to emphasize the moral and political significance of these statements.

In light of the above, it was an interesting professional experience to see how the UN reacted to the **Kosovo events** in 1999, when the Security Council could not take action to stop the ethnic cleansing and other human rights violations because of the disagreements among its permanent members. To put an end to the civil war conflict, NATO decided to launch an armed aerial intervention. This

coercive measure was taken without a Security Council authorization. However, surprisingly, the vast majority of the world organization's members approved or acknowledged this military operation, and Secretary-General *KofiAnnan* also declared that this action was legally illegitimate, but politically unavoidable. This was another manifestation of those new processes that were taking place in the ranks of the international community at that time. This trend continued with a report in 2000 by an expert group appointed by the UN Secretary-General on the lessons of the Yugoslav and Rwandan civil wars, according to which peacekeepers should use their weapons not only in self-defense, but also when the civilian population is at risk, the mandates of the blue helmets should not be blurry and contradictory and their concrete priorities should not be defined from the headquarters but on site. It is in this line of thought that belongs the **principle of Responsibility to Protect** (commonly referred to as R2P) adopted at the 2005 UN Summit, according to which if a government is unable protect its own citizens against genocide, war crimes, ethnic cleansing and crimes against humanity, the UN is ready for collective action through the Security Council. This is definitely a step forward in the rhetoric of the world organization, but it also indicates its limitations, namely, that the decision about such action shall be made on the basis of the unanimity of the permanent SC members, or without their opposition (abstention does not mean veto). The 2013 initiative by France and several other member states tries to resolve this dilemma, by proposing that if mass atrocities occur, the permanent SC members voluntarily suspend their veto rights. As far as I know, this proposal is still 'up in the air', it is supported by more than one hundred UN member states, but only France and Great Britain among the permanent members of the SC. In the context of this initiative, we must also highlight the cardinal question of who defines, and how, the notion of mass atrocity. Diverging interpretations deriving from opposing great power interests and values may defeat a decision on this matter.

As a result of the developments in the '90s, **peacekeeping** has opened a new chapter in recent years, the SC resolutions adopted primarily with a focus on Africa now include more specified mandates, which prescribe the disarmament of rebel groups, targeted offensive operations, more robust armed actions, and the defense of civilian population. In my opinion, if during the Yugoslav crisis, the Blue Helmets could have acted under similar authorizations, the known outcome of the events could have been avoided. To assume that the UN will take appropriate actions in the future accordingly, the agreement of all the permanent members of the Security Council would be necessary, and we witness day-by-day that this scenario is far from being self-evident. What complicates the situation lies in those dangerous circumstances under which the peacekeepers do their job in far-away areas cut off from the world, face to face with hostile armed groups who are not deterred from using barbaric methods, and all this with a growing number of fallen Blue Helmets, a lacking financial background and adequate miltary equipment.

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The reform of the UN, its adjustment to the realities of today's world is a quite complicated process where countless interests, efforts, approaches strain each other. The most sensitive field is the 'reconstruction' of the Security Council. In the early '90s, we were able to start moving forward, but for a long time now we are not able to make further steps ahead, and, on top of all this, the international situation became more complicated, new challenges, tensions, controversies further complicate our situation. The reform of the UN also includes the amendment of the 1945 UN Charter, which involves simpler and more complex elements as well. By now, it is clear that changing the texts of the Charter that might be considered ripe for amendment could only be done under a final package deal. For a relevant illustration, I recall a proposal submitted in the UN in 1995 to delete from the Charter the general formula of 'enemy states' which is to be found in three different clauses of the UN Charter, an expression which refers to those countries (including Hungary) which were the enemies of any of the

signatories of the UN Charter during WWII. Let's face it, nowadays, it is not necessarily a delicate and complicated topic. After the proposal was presented, the General Assembly decided that these clauses will be abolished "in an upcoming proper future session"... No comment.

Another example of the disparities that exist between the UN Charter and the realities on the ground is the provision about the right to self-defence which authorizes a UN member state to exercise this right if an armed attack occurs against it. Nowadays, such an attack – carried out with soldiers, tanks, aircrafts, naval forces – is far from being the only method of aggression against a country. Cyberterrorism, hybrid warfare, modern technology can paralyze an airport, a city, a country with all the consequences of such actions – without crossing any state borders. Under the UN Charter, one can only defend itself when it is already under fire that comes from beyond its borders.

It is a fact that the earth is moving in the UN, since the world organization is a reflection of the status of our planet. Several important steps were taken to renew the organization, such as the establishment of new organs, the process of electing Secretary-Generals, peacekeeping, gender equality, environmental protection etc. The most sensitive part of the UN reform concerns the composition and powers of the Security Council. There are two options: either everything remains as it is today, which goes against reality and the banging demands, or we change. Of course, we do not know how. If the latter will come true, then – whether you like it or not – we should expect that the decision-making mechanism of the Security Council on the crucial issues of international peace and security – a mechanism which has failed many times before or has been proven slow and ineffective – becomes even more cumbersome and more complicated. In the future, this might result in further unpredictable and dramatic consequences in the field of international relations.

Concluding my reflections, my thoughts now go to the new generation of the millennium, those who will be called upon to be the stakeholders, the decision-makers of stormy times. This is a tough challenge where, on the one hand, exciting professional tasks are waiting for them, while on the other hand, they will face the overwhelming and even tragic human aspects of this unpredictable turbulent world. In this respect, despite all of its problems, the United Nations will remain an irreplaceable forum where we shall work together to handle the issues of our Earth, this global village, in the interest of the survival of our human race.

CHAPTER 1

THEORIES OF INTERNATIONAL RELATIONS AND INTERNATIONAL POLITICS

The discipline of international relations' theory emerged after the WWI, as it was then called, the Great War, when the need of a discipline to reveal the causes of war and the conditions of lasting peace has risen. The establishment of the first common International Relations Institute first came up as a British-American initiative at the 1919 Paris Conference. The discipline, therefore, was essentially born with a crisis-explaining and -solving purpose at the beginning of the 20th century, however, its roots and antecedents can be found in political philosophy, international law, as well as in diplomatic and political history.[1]

It is crucial to emphasize that the discipline of international relations does not have a unified theory, it rather consists of arguing and competing theories, some of which may become dominant over certain periods. The fundamental difference between the main theoretical trends of international relations lies in how they see the international system, what they consider to be its central actor and what motivational factors are important related to the behavior of actors in international relations. The **traditional theories** of international relations include **liberalism**, **realism**, **neoliberal institutionalism** and **neorealism** while **critical theories** comprise **constructivism**, **Marxism** and **feminism** – just to mention the most important ones. This chapter aims to present the above theories.

1.1 Traditional Theories of International Relations

1.1.1. The Liberal Trend of International Political Theory

The first significant paradigm of international relations is liberalism or idealism which became the defining theory of the discipline after WWI and many of its theses derived from the shock of the war and aiming at defining the conditions of lasting peace in international relations.

The theory was strongly influenced by liberal internationalism, originated from the war winner Anglo-Saxon countries, which saw the pledge of enduring peace in the transposition of the institutions and mechanisms of liberal democracy into the international system. This was represented by one of the most well-known advocates of liberalism, *Woodrow Wilson*, the 28th President of the United States who proposed – as one of his 14 points announced in January 1918 –, the establishment of the League of Nations whose main purpose was to ensure lasting alliance and cooperation between states.

Within the liberal trend of international political theory **three central concepts** emerged based on the work of *John Locke* and *Immanuel Kant* on the behavior and foreign policy of states, especially that of liberal democracies:

– the theory of liberal or **democratic peace:** *Kant* laid the foundations of the concept in his work entitled "Perpetual Peace", which were improved by many in the 20th century – e.g. *Michael Doyle*. According to *Kant*'s basic concept, the natural condition between states is war, thus peace, especially lasting peace, must be created. He mentions the republican constitutional system and the democratic exercise of power, the (peace) alliance of states with these characteristics, and the evolution and emergence of world law and cosmopolitan law (essentially international law)

[1] Bayer 2001, 291-293.

as conditions of achieving lasting peace. Following the Cold War, the theory of democratic peace based on the Kantian philosophy was having its renaissance, claiming that democratic states rarely engage in war with each other, thus the key to lasting peace is the democratic transformation and democratization of the countries of the world. Many politicians have chosen this concept to support their foreign policies, among which we shall highlight the American efforts to export a Western-type democracy (by *Bill Clinton* or *George W. Bush*). One of the reasons why democracies engage less in war with each other stems from the typical institutional and normative constraints of democracies, the most important element being the accountability of governments towards their voters. Since the voters bear all the costs and losses (financial expenditures and human life) of a possible war, it is less common that the majority would support starting a war. Another explanation is found in democratic political culture according to which democracies prefer peaceful, intrastate and orderly conflict management solutions among each other.[2]

- the imprudent **aggression** and **tendency for intervention** of liberal democracies towards illiberal democracies: the essence of the idea first articulated by *David Hume* is that while the relationship between democracies is characterized by lasting peace, democracies regularly engage in war with non-democratic states, what's more, not with defensive aims. The main reasons behind carelessness and imprudence are mostly the inadequate assessment of profits and losses of war, as well as the increasing distrust and misunderstanding between the states. Furthermore, we cannot ignore the interest-driven and typically expansive (not primarily in territorial but in ideological sense) motivations of democracies in connection with the war against non-democratic regimes. As László Kiss J. points out, the United States intervened in Third World countries between 1946 and 1976 more than twice as many times as the USSR did.[3]
- **the excessive, sometimes even indifferent leniency of liberal democracies against danger and aggressors**: the leniency and indifference formulated by *Hume* can basically take two forms, in the lack of support of the allies (for example the refusal of liberal democracies to support the republican forces in the Spanish civil war), on the one hand; or, on the other, in the lack of actions against the aggressor (see the policy against Mussolini and Hitler). While the imprudent aggression towards non-democratic systems is a feature of liberal democracies in hegemonic, great power status, the leniency is rather a particular foreign policy behavior of states with isolationist foreign policy (e.g. the United States between the world wars) or that of democracies with declining power (e.g. France and Great Britain after WWI).[4]

Critics of the Concept of Democratic Peace

> The essence of the concept of democratic peace is that the greater the scale of political participation within a society, the less the violence within the society and in the external relations of the country. However, practical experiences only partially justify the concept. In democratic countries, the domestic use of force is smaller than in dictatorial regimes, and it is also true that democracies in their relations with each other are more peaceful. However, democratic states often engage in war with non-democracies – and not just in self-defence. Especially the young, yet unconsolidated democracies tend to be more aggressive.
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> Source: Kiss J. 2009, 295.

Liberalism, like classical realism, takes an anthropological approach to state behavior, i.e. it deduces it from human nature. However, contrary to realism, liberalism considers human nature fundamentally

[2] Kőváriné Ignáth 2-4.
[3] Kiss J. 2009, 294-295.
[4] Kiss J. 2009, 298-300.

good, human beings rational, teachable and cooperative. Consequently, long-term cooperation between states and the elimination of war from international relations is also possible for liberals. Thus, international politics is not a zero-sum game – as the realist trend of international political theory states – in which a state can only acquire more power if it takes it from another state, but rather a positive-sum game in which all actors win due to their cooperation.

For liberals, however, the state is not the only significant actor of international relations. The individual also emerges as a formative of international relations, while the examination of public opinion is also relevant to liberal foreign policy analysis. For liberals, individuals capable of acting in the international system are primarily the members of political or foreign policy elite who can influence and shape international politics, depending on certain external circumstances as well as their personal characteristics and habits. According to *Karen A. Mingst*, the following external factors shall be highlighted that have a positive impact on the individual actions of political leaders:

- in case of the instability of new political institutions, or the crisis of existing political institutions and of economy, political leaders can have a strong impact on state foreign policy and thus on international politics as well. *George Washington* in the United States, *Mahatma Gandhi* in India, *Václav Havel* in the Czech Republic all managed to have a great personal influence on the foreign policy of their state because the political institutional system and procedures had not yet been sufficiently consolidated. The impact of *Mikhail Gorbachev* could become so emphatic because of the economic and political crisis of the USSR.
- the lack of institutional and social control and accountability in non-democratic regimes also favors dictators in shaping their foreign policy without constraints.
- an atypical situation, a crisis or a less central, more specific topic, where well-established institutions and procedures cannot be applied or where there is insufficient and confusing information, also increases the personal influence of a political leader on foreign policy. For instance, during the Cuban Missile Crisis, the factors inherent in *John F. Kennedy*'s personality (e.g. openness to various alternatives) largely contributed to the peaceful resolution of the crisis.[5]

Apart from political leaders and members of the political elite, private individuals can also play an important role in international relations who might end up in a position of influence primarily by circumstance, particularity, knowledge or means. See the impacts on international affairs of *Bill Gates* and his wife through spreading vaccines and supporting AIDS programs,[6] *George Soros* through his Open Society Foundation, and *Lady Diana* through programs against landmines.

Background Diplomacy

The essence of background diplomacy is to invoke persons outside of the government to help resolve conflicts, which might be successful. One of the examples of high-level background diplomacy is the series of informal meetings terminating the conflicts between Ethiopia and Eritrea which became independent from Ethiopia. These meetings were mediated by *Jimmy Carter*, former President of the Untied States and the *Carter Center's International Negotiation Network*.

Another example of background diplomacy was provided by *Armand Hammer*, American businessman who mediated between the USA and the USSR in the years of the Cold War through his communication channels based on his business interests and friendships in the USSR. After the catastrophic Chernobyl nuclear accident in 1986, he could convince *Mikhail Gorbachev* to accept the assistance of American doctors and experts.

Source: Mingst, 2011, 166-167.

[5] Mingst 2011, 155-156.
[6] Mingst 2011, 166.

1.1.2. Realist Approaches of International Relations

The theses of the realist theory of international relations are rooted in *Thucydides*' historiography and in the political philosophies of *Thomas Hobbes* and *Niccolo Machiavelli*, while modern realism emerged after the Second World War out of disappointment in liberalism and became the dominant trend within the discipline for a time. As *László Kiss J.* notes "[…] *for most laymen*, *but for a considerable part of experts and politicians*, *it is still such a starting point*, *which serves as the most convincing explanation for the operation of international politics* […]".[7]

The realist trend of international political theory is not a unified trend either. *Hans Joachim Morgenthau* is usually mentioned as the father of the so-called **classical realism** of the post-WWII period, who laid down the foundations of classical realism in his elementary 1948 work *Politics among Nations*. From the 1970s, many trends of **neorealism** emerged, among which *Kenneth Waltz* represents **structural realism** (*Theory of International Politics* – 1979), while *John Gilpin* and *Robert Modelski* represent **economic realism**.

Classical realism, the first in chronological order, laid down some of the foundations of realism that were also recognized by the representatives of later trends. These can be summarized as follows:

- the international system is characterized by **anarchy**, i.e. there is no supranational entity in the international system that would have the monopoly of use of force and could make states follow the rules, thus guaranteeing security. Several concepts central to realism arise from the above thesis. One of them is the notion of **self-help**, meaning that primarily the countries themselves are to maintain and maximize their own security. During this they are faced with the so-called **security dilemma**, i.e. the choice between two available alternatives:
    1. either to start arming up in order to maximize their security and thus trigger the concern of other states, spurring them to arm up, thus launching an **armament spiral** and increasing the risk of armed conflicts;
    2. or to give up on the acquisition of weapons and equipment expected to ensure their security, thus becoming more vulnerable to aggression.
- the point of international politics is the **fight for power**: this assertion is closely linked to the previous one, since states shall deal with the anarchic international system themselves, thus the more power they have, the safer they can feel.
- the most important actors of the international system are the **states (*statism*)**: although realists do not deny the raison d'être of other, non-state actors, they definitely consider the states the central actors of international relations.
- the functional **similarity** of states: states should be considered homogenous, functionally identical actors of the international system that try to maximize their profit and power, in their international interactions, regardless of their territory, population, economic and military power.
- **the role of morality is marginal** in international relations: states and their leaders are not bound by universal ethical, moral norms or commands, thus states do not have be fair in dealing with each other, according to realists. The most important thing for the state is to guarantee its own existence and security during which essentially any instrument is allowed.

Classical realism is characterized by an **anthropological approach** regarding the fundamental motives and behavior of states, for it traces back its origins to the essentially negative human nature. Since the most important features of human nature are egoism and the unwavering desire for power (*animus dominandi*), conflicts between human beings are inevitable.[8] Thus, this explains, through tracing state behavior back to human nature, that – for realists – armed conflicts between states and wars are inherent in international politics and whose elimination is an impossible mission.

[7] Kiss J. 2009, 220.
[8] Kiss J. 2009, 226.

Structural neoliberalism diverts from the anthropological approach of classical realism. According to *Kenneth Waltz*, its best-known representative, not human nature, rather **the international system determines the interactions of states**, thus if we want to understand international politics, we shall focus on the international system (*system-level analysis*).[9]

According to the neorealist view, states' interactions are basically defined by the distribution of power in the international system. A state's position of power is determined, on the one hand, by the extent of benefits from resources available in the international system and on the other hand, by the polarisation of the international system. [10] **The polarization of the international system** influences the states' positions of power by that the number of polarizing great powers in the system determines the course of action and ability to maneuver for each state.[11]

From the point of view of power poles, we can talk about uni-, bi- and multipolar international systems. **Unipolar international system** can usually occur by the dominance of an imperial size great power (e.g. the system established and ruled by the Roman Empire in antiquity), which does its best endeavours to monopolise military and economic power and is able and willing to maintain order in the international system, punishing the offender countries. **The bipolar international system** is based on two polarising great powers of almost equal weight which basically determine the positions and interactions of states within the international system. An important feature of the bipolar international system is the tight ideological bound of countries belonging to the same side which means a serious cohesion force between them (see the ideological bounds of the Eastern and Western bloc countries in the decades of the Cold War). Finally, in **the multipolar international system** (e.g. the current international system) it emerges more than two power blocks among which the competition is much less tense than in the bipolar system, especially due to the lack of tight ideological bound, however which factor in the same time results less cohesion within each block.[12]

In the same time, the international system's number of poles not only determines states' position of power, but it is also the determinant of stability and instability of the international system. However, there is a dispute among Neorealists about which international system is considered more stable. According to *Waltz*, the bipolar system is considered the most stable structure in the long term because both parties can counterbalance and mitigate the violent aspirations of the other, thus preventing the system's destabilization. In a bipolar system, the two poles are clearly and unequivocally separated, it is knowable from each state to which pole is linked or rather is not linked to either. The leading powers of both poles can act almost exclusively watching the other and try to calculate the other's actions or possible responses. By maintaining balance of power, thus the parties strive to protect themselves and the bipolar international system. *John Mearsheimer* also argued for the stability of the bipolar system and said that by the end of the Cold War, the international system would lose its former stability and predictability, the number of conflicts and thus the chance of wars rockets. Regulation/control of multipolar systems is theoretically easier than the bipolar system's. There are many relations and interactions between the political units which reduce the extent of hostility but also make the establishment of long-lasting and high-level cohesive alliance harder. The supporters of the unipolar system (for instance *Paul Kennedy*, *Robert O. Keohane*) often argue that this is the most manageable and thus the most stable system, since the hegemonic power has the will to pay, even unilaterally, but to enforce the norms regulating the international system, if it is necessary to maintain the system. And when the power of the hegemon starts to decrease, the stability of the system also wavers.[13]

[9] Waltz 1979, 65.
[10] Kiss J. 2009, 235-236.
[11] Kiss J. 2009, 241.
[12] Egedy 2007, 53-57.
[13] Mingst 2011, 99-101.

The Theory of Balance of Power

The theory of balance of power is an approach derived from the anarchic nature of the international system, meaning that in the anarchic international environment, any state can resort to violence in the interests of its foreign policy and of maximising its power. Hence, the most likely reaction of other states will be to prevent – if necessary by cooperating with each other – the given state's power-maximalisation and hegemonic aspirations. The system of balance of power presupposes the existence of two or more great powers capable of controlling and counterbalancing each other's power.

The representatives of realism and neorealism distinguish two crucial obstacles of inter-state cooperation, on the one hand the fear of cheating, i.e. the fear that the other state in the cooperation breaks the cooperation, on the other hand the problem of relative profit.[14] Since the principal purpose of state is not to maximize its own absolute profit, as later discussed liberal institutionalism says, but to ensure its position in the anarchic international system and by this its survival,[15] therefore the state does its best endeavors to prevent the relative profit deriving from the other states' cooperation.

Realism has often been criticized for the fact that besides 'high politics' (which essentially means military security) does not pay enough attention to economic processes in course of interpreting international relations. **Economic realism** fills this hiatus in the realist approach of international political theory, its emergence was closely related to the discourse on the relative decline of the United States' power and its impact on the international system in the 1970s and 1980s. Besides military security and its most threatening rival, the USSR, economic realists regarded economic processes to be of central significance, stressing that for the United States Japan is – in economic terms – such a serious competitor as is the USSR in military terms.

Robert Gilpin explained the decline of the United States with the **hegemonic cyclicity** theory, according to which each hegemony is necessarily ephemeral in international relations on the one hand because their running expenses increase faster than the resources available to them, and on the other hand, because none of the leading states can prevent the spread of their economic knowledge and technologies in the world.[16]

The Theory of International Public Goods

The theory of international public goods is closely related to the concept of hegemony cycles. Its starting point is that as the state has to provide national public goods (infrastructure, legal certainty, public safety), the operability of the international system also requires a hegemonic power undertaking to guarantee the availability of international public goods (international financial, economic system, international security, freedom of trade). This is not done, however, by the hegemon out of selflessness but because it benefits the most this way from the existing international system. Other states typically accept the situation because they can take part in international relations like a free rider, without contributing to the maintenance of the international system. This happened essentially after 1945, when the United States played a hegemonic role regarding the West through constructing and maintaining the Bretton Woods system of monetary management and in assuring security.

Source: Kiss J. 2003, 26.

[14] Grieco 1988, 487.
[15] Waltz 1979, 126.
[16] Galló 2000, 64.

1.1.3. The Fundaments of Neoliberal Institutionalism

The neoliberal institutionalism that emerged in the 1960s and 1970s, besides that it agrees realist, neorealist approaches that the international system has anarchic nature and that the central actor of international relations is the state, it put **interdependence**, **international institutions** and **long-term cooperation** into the focus of its analysis.

The economic interdependence of states was placed at the center of analysis by the oil crises of the 1970s and the crisis of Bretton Woods system of monetary management based on the convertibility of gold-dollar, while the security policy interdependence is linked to the development of intercontinental missiles and the relativization of geographical distances.[17] These events shed light on that global and regional economic or rather political crises can have many unforeseeable consequences for the majority of countries, as effect of globalization cross-border, economic, financial and political processes have started which shaped interdependence among states.

In their complex interdependence theory, *Robert O. Keohane* and *Joseph Nye* posit that interdependence always has costs as it limits the autonomy of the state and requires adequate resources for adaptation. Depending on the scale of costs, we can talk about states' **sensitivity (to) interdependence** and **vulnerability (to) interdependence**. In the first case, additional costs are incurred for the state when it reacts to a change in another country, but it is unnecessary to take countermeasures or modify the affected policy. In contrast, in the case of vulnerability interdependence, the costs of the state are so excessive that it shall take political countermeasures, or if is unable to do so or unsuccessful, then it might find itself in a critical situation (e.g., a country in need of import is either able to manage the rise of the world market price of crude oil or it has to change its energy policy by modifying oil-pricing or by providing alternative energy resources).[18]

Referring to interdependence, neoliberals assert that the long-term cooperation between states is not only possible (as classic liberalism claims), but it is necessary for countries to regain control over cross-border economic, political, social processes. The framework of long-term cooperation consists of **international institutions**, in other words **regimes** which on the one hand reduce the costs of cooperation between states through permanent structures and procedures; on the other hand, they can increase the bargaining power of weaker and smaller states. It is important to note that the term 'regime' used in international relations' theory is not the same as in political sciences, which indicates the different political systems. The regime-concept of international political theory means all international institutions which serve as a framework for long-term cooperation between states and thus also become actors that shape international relations (although neoliberal institutionalists are not unified in dealing with international institutions as autonomous actors or merely as tools of states). International institutions, regimes include not only international organizations with permanent structures and competences but also rules of international law, international agreements and judicial fora, conferences and congresses.

1.2. Alternative, Critical Theories of International Relations

Over the last two or three decades, numerous new alternative theories were born within international relations' theory, which have a strong criticism of the principles of traditional trends in common. The fact that the traditional theories were not able to predict and explain the collapse of the USSR (and

[17] Kiss J. 2009, 305.
[18] Kiss J. 2009, 307-308.

with this the end of the Cold War and the bipolar world order) largely contributed to the spread and strengthening of alternative theories.

1.2.1. The (Social) Constructivist Trend of International Political Theory

Constructivist authors acknowledge and consider the **facts of the social world**, besides the facts objectively given by the natural world, saying that these are created, i.e. constituted by ideas, values, norms, theories accepted by individuals and by agreements based on these facts. The social world and some of its phenomena, institutions, concepts and within them the basic assumptions related to international relations – such as anarchic characteristics of international environment, security dilemma, clash of civilizations or state interest – are existing phenomena, therefore not objectively given but socially constructed, so they can be changed. Therefore, constructivism breaks with the deterministic (thus narrow) interpretation of international relations.

The notion 'socially constructed' also refers to the fact that the objects of our knowledge are not independent of our interpretation and language, i.e. we attribute a different collective meaning to the material world around us.[19] The act of a Muslim suicide terrorist, for instance, is a seriously reprehensible act committed against life according to Western values, while, in the Muslim world, this is a self-sacrificing behavior, what's more requirement, in the spirit of Jihad.

Consequently, according to constructivists, the state's behavior and interests are not determined by the power or its distribution in the international system, but by the persuasions, identities and social norms of the given political community. One of the best-known representatives of constructivism, *Alexander Wendt* recognizes that in the international relations' theory states compose the most important unit of analysis, but the relations between states are not created by objective factors (such as the anarchic nature of the international system) but they are socially constructed, therefore they are constantly changing.[20]

Although, for constructivists, power is not a central notion, they deal with its nature and significance. However, while realist trends and neoliberal institutionalism use 'power' primarily in a material sense (military, economic, political), constructivists rather talk about immaterial power, rooted in ideas, culture or language. [21]

Similarly to neoliberal institutionalism, constructivism also addresses the role of norms, highlighting their central importance. However, we should distinguish between **regulatory norms** and **constitutive norms**. As a matter of fact, neoliberals recognize norms as purely regulatory, saying that norms/regimes regulate the behavior of states and facilitate their cooperation by promising different advantages. Conversely, constructivism talks about constitutive norms which not only regulate the behavior of states, but they are the determinants thereof through the definition of state identity and state-interest.[22]

The trend's central questions are how the norms are established and how do the norms determine and influence the behavior of states and non-state actors. The **stage model** can answer to these questions which differentiates three phases of norms' life-cycle: **emergence**, **cascade** and **internalization**. In the phase of the emergence, birth of the norm, the central actors are the so-called norm-activists, i.e. for example human rights or environmentalist groups and NGOs seeking to influence governments, politicians and parliaments with the help of, among others, mass-communication to reach and protect

[19] Kiss J. 2009, 359.
[20] Kiss J. 2003, 62.
[21] Mingst 2011, 86.
[22] Kiss J. 2003, 61.

important values, objectives. At the same time, norm-activists seek the support of the broadest masses of society through campaigns, demonstrations, various actions. In case they can convince the critical mass of states to appreciate the importance of a given norm, then we move to the second phase of the norm cycle, cascade, where the central actors are no longer the norm-activists, but the so-called normative leading states or rather international organizations (in many cases the UN or its specialized agencies), which can have an indirect or direct pressure on other states in order to adapt the given norm. For example, the decisions of the International Court of Justice (ICJ) or the international agreements containing the given norm play an important role in dissemination of norms. Finally, the third phase of the life cycle of norms is their internalization, in which state bureaucracies, competent experts and lawyers have a central role tasked with shaping state institutions, procedures and society according to the given norm. [23]

1.2.2. The Radical Theories of International Relations: Marxism and Neomarxism, Theories of the world-system and world-society

Radical theories of international political theory are usually based on **Marxist foundations**. Marxist and Neo-Marxist authors, in their analyses, principally emphasize economic inequalities and the unilateral dependence of undeveloped countries from developed ones. The essence of their materialist approach to history is that historical turning points can be interpreted essentially as responses to economic processes and the changes in international relations are of economic origins as well.

The **world-system theory** of *Immanuel Wallerstein* is also based on Marxist foundations. Its point of departure is that the analysis of international relations should not originated from nation-states, but from world-system, this must be the basic unit of international relations. Historically, he differentiated two forms of the world-system based on the way of decision-making on resource allocation: world empire and world economy. A centralized organization allocates resources among the respective actors in the world empire, while in world economy there is no centralized political actor, but numerous power centers compete for the resources.[24]

World economy essentially started to emerge after the Age of Discovery and started to become structured due to the unequal distribution of resources – a feature of capitalism. Thus the groups of core countries, periphery and semi-periphery countries have been created. Core countries are developed ones, characterized by international capital concentrating here, they possess the most advanced economy and technology. The countries of the periphery are the poor, developing (third world) countries which have difficulties engaging in global economic processes due to the lack of adequate capital, technology and highly qualified workforce, typically being exposed to core countries. The semi-periphery is the in-between category, in which countries also depend on the core – although not to such a great extent.

The advantage of economic development is also reflected in political power relations, as the world-system, i.e. the world economy encompasses the interstate political system (international system), which is thus characterized by unequal power relations and action possibilities, in which the element of national sovereignty formally relevant to every state essentially correlates to the different degrees to which states are limited.[25]

One of the best-known authors of the world-society theory, *John W. Burton* who broke with the concept of a state-centered international system based primarily on the process of globalization and

[23] Kiss J. 2003, 64-65.
[24] Egedy 2007, 40.
[25] Galló 2000, 114-115.

in this context on the so-called multiplication of **non-state actors**. He describes the emergence of a spider-web-like world-society in his book '*World Society*'.

The functionally interconnected transnational, i.e. cross-border systems (economy, science, culture, sport, certain groups of people or individuals, etc.) are – as a result of globalization – directly linked to each other permanently, primarily due to modern communication technologies and easier and cheaper travel and transportation.[26] These transnational networks, alongside intergovernmental relations, are also architects of international politics and members of the world-society in which power loses its former significance and communication becomes the principal organizing force of international processes. In this system states do not disappear but their borders blur, lose part of their former significance.[27]

1.2.3. The Feminist Trend of International Political Theory

Like all **feminist** scientific trends, the feminist approach of international relations is also very closely linked to the second wave-feminism of the 1960-70s. Many feminists, however, originate their interest in international relations from the peace movements of the Cold War. In 1988, *Millenium* was the first journal dealing with international relations that dedicated a special issue to the topic of women and international relations. In that issue, *Fred Halliday* stated that the exclusion of women and their experiences from the discipline led to a partial, masculine interpretation of international relations despite the dominant theories claiming that they explain the reality of world politics. [28]

The end of the Cold War and the bipolar world order gave a serious boost to the theory, because the traditional approaches failed to predict and explain the end of the bipolar world order. The International Feminist Journal of Politics launched in 1999 specifically intended to serve as a permanent forum for the feminist approach in international relations and politics, to ensure a platform for the representatives of the trend in addition to the columns of special issues. [29]

The most important theses and criticisms of feminism can be summarized as follows:

– it approaches "**making women more visible**"[30] – i.e. the detection and elimination of discrimination, abuse, political and economic under-representation of women – as a moral obligation;
– it distinguishes between sex and **gender**, stating that the latter consists of socially constructed stereotypes and roles that have an impact on the states' foreign policy and international politics, making them state- and sovereignty-centered, and power- and war-centered;[31]
– realists overestimate the importance of states in international relations, without paying attention to political and social relations within the states which, feminists claim, are determinants of state foreign policy. The lack of attention paid to individuals (not members of the political elite, but ordinary persons) is mentioned as another important hiatus, because for realists security almost exclusively means the security of the state, while for feminists it refers to the security of individuals, i.e. **human security**.

[26] Fejes 2012, 22.
[27] Galló 2000, 75-76.
[28] Cited by True 2017, 3.
[29] True 2017, 4.
[30] Smith 2018
[31] Smith 2018

As feminist international relations experts have pointed out: violence against women (sexual or domestic violence, forced prostitution) not only continues but occasionally increases in post-conflict periods – when the reorganisation and assurance of state functions (including state monopoly of violence, re-establishment of public safety and public services) is usually done by peacekeeping troops. One of the reasons for this is that peace between the former combatants and the assurance of public safety are primary considerations for the peacekeepers and thus the various forms of violence against women get lost in the uncertain security environment.

Another aspect of the situation of women in post-conflict periods is that women are typically excluded from power positions and thus from political decision-making processes, as well as from access to economic and social resources (workplace, education, elementary food, housing).

Finally, women's participation in peacekeeping operations is extremely under-represented. In 1993, women composed just 1 percent of the deployed military peacekeepers and by 2014 their ratio only increased to 3 percent.

Source: Smith 2018

UN Security Council Resolution 1325 on women and peace and security targeted remedying the above issues, encouraging the MS – among others – to ensure greater representation of women at all decision-making levels, in national, regional and international institutions and in the field of conflict prevention, management and resolution. The document also encourages the Secretary General to prepare a study on the impact of armed conflicts on women and children and the role of women in peace-building as well as on the different roles of gender in peace processes.

Source: UN Security Council Resolution 1325 (2000)

QUESTIONS FOR SELF-CHECK

1. When was the birth of the discipline of international relations' theory and the beginning of its institutionalization?
2. What do we mean by the concept of liberal or democratic peace?
3. What are the external factors increasing the influence of individuals (mainly political leaders) and their ability to act in international politics?
4. Enumerate the fundamental theses of realism.
5. What types of international systems can be distinguished from the point of view of power poles?
6. What do we mean by interdependence?
7. What are international regimes and what is their function in international relations?
8. What role does constructivism attribute to norms?
9. Briefly summarize the World-system Theory.
10. Describe the important theses of the feminist theory of international relations.

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Useful webpages:

E-International Relations http://www.e-ir.info/

Grotius http://www.grotius.hu

CHAPTER 2

THE HISTORY OF INTERSTATE AND INTERNATIONAL RELATIONS

Relations between states date back to the time of the creation of first states. For more than 5,000 years, the world and societies within it have been undergoing an almost indescribable transformation. The economic situation, technical knowledge, religious-ideological background and communication facilities have considerably defined the relations between states and interstate relations in all ages. The emergence and creation of the most basic institutions and concepts of international relations and international law, such as state, sovereignty, nation and international organization, were all formed because of historical circumstances. The antecedents of the modern international legal and political system are to be found fundamentally in the Western civilization starting out of Europe, so the purpose of this chapter is to review the history of interstate relations to better understand the challenges of the 21st century.

2.1. The Origins and Ancient Roots of Relations

A prerequisite for the establishment of interstate relations was the creation of relatively developed cultures that were close to each other under then-existing traffic conditions. Historical science puts the beginning of the civilized society around 3,000 BC and, based on our knowledge, it was established by the people called Sumerians living in Mesopotamia in the territory of the valley of the Tigris and Euphrates rivers. Initially, Sumerians lived in city-states, not in a single state, and their relations were settled based on international law. The oldest known **international treaty** was concluded between the two Sumerian city-states, Umma and Lagash around 3,000 BC.[1] This treaty established the border between the two city-states, resolving border disputes going or for centuries, however, it was not very successful as it was soon infringed by Umma. As a result, violence re-escalated between the two city-states.[2]

The Definition of International Treaty

> International treaty is an agreement between two or more states or other competent parties of international law, establishing, amending or terminating their respective international rights and obligations.
>
> In more detail, see: Szalai 2018b.

This story is a testament to ancient relations: there was a relationship between neighboring states, often governed by law (as well), and typically it was characterized by **war** with each other.

Between 3,000 and 1,500 BC, several states were established in the Middle East and North Africa regions, such as the Kingdom of Akkad, Assyria, Babylonia, Egypt and Persia. The peaceful forms of cooperation including trade relations and alliances started to be forged.

[1] Nagy 1995, 7.
[2] Sulyok 2014, 479-488.

In the 1,500-1,000 years BC, such states were formed that provided the direct foundations for today's civilization, such as the Hellenistic (Greek) city states, Israel and Judea, Chinese and Indian states, the Mayan empire in Central America and then the Roman Empire. In addition to increasing **trade**, envoys had been delegated, treaties of friendship and non-aggression or military alliance agreements had been concluded, arbitration had been applied. Also peace treaties have been signed along with the rules of law of war appearing, such as announcing the declaration of war or the exchanges of prisoners-of-war.[3] Peaceful cooperation, however, was usually temporary and the realignment of power was realized through war.

As for the development of interstate relations and international law, the more prosperous periods were when the states of similar size and power existed 'in proximity', however, the formation and existence of the great empires was not favorable to them. The emperor of the unified Chinese Empire created in 221 BC from the Chinese chiefdoms, for instance, considered himself the ruler of all mankind and, since everyone remained subordinate to him, cooperation or peaceful relations with the neighboring states or farther regions was impossible.[4] Great empires do not need the international system or balance of power with other states.[5] (At the same time, it is also true that anarchic periods following the fall of great empires, such as in the 9th or 10th centuries in Europe, or the periods of uniform domination of the great dynasties in China, did not promote international cooperation and development. These periods meant re-establishing the balance of power, mostly through wars.)

Four out of five major **world religions** were created during this period, Judaism (Jewish religion), Christianity, Hinduism and Buddhism. (Islam only developed in the 6th century AD.)

2.2. Interstate Relations in the Middle Ages – From the Decline of the Roman Empire to the Thirty Years' War

Europe was almost completely centralized until the beginning of the early Middle Ages when it gradually began to decentralize. The Roman Empire was torn in two parts in 395 AD and the Western Roman Empire collapsed 81 years later in 476 AD due to the constant attacks of German tribes. German tribes created new states in its place, such as the Frankish Empire (Francia) and the Gothic Kingdoms. However, there were only a few states that existed persistently for centuries. The strongest between them was the Frankish Empire (482-843 AD), in which the feudal system, also called **feudalism**, was created for the first time. The emergence of feudal ties and feudalism was in response to the lack of a strong and central authority, since entitlements were placed into private hands that otherwise would have been in the 'hands of the state' in a strong and centralized system (e.g. entitlement to collect tax and legislative powers). As a result, a stable order was established, and this economic and social organization affected the lives of Europeans until the 1800s. (However, we must also add that in China there were conditions similar to feudalism already in the 3rd-4th centuries.)

In the 900s AD, migration came to a close, leaving a period of relative peace in Europe and land ownership started to be the dominant factor of power relations. Royal power was weak at this time, the landlords fought against each other to obtain central power, while the kings tried to preserve their power and gave away lands for which vassals owed allegiances and fidelity to the king. With the decline of the Roman Empire, long-distance trade ceased to exist and the road network was not maintained, therefore it was necessary to produce all goods locally. As a result, cash flow was significantly reduced and most of the lease payments were paid to the liege in crops and not in cash (cash allowance was only possible during the far advanced feudalism).

[3] Nagy 1995, 8-15.
[4] Nagy 1995, 9.
[5] Kissinger 1998, 21.

The more intricate vassal system influenced international relations and the **hierarchical system** appeared among the rulers of different states. For example, the English kings were the vassals of the French king for two hundred years from the end of the 1000s (until *John Lackland*, King of England was divested of his lands – hence the nickname – by the court of the French king due to a breach of his oath of fealty). It resulted in vassal dependency even when the British kings had more lands in the territory of the French Kingdom than the French king himself.[6]

For centuries, the Pope, as head of the Catholic Church, was at the top of the hierarchy. The struggle between secular and ecclesiastical power, and deciding whether the (lay) rulers or the Pope's have greater power, lasted for centuries. The debate over the supremacy of their reign was controversial, because the Pope and the ruler often mutually needed each other to keep their power. Charles the Great, the King of the Franks (768-814 AD), for instance, was a major supporter of the Western Church, therefore the Pope crowned him as Emperor of the Holy Roman Empire. In return, he promised to protect the Pope and unite Western Europe in the name of Christianity. In reality, however, the creation of a unified centralized power failed, and the dispersed ethnic groups formed smaller units against the needs of the Church for universalism and centralism.[7]

Meanwhile, the Eastern Roman Empire, known as the Byzantine Empire, survived in Eastern Europe from the 7th century and existed until 1453 when, due to the expansion of the Ottoman Empire, it ceased to exist. In the Byzantine Empire, the Greek language was used instead of Latin, functionally with the continuation of Roman traditions in the operation of the state. It was Christian, with Christianity being the state religion from 380 AD throughout the Roman Empire.

In 1054, the **Christian church** split up into two parts, and thus the Orthodox Catholic Church headed by the Byzantine Patriarch existed in the Eastern part of Europe, while the Latin Church headed by the Roman Pope existed in Western Europe. The power of the Patriarch was far less than that of the Pope, and the Roman Catholic Church involved far more European states than Eastern Christianity.

While Christianity became generally accepted in Europe, Islam, the fifth major world religion developed in the Arabian Peninsula in the 6th century. The vast majority of world population nowadays exercise one of the five world religions and it basically defines cultural identity. Today, instead of political ideologies, civilizational features based on culture and religion are decisive and according to some scholars such as *Samuel P. Huntington*, this also leads to the clash of civilizations, as a change in the balance of power between civilizations is currently under way.[8]

Rivalry and even warfare between religions and cultures has a long history, and we can see its two major historical examples in the period between the 1000s and 1500s. One of these was the Crusades, when European Christians tried to prevent the Islamic invasion in the Middle East, and the other was the persecution of Jews in Europe, such as the one in German territories in the 1300s.

From the 1300s to 1500s, due to the fragmentation caused by the feudal system, there were still significant obstacles to free land transport and overland trade. Customs were generally collected both on roads and rivers, which made transport, already carried out under bad circumstances, much more expensive. This hindered economic development and also favored coastal states as **maritime trade** could freely evolve. This is evidenced by, e.g., a number of books on international maritime law and sovereign orders from the 1400s and 1500s. In addition, the expansion of the Turks and the collapse of the Byzantine Empire made Levantine trade between Asia and Europe considerably more

[6] Bloch 2002
[7] Mingst 2011, 32.
[8] Huntington 2004

difficult, which also favored seeking new maritime trade routes by the Mediterranean states (Venetians, Spaniards and Portuguese).[9]

The hundreds of years of undisturbed maritime trade development delivered a number of results. An international trading community (as a transnational network) emerged, with financial interests were no longer limited to the territory of a single state, who gained significant wealth. The protection of the trading community's interests led to the emergence of consular relations and protection. States became acquainted with other cultures and gained broader secular knowledge than the knowledge acquired only from the Church, which provided exclusive education in the vast majority of Europe. They rediscovered Ancient ideas, classical literature and philosophies, which influenced the development of Renaissance culture and humanism. In this era, we can already find the roots of individualism and the relativization of the moral order branded universal by the Church (e.g. *Machiavelli*'s The Prince, in which he posits that the ruler must always behave in the interest of the state and not with regard to the Church or some other universal value system).[10]

The development of maritime transport and trade has led to the **discovery** of territories further and further away. From 1470, Portuguese sailors wanted to find the sea route to India. In 1487, *Dias* circled the Cape of Good Hope, the south-westernmost point of the African continent. In 1492, *Columbus* discovered the American continent when he headed west, and in 1498, *Vasco de Gama* succeeded in circling Africa and getting to the west coast of India. Due to these discoveries, colonization began, first by Spain and Portugal. About a hundred years later, the British, the Dutch and the French joined in. The **colonies** were established on the Central and South American continent in the 1500s, but they also benefited from the discovery of the African continent: they took workforce to the colonies from there. The abduction of Africans was extremely violent and it is estimated that for one slave who was transported to the American continent unharmed there were three slaves slaughtered or dead due to horrible transport conditions.[11] The colonists considered the colonies as being part of their respective empires; thus, the region where European and Christian international law prevailed has grown considerably. In addition, wealth from the colonization resulted in rapid technical and economic development that had a social impact: feudalism has gradually been replaced by a more centralized monarchy.

While in the 1500s, the exploration of seas and the power to control them occupied the attention of the states in proximity to the Atlantic Ocean, in the substantial part of the continental territories of Europe two important parallel phenomena went present: one was the expansion of the Turkish Empire and its continuous attacks from the south-east, and the other was the weakening of the Catholic Church. **Reformation** began in 1517, and the proclamation of *Luther*'s doctrines and the establishment of the Protestant church made it very popular among monarchs. Therefore, the rulers converting to Protestantism could rid themselves of the supreme authority of the Pope, which was what also the rulers remaining Catholic (e.g. the French king) also wanted to achieve.

The religious division in Europe and the associated rearrangement of power led to wars. In 1618, the one covering the significant part of European states started as a religious war and lasted for thirty years resulting in a substantial power shift. From 1452, German Prince-electors elected the emperor from the Habsburg family. Although this title ensured the supremacy of power, yet significant rights and power remained in the hands of the leaders of certain electorates. In the 1500s, many Prince-electors converted to Protestantism, and although effective Counter Reformation began from the Austrian and Bavarian territories, by 1555 (Peace of Augsburg) the Evangelical religion became equal

[9] Nagy 1995, 26.
[10] Mingst 2011, 34.
[11] Nagy 1995, 27-28.

to the Catholic religion. In the context of the Peace of Augsburg, the Habsburg Emperor accepted that the electors themselves may choose their religion and practice that religion within their respective territories (the principle known as *cuius regio*, *eius religio*). However, the Habsburgs had strong centralization demands by the beginning of the 1600s and the Protestant electors formed an alliance called Protestant Union in 1608 in defending their rights to freedom of religion and protecting their interests. In 1618, however, the Imperial Electoral Council banned the exercise of Protestant religion in the Czech Republic (part of the German Roman Empire at that time). In response to this, the Protestant Czech nobles pushed two members of the Electoral Council out the window of the Castle of Prague (the well-known Defenestration) and the anti-Habsburg rebellion began also meaning the beginning of the Thirty Years' War.

However, the fights within the German-Roman Empire soon became European, since almost all European states have intervened on either side. England, the Netherlands and France supported the Protestant Prince-electors against the Habsburgs and financed them, while Denmark, Sweden and the Principality of Transylvania ruled primarily by the Hungarian *Gábor Bethlen* participated in the fights with their own armies on the Protestants' side. The Habsburgs were supported by the Pope, the Venetians and the Catholic German Prince-electors, especially the Bavarians and Spain's Habsburg king. The war was not only in the territory of Europe, as the Netherlands and Portugal also fought with each other in South America and East India for colonial power.[12]

In the first 18 years of the war, the Catholic alliance proved to be stronger, but in 1635 France ruled by King *Louis XIII* and Cardinal *Richelieu* declared a war on Spain that was led by the Habsburgs (the king of which was *Philip IV*, the brother of *Anne of Austria* who was the wife of *Louis XIII*). The French troops crushed Northern Italy, acquired the Rhineland and part of Saxony involving the Swedes back into the fight, with whom they had allied themselves. From 1642, the French and Swedish forces were successfully fighting and they defeated the Spanish, Austrian and Bavarian armies. By 1648, their superiority over the Habsburgs became clear.[13]

In the Thirty Years' War, all Europe suffered heavy losses and it is estimated that one third or quarter of the then European population was lost. This is based on several reasons, e.g., these battles were no longer similar to the chivalric battles in the Middle Ages, they were much more like modern, total wars. The most famous example of this was the plundering and destruction of the Protestant city of Magdeburg in 1631, where about 25,000 people burned to death in the town lit on fire, while 300 souls were lost among the Imperial army and the forces of the Catholic League responsible for the act. Another reason for the civilian population's destruction was typhoid fever, epidemics of the plague and the lack of food. The possibility of making peace emerged several times during the increasingly chaotic war, but it was proceeding extremely slowly. In 1641, the first preliminary agreement was reached on the location of the peace negotiations, however, the actual talks only began in 1645, and it took 3 years to actually conclude the peace treaty.[14]

In 1648, peace treaties were signed on two locations, in Osnabrück and Münster, both in Westphalia, hence the name: **Peace of Westphalia**. The peace treaties fundamentally dealt with three issues: the question of religion, territorial issues and the power rights of the German-Roman emperor and its relations with the Prince-electors.

Regarding religion, the peace treaties stated that there shall not be any distinction between the Catholic, Evangelical and Reformed realms and that some of the achievements of the Peace of Augsburg

[12] Csikány 2005
[13] Ibid.
[14] Lázár 2009, 28-45.

have been strengthened. It was declared that there is tolerance in **freedom of religion** in private life and that the electors shall not use force against people of other religions (except that they could be banished from the area within five years after the conclusion of the peace). (However, this did not apply to the dependent Austrian provinces where only the Catholic religion was recognized.)

Just as religious rules, the territorial provisions also had an impact on the relationship between the Emperor and the Imperial orders. The German-Roman Empire was broken into 296 independent principalities and several free cities, with Switzerland and the Netherlands splitting, recognized as independent states. Some German principalities have become strengthened, especially Brandenburg-Prussia acquiring significant territories due to the peace treaties. Through the Peace, the Habsburgs were obliged to admit that the title of German-Roman emperor did not imply superiority and the regime of the royal hierarchy failed. The German Imperial orders were given the right to freely cooperate with external powers and to pursue independent foreign policies, and the Emperor was only able to conclude international treaties or declare wars only with the consent of the Prince-electors. The Peace restored commercial freedom within the Empire and ordered the abolition of customs borders established due to the war. The Empire formally existed until 1806 (when it was dissolved by *Napoleon*), but it rather became an **alliance of independent states** and it was no longer a major power. Instead of the centralized German state desired by the Habsburgs, following the Thirty Years' War, more than two centuries of fragmentation started, the consequences of which can be traced until the 20th century.

France, as the winner of the war, became a great power and received Alsace and occupied Piedmont (Northwest Italy). The defeat of the Habsburgs led to the **decline of papal influence**, and – through the peace treaty – the Pope's supremacy terminated even over the Catholic rulers. By then, it became clear that even Catholic rulers did not consider the interests of the Church.[15] With the dissolution of the equal and separate German principalities and the supremacy of the Church, the independence of state power and sovereignty over its territory and its secular nature have been put into practice.

The explicit territorial, religious and political provisions of the Peace of Westphalia listed above had a significant influence on international relations, which is why we consider this event the beginning of **modern international relations**, modern diplomacy and several international legal principles applied to this day. From here, we derive the principles of sovereignty and equality between states, which are determinative **principles of international law** also at the beginning of the 21st century. In Europe, the politics of seeking balance has become decisive for hundreds of years in international relations. As a result of the Peace of Westphalia, a group of states has emerged that dominated the world until the 1800s. This was a peaceful compromise, the goal of which was not to get revenge on the enemy, but rather to achieve lasting peace (following the suggestions by many philosophers of the era such as *Grotius*, *Erasmus*, *Machiavelli* and *Bodin*). The fact that the conclusion of peace was in the interest of about two hundred states (most of which were small German principalities) played a significant role in the development of **modern diplomacy**. During the peace negotiations, about a hundred representatives of these states appeared. The negotiations were typically conducted through envoys not directly between the rulers and they lasted for years.[16]

The Results of the Peace of Westphalia

- freedom of religion
- every state has equal right to sovereignty
- beginning of modern international relations
- beginning of modern diplomatic relations
- doctrine of the balance of power

[15] Ibid.

[16] Hadfi–Kolozsvári 2009

2.3. From the Peace of Westphalia to the Congress of Vienna

Despite the end to the Thirty Years' War and philosophical approaches underpinned by peace, there was no peace in Europe. Taking advantage of the weakening of the German-Roman Empire and the estrangement of the alliance between the Austrian and Spanish branches of the Habsburgs, France did not seek to preserve the European balance of power, but to increase its own in the second half of the 17th century. This was achieved by the state of *Louis XIV*, as – resulting from the countless wars waged – he seized Belgium and successful fought against Spain and the Netherlands for decades. Meanwhile, the Habsburg branch of Austria was bound by the war against the Ottoman Empire, which resulted in the expulsion of the Turks from the Hungarian territories and in 1699, and the Habsburgs making peace with the Turks (Treaty of Carlowitz). In the western and eastern part of Europe the centralized and absolutist state became typical in the second half of the 1600s and the early 1700s.

The Thirty Years' War was still raging on the continent when the Revolution broke out in England. The **English Civil Wars** were a series of peaceful periods and armed conflicts between 1640 and 1688. After several decades of parliamentary debates, wars, religious intolerance, anarchy and *Oliver Cromwell*'s authoritarian republic that lasted for a few years, a more relaxed era dawned in 1688. After becoming king, *William of Orange* accepted the Bill of Rights, which set the stage for a constitutional monarchy in England. This became the first example of non-absolutist exercise of power, where the parliament had a significant role. An important result of the English Civil Wars of the 1600s was that the subsequent European revolutions (the French Revolution in the late 1700s and the pan-European revolutions in 1840s) have not resulted in similar events in the UK. In addition, the unification of England and Scotland in 1707, also brought economic growth. This lasting internal peace and the balanced exercise of power have led to the development of the industry, economy and technology and to the fact that the **industrial revolution** began in the mid-1700s. It was the time when *Adam Smith*, the Scottish philosopher renowned as the father of modern science of economics, wrote "The Wealth of Nations", in which he explained the theories of labor as value and division of labor, as well as the importance of trade and economic liberalism free from state interference.[17] What has been described by *Smith* had an impact on the economic decisions of states and on the establishment of international cooperation such as the World Trade Organization (WTO), which supported the globalization of free trade without customs in the 20th century.

The Industrial Revolution

The Industrial Revolution is a complex phenomenon including technological development, raising of capital, scientific development, development of advanced trade networks, termination of feudal constraints, and the existence of free workforce, and, finally, the richness of resources originating from the expanding colonies. One of the far-reaching achievements of the Industrial Revolution was the establishment of the first intergovernmental international organizations in the second half of the 1800s. The industrial revolution went down in more waves: in the 1700s, and then in the second half of the 1800s, and it received renewed impetus in the second half of the 1900s.

While in England the end of the 17th and the beginning of the 18th centuries brought about peace that has been expected for many decades, for most of the other European powers it was about starting more wars: the War of the Spanish Succession between 1701 and 1714 affected the countries of the continent again. As the house of the Spanish Habsburgs died out, the war ended with the Treaty of Utrecht and with the French Bourbons ending up with the Spanish throne. By this time, the English obtained

[17] Smith 2011

Gibraltar from the Spanish and some colonies in South America and the exclusive right or maritime slave trade. The balance of power established by the Treaty of Westphalia therefore prevailed only within the territory of the German-Roman Empire while outside of it there was a constant realignment of power relations as power struggles were 'transmitted' to other continents. **Wars for** the acquisition of more **colonial territories** were recurrently present among the English, Spaniards, French, Dutch and Portuguese in North America, Asia and Africa. While the British Empire in India started in 1760 (and lasted until 1947), France at the same time lost significant colonies, such as Canada, favoring mainly the British.

The era characterized by the balance of power established by the Treaty of Westphalia and by smaller and geographically transferred power struggles brought about significant changes by the 1770s thanks to the more open and violent power struggles. The importance of Prussia has significantly increased because of the First Partition of Poland (with Poland ceasing to exist by the end of the century, with statehood being re-established only in 1918). The Russian Empire has undergone a significant strengthening of power over the decades prior to this period, gaining strategically important territories from the Turks, among others the Crimean Peninsula, therefore it became possible to build the fleet of the Russian Navy in the Black Sea (which territory is still important in the early 21st century, let's just mention the annexation of Crimea from Ukraine in early 2014).

Among the events of the second half of the 1700s two appears significant: one is the American Revolutionary War (1775-1783) and the other is the French Revolution (1789). The ideas of the Enlightenment arguing against the centralized and absolute power played a significant role in both. Many philosophers and writers such as *Locke*, *Voltaire* and *Montesquieu* argued on the importance of limiting government power. They explained that state power should derive from the individuals and society, and between the individuals and those who exercise power a so-called social contract should exist. This agreement ensured the legitimacy of power; that the individuals accept the rulers and the laws they have adopted. The ideas of the **Enlightenment** were born in response to the rulers with absolute power who failed to have sufficient regard to the interests of the people. Therefore, the ideas of – still influential – political liberalism have appeared in addition to the economic liberalism described by *Smith*. These ideas were incorporated into the Constitution of the USA rising from the American Revolutionary War, enabling the emergence of a world power.

The ideas of Enlightenment, the financial and social failure of Absolutism, the significant increase in the numbers of European population and conflicts of interest between the increasing number of citizens and the privileged orders all contributed to the outbreak of **the French Revolution**. The French Revolution remained an internal affair not for long, as two years later, Austria and Prussia became involved, then after the decapitation of *Louis XVI* in 1793, the first international coalition was formed against the French First Republic. England, the Netherlands, Portugal, Spain, the German-Roman Empire and the Italian city-states have cooperated partly in favor of restoring stability in the French monarchy, but mainly for territorial purposes. This coalition was not particularly successful and resulted in the expansion of the French territories thus breaking up after four years. A year later, in 1798, the second coalition was established, in which the Turkish Empire, Portugal and even Russia participated for a short period of time in addition to the states bordering France. This alliance failed to achieve its goals in the so-called **French Revolutionary Wars**, with all members making peace with the French one by one, the last one being England in 1802. Territorial disputes nonetheless remained unresolved, thus the wars continued in 1803. This period is generally referred to as **the Napoleonic Wars** (although *Napoleon* had already been the leader of France since 1799) and ended in 1815 with *Napoleon*'s defeat. During these 12 years of war, five different international coalitions were established against *Napoleon*, primarily under the leadership of the UK.

The was ended by the First (1814) and Second (1815) Peace of Paris; however, it was agreed that all states of Europe would hold a general congress to determine issues of territorial settlement and conditions for lasting peace. Thus, in 1814-1815, the international conference convened in Vienna, also known as the **Congress of Vienna** reflected the Pan-European agreement.

The Results of the Congress of Vienna

- formation of the cooperation known as the Concert of Europe and conference diplomacy
- favoring multilateral international relations over bilateral ones
- new international rules on diplomatic relations
- restoring the balance of power in politics
- idea of popular sovereignty
- idea of nationalism
- development of fundamental human rights

The Congress of Vienna largely restored France to its frontiers prior to the Napoleonic wars, but there were also territorial gains, e.g., Russia, Austria and Prussia gained parts of Poland, England gained Malta and several Dutch overseas territories, the Netherlands gained Belgium and Luxembourg and Sweden was given Norway from Denmark (as a compensation for the 'loss' of Finland benefitting the Russians in 1809). Austria gained Venice and much of northern Italy (Lombardy–Venetia). It was declared by the states that the neutrality of Switzerland, which was recognized as a sovereign state by the Peace of Westphalia, shall be guaranteed, which remains respected by all states ever since.

The agreement accepted in Vienna restored Bourbon power and recreated the balance of power among European states settled by the Peace of Westphalia in a slightly altered form. To establish a lasting peace and balance of power in Europe, it was agreed that the UK, Austria, Russia, Prussia and France will jointly manage major European affairs. This cooperation is known as the **Concert of Europe**, which was conceived to be implemented through regular multilateral diplomatic negotiations. Obviously, there has already been lasting cooperation between more states, but organizing this regular congress forecast both the world of international organizations (such as the League of Nations founded in 1919) as well as multilateralism, which will become greatly significant in the 20th century. At the Congress of Vienna, a further step forward from the negotiations of the Peace of Westphalia was that the representatives of the states negotiated collectively at one location and not only by envoys but at the highest level of state leadership (e.g. *Frederick William III*, King of Prussia, *Alexander I*, Russian tsar, Emperor *Francis I* and Austrian Chancellor Prince *Metternich*, *Talleyrand*, Prime Minister of France, and foreign ministers of several states).

The conduct of multilateral diplomatic negotiations was facilitated by the **new international rules on diplomatic relations** adopted at the Congress of Vienna. In medieval Europe, the envoys representing each state were ranked in a strict hierarchy, which was constantly disputed by certain states in an effort to gain a position reflecting their presumed or actually increasing power. This constantly led to disputes and made it difficult to conduct multilateral negotiations. Moreover, it would have been less fortunate to concentrate on the formation of a complex hierarchy at a Congress whose aim was to restore the balance of power. Therefore, a reform of the previous practice was decided on. Thus, in determining the ranking of envoys, sovereign equality became the principle not perceived or real power. Certain diplomatic rules laid down by the Congress, such as rules on permanent embassies and diplomatic relations, are still applicable today.

Three countries of the Concert of Europe, namely Austria, Prussia and Russia also agreed on a closer coalition, which was called the **Holy Alliance**. This political and military alliance had a decisive

influence on international politics until 1848, and its main aim was to maintain feudalism and absolute monarchy. The result of the Concert of Europe and the Holy Alliance was that it prevented the European powers from future wars with each other for almost forty years.

Although only 23 years passed from the outbreak of the Revolution to *Napoleon*'s defeat at Waterloo, these events still have had an effect we can sense even today. Similarly to the results of the Peace of Westphalia on German territories, the power of the Catholic Church declined in France and throughout Europe. The idea of **popular sovereignty** and the idea of national unity emerged. Nation-states and people as the bearers of sovereignty came to the forefront instead of rulers of the absolute power as embodiments of state and sovereignty. People were no longer tied by belonging to families or whether they were subjects of a certain monarchy, but it was also important to participate in the political life as a group, and in fact the common historical past, common traditions and language were of the greatest importance. In the development of the demand for community-based awareness of the nation, social bonds transformed by the industrial revolution have also played a significant role. Mass migration motivated by employment opportunities did not strengthen family relations in the absence of good options of communication, it rather helped the formation of new communities based on other principles. Apart from family ties, national and ethnic identity became the most important and **nationalism** emerged. This resulted in the definition of political and cultural nationalism and the concept of the nation-state.[18]

One of the most significant works of the French Revolution was the Declaration of the Rights of Man and of the Citizen adopted in 1789, in which **fundamental human rights** were declared. This was a significant step from the direction of absolutism towards the constitutional monarchy, and we typically refer to this document as the point of origin of fundamental human rights, despite the text being inspired by many earlier documents, such as the Bill of Rights (1689), the Declaration of Independence (1776) and the Virginia Declaration of Rights (1776). The declarations listed above are all internal laws and on the level of international law it was only by the middle of the 20th century when similar and comprehensive human rights regulation was adopted (Universal Declaration of Human Rights, UDHR 1948). However, the first domain of human rights where international regulation was adopted is linked to the Congress of Vienna and it was the abolition of slave trade. This international prohibition focused only on trading with slaves, and no new aspects emerged in the development of international human rights law in the following hundred years. The prohibition of slavery and forced labor as well as the improvement of working conditions were in the focus of international human rights law until the 1940s.

2.4. The Events of the 19th Century and the Road to World War I

There was an initial enthusiasm for the idea that the Congress of Vienna shall preserve European peace through multilateral diplomatic conferences; however, the momentum was quickly lost. Between 1818 and 1822, the annual consultations were organized within the framework of the Concert of Europe (between the five great powers), but after this, only when major revolutionary events took place or when it was considered necessary to resolve the outbreak of wars. Nevertheless, until the outbreak of WWI, more than thirty meetings took place which clearly demonstrated the presence of politics seeking balance and consensus.[19]

[18] Glatz 1993

[19] Mingst 2011, 40.; Nagy 1995, 35-39.

The development of the principle of nationalism and popular sovereignty in the philosophical writings of the 1700s and then during the French Revolution scared the rulers of the Holy Alliance, and the greatest motivation for cooperation was to prevent events like the French Revolution in other states. One of the results of the Congress of Vienna was the renewed balance of power, thus fear was justified that a change of government resulting from a revolution or a secession of a territory would significantly upset this balance of power. Conventions were held by the participating states when revolutionary movements emerged somewhere, and they have successfully prevented the revolutions of the 1820s and 1830s (such as the uprising against the absolute power of the Spanish king, the Naples uprising or the Polish national uprising in the territories directed by the Russians). The last joint action of the Holy Alliance was quelling the Hungarian War of Independence in 1848–49.

One of the major achievements of the decisions of the Concert of Europe in the 1820s was the **Monroe Doctrine** adopted by the United States in 1823. In 1810, conflicts broke out and the war of independence began in the Spanish and Portuguese colonies of South America. A revolution started in the European territory of Spain in 1820, making the position of the Spanish king even more difficult, leading to the abolition of the absolute monarchy and the introduction of a new constitution. Under the Concert of Europe, it was agreed that France would intervene and restore the power of the Spanish king. This was achieved in 1823 and the Spanish king requested the European states to assist him in restoring his power also in the colonies of South America, most of which have already declared independence (e.g. Argentina in 1816, Chile in 1818, and Colombia in 1819 from Spain, then Brazil in 1822 from Portugal). However, England disagreed with this request and so did the USA that has then been independent for a few decades.

In 1823, US President *James Monroe* declared in a statement that the American continent was free and independent and that European superpowers must not interfere there. This statement was not only an ideological protest the repression of absolutism, but rather the designation of the power of the USA and its intervention zone. Thanks to this fact too, the other name of the Monroe Doctrine is "America for the Americans". President *Monroe* also stated that the USA would not intervene in European affairs and this policy had basically been pursued until 1940.[20] Even though the USA intervened in WWI in 1917, the impact of the principle was apparent in that the USA had never become a member of the League of Nations. Entering WWII and overcoming of the Monroe Doctrine made it possible for the USA (among other things) to become a world superpower.

In the first half of the 1800s, the Holy Alliance successfully fought against the principles of nationalism, enlightenment and constitutional governance, but they spread in most of Europe regardless. In 1848, there was a revolutionary wave in Europe also known as the "**Spring of Nations**", generally characterized by the need to abolish the absolute and feudal exercise of power of and to propagate the right of nations to self-determination. Among these, the longest fights for freedom were fought in Hungary.

The Austro-Hungarian Monarchy emerging from the 1867 Compromise was a result of integrating nations into a larger unity, though far less significant internationally, while the unified Italian state established in 1870 and the German Empire founded in 1871 were of greater international importance. The German fragmentation sealed by the Peace of Westphalia thus ceased to exist after more than 200 years and Europe's most powerful state was established. Similarly, because of the idea of nationalism, the dissolution of the Ottoman Empire began, which led to the secession of Greece in 1829, the acquisition of ever greater autonomy by Serbia, Montenegro and Romania from the 1810s, which ended with their secession in 1878.

[20] Nagy 1995, 37-38.

After 1814-15, the first major war between several European great powers was the **Crimean War** breaking out in 1853. The conflict itself was one between the Ottoman Empire and Russia, where England, France and the Kingdom of Sardinia were involved on the side of the Turks, while Prussia and Austria mostly stayed out of the war. The Russian Empire grew steadily during the 1700s and 1800s and expanded quite remarkably on the European continent, especially by the acquisition of Polish and Finnish territories. Along with its increased presence in the Baltic Sea, the Russian Empire wanted to have an exit through the Black Sea to control the Bosphorus and Dardanelles, and to expand its power on certain areas of the Balkans (mainly Moldovan, Bulgarian and Serbian territories). The Ottoman Empire has already begun to decline by then, with several major powers hoping to be able to expand their own territories as a result. The Russians launched the attack in 1853, and initially they were successful, for instance, in the Black Sea they managed to sink the entire Turkish fleet. In response to that the combined forces of Great Britain, France and the Kingdom of Sardinia landed on the Crimean Peninsula, which then became the major battlefield. With a siege going on for about a year, the Russian Sevastopol was overtaken and the Russians were forced to capitulate in 1855.[21]

The 1856 Treaty of Paris ended the Crimean War. The peace clearly stopped the Russian expansion in Europe and the Czar had to accept that the Black Sea was declared a neutral zone. Russia was forbidden by the peace treaty to station warships in the Black Sea, and all the contracting states accepted that warships shall not transit the Bosphorus and the Dardanelles. These rules not only marked a severe setback to Russian and Turkish influence in the region, but also increased the British interests. However, against the Russian Empire a functioning Turkish Empire was in the interest of England and France who supported the Ottoman Empire to be admitted into the Concert of Europe. Thus, the **international community** of solely Christian nations, admitted a member from of Islamic religion. As a result of the peace, the Turkish territories in the Balkans gained greater autonomy, which was regarded as a buffer zone between the Turkish and Russian territories. These processes explain why it is important for Russia to have influence over the Crimea, Ukrainian, Moldavian and South Slavic, mainly Serbian territories in the 21st century.

The Definition of International Community

Historically, the definition of international community did not typically refer to the community of all states on Earth but to the Christian European states that controlled international relations and regulated international law. Therefore, in the Middle Ages, it only meant the European states, and from the middle of the 1800s, they included the Ottoman Empire where Islam was the official religion. Those who were not part of the international community were typically regarded as subordinate territories, which can be most easily subdued. The already independent American colonies were the only exceptions; however, the 1899 and 1907 Peace Conferences in The Hague were the first international legislative conferences where non-European states, such as the United States, were invited. The Covenant of the League of Nations and the UN Charter both referred to the "civilized nations" which meant that at the beginning of the 20th century only the non-independent, non-colonial states were considered as members of the international community, albeit no association with Christianity was relevant any longer. The widening of the international community completed with the independence of former colonies, and nowadays it is considered that all universally recognized states are members of the community, regardless of their religion, political and economic structure and geographic location.

[21] Vadász 2011

Austria, the leader in the Vienna Congress, had to accept the fact that the Russian Empire which was an ally for the previous few decades, became weakened (lost the Crimean War in 1856, went bankrupt, and to resolve its problems, sold Alaska to the USA). They also needed to concede the loss of its Italian territories first in the Franco-Austrian War in 1859 and then in the 1866 Austro-Prussian War. In addition, this latter war also resulted in the termination of Austrian influence over German principalities, where only Prussian influence remained. A few years later in 1870, a unified Italian state was formed and the unified German Empire in 1871. Austria's power was further weakened by the fact that in 1867 it had to compromise with the Hungarians and transform the monarchy from the Austrian Empire into the Austro-Hungarian Monarchy.

Twenty years after the Crimean War, in 1875, the **Russian-Turkish conflict** flared up again, focusing on the Russian influence in the Balkans which became ever more independent from the increasingly weakening Turks, and on the formation of a great Bulgarian state under Russian patronage. As the Russians won the war, the Turks accepted these conditions in the San Stefano Agreement (1878). However, the British worried about that Russian power over the Black Sea Straits being too strong, so they sent their navy fleet and – in agreement with the Austrians – forced a decision to be made on the situation of the Balkans by a pan-European Conference. This took place in Berlin in 1878, where the Balkan territories lost by the Turks were divided by the relevant superpowers. It was decided that the provinces of Bosnia and Herzegovina shall be occupied and administered by Austria-Hungary, Great Britain acquired Cyprus, Russia took Bessarabia; Serbia, Romania and Montenegro became independent states, but Bulgaria was left as an autonomous territory of the Ottoman Empire.

Against the objectives of the Congress of Vienna in 1815, the balance of power clearly shifted by the 1870s, the Turks, Russians and Austrians have weakened and the British, Germans and Italians have strengthened. A general European war did not take place for more than 40 years (until the 1914 outbreak of WWI). This can be explained by several factors. On the one hand, there was a **balance of power** in policymaking to avoid that one European state become too strong (a hegemonic power). The ad hoc association of states reacted flexibly to internal and external changes. As they were afraid of the revolution of the masses, they pulled together and tried to prevent a state from gaining too much power. This balancing was mainly done by the English and the Russians in Europe in this period. (The weakening of this balance of power led to the solidification and strengthening of formerly flexible alliances and alliance systems, which eventually led to WWI.)

Another factor affecting peace was concentration on acquiring territories outside Europe. Colonization rapidly accelerated in the second half of the 1800s and, while in the first half of that century, Europeans largely lost their South American interests, they increased them in Asia and Africa during this period. Data characteristic to colonization shows that only 10% of Africa was under formal European control in 1876, but 14 years later in 1890 it was already 90%. The European states involved held the so-called **Congo Conference** of 1884–85 in Berlin, where they practically divided entire Africa among themselves. This conference also served to maintain the balance of power and it was hoped to be achieved by giving major colonies to the German Empire in Africa. By the end of the 1800s, European and American influence in Asia was apparent with Japan and Siam (also known as Thailand) being the only exceptions.[22] Consequently, rivalry and subsequent military conflicts were often transferred to another continent, although there was no major war between the European superpowers for the colonies. By 1914, four fifths of the world's territory were under European rule.[23]

The industrial revolution was the third factor that promoted European peace. Great Britain was at the forefront of production and development of technologies, it was a leading exporter of manufactured

[22] Mingst 2011, 42., Nagy 1995, 42-43.
[23] Mingst 2011, 42.

goods, had abundant raw materials from the colonies and, consequently, became the center of monetary capital and a world banker. As a result of technological development, the first intergovernmental **international organizations** were established from the 1860s, such as the International Telegraph Union (ITU 1865), the Universal Postal Union (UPU 1874) and the International Meteorological Organization (IMO 1873). These intergovernmental and expert organizations with a permanent institutional structure tried to find international solutions to the challenges of technological development, and therefore their decisions were less affected by the actual power groups.

The spread of **pacifism and humanitarianism**, in various forms, can be mentioned as the fourth factor influencing peace. The battle of Solferino (now in Northern Italy) fought during the above-mentioned Franco-Austrian War of 1859 was one of the bloodiest battles of the 1800s. Henry Dunant, a Swiss businessman, decided to establish the International Red Cross when he saw the horrors of the battle and the lack of care for the wounded soldiers. Today, this organization is one of the world's largest humanitarian aid organizations and has a major role in developing international humanitarian law, which protects the wounded people, prisoners of war as well as civilians during armed conflicts. The need to avoid wars and to ease their horrors has led to international conferences held in The Hague in 1899 and 1907. The two conferences regulated the rules of law of war under 13 treaties and they agreed on the prohibition of armaments and methods of warfare and on peaceful settlement of international disputes through establishing the Permanent Court of Arbitration, the first permanently operating international judicial forum. This was the beginning of international efforts to avoid wars and to regulate the law of war, which led to dozens of international agreements in the 20th century. The two major achievements of this process were the prohibition of the use of force in the UN Charter of 1945 and the Geneva Conventions of 1949 regulating international humanitarian law.

2.5. The Thirty Years' War of the 20th century – from 1914 to 1945

Efforts to establish the balance of power described in the previous chapter failed when the alliance systems became stronger as a result of attempts at gaining more and more power and economic rivalry. Since the 1880s, the alliances had no longer been volatile, flexible or balancing but alliance blocks were forged. Two alliances were created; one of them were the Central Powers, i.e. the Austro-Hungarian Monarchy, Italy and Turkey, led by Germany; whereas the Entente Powers, i.e. France, Russia and Great Britain were against them. Although the direct reason of the outbreak of **World War I** in 1914 was the assassination of *Franz Ferdinand* in Serbia, yet there were several other factors. From 1912 to 1913 there was a war in the Balkans between the Serbs, Greeks and Bulgarians because of which the Ottoman Empire lost its last remaining European territories and Bulgaria and Albania were born. Moreover, the interests of Serbia were violated also by the fact that Bosnia and Herzegovina were occupied by the Austro-Hungarian Monarchy. Germany wanted to obtain even more colonies, which was against the interests of Great Britain. France wanted to regain Alsace-Lorraine that was lost in the war against the Germans in 1871. However, the Russians wanted to have more influence over the new-born countries in the Balkans and they supported the desires of their main ally, Serbia. Because of the assassination, the Austro-Hungarian Empire declared war on Serbia and, based on the alliance agreements concluded in the previous 20 years, Germany, Russia, England and France were also drawn into the war within a few weeks. Further states entered the war in the next years, in several cases on the opposite side than it was previously agreed in the alliance agreement (e.g. Italy and Romania joined the war on the side of the Entente and Turkey on the side of the Central Powers). In 1914, most people thought that this would be one of those small and rapid wars, however, this was not the case.

The war ended in 1918 and caused the death of almost 15 million people. The fights transferred to most parts of the world due to colonial interests. Wartime conditions were worsened also by the fact

that because of the spread of nationalist and other ideas (e.g. Bolshevism) since the French revolution, a revolution broke out in Russia in 1917 and overthrew the power of the tsar. The USA entered the war on the side of the Entente in 1917 because of unrestricted submarine warfare by Germany, thereby they practically put an end on the Monroe Doctrine (although the USA remained isolated in foreign policy after WWI until 1940).

The **Paris Peace Treaties** (1919-1920) ended WWI, leaving behind numerous unsatisfied states. Germany lost its colonies, Alsace-Lorraine and its Polish territories, Russia lost Finland, Estonia, Latvia and Lithuania and its Polish territories. The Polish territories were united and Poland was reborn. The Austro-Hungarian Monarchy dissolved and the independent Austria, Czechoslovakia and Hungary were born, Romania and Serbia won huge territories and Serbia transformed to the Kingdom of Serbs, Croats and Slovenes. The peace treaties were not only specifically strict in the field of territorial provisions, but also enormous amounts of war reparations were part of the retribution.

This peace was no longer like the Westphalian and Viennese attempts at establishing a balance of power. The sense of cohesion of conservative monarchies disappeared, the European community was made up of several nationalist states instead, organized based on several different ideologies, which relentlessly took advantage of the possibilities of gaining more power in case of the weaknesses of others. At the turn of the 19th and 20th centuries, the liberal political and economic way of thinking was quite popular especially in the USA, which provided an ideological background to the settlement after the war through *Wilson*'s Fourteen Points. However, the real results and consequences of the peace were far from liberal ideas, and from the 1930s, politics later labeled as realism has definitely dominated international relations.

Albeit the **League of Nations** was created in the pattern of 1800s international cooperation through a system of conference s, it was basically unsuccessful. The great powers were not members at the same time and the USA chose to completely stay out of it. Due to its weak legitimacy and international law-making powers, it was incapable of preventing even smaller conflicts. Once the cooperation with the League of Nations became uncomfortable for a state, it could just easily exit (just as Germany did in 1933 when *Hitler* came to power). Although the organization failed, it must be acknowledged in its favor that it had been the first international organization created with the purpose of coordinating events on global level and preventing 'unlawful' wars. Thus, it was an important precedent and sample for the UN created after WWII.

The spread of the Russian revolution and leftist ideologies led to the creation of another international organization important from the aspect of the development of human rights in 1918. Even today the main purpose of the **International Labour Organization** (ILO) is to improve people's working conditions and standards of living. The founding states thought that revolutions were caused by the dissatisfaction of people and, in case the work and life conditions were improved, people would not support revolutions and extreme ideologies. Within the framework of ILO, several international conventions were concluded between the two world wars including the prohibition of night work of women, prohibition of child labor, convention on weekly rest and workers' medical care.

After the war, it was not easy to recover the economy and the Great Depression further increased the spread of extreme ideologies, especially fascism and communism. Based on these it is not surprising that peace did not last long and **World War II** broke out in 1939. During WWII, a common ideological background can be found (fascism) behind the cooperation of the Axis Powers (especially Germany, Italy, Hungary and Japan), however this is not true for the Allies, who fought together solely for mutual interests (just think about the alliance between the communist USSR and USA, or the relationship between China and Great Britain). WWII was a global and total war, around 80 % of the world's population was affected. In contrast to the provisions of international humanitarian law and the law

of war, it claimed around 60 million victims among which 20-25 million were soldiers and the rest of them were civilians. Among them around 6 million were the victims of Holocaust. In addition to this, the estimated number of victims dying from starvation and epidemics caused by the war is 20 million.

From a historical perspective, the two wars can be regarded as a unity; therefore, they are usually called the thirty years' war of the 20th century. At the end of WWII in 1945, the world experienced a huge change compared to 1914. Since the Allies have won the war, which basically included the same states that had won WWI, certain issues were decided for good. The realignment that started some decades earlier has led to unexpected results, such as the USA and the USSR becoming leading world superpowers coming out of the war. France kept its relative power due to its historical position, however Great Britain lost its leading place. Germany had ceased to exist for some years and it was born as divided into two parts in 1949 which ended in 1990. Japan was totally destroyed by the two atomic bombs, and in most parts of China *Mao Zedong*, the leader of the communist party came to power.

The USA and Great Britain started to plan world order after WWII already in 1941 with the **Atlantic Charter**. It declared that they imagine a world after the war where all states would be able to participate in the world economy with equal conditions, all nations may elect their state's forms of government and all states would be sovereign and equal and renounce the use of armed force when managing their international relations. These principles were reaffirmed during the war in several documents, such as the Declaration by the United Nations which called the cooperation UN for the first time. The Allies also agreed that although the League of Nations failed, a universal international organization was necessary, and within its framework international relations can be coordinated. Based on the above principles and name, the Organization of **United Nations** (UN) was born already before the end of WWII, in the summer of 1945.

2.6. The Cold War

During WWII, the USA and the USSR representing completely opposing ideologies could cooperate with each other because of their mutual interests; however, this came to an end as well when the war ended. They did not fully agree on the situation of the defeated states either. While Japan was occupied by the USA, Germany and Austria were divided by the USA, Great Britain, France and the USSR into four occupation zones. The winners also occupied the territories of other countries and they tried to essentially influence the progress of internal politics. This was especially true for the territories occupied by the USSR, such as Hungary, Czechoslovakia, Poland and East Germany. As a result of Soviet support, Communist parties came to power everywhere and the idea of Western states representing liberal ideas and the states following Soviet schemes on how the world ought to be was more and more diverse. Along its borders, the USSR tried to extend its influence by creating a buffer zone. In 1946, *Churchill* already described it as an Iron Curtain, which was being put up in the middle of Europe. The aggressive Soviet foreign policy forced the USA already in 1947 to try to control the spread of the Soviets by following the principles of containment. Therefore, preventing the spread of leftist ideas and communism in any part of the world became the central element of US foreign policy. With the creation of the North Atlantic Treaty Organization (NATO) in 1949, the western military alliance against the USSR was formed and the **Cold War** began.

The Cold War

The period between 1947 and 1990 was characterized by the opposition of the two superpowers, the USA and the USSR. There was no direct ("hot") war between the two states, however, the rivalry extended to ideological, cultural, social, economic and political issues and manifested in alternative (proxy) wars in other continents. The central issues were the principle of containment, the arms race and the idea of mutually assured destruction.

The expression 'Cold War' referred to the lack of actual and direct confrontation between the two superpowers, despite their relationship remaining strongly hostile. Crisis came after crisis and the superpowers participated in outsourced and so-called proxy wars to protect their interests. Such wars were the Korean War (1950-1953), the Cuban Missile Crisis (1962), the Vietnam War (1965-1973) and the Soviet occupation of Afghanistan (1979-1989).

The two world wars completely changed previous warfare, masses of technological innovations were introduced, which affected other areas of life, just to mention two examples: aviation and atomic energy. The knowledge of atomic energy and of the production of atomic bombs played an important role in the two superpowers not engaging in a direct war. This is called the idea of **mutually assured destruction**, when peace is ensured by the fact that the accumulated nuclear arsenal would cause the complete destruction of both parties and therefore neither party shall win. This leads to an arms race and a situation of high tensions but at the same time it also results in peace between the parties.

It was also the profit of the two superpowers that **decolonization** sped up and colonial territories became independent after WWII. These colonial wars on the one hand made the colonial states preoccupied, especially Great Britain and France, and on the other hand essentially caused setbacks to their economic conditions and positions as superpowers. The other consequence of decolonization was that the international community has been massively enlarged. While in 1945, there were around 70 independent states, in 1960 there were 100, in 1977 there were 150 and in 2018 there are more than 190. While in the beginning of the 1800s, only the European states were considered members of the international community, it includes around 200 states nowadays, which can be in any part of the world.

The independence of colonies was accompanied by bloody wars and border disputes, therefore, the period after WWII cannot be considered peaceful at all. The only thing that is true that there were no wars in Europe and between the superpowers. The peaceful circumstances created in the Western developed countries have favorably affected the economic, industrial and technical development; therefore, the second half of the 20th century brought them accelerated improvement, high standards of living and a high human level of evolution. Following a capitalist and liberal economic policy, the states in alliance with the USA created a worldwide free trade network (see GATT and WTO).

Consequently, in a few decades the economic dominance of the USA became more and more obvious over the USSR which became weak by the end of the 1980s. Between 1989 and 1990, the Communist-Socialist state system fell in several states (e.g. in Hungary, Czechoslovakia and Poland). The Berlin wall came down and the two German states were united again in 1990. The weakening of Communist power resulted not only in a **transition** in the USSR but also the total disintegration of the state (1990-1991). The USSR broke up into 15 states and its successor was Russia. These changes did not go peacefully everywhere, in Yugoslavia a bloody civil war broke out (1991-1995, 1999), which has unresolved consequences to this day, like the situation of Kosovo. Ethnic conflicts surfaced also in other continents, a particularly cruel example of which being the Rwandan genocide (1994) or the conflicts between the post-Soviet states (for example the Russia-Georgia wars or the Armenia-Azerbaijan Conflict (Nagorno-Karabakh War between 1988 and 1994).

2.7. From 1990 to Present Day

With the falling apart of the USSR, the former bipolar world order (centralized around the two superpowers) became unipolar. In the beginning of the 1990s, the USA was the world leader power that had bigger power alone than the other superpowers put together. This however lasted only for some years.

From the beginning of the 2000s, we entered the new, global and **multipolar world order**, in which Russia – besides the USA – has again become a superpower, as well as China for the first time in history. The USA is still the world's leading power; however, the strengthening of China and Russia contributes to the balance of power. In Europe, France keeps its superpower position, while Germany is strengthening rapidly. In contrast, the superpower position of Great Britain will likely decrease further when it exits the European Union. Besides them, there are clearly identifiably regional leading states, such as Turkey, Iran, Nigeria and Pakistan.

Global Challenges

By the 21st century, states are more closely connected and dependent on each other than ever before. The world is a "global village", thus states not only enjoy the benefits but share the responsibility to resolve the problems. Terrorism, migration, climate change, environmental degradation and population growth are all challenges that members of the international community can only resolve jointly.

The international community shall face new and global challenges, among which **terrorism**, migration and climate change are the most significant. The terrorist attacks of 11 September 2011 opened a new chapter in the fight against terrorism, making it possible for the willing and able states to conduct a global war against terrorism with the leadership of the USA. As a result, a war was declared on Afghanistan and Iraq destabilizing the whole Middle Eastern region. Destabilization escalated not only because of the American intervention but the so-called Arab Spring also contributed to it when, during 2010-2011, protests, revolutions and even civil wars broke out in the countries of North Africa and the Middle East. Consequently, several state systems have collapsed and societies have been dragged into permanent conflicts like in Syria and Libya. States may only act jointly in the face of these global challenges, therefore international cooperation in the 21st century is more necessary than ever.

There are spheres of interest and spheres of influence also in the multipolar world order, which the superpowers are constantly trying to secure (e.g. Russia in Ukraine and the post-Soviet states, or China in the surrounding states and on the sea). The new balance of power is partly developing and partly changing, and sometimes it becomes apparent behind the political decisions of the states. However, it remains a question until when this world order, functioning since the end of WWII and considered on a superpower level, will exist.

QUESTIONS FOR SELF-CHECK

1. What is the significance of the Peace of Westphalia in international relations?
2. List three examples of international cooperation already existing in Ancient times!
3. What is the international community?
4. What is a treaty?
5. What are the results of the humanist and pacifist thinking of the second half of the 1800s?
6. What does the multi-polar world order mean?
7. Describe the characteristics of aiming at a balance of power through historical examples!
8. What is the strategy of mutually assured destruction?
9. Name an example of proxy wars!
10. When was the Cold War?

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CHAPTER 3

THE STATE AS AN ACTOR OF INTERNATIONAL COOPERATION. GLOBALIZATION AND THE CHANGED ROLE OF STATE IN INTERNATIONAL RELATIONS

Politics, political sciences, constitutional law, international law and international relations' theory increasingly focus nowadays on the analysis of the notion of state and, in this context, of statehood. In this, the question of what role and what status does the state have in international relations and in the increasingly globalizing world order is of outstanding importance.

This chapter examines how states become actors of international cooperation, how can the transforming place and role of states be interpreted in the international and global world order and, taking these into account, what characterizes the changed operating mechanisms of nation-states.

3.1. Criteria of the Public Law Notion of a State

The definition of states as actors of international cooperation is crucial, because states can still be considered the most essential foundation stones of the international legal and world order. At the same time, states are extremely complex phenomena subjected to continuous changes throughout history, whose legitimacy, objectives and functions as well as their social cohesive effects changes from age to age. Therefore, many approaches of the phenomenon of the state are known, without any universally acceptable definition used across all disciplines, namely theory of the state, legal sciences, historical sciences, sociology.

The essentials of a modern state and statehood were defined by *Georg Jellinek*, Austrian scholar of state theory, law professor (1851-1911), and an outstanding representative of German 19th-20th century political sciences, within the framework of his concept of the **general theory of the state** (*Allgemeine Staatslehre*). According to this concept "*every long-lasting alliance requires an order*, *which molds and realizes its will*, *based on which its boundaries are drawn*, *and which regulates its members*' *situation and their relations with this order.*"[1] Jellinek traces the conditions of statehood back to three general and necessary elements, creating the **normative notion of state**, the 'three-element doctrine' (*Drei-Elemente-Lehre*) of the public law definition of statehood. These are:[2]

- **national (state) territory;**
- **constituent population;**
- **existence of an original supreme authority exercised over the given territory, and recognized by others.**[3]

3.1.1. State Territory

National (state) territory is the conceptual element of the state which encapsulates the three-dimensional space – mainland within borders defined and recognized in international treaties, the water area within

[1] Jellinek 2003, 3.
[2] Takács 2011a, 74.
[3] Egedy 2017, 68.; Mingst 2011, 113.; Takács 2011b, 16.

the borders, the column of air above them and the conical part extending towards the center of the Earth beneath the surface – where **the state's authority (territorial sovereignty)** prevails. [4] This means that the national territory, is not the property of the state in civil law sense, but its empire (*imperium*), i.e. the state exercises territorial authority over the population of its territory. [5] The territorial sovereignty of the state means the total and exclusive authority which prevails over everything and everybody within the national territory, excluding all other powers, under which the state is entitled to create and enforce the effective legal order.[6]

However, these principles do not prevail in their entirety and in an unrestricted fashion. There are international limits independent from the state's will (international neighboring rights, international easements, international public interest), but also voluntary commitments of states (voluntary decision, acts of accession to other alliances, bi- or multilateral treaties of states) might fall into this category, as well as the establishment of diplomatic missions, and other principles of international customary law. Exceptionally, however, the sharing or joint exercise of territorial sovereignty may also occur (in cases of condominium, common property, or in areas under international administration).[7]

National territory is not exclusively the spatial dimension of state power, but it is also **the subject of state power** as in states can freely dispose of their own territory, determine the internal division of national territory by law (an internal state affair), determines the rules of residence, entry and exit in and from its territory, decide on the system of protection and administration of state borders.[8] The majority of the territorial bodies of the state organization and public administration operating in territorial units of the state (of various shape and size) is a general practice, based on which we can talk about unitary, regional, decentralized, and federal states. Pursuant to legal regulation, the different territorial units receive a public-law status as public-law entities subject to public power. As such they are defined as subjects of legal regulation and are protected by law.[9]

The national territory is surrounded by **borders** that separate the national territories of states and national territories from areas not subject to state sovereignty. The border-line can be defined geographically as a two-dimensional area surrounding the national territory and internally (downwards) it extends to the center of the Earth. In the airspace, however, it extends up to a certain altitude, between aerospace and outer space. While the altitude associated with the beginning of aerospace is unclear, it is crucial from the aspect of the exercise of territorial sovereignty. In international relations, the definition of the so-called Kármán-line (named after Hungarian-born physicist, Tódor Kármán) is mostly accepted meaning an altitude where airplanes moved by the air's force of buoyancy are still able to fly.[10] The concrete determination of borders always takes place by an international legal act, through the agreement of the states involved. The distinction between the terms 'frontier' and 'boundary' might be of interest. While frontiers as civilization borders basically play a role in division, i.e. delimiting a homogenous cultural civilization unit or realm from another culture (such as the *limes* in the Roman Empire); boundaries indicate border-lines that separate but at the same time connect, i.e., create a unified world system, which became widespread and dominant in interstate relations with the formation of modern states.[11]

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[4] Nagy 1999, 136., 139.; Schanda 2015, 105-106.
[5] Takács 2011b, 59.
[6] Ibid. 62.
[7] H. Szilágyi–Paksy–Takács 2006, 68-70.; 72-74.; Nagy 1999, 156-162.; Takács 2011b, 63-65.
[8] Schanda 2015, 108.
[9] Pálné Kovács 2008, 60-85.
[10] Nagy 1999, 151-152., 206-207.
[11] Takács 2011b, 76.; See also: Rechnitzer 1999

The Schengen Borders

With the establishment of the European Union based on the free movement of people, and the Schengen area created within it, the citizens of the affected EU MS obtained opportunities in the field of free movement that have been unprecedented in modern history and which barely exist anywhere else in the interstate relations. The Schengen Agreement constitutes the foundation of the Schengen area and cooperation. It was signed on 14 June 1985, originally by France, Germany, Belgium, Luxembourg and the Netherlands with the aim of abolishing border controls at internal borders, thus achieving the free movement of people. Hungary joined the Schengen Agreement on 21 December 2007. However, not all EU MS are part of this area, while it has such members who are not EU MS (Iceland, Liechtenstein, Norway and Switzerland). The Schengen area, does not naturally mean the termination of state borders, only the abolition of border control. Schengen rules allow states, in justified cases and for a limited time only, to temporarily reinstate border controls upon prior notification to the European Commission.

3.1.2. The Population of a State

The second most important criterion of the modern state concept is **population**. Population encompasses the **subjects of state power**, the citizens. Their relationship with the state understood as personal ties and the extent of the state's personal sovereignty is based on citizenship.[12] As a consequence of these mutual rights and obligations, a legally regulated, special citizenship is created between the state and the individual. The population is tied to the state through **citizenship**, which – as a legal category – comprises those natural persons who have the right to participate in political decision-making based on the principle of popular sovereignty.[13]

The **personal sovereignty of state**, in its entirety, only prevails within its own territory, as on foreign soil it is limited by the territorial sovereignty of the other state. Nonetheless, it extends to aliens and stateless persons staying within the state's territory. However, there are exceptions to the totality and exclusivity of the state's personal sovereignty, because certain individuals or groups, under international treaties, can be excluded from the personal sovereignty of state (e.g. in the case of diplomatic immunity and of foreign allied soldiers).[14]

The concept of **nation**, which we also know to have several meanings based on different approaches, is closely related to the notions of state and of population. Historically, the concepts of state and of nation have not coincided for a long time, since states have been established without national frames, and while states have an unquestionable role in the creation of nations, nations were not always shaped neither did they survive within the frameworks of statehood.[15]

[12] Petrétei 2009, 2011, 249-251.
[13] Ibid. 252.
[14] Schanda 2015, 115., Takács 2011b, 90-91.
[15] Egresi–Pongrácz–Szigeti–Takács 2016, 178.

Relationship of state and nation	Example
The state and the nation overlap	Denmark, Italy
nationalities that live within the borders of several states	Kurds in Iraq, Iran, Turkey, Syria
states that have more nationalities within their borders	India, Russia, Republic of South Africa, Canada
nationalities that do not have their own state	Basks, Catalans in Spain, Sami people in Finland, French in Canada
more nationalities vindicate the same territory	opposition between Israeli Jews and Palestinian Arabs
a nationality is divided between two states (due to specific historical conditions) where both constitute a majority	North-Korea and South-Korea, or formerly FRG and GDR

Source: own editing, based on Mingst 2011, 114-115.

With respect to the **emergence of nations**, Gergely Egedy distinguishes between two theories: 'perennial' and 'modern' theories.[16] According to the perennial approach, nations existed from the beginning, in Antiquity and in the Middle Ages as well, while the modernist perception links the emergence of nations to the appearance of modernization, urbanization and industrialization, connected to the process when nations took over the legitimizing role of religion. With this, during the 19th century, the notion of nation was intertwined with the notion of modern civil states and with national sovereignty, under which the public authority embodied by the will of the nation will result in state sovereignty.

In the process of the emergence of nations, two fundamentally different interpretations of the concept have formulated in the literature: the notions of the so-called civic (political) nation and of the so-called ethnic (cultural) nation.[17] The concept of **civic nation** has become determinative in Western Europe, where belonging to a common state is the key of the nation-concept, according to which the nation is the equivalent of constituent population. This means everyone who are the citizens of a given state, live within the same territory, under the same law, regardless of which national, ethnic community they belong to.[18] Since constituent population, together with territory and the power organization of the state are dominant elements of the modern state concept, it includes – as a legal category – the totality of citizens of the given state. In contrast, the concept of **ethnic nation** in a narrower sense encompasses that part of the citizens of the nation-state who are members of a national-ethnic group of common origins, culture, and language. However, the notion is broader than the civic nation in the sense that it also incorporates those into the nation who live in other countries, are the citizens of other states, but based on their language, culture, and origins they belong to the nation.[19]

The coincidence of the phenomena of state and nation, the nation-state itself, is based on the 'expectation' of the nation to govern itself within the state framework established by the nation, which essentially creates the basis of national self-determination. In other words this means the right of peoples with a common national identity to decide under what conditions and how they want to live.[20] Since the

[16] Egedy 2017, 73.
[17] Smith 1995, 9.; Pákozdi–Sulyok 2011, 118-130.
[18] Egedy 2017, 73.
[19] Petrétei 2009, 2011, 186-187. For more details on how states deal with national-ethnic groups of common origins as part of their nation concepts and kin-state policies, see: Sulyok 2013, 231-239.
[20] Mingst 2011, 115.

emergence of the modern international system is closely intertwined with the birth of nations, thus the principle of national self-determination appeared as the most fundamental legitimacy doctrine of the international system.[21] The emergence of **nationalism** – a complex concept itself – can be linked to this process. Nationalism can refer to the general process of nation-building, to the national sentiment or to the sense of national belonging; to the acquisition or preservation of national status, or in a broader sense to the national ideology that emphasizes national identity.[22] Ernst Gellner interprets nationalism as a political principle in which the political and the national dimensions overlap.[23]

Nationalism as a Political Doctrine

The ideology of nationalism can be divided into 'basic' and 'secondary' components. The basic doctrine includes the following principles:

1) the world is constituted by nations, and each nation has specific characteristics
2) the source of all political power is the nation
3) loyalty to the nation is above all other loyalties
4) real freedom can only be achieved through identification with a nation
5) the peace and freedom of the world is based on the freedom and security of all nations
6) nations can only be "free" in their own sovereign states.

Source: Smith 1995, 10.

3.1.3. Sovereignty and State Authority

One of the most important elements of the public law concept of the state, the "key word" of the exercise of state power is the sovereignty. **Sovereignty** means a truly and effectively exclusively exercised **state authority** over a given territory and population which is recognized by others. Sovereignty is a necessary feature of states (alongside territory and population), that is, only such entities can be considered states which are sovereign.[24] Accordingly, state power can be labelled totally sovereign if the state possesses stronger, determinative and decisive, non-derivative and original power over its territory and its population and if this force of state power is expressed in the monopoly of legitimate physical violence and in the primacy of legislation.[25]

In public law literature, sovereignty is discussed in two ways. **Internal sovereignty** relates to intrastate relations and determines who is the sovereign in the state decision-making system, who has supreme authority, who is the ultimate holder of power. In other words, internal sovereignty means the supreme power, the ultimate holder of power in the state decision-making mechanism, and the rules (constitution, laws) adopted thereby regarding the population of the state.[26] In international relations' theory, the concept of the sovereign state is crucial as sovereignty is the most important criterion of modern statehood. Regardless of who the bearer of sovereignty is, the state is considered to be sovereign in the interstate relations. We speak about **external sovereignty** when the state has its own statehood, independence, it is not subordinated to other states or other actors of interstate relations, so its decisions are made without external influence or control. Therefore, the international recognition of new state polities is especially significant for this reason, namely that from the moment of recognition, the country in question gains independence in international life, thus 'taking possession' of the external

[21] Egedy 2017, 74-75.
[22] Smith 1995, 9.
[23] Gellner 2009 Cited by Egedy 2017, 76.
[24] Tóth 2006, 114.
[25] Szilágyi 2009, 74.
[26] Tóth 2006, 114.

aspect of sovereignty. The question is, of course, whether the new state commands the necessary ability to exercise this authority within its own territory.

There is no universally binding international legal document clarifying the concept of the state. Even the UN's universal documents are silent on the attributes of statehood, while one of the conditions for UN-membership is exactly that: the existence of statehood.[27] Therefore, in connection with the definition of the notion of the state the 1933 **Montevideo Convention** on the Rights and Duties of States is often referenced, under which: "*The state as a person of international law should possess the following qualifications*: (*a*) *permanent population*, (*b*) *a defined territory*, (*c*) *government*, *and* (*d*) *capacity to enter into relations with the other states*". [28]

While states have a fundamental right to the so-called international contact, to interact with other actors of interstate relations, this right is not unconditional and unrestricted. The establishment of external relations between states is the decision of the internal politics of each state, so no state can be forced to contact others, especially if such relations bear potential disadvantages. At the same time, a state that completely isolates itself from other actors of interstate relations, from other members of the international community, cannot enjoy the protection of international law.[29]

3.1.3.1. The Nature and Sources of State Power

Karen Mingst characterizes the power of states as something with which the state seeks not only to influence others, but is also able to control the consequences of its activities and to achieve and realize results that would not have occurred on their own. Consequently, power is such a multi-dimensional factor, which is determined – as to the consequences of exercising it – by the **power potential** of the affected interstate actors.

What are the components of a state's power potential? The extent of state power is primarily illustrated by the natural, material and other (non-material) sources of power. Natural resources of power include the geographic extent (size and location) of the given state, its stock of natural resources (minerals, crude oil, natural gas), and its population and its characteristics (size, level of education). However, natural resources of power can be converted into material and other (non-material) resources in the course of exercising power. The most important element of material resources of power is industrial development, suitable to bridge geographic barriers, but it can also affect the rise in the standard of living of the population, technological development and equipment. The elements of non-material resources of power are national image, social cohesion (the public support of power) and the leaders themselves (the quality of government).[30]

3.1.3.2. Exercise of Power – State Functions

The essence of power, however, also implies not only being possessed by each state and other international actors, but also being exercised, i.e. different techniques are used to transform the power potential described above into real power. These techniques are: diplomacy, economic pressure, and military power (political instruments). [31]

The exercise of state power depends significantly on the internal social conditions of the state and on the constantly changing external international environment surrounding it. According to most

[27] Nagy 1999, 98.
[28] Article 1, Montevideo Convention, Seventh International Conference of American States. 26 December 1933.
[29] Schiffner 2006, 3.
[30] Mingst 2011, 121-126.
[31] Egedy 2017, 107-147.; Mingst 2011, 126.; Fleiner-Gerster 2003, 447.

approaches in relevant literature, the exercise of state power is realized through internal and external functions. Accordingly, the state shall ensure internal self-preservation and societal development as well as its external defense and its balanced relationship with other states.[32] The **external function of states** is two-fold: it includes both defending the state against external attacks and the management of international cooperation, within which the state takes care of cooperation with other states and international organizations guided by political and economic considerations.[33]

Defense tasks against external attacks were later transformed, in parallel to the emergence of modern nation-states, and even the aims of **foreign policy** itself have changed. While formerly the most important foreign policy objective was to maintain independence, modern nation-states strive to create a state of peace and solidarity.[34] As part of foreign policy, the establishment of a peaceful international contact and an active contribution to the operation of institutions governed by international law were formulated as the most important objectives for which **diplomacy** provided the appropriate framework.[35] Diplomacy is one of the oldest and most important institutions of interstate relations, which includes all forms of communication between states.[36] The essence of traditional diplomacy is that states try to influence the behavior of other actors through negotiations and bargaining processes by either acting or by refraining from certain conduct.[37]

As part of the transformation of foreign policy objectives, a close international cooperation formulated in the economic sector as well, and the external functions of a state were no longer limited to cooperation with international organizations, and within that to the representation of state sovereignty and self-determination, but also to facilitate the establishment of fairer international relations, to develop a spirit of solidarity, which is a token of the international order.[38]

3.2. Globalization and the Changed Role of States in International Relations

Globalization intensified during the past century and it did not only transformed economic and social processes, but also the state's position and role in the emerging world order as consequence of the Westphalian peace built on the sovereign equality of nation-states, on non-intervention and on the binding principles of international law.[39] Nowadays, in the 21st century, we cannot speak only about states themselves, they have to be placed in the international and global world order, in which, besides the states, **non-state (economic and social) actors** have also gained ground, having a significant influence on the different (subnational, supranational, transnational) levels of interstate relations. Consequently, all the actors of the global world order ended up in a close **interaction** with the state and with each other, which created their **interdependence**.

3.2.1. Possible Interpretations of Globalization

New methods and analytical frameworks have emerged regarding globalization processes, and new perspectives have been developed in international literature.

[32] Torma 2012, 35.
[33] Ibid. 35.
[34] Fleiner-Gerster 2003, 447.
[35] H. Szilágyi 2006, 98.
[36] Egedy 2017, 108.
[37] Mingst 2011, 126.
[38] Fleiner-Gerster 2003, 449.
[39] Takács 2008, 163.

One of the most wide-spread definitions of globalization comes from *Thomas Friedman*, who considers it as "*the inexorable* ***integration of markets, nation-states and technologies*** *to a degree never witnessed before – in a way that is enabling individuals*, *corporations and nation-states to reach around the world farther*, *faster*, *deeper and cheaper than ever before*."[40]

Anthony Giddens sees the essence of globalization in the increasing **intensification** of worldwide **social relationships** and describes it as a process in which places many miles apart have such close bonds, which results in an event occurring at one place of the world has a simultaneous effect at another place of the world, influencing events there, and this interaction is mutual.[41] Globalization therefore means "*the widening*, *deepening and speeding up of worldwide interconnectedness in all aspects of contemporary social life*".[42]

According to other approaches, globalization is essentially a **power-economic process**, in which the most powerful actors of world economy intend to unify and universalize economic and political rules. In this process, they keep their own interests in mind, they try to define the legal and egulatory framework, and they conduct their activities through the most important international institutions.[43]

Karen Mingst describes globalization as the growing political, economic, communication and cultural integration of the world, in which the following **challenges** present themselves to the states:

1) **Politically**, the state faces such global issues that **governments cannot solve on their own**.
2) **Economically**, the interconnection of states and financial markets becomes more and more unclear because, with the appearance of MNCs and with the internationalization of production and consumption, states **are unable to maintain** the regulation of their own economic policies.
3) **In the field of communication and culture**, with the spread of new technologies, the flow and use of information **can no longer be controlled by the states on their own**.[44]

3.2.2. The Impacts of Globalization on Statehood – Theoretical Approaches

In analyzing globalization processes, the following questions arise: (i) **how they affect state power** and state involvement; (ii) which are the most important changes faced by the state.[45]

Politically

In the global force field of the second half of the 20th century such political and economic structures have emerged that are not created on a territorial basis, and even though states may become members, nevertheless they are often made up of public and private actors. The most important feature of these structures is that they **cross national borders**. They can be created at local, regional, national and supranational levels, while they remain the core elements of the international system. Their specialty is that they prevail beyond the state and the national territory, by 'reaching over them', they influence global politics and economics. Thus, actual political control is transferred out of the control of the nation state, which brings about the **weakening of territorial nation-states** (deterritorialization).[46] For this reason, a lot of people see the greatest threats and impacts of globalization primarily in the erosion of national self-determination and of state sovereignty, as in **the placement of decision-making outside of the respective countries**.[47]

[40] Friedman 1999, 27. Cited by Mingst 2011, 264.
[41] Giddens 1990, 64.
[42] McGrew–Held–Goldblatt–Perraton 1999, 2.
[43] Veress 2009, 401-416.
[44] Mingst 2011, 145-146.
[45] Pierre 2013, 1-37.
[46] Pongrácz 2016, 14.
[47] Szilágyi 2009, 65-69.

Economically

In the economic sense, the process of globalization is the process of shaping the **world economy** into an organic system, the essence of which is that economic relations and affairs extend to more and more countries and territories, while their (often asymmetric) interdependence intensifies and deepens – also starting to erode more and more the frameworks of national economy. With this, naturally, the actual scope and power of government policy diminishes, while the legitimation of supranational "governing mechanisms" becomes the task of nation-states.[48]

As Paul Kennedy writes: *the supranational tendencies weakened the independence and role of the state*, *and no adequate substitute was created*, *which could have replaced it as a fundamental unit responding to the change in the world*.[49]

In Communication and Culture

The effects of globalization increase the role and influence of external, international factors not only in politics and in economy (as seen above) but also in other areas of social life. In the era of globalization, the emergence and organization of **social networks and processes** exceed territorial-based power, whereupon it is increasingly difficult to clearly distinguish domestic affairs from foreign affairs. In cyberspace, the digitalized world connected through electronic networks, numerous functional institutions and places are created, which enjoy the benefit of being extraterritorial, if you will, within the borders of sovereign states, which renders states unable to control the flow of information.[50] The proliferation of the use of the Internet has played a significant and determinative role in this process, by facilitating communication between the actors of international relations and by making possible the monopolization of the possessing information. This process is closely linked to the internationalization of civil society, the emergence and strengthening of the so-called **global civil society**.[51]

According to *Samuel Huntington*'s seminal work (*Clash of Civilizations*) the most important international fault lines developed alongside the respective civilizations, and the sharpest oppositions will also be determined by the different **civilizations based on cultural and religious identities**. In this process, globalization, regionalization and the loss of cultural identity also refer to the decline of the influence of the nation-state level, meaning the weakening of national engagement. The author uses the term global 'turmoil' to describe the upcoming situation, characterized (in his view) by the collapse of governing power, the disintegration of states, the intensification of ethnic, religious and tribal conflicts, the internationalization of mafia-type crime, the flood of tens of millions of refugees, and the multiplication of nuclear and other weapons of mass destruction, the spread of terrorism, the frequentation of ethnic cleansing and genocide.[52]

Robert Gilpin, however, posits that serious attacks affect the nation-state not only from the outside, but also from the domestic environment. "*Within many nations*, **the politics of identity and ethnic conflicts is challenging the integrity of states,** *as ethnic and regional groups seek independence or at least greater autonomy*. *Yet it is important to understand that the Kurds*, *Palestinians*, *and many other groups all want nation-states of their own*; *they do not wish to eliminate nation-states but to divide present nation-states into units that they themselves can control*."[53]

Besides presenting the above globalization challenges affecting the state, it must unquestionably be pointed out that, on the one hand, the process of globalization does not have the same intensity

[48] Szentes 2002, 710-713.
[49] Kennedy 1997. 130.
[50] Bayer 2013, 380.; Castells 2005, 152-206.; Egedy 2017, 188.
[51] Anheier–Glasius–Kaldor 2004.
[52] Huntington 1997
[53] Gilpin 2004, 362-363.

everywhere and, on the other hand, it is an extremely complex phenomenon that cannot be traced back to a single dimension, thus cannot automatically be interpreted either as political or as economic, nor as cultural homogenization. Although the process **goes beyond national borders, it does not eliminate the significance of the territorial principle** or endanger the concept of the sovereign state emerging as a result of the Westphalian system.[54]

3.2.3. The Changed Tasks of the State in the Global World Order

Globalization does not impact the state in the 21th century in the aspects that were presented in the previous chapter, but also significantly transforms the place and role of state in international order, revealing new issues to and tasks to be solved by the states.

World Economy – The State's Economic Engagement

After WWII up until the early 1960s, the establishment of interstate relations aimed at avoiding war and creating peace. The primary and most important actors in this 'network-building' were the states. From the 1960s and the 1970s, however, the emphasis was placed on the relationship between states and the market. For states, the most important challenge became how economic goals can be achieved through state policies and vice versa: how can the economy contribute to the strengthening of public (state) positions and of policies. As a result, **economic relations between nation-states** intensified, resulting in the widening of trade, investment and financial transactions, **exceeding the framework of national economy**. This was reinforced by the rapid strengthening of the development of information technology, enabling the rapid and efficient bridging of physical distances. Thus, states have not only formulated political objectives, but economic measures and processes have become increasingly more emphatic (on the part of states) in the system of interstate relations.[55]

After WWII, MNCs emerged reaching beyond state frameworks in an increasing number, characterized by not having their own production or service facilities (or those, which they control) in their home state (where they are seated), and having the headquarters of decision-making and the place of their actual operations in different countries. MNCs act on a global scale, but their (economic, employment and environmental) impacts affect the local level, so their decisions have a significant impact on the economic policies of nation-states.[56]

With the emergence of **economic globalization**, the expectations for **the economic responsibility of national governments** have **increased**. By the 21st century, the three macro-regions: North America, Western Europe and East Asia (*global triad*) account for more than 80% of the world's industrial production and total exports, while China produces significant growth, but the development of Japan in the Pacific Region and of the "Four Asian Tigers" (South Korea, Taiwan, Hong Kong, Singapore) should also be emphasized.[57] Without such an expanding and systematized world economy, interstate relations cannot be interpreted in their entirety at present. World economy significantly impacts the national economies of each state, which then influences the states' domestic policies. This interaction is valid vice versa, it is mutual.

The North-South Development Gap – Demographic and Health problems, *Protection of life*

The globalization of the world economy had many advantages and opportunities for development for all states of the world, but it also had serious consequences: it generated **global inequality and a development gap** between the **core and the periphery** of world economy, between **the North and**

[54] Egedy 2017, 264.
[55] Mingst 2011, 263.
[56] Egedy 2017, 210.
[57] Ibid. 198.

the South.[58] The North comprises the majority of the world's industrialized countries, while the South consists of less developed, developing countries.[59] The name North-South refers, beyond geographic aspects, to such serious global inequalities as population problems, starvation and drinking water shortages, because of which the Southern countries urge dramatic changes in the system of interstate relations.[60] This, in turn, also expands traditional state tasks and increases the responsibility of the international community (including each state) towards developing countries.

Since **population growth** is not evenly distributed, one of the most dramatic consequences of the backwardness of the South is the proliferation of population problems, as the demographic rates of the developing world are much higher than those of the developed world. Countries with a high population growth rate need to find a response to this problem, and this places states in a major moral dilemma (e.g. birth control). In the context of population growth, **starvation, spread of diseases and epidemics** are waiting to be resolved in less developed countries. Nevertheless, economic and social globalization make individuals and communities living in other states vulnerable worldwide to infectious diseases and epidemics. This made it clear that the demographical problem, the preservation of human health and the protection of life by public goods **not only affect the given states**, but also their neighboring countries, and thus becomes the **problem of the international community**, affecting the whole world.[61] The WHO was created by the UN in 1948 for manage such problems.

At the same time, we must see that for the 21st century, within the third world (more or less treated as a unity), a much deeper differentiation is under way. The developing countries of Latin America and Africa paint two very different pictures, while some of the East Asian countries, also called 'developmental states' (as the above-mentioned Asian Tigers, Malaysia, and Thailand), have made promising progress and with their active state engagement, via a market economy. Building on their own civilizational and cultural character, they became successfully industrialized states through prioritizing education policy. At the same time, the third world has 'failed states' such as Afghanistan, Somalia and Libya, which are unable to perform basic state functions, but many overpopulated Asian countries such as Bangladesh, Pakistan also show signs of such decline.[62]

International Movements, *International Crime*

Problems of the developing world, poverty and starvation, as well as internal destruction trigger newer globalization phenomena as they reinforce **migration and emigration** at the center of attention today. Further new state tasks are outlined in this context, e.g., in administrative issues regarding those affected by migration, in facilitating their social integration and in overcoming linguistic barriers.

At the same time, the migration process can spectacularly amplify the emergence of new illegal labor markets, the rise of illicit markets, and the various forms of smuggling and international crime. Globalization facilitates the commission of crimes by providing for rapid communication and finding flexible networks through technological development, while electronic financial systems also offer opportunities for new types of abuse. **Reducing the growth of international crime** is one of the most pressing challenges of our days and it appears as a task to be solved by the states. States cannot handle these challenges on their own, the changed state responsibilities lie in international cooperation and

[58] Goldstein–Pevehouse 2014. 21-23.

[59] The delimitation of the North-South and the distinction between developed and less-developed/emerging countries appears in the European Commission report, spearheaded by Willy Brandt, West German Chancellor in 1980. Egedy 2017, 220.; The Human Development Index (HDI) is applied at international level for measuring and comparing the human development of each country.

[60] Egedy 2017, 220-234.

[61] Mingst 2011, 312-315.

[62] Egedy 2017, 235-236.

joint action, in the harmonization of electronic systems; however, unfortunately, the states can often hardly find solutions on their own level to problems arising from bureaucracy, difficult procedures and from the lack of communication between agencies.[63]

The **emergence of movements intensified based on religion and ideology**, the **rise of Islamic fundamentalism**, world-wide **terrorism** and the **management of relevant security policy challenges** constitute new types of global tasks. Cultural differences separating the state political communities now rather have religious and cultural characteristics than ideological ones, and these impact the international system. The content of the state's former external functions (instead of the state's defense and security) increasingly shifts towards **human security**.[64] At the same time, the global communication and technological revolution, as described above, led to a new interpretation of geographic space, and eliminated the former interpretations of space and time through mass media networks, virtual and cyberspace. States are not able to influence or **control the free flow of information and ideas** by traditional means, thus, they shall fight against new challenges regarding control over their citizens (and those who stay within national territory).

The Protection of Environmental and Natural Resources, *Climate Change – Sustainable Development*

The spread of globalization and connected phenomena, such as the rapid growth of world economy and technological progress, also have specific ecological consequences. By the 21st century, humanity faced that economic growth reached and at some points exceeded the limits of the Earth's load bearing capacity.[65] Earth's natural resources are finite and states have to face the problem that conflicting interests appear often in connection with economic development (market laws), **environmental protection** and resource management, harmonization and reconciliation of which often falls back into the lap of states.[66]

The most typical feature of **environmental pollution** is that it does not respect state borders, while containing it is the task of individual states, even if it does not directly affect their territories. It is about the contamination of such spaces and causing such harmful environmental impacts that are not closely related to the territory of any state but are the common tasks of all states.[67] In the 21st century, such a definite environmental problem is global warming, causing extreme weather conditions, resulting in drinking water shortages, and it may cause ozone depletion and tearing directly threatening every living organism.[68]

Guaranteeing **sustainable development** is listed as a new, 21st century state task. Sustainability means the elaboration of such strategies that support change but do not destroy the environment and spare reserves, while guaranteeing that future generations can also benefit from their advantages.[69] In the spirit of sustainable development, the UN convened the first World Conference on Environment and Development in 1992, than it held several similar international environmental conferences and international legal documents were born (Rio de Janeiro, Framework Convention on Climate Change 1992, Kyoto Protocol 1997, Johannesburg 2002, Copenhagen 2009; Paris Agreement 2015). While more than 200 international environmental conventions are in force today, the extent of progress in resolving the ecological crisis is relatively small.[70]

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[63] Mingst 2011, 146.
[64] Egedy 2017, 77-78.,189., 249.
[65] Ibid. 238-239.
[66] In the intersection of the rules of market and environment-protection such topics are significant as e.g. international cooperation for the protection of endangered species. See e.g. Sziebig 2016, 217-229.; Sziebig 2017, 62-67.
[67] Mingst 2011, 318-321.
[68] Egedy 2017, 240.
[69] Mingst 2011, 310-311.
[70] Egedy 2017, 244-246.

The issue of environmental protection is closely linked to the **ensuring the right to a healthy environment** belonging to the third generation of human rights, which also appears as a new task of the state (and of the international community) and directly affects the quality of our individual and collective lives.

The Changed Tasks of the State in the Global World Order

Global challenge affecting the state	The changed task of the state
– Economic globalisation	– national governments' responsibility for economic policy
– Global inequality, North-South development gap	– management of population growth – fight against starvation – containment of worldwide health problems and epidemics
– Migration – International movements (religious and ideological movements, Islam fundamentalism) – International crime (terrorism, smuggling)	– increased administrative burdens related to immigration – security policy measures – establishment of human security
– Environmental pollution, climate change (global warming)	– environmental protection – sustainable development

Source: own editing

3.3. State, Globalization and Europeanisation – Changing Governing Structures

The notion of globalization is increasingly associated with the concept of **Europeanisation**. Europeanisation marks the transformation process brought to life by the debates on the future of Europe at the turn of the millennium. Questions on how to manage the enlarged Europe and how the basic institutions of governance can be reorganized are central to it.[71] Europeanisation is most often interpreted as a process whereby "*the economic*, *social*, *legal*, *political and public law systems of the member states get closer to each other*, *primarily through the influence of EU regulation and orientation*."[72] In the process of Europeanisation, such tough questions are to be addressed as the democratization of the EU, the establishment of European identity, the legitimacy of supranational power. Even the most formalized EU institutions are based on long bargaining processes and ultimately operate on a consensual basis to create a more or less acceptable compromise for each MS.[73]

The European Union is such a **policy space in which the symbiosis of supranational, intergovernmental and subnational levels is realized**. This process promotes economic and social cohesion, while the headway of subnational levels organically connects to the forms of democratic participation and the concept of effective governance.[74] At the same time, the process of European integration poses a challenge to the functional and operational autonomy of the sovereign states involved, through the sharing of decisions and through the shared exercise of policies.[75]

[71] Kiss J. 2009, 180-184.; Olsen 2002, 923.
[72] Pálné Kovács 2008, 17.
[73] Shore 2011, 287-303.
[74] Kaiser 2014, 66-69.
[75] Palánkai 2017

In the context of the narrowing of states' possibilities to act, the literature emphatically warns about a **change in the governance structure**,[76] the process in which the traditional **government**-type administration is replaced by a **governance**-type one, the essence of which is that the actors of economic and social life (profit and non-profit actors, business, employees and transnational interest groups) spontaneously take over the traditional tasks of states.[77] This will also be transferred into the international arena to interstate relations, where besides formal structures (international conventions, international law, international institutions) informal agreements and procedures appear – the process of governance without government – which try to comply with the complex, multilevel regulation and coordination challenges of a multi-actor world order, which does not have a world state. The operating mechanism of this is the global governance phenomenon.[78]

The Notions of (old) Government and (new) Governance

Old	New
Governance as structure	Governance as process
Actor-oriented: the subject of governance is the government	Process-oriented: governance = interactive process
Governance = (political action)	Governance = 1. organising framework, 2. management (*Management von Interdependenzen*)
Hierarchical problem management structure	Non-hierarchical structure – involvement of social actors in the management of problems
Definitive separation of the subject and the object of governance	The subject and the object of governance cannot be sharply separated
Clear border between the 'governance ability' of the governing subject and the 'governability' of the object of governance	The issues of 'governance ability' and 'governability' are not separated, but they appear as the complex and institutionally formed interaction structure of actors

Source: Stumpf, 2014. 71. based on Mayntz, Blumenthal, Benz, Kooiman

Transitioning from government to governance did not only come up among theorists, but also received an increasing emphasis in the practice and mechanisms of operation of the European institutions. The European Commission in its White Paper of 2001,[79] established its own governance concept, primarily intended to be achieved through political will, new forms of communication, by the involvement of local and regional authorities and as wide as possible participation of civil society. Consequently, "good" European governance includes the principles of subsidiarity and proportionality and draws attention to redefining the role, purpose and responsibility of European institutions in accordance with these principles to realize the public good. This is still in progress, with the expansion and intensified engagement, involvement of subnational actors being more and more detectable in MS and European decision-making as part of **multilevel governance**.

[76] Egedy 2017, 77.

[77] Stumpf 2014, 69-71. On the transformation of government to governance within the EU context of a changing social contract, see: Sulyok 2009, 143-167.

[78] Kiss J. 2009, 162-165.

[79] European governance – A white paper. COM (2001) 0428 final. OJ C 287. 12.10.2001.

The European Commission White Paper on European Governance

Five principles:

1) Participation: The quality of EU policies depends on ensuring the widest possible social participation throughout the policy chain – from conception to implementation.
2) Openness: The European institutions should work in a more open and clear manner in order to improve the confidence in EU's institutions.
3) Accountability: Each of the EU institutions must take responsibility for their actions.
4) Effectiveness: Legislation must be effective and timely, and in compliance with their original objectives.
5) Coherence: Legislation and its execution must be in harmony, and EU-level actions must be harmonised and coherent.

Source: COM (2001) 0428 final on European governance – A white paper. OJ C 287 12.10.2001 pp. 7-8.

In the European Union's governance structure, the **duality of politics and policy** can be well observed: while states traditionally possess a central government, their operation and structure can be described by the traditional concept of politics. The EU institutional system, however, does not have a permanent and stable central government. Albeit it has a permanent institutional system, the EU is much rather a decentralized, diverse and multi-actor institutional structure, also incorporating the actors or economic and social life, with its operational principle being governance. Based on this, the EU strives to realize common policies, to reach common goals, which is much closer to the notion of public policy.[80] The EU is created and operated based on common values and democratic institutions but primarily and essentially functions as a public policy system. While the development of public policy systems goes full steam ahead, the construction of the political institutional system is lagging. The more we look ahead in the integration, the stronger is the EU's political and economic dimension – but it is far from being regarded as a state or government organization regarding the functioning of the political system.

3.4. Summary

Lastly, let us observe those **challenges of globalization** that modern states of the 21st century shall face even today:

1) the governments of the respective states more intensively take note of the fact that they have narrower possibilities to enforce efficient regulation in the global force field;
2) the relationship of governments and citizens becomes looser, thus the influence of states on their citizens decreases;
3) the state is less and less able to perform its tasks independently; state functions shall be accomplished increasingly through international cooperation, while
4) the need of states to establish and to build relations with one another and efficiently manage these relations increases more intensively; finally
5) the number of those international non-state actors increases more intensively and permanently, who possess more and more rights formerly pertinent to the purview of state sovereignty (e.g. legislation) and who try to control globalization processes.[81]

[80] Ágh 2013, 73–90., 74.
[81] Held 1991, 196-235. Cited by Pongrácz 2016, 13.

QUESTIONS FOR SELF-CHECK

1. Define the concept of the state as the most important actor in international relations.
2. What does the Montevideo Convention say about statehood?
3. What do we mean by personal sovereignty?
4. How does Anthony D. Smith determine the doctrine of nationalism?
5. How can the concept of "external sovereignty" be interpreted?
6. How can a state's (potential and actual) power be measured?
7. What kind of interpretation possibilities has the concept of globalization?
8. How does the role of the state change in the globalizing world?
9. How can the concept of Europeanisation be interpreted?
10. What are the challenges for the state in the 21st century international order?

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CHAPTER 4

SOVEREIGNTY, SUPRANATIONALISM AND SUBSIDIARITY

Sovereignty is the central element of the modern definition of the state, thus it is part of international legal order, and the foundation of interstate relations. Owing to its central significance, it is a key term in political theory, in the theory of international relations, in constitutional law, in state theory, and in the field of international law. This gives room to many different approaches with respect to its definition, content and nature. Important differences can be discovered already in relation to who is the holder of sovereignty (state, people, nation, monarch, parliament, etc.)[1]

There is no generally accepted definition of sovereignty. It is used with different objectives, in different connections. Thus, the word has received numerous shades of content and meaning, and it is difficult to find such a common core which is acceptable and free from controversy. The word sovereignty is often not capable of representing a clear and well-framed meaning. Its use rather only suggests, illustrates something, but what does it suggest? Supreme power, freedom of decision-making and action, independence from others. The sovereign – if its sovereignty is unlimited – can do anything without anyone interfering. It has the supreme power, this is the "***summa et suprema potestas***".

Hereinafter we will only discuss the sovereignty of the state. The fundamental building block of present international world order (and of modern international legal order) is the state. The theories of international relations and international law can build upon the concept of **sovereign state**. It does not matter who is considered the holder of sovereignty within one or the other state within their constitutional regimes or by constitutional theories. In international relations, the state is the sovereign. A further narrowing is that it is not worth looking for a suitable definition of sovereignty, since we would find ourselves in a terminological chaos. Thus, hereinafter sovereignty – as a starting point, in a flexible understanding – simply means the supreme power (*summa et suprema potestas*).

4.1. Theoretical Roots of Sovereignty

The French *Jean Bodin* (1529/30–1596) is considered the first big theoretician of sovereignty. He summarized his theory of sovereignty in his book on the operation of the state (*Six Books of the Republic*), first published in 1576.[2] This was the first publication which comprehensively and theoretically dealt with sovereignty. Furthermore, Bodin stated that he was the first in defining the term of sovereignty (as an "absolute and permanent power").[3] However, parts of the concept of sovereignty had already existed before.

Bodin himself identifies sovereignty e.g. with the term *maiestas* of the Ancient Romans (which, however, primarily was tied to the Roman people, see *maiestas Populi Romani*).[4] The characteristic fields of the exercise of state power had already been present in the works of Aristotle, e.g. decision-making on the issues of war and peace, and legislation.[5] In the middle period of the Middle Ages, roughly in the 12th century, the political thought has already surfaced that the monarch exercises full power in its territory and

[1] Takács 2011b, 147.
[2] Bodin 1987 (in Hungarian)
[3] Ibid. 73.
[4] E.g.: Cicero Philippicae III, 13.; Sallustius Bellum Iugurthinum, 14, 7.
[5] Aristotle: Politics, Book 4, 14.

no earthly power can be above it (see *rex in regno suo est imperator*). The word sovereignty had become known by the end of the 13th century, approximately in the meaning how *Bodin* used it later as well.[6]

The *Bodinian* definition of sovereignty had already contained those fundamental problems, which have not been satisfactorily resolved ever since. E.g.: does the term of sovereignty have necessary elements – besides the difficult-to-interpret "absolute" and "permanent" nature? Is there a sphere of state affairs, in which the state necessarily has exclusive power, because in the absence of that it could not be sovereign? *Bodin* himself listed the domains of the exercise of sovereign power.[7]

- legislation without anyone having to consent to it;
- the right to start a war and to make peace;
- the right to appoint chief state officials;
- supreme administration of justice through highest courts;
- the right to clemency (alleviating the strictness of law);
- imposing taxes and duties; exempting from taxes and duties;
- issuing currency, setting the value and ore content of money;
- the right to ensure compliance with feudal and dependency oath of subjects

This list has been overcome by the practice of the past centuries. Later, different approaches had developed with regard to the sphere of sovereign exercise of power.[8] Independently from that, a group of sovereignty-theories still exists, which links sovereignty to the actual exercise of power, to its capability (**power theories**). However, in certain state affairs the exercise of power is not regarded as the necessary condition of sovereignty, but as its characteristic. Besides this more flexible approach, which mirrors practice better, such notions still exist according to which sovereignty has such a core (certain domains of the exercise of power), which are the conditions of sovereignty.

Contrary to the power theories, some deducted sovereignty not from the capability, characteristics and extent of the actual exercise of power by the state (monarch). Starting from the sovereignty of an existing state (a ruling monarch) and from the abstract concept of sovereignty they tried to define the rights of the state due to its sovereignty. This is independent from the actual extent of power which the state is capable of exercising. In this approach sovereignty becomes the source of state rights relating to the exercise of power, eventually developing into a legal category (**normative theories**).

Based on this distinction *Bodin*'s theory was mixed (and inconsistent). On the one hand, it is unclear whether he regarded the characteristics of sovereignty as necessary conditions or simply as the typical domains of the exercise of power (both have signs). On the other hand, he took turns at writing about the capability and rights of the exercise of power in the different domains. Thus, both the representatives of power theories and of normative theories can draw from his book.

4.2. The Nature and Characteristics of Sovereignty

4.2.1. The Territorial Limits of Sovereignty

There is not one, but many sovereign (states) on Earth, all of whom hold the supreme power. Thus. the sovereignty of the state is limited in a territorial sense. The supreme power of every state is limited

[6] Cuttler 2003, 9.

[7] Bodin 1987, 117-124. (in Hungarian); though his notion was that all the characteristics can be deduced from the first one, namely from legislation.

[8] Szabó 1936/37, 265.

to their own territories, though with significant exceptions. This element of sovereignty is also called **supreme territorial authority**.[9]

4.2.2. Two Directions of Sovereignty

It has become a cliché by today that sovereignty has two 'sides': internal and external. This stems from the essence of sovereignty. The supreme power shall be present in the domestic affairs of the state as well, and it also shall not become inferior position vis-á-vis other states. Otherwise, the exercise of power would lose its "supreme" character. This approach has formed the two pillars of sovereignty already in the political thought of the Middle Ages: the unlimited power of the monarch over domestic affairs (*plenitudo potestas*), and the independence of the monarch, who is not subdued to any external power (*superiorem non recognoscens*).[10]

In interstate relations, the external direction of sovereignty is of special significance, which basically means sovereign **independence** from **or protection** of the state against other sovereigns or actors of international relations.[11] This external protection stemming from sovereignty is expressed in international law by several fundamental principles (such as the prohibition of intervention, the prohibition of the use of force, the principle of state immunity, the legal institution of diplomatic immunity).

4.2.3. Is Sovereignty Divisible or Indivisible?

The question relates to whether there can be more subjects (holders) of sovereignty in respect of the same state territory. In the traditional theories sovereignty is not shared and is indivisible, but this is becoming ever more difficult to maintain in today's world order built on the intricate system of mutual dependencies. The issue of **divisibility of sovereignty** primarily interests constitutional theories.[12] The divisibility of state sovereignty can hardly be supported in international relations,[13] but it does occur in some situations.

In international practice, shared sovereignty can be mentioned with respect to federal states, in the relationship between the constituent states and the federal state.[14] In such a case, international law regards the federal state as the sovereign actor in international relations. Otherwise, the decision about sovereignty is to be made based upon the constitutional regime of the federal state. Exceptionally, a constituent state of a federal state can be a subject of international law and have international legal capability, and can conclude treaties (typically this is allowed by the constitution of the federal state). Nevertheless, such a right does not mean that the constituent state has sovereignty. Not only a sovereign can be the subject of international law.

The issue of shared sovereignty can also occur when a state occupies another state (**wartime occupation**). The occupying power frequently leaves the exercise of certain state functions to the authorities of the occupied state. Power theories – which proceed from the actual exercise of power – explain this situation with the concept of shared sovereignty, whereby the occupying power partially takes sovereignty from the occupied state. Nevertheless, based on normative sovereignty theories,

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[9] E.g.: Kiss 2014, 318.
[10] Cuttler 2003, 9.
[11] *Island of Palmas case* (U.S.A. v the Netherlands) Award of 4 April 1928, PCA (1928) 7. https://pcacases.com/web/sendAttach/714
[12] E.g.: Chronowski 2005, 49.
[13] Szabó 1936/37, 126.
[14] Kelsen 1931, 21.

the sovereignty of the occupied state remains intact until the termination of the state itself. Only the exercise of sovereignty is hindered due to the occupation.[15]

Shared sovereignty can, in theory, be mentioned regarding the relationship of an **international organization** and its **Member States**. Such international organizations exist, which have such wide scope of powers vis-á-vis the MS, that shared sovereignty might become an issue (e.g. the European Union). This is only a theoretical possibility, since in the present international legal order international organizations cannot be the holders of sovereignty.[16] The MS transfer competences to the international organizations, thereby limiting their own sovereignty, but this does not result in the international organization becoming sovereign.[17] This has already been the case at the time of *Hugo Grotius* (1583–1645): as long as states are not unified into one state, but only create an alliance ("a system", i.e. an international organization), irrespective of its tightness, the MS remain sovereign.[18]

4.2.4. Limiting Sovereignty

The issue **whether sovereignty can or cannot be limited** is often linked to the **absolute/relative** nature of sovereignty.[19] However, these terms are not in close connection with each other. *Bodin*, e.g., considered sovereignty to be absolute, but at the same time he admitted that it can be limited or restricted. The sovereignty of the state (monarch) is restricted by e.g. religious norms, the rules of natural law, the ruler's oath or the treaties concluded by the monarch.[20] What *Bodin* meant under the absolute nature of sovereignty was only that the monarch holds the reins of the totality of legislation and in the exercise of state power, his is the last word.[21] This shows that the relationship between the absolute nature of sovereignty and its 'limitability' is not worth examining deeper, because different authors used the "absolute" attribute in different meanings. Therefore, we shall limit ourselves to the examination of limitability.

It is undoubted that sovereignty has limits. The state exercising supreme power cannot do everything in any situation, its possibilities of decision-making and action are not unlimited. This has become especially evident nowadays, when states depend on each other in numerous territories with thousands of links.[22] The system of interdependence can hardly be reconciled with such a concept of sovereignty, which is linked with the illusion of final power and absoluteness. State sovereignty can be and is limited. The question is rather what these limits can be. The different theories provide different answers to that.

Normative theories, which understand sovereignty as a legal category, regard the relevant international norms binding upon the state as the only limit to sovereignty in international relations. (Even though, other normative limits can be imagined, such as moral or natural law).[23] This has been represented strongest by *Hans Kelsen* (1881–1973), the famous normativist jurist, who phrased this in the first half of the 20th century. The state's right to act freely ceases in the domains concerned, bound by a threshold set up through obligations contained in international legal norms. If a state becomes party to an international treaty prohibiting the use of capital punishment, then the state's right to execute

[15] Steinberger 2000, 513.
[16] Ibid. 512.
[17] Martonyi 2016, 626.
[18] Grotius 1999, 95.
[19] E.g.: Diplomáciai és nemzetközi jogi lexikon 1967, 802. [Encyclopaedia of Diplomacy and International Law]
[20] Bodin 1987, 78, 81. (in Hungarian)
[21] In the same sense see e.g. Steinberger 2000, 505.
[22] Valki 1996, 50.
[23] Szabó 1936/37, 16.

capital punishment during the exercise of state power ceases. Thus, the execution of capital punishment is taken from the scope of sovereignty, of supreme power. The more international legal obligations the state has, the less sovereign rights it retains.

The state undertakes most of its international obligations – in order to reach and ensure the advantages of international cooperation – voluntarily, typically in the form of international treaties. Thus, it limits its own sovereignty itself. This special situation is described by the "**theory of self-limitation**", which had been elaborated in its classic form by *Georg Jellinek* (1851–1911).[24] This model of (self-) limitation of sovereignty – which is the strongest explanation of the foundations of the present international legal order – was also shared by the Permanent Court of International Justice in the frequently-cited statement of the *Lotus*-case: "*...all that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction*; *within these limits*, *its title to exercise jurisdiction rests in its sovereignty*."[25]

When opposing the theory of self-limitation, many highlight that the mutual undertaking of obligations by the states is not the limitation of their sovereignty, but rather the **completion of sovereignty**. Through the channels of international law not only obligations are undertaken, but by obliging other sovereigns, the state can establish a friendlier external environment for itself, the interests of the state can be ensured against other actors of international life. What might constitute an obligation from its own point of view, it also means the widening of the rights towards others. A further objection is related to the fact that international law is not exclusively created by the consent of the parties concerned. Some parts of customary international law, or the imperative (*ius cogens*) nature of certain international legal norms is not necessarily bound to the consent of each state. Here we cannot talk about self-limitation, this cannot be properly explained by this theory.

Power theories, starting out of the actual exercise of power or its capability, cannot easily categorize the limits of sovereignty. The actual exercise of power can be hindered by numerous factors (e.g. geographical, economical, military factors). In relation to the circumstances of the actual exercise of power, states are in totally different positions; thus their sovereignty (the possibilities of their decision-making and action) is also totally different. While normative theories rest upon one type of the limitation of sovereignty in international relations (that is international law), power theories have to face and conquer an unforeseeable sphere of limitations.

It shall be noted, that international law can limit sovereignty also in the power theories, but only inasmuch as the state respects these obligations. International law does not physically impede the exercise of power contrary to it, it only represents a barrier because the representatives of the state are willing to follow it. The extent of this (willingness) can vary, thus in power theories international law is only one – and not even the most important – limit of sovereignty.

4.2.5. The Subject of Sovereignty and the One Exercising It

From time to time, the theoretical construct according to which the **subject of sovereignty** is differentiated from the **one exercising it**, can help solve problems relating to sovereignty. This can be a comfortable solution in many situations, e.g. when the issue of shared sovereignty is raised. In the relation of the occupying state and the one occupied it can be declared that one of them has sovereignty, while the other partially or fully exercises the rights and power stemming from sovereignty. This way,

[24] The theory of *Jellinek* (the self-obligation of the state) is more comprehensive than this, and defines all of his theory on the state. See Sólyom 2012, 65-67.

[25] *The Case of S.S. Lotus* (France/Turkey), Judgment, PCIJ (1927), Series A. No. 10, 3.

it is unnecessary to apply the theoretically problematic concept of shared sovereignty. We will see that through this theoretical manoeuver, international organizations do not have to be regarded as sovereign in international relations, even though states can transfer sovereign competences to them.

This all follows the pattern used in law, when the right is differentiated from the exercise of the right. This parallel had already been applied by *Grotius* in connection with the supreme power of the monarch/state (the sovereignty),[26] but indirectly also *Bodin* separates sovereignty and its practice in certain cases.[27]

4.2.6. Sovereignty and the State – the Westphalian System

In the present international legal order sovereignty and the state are symbiotic. Sovereignty is the characteristic of the modern statehood. The two are closely related.[28] Therefore, it can hardly be accidental, that not long before the exposition of the comprehensive theory of sovereignty, *Niccolo Machiavelli* (1467–1527) in his famous work (*The Prince*) started to paint the picture of the **modern state** (*status*), which later became the foundation-stone of the changing international legal order.[29] This theoretical development stood behind the total change of the European international system in the middle of the 17th century. The change can be linked to the peace treaties of Westphalia (of Osnabrück and of Münster) concluding the Thirty Years' War in 1648.

The peace treaties of Westphalia meant the foundation for the **modern European interstate legal order**, which replaced the Christian legal community of the Middle Ages. The extent of the change marks such a borderline, which can only be compared to the confine between the Roman Empire and the early Middle Ages. This new interstate regime is called the **Westphalian legal order** or the **Westphalian system**. This European interstate system has slowly become global starting from the 19th century. Today we still live in the Westphalian system, but in one that is global and is rather transformed, with its foundation-stone still being the sovereign state, the same way as it was in 1648.

The key terms of the Westphalian system are the state and sovereignty.[30] It consists of sovereign states, which are – in a legal understanding – independent from each other, and equal, and typically they establish the system of norms governing the relationships between each other by consent, based on treaties (and partially on customary international law). In contrast, the foundation-stones of the European legal order in the Middle Ages were the monarchs, who existed in a hierarchic and multilevel community owing to the complex feudal and dynastic relationships between them (**European Christian legal community**). The pope stood at the top of this. The relative stability of this system was guaranteed by the common Christian religious system of norms and institutions, which formed a frame for the relationships between the monarchs. The state separate from the monarch, in its modern sense, had not existed then. No sovereign exercise of power existed. The foundation of this was built by the theoretical development marked by *Machiavelli* and *Bodin*, later *Hugo Grotius* and *Thomas Hobbes*. The break-up of the European Christian legal community of the Middle Ages, and of the common religious system of norms and institutions took place owing to the Reformation movements. The bloody and desperate Thirty Years' War (1618–1648) showed that the creation of a new European interstate order had become inevitable.

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[26] Grotius 1999, 125.
[27] Bodin 1987, 75-76.
[28] There are theories denying this. Takács 2011b, 158.
[29] Paczolay 1996, 457-462.
[30] For more detail, see e.g. Schiffner 2005, 4-8.

Sovereignty also marks one of the most important characteristics of the modern state (*status*): the **institutionalisation of the exercise of power**. While the power of the monarch previously had rather been personal in nature, the function of the monarch has slowly been separated from the person of the monarch, who only filled that position. This can already be traced back to *Bodin*, when he e.g. talks about the permanent nature of sovereignty, which has no limitation in time,[31] thus it is not only tied to the lifespan of the monarch. The means, nature and norms of the exercise of power thus survive the monarch and are rather linked to the state itself. In the Westphalian era, with the establishment of the modern states, treaties oblige the state itself and not the monarch who concludes them. This has already been clearly stated in the work of *Bodin*. It is true, however, that he only acknowledges as a rule of the hereditary monarchies that the monarch is only bound by the treaties concluded by his predecessors.[32] The modern definition of state fertilized by the theory of sovereignty was only half-ready at this time, slowly reaching its final form. It is also the result of gradual development – surpassing the Peace Treaties of Westphalia – that the sovereignty of the state generally replaces the sovereignty of the monarch.[33]

The following table categorizes the characteristics of the Westphalian system, the new European interstate order established by the sovereign states.

European system of the Middle Ages	Westphalian system
Primary international actor: the monarch (pope, king, prince, etc.)	Primary international actor: the state
Multilevel: hierarchic and more or less centralized	One level: horizontal and decentralized
Inequality of monarchs (feudal relations)	Equality (of states)
Religion-based, Christian community	Secular, worldly legal community (only European at the beginning)
The Ppope at the top of it (papal primacy)	No formal leader
Regnum (reign) (personal and not absolute exercise of power)	Sovereign exercise of power (institutional and with the claim of absoluteness)
Principle of personality (Cosmopolitanism of the Middle Ages)	Principle of territoriality – territorial integrity (state)
Personal, religious and feudal interests	Interest of the state / raison d'état (Richelieu)
Its relative stability is secured by a unified system of religious norms and institutions	Its relative stability is secured by the balance of power and the network of international agreements

4.2.7. Does Sovereignty have an 'Extent' and Degrees?

Bodin had already written several times about "full sovereignty".[34] Four hundred years later a UN resolution also uses this expression.[35] This presupposes that there is also not full (partial) sovereignty. Thus, sovereignty can have degrees, and the sovereignty of two states can have different extents. This, however, creates a few problems: e.g. based on what can we declare that sovereignty is full? Or what is the difference between not full sovereignty and the total lack of sovereignty?

[31] Bodin 1987, 75. (in Hungarian)
[32] Ibid. 102.
[33] *Grotius* already referred to state sovereignty. Grotius 1999, 94.; see elsewhere Takács 2011b, 148.
[34] Bodin 1987, 110. (in Hungarian)
[35] A/RES/25/2625 Annex point 1.

Power theories relating to sovereignty, as starting from the actual exercise and capability of power, shall deal with the degrees of sovereignty. Different states are in totally different situations, and the ability to exercise power is influenced by numerous, geographical, economic, military, international and other factors. States have different possibilities and freedom to decide and act – based on which their sovereignty can have different extent.

Power theories cannot find the measure of full sovereignty as the ability to exercise power is never full, it always has limits. No state has a totally general freedom of decision-making and action (it's even difficult to imagine), thus sovereignty cannot be "full". Power theories also cannot properly define the borderline between not full sovereignty and the total lack of sovereignty. It derives from the quantitative approach, that the exercise of power shall have a certain quantity or weight for us to be able to even discuss sovereignty, even if it is not full. But due to the absence of an acceptable definition of sovereignty, it varies greatly where the different authors draw the line.

Normative theories on sovereignty have it easier, as they do not start out from the actual exercise of power, but from the scope of rights states have relating to the forms of the exercise of power stemming from their sovereignty. Since sovereignty can be limited in international relations by international law, in this context, full sovereignty would be the situation when the state would not be bound by even one international norm. (This does not exist in reality). Sovereignty has degrees based on these theories as well, since the different states are parties to different treaties, they have different levels of obligations, thus their rights stemming from sovereignty are also different. Normative theories describe every state as holders of sovereignty because they are the members of the international legal community. Thus they don't have to look for the borderline between not full sovereignty and the total lack of sovereignty. If a state loses its sovereignty, then it would cease to exist as a state and as a member of the international legal community.

Thus, it follows from the above that the main trends of the theories on sovereignty imply the **graduality of sovereignty**. Even though all sovereign states have supreme power, this shall lead to a different extent of freedom in decision-making and action, on a case-by-case basis.

4.2.8. Sovereignty and International Law – The Sovereign Equality of States

Unsurprisingly, normative theories of sovereignty dominate international law: they regard sovereignty such a comprehensive legal category, legal status, which covers a wide range of rights with respect to the exercise of power (sovereign rights, regalia, etc.) *Hugo Grotius*, the 'father' of the science of international law was the first famous scholar, who clearly believed in the normative approach to sovereignty. This is also proved by his definition.[36] The bigger part of the subsequent international legal academia also mirrors the normative approach (the theory of self-limitation is also normative),[37] as well as the above-cited decision of the Permanent Court of International Justice in the *Lotus*-case, or the also mentioned UN General Assembly Resolution 2625 (XXV).

In accordance with the logic of the Westphalian system, the international legal community was built on the cooperation of sovereign states. If a state is the member of the international legal community, then it is also a sovereign. That is why *Károly Nagy* wrote that sovereignty means the status of statehood in the modern international legal order.[38] Naturally, when recognising a state, it can be an important aspect whether the new state has the proper capabilities to exercise power on its own territory. To this

[36] Grotius 1999, 94.
[37] See e.g. Nagy 1999, 68.
[38] Nagy 1999, 66-67.

extent, power theories have an explanatory strength. However, following general recognition: "*Every state has the rights stemming from full sovereignty*."[39] This exists as long as the state does. Later the sovereign states, by undertaking international obligations – in the interest of international cooperation – can mutually limit their sovereignty.

The legal equality of states can easily be paired with the Westphalian system, and thus also with the international legal order. If all states are sovereign, all of them are holders of the supreme power (with a territorial limitation), none of them is subordinated to the other, then it is hard to dispute their equality in a legal sense. The **legal equality of sovereign states** is the natural corollary of the Westphalian system. Nevertheless, the discussion today is rather focused on the **sovereign equality of states**, which is not the same as the latter, and brings about new problems. We can thank this term to Article 2 (1) of the UN Charter, which declares that the organization is based upon the sovereign equality of states.[40]

It is difficult to decide how the "sovereign" epithet qualifies equality. Since we could see that sovereignty has degrees, the sovereignties of different states differ from each other, thus there cannot be equality in the extent of their sovereignty (that is in the scope of the actual rights pertaining to each state). Equality with the sovereign epithet can only allow such an interpretation, which results in that the sovereignty of states ensures **inherently identical rights** in international relations (even though the states later decline some of these rights by undertaking international obligations).

4.3. Challenges Facing the Sovereign State

For a long time since the 17th century, sovereign states constituted the most important integrative power of human communities in Europe. (The Catholic Church had not threatened this integrative role by then.) States had an absolute power on their territory, while in the international arena they were the only actors establishing the frames of cooperation based on equality through international agreements. Challenges have later started to corrode this integrative role of the sovereign state from the second half of the 19th century. It is worth to mention two of these here.

4.3.1. Sovereignty and Globalization

Globalization generally refers to integrative processes circumventing the sovereign state in numerous fields (e.g. economy, culture, sport, info-communication). As a result of these processes certain decisions concerning the state are removed from the hands of the state, and they are decided elsewhere (this is the **deterritorialization of power**).[41] The states' freedom in decision-making and action is narrowing, they are no longer able to influence a number of processes that have a significant effect on the state or its citizens.[42] Globalisation **is without prejudice to regalia stemming from sovereignty**, but globalisation processes in the course of international cooperation in many ways leave the state and its citizens vulnerable.

Globalisation represents a problem primarily for power theories. The narrowing of the actual exercise of power owing to the forces of globalisation constitutes an inexhaustible source of scientific research placed in the coordinate system of sovereignty. Analysis of complex, wide-spread and non-transparent processes of globalization based on the changes of the content of sovereignty and the

[39] A/RES/25/2625 Annex point 1.
[40] UN Charter, 1945.
[41] Bayer 2015, 20.
[42] A short summary is given by Martonyi 2016, 625.

capability of the exercise of power by the state, provides fertile ground for the '**scientific sovereignty-industry**' (thus e.g. globalisation and sovereignty, the world market and sovereignty, the relationship of the world wide web and sovereignty are never-ending sources of research). Relevant research tends to conclude in spectacularly dramatic fashion: state sovereignty is over, the time of 'post-sovereign' world order has come, etc.[43]

Since globalisation leaves regalia stemming from sovereignty untouched (and it only concerns the exercise of power), the normative theories are intimidated by globalization to a lesser extent. The Westphalian system is still standing. The interest of normative theories is rather focused on the relationship between international organizations and sovereign states. The latter ones transfer more and more rights to the international organizations established by themselves, which might signal the erosion of sovereign rights.

4.3.2. Sovereign States and International Organizations

International organizations can be regarded as the institutionalized forms of globalization, but also as the cooperation of sovereign states, which try to keep globalization processes under their control through the international organizations they establish. The **increasing role of international organizations** causes problems for the normative theories of sovereignty. States empower international organizations with an increasing number of such rights, which have traditionally been regarded as sovereign rights (the right to legislate, or the right to issue currency in the member states of the Eurozone in the European Union).[44] Because of this more and more authors discuss that **states transfer a part of their sovereignty to international organizations**. If this is so, then the subjects of the transferred part of the state's sovereignty will be international organizations (**shared sovereignty**). However, in the Westphalian system the subject of sovereignty can only be the state and not international organizations. Two solutions exist to this dilemma.

According to one, the increasing role of international organizations destroys the globalizing Westphalian system, and we are heading toward some kind of a new world order, which is proved by that international organizations have sovereign rights. According to the other, it is false to believe that MS transfer a part of their sovereignty to the international organizations, they only **allow the exercise of sovereignty**, and do not transfer sovereign rights. This is the foundation for the Europe-clause of the Hungarian Fundamental Law (the accession-clause): it permits the (partial) transfer of the exercise of certain constitutional competences.[45] Thus the differentiation between the right and the practice of rights can save the Westphalian principles even in relation to an organisation with such a high-level of integration, as the European Union. Nevertheless, the institutionalised international cooperation cannot be regarded equivalent to the centuries-old situation. The European Union, e.g. without a doubt means a new quality of cooperation: the Union is a **supranational organization**.

4.3.3. Supranationalism and Subsidiarity

The term supranationalism ("existence above nations") signals a new level of interstate cooperation, where states relinquish their sovereign rights or the exercise of these to an unusually great extent for the good of international organs and organizations, e.g. in the field of legislation. An international organization can primarily be regarded as supranational if it can prescribe legal obligations to the

[43] Blutman 2015, 125.
[44] Valki 1996, 53.
[45] See Article 2/A (1) of the former Constitution; Article E (2) of the Fundamental Law since 2012.

detriment of MS without their consent. The minimum of **supranationalism** can be summarised as follows:

> The minimum of supranationalism: an international organization is entitled to create a law which directly obliges the MS or its resident private parties (citizens and legal persons) without the MS's consent or contrary to its expressed objection, through one or more of its organs, in which the MS is not represented, or even if yes, the MS cannot bar the legislation (majority decision-making).

Supranationalism is the third type (level) of cooperation in the Westphalian system:

1. Cooperation based on a treaties	– The mutual undertaking of obligations by the parties to the treaty
2. Institutionalised international cooperation	– States establish an international organ, organization – This organization cannot or can only with the consent of the MS make decisions obliging it (except for institutional matters)
3. Supranational cooperation	– States establish an international organ, organization – This organization can make decisions obliging the MS without their consent

The right to legislate had already been the most important sovereign right for *Bodin*, the partial transfer of which to an international organization can raise the question to what extent we can talk about supreme power in such a situation. The problem is the following: in supranational cooperation, MS transfer the exercise of very general competences to the international organization (see e.g. the competences of the European Union). Thus, the organization has a very wide scope of decision-making with regard to how and what it regulates within the transferred competence. Though formally the exercise of the competence is based on the consent of the MS, it is, in reality, unable to keep the decisions of the organization under its control.

Within the European Union, as a limitation to the decision-making of the EU, the MS introduced a **control-principle** to counterbalance and limit the supranational decision-making within the transferred competences (Maastricht Treaty 1992/1993). This is the **principle of subsidiarity**. According to this, in areas in which the European Union does not have exclusive competence, the Union shall act only when and inasmuch as the objectives of the proposed action cannot be sufficiently achieved by the MS, and the action can therefore, by reason of its scale or effects, be implemented more successfully by the Union. (In addition to the principle of subsidiarity, the European Union also introduced the principle of **proportionality** as a form of control over EU legislation: the action of the EU must be limited to what is necessary to achieve the objectives of the founding treaties.) Owing to these two principles there are three restrictions of the legislation by the European Union, as an international organization:

– the objective of the measure (regulation) cannot be sufficiently achieved by each and any of the MS;
– the objective of the measure can be reached more successfully by the Union;
– the measure cannot exceed the extent necessary to achieve the objectives of the founding treaties.

Since the principles of subsidiarity and proportionality are too general, and their content is difficult to grasp, they have erected a very weak barrier to the supranational legislation of the Union.

QUESTIONS FOR SELF-CHECK

1. Since when is the word sovereignty used in Europe in the meaning of "supreme power"?
2. Which fields of the exercise of sovereign power defined by *Bodin* can still be regarded as valid today?
3. What is the difference between power theories and normative theories in relation to sovereignty?
4. What does supreme territorial power (authority) mean?
5. Why do we call the European interstate system after 1648 Westphalian?
6. Identify the three most important differences between the Westphalian system and the European legal order of the Middle Ages!
7. What does the institutionalization of the exercise of power mean?
8. When can we consider sovereignty to be full?
9. List the characteristics of supranational cooperation!
10. What follows from the principle of subsidiarity?

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CHAPTER 5

INTERNATIONAL ORGANIZATIONS AS ACTORS OF INTERNATIONAL COOPERATION

5.1. History of the Emergence of International Organizations

States are the oldest actors in international law and relations, however, in the second half of the 1800s a new actor, the intergovernmental international organization emerged. Significant industrial, economic, technical and scientific developments were achieved during the industrial revolution. New inventions were created that required international cooperation. One of the best examples is the history of the telegraph machine. In the 1830s, Samuel Morse developed the first line telegraph for the main purpose of allowing long-distance data transmission. Morse developed a simple coding system (the Morse code alphabet) and a machine with an a structure that was easy to assemble and could be produced at a low cost. In the 1840s, telegraph lines were laid down and the construction of the telegraph network began both in the USA and in European countries. This revolutionized messaging, its fastest way being the use of horse riders as couriers for centuries. As a consequence, in 1850 the first telegraph cable was laid down on the seabed between England and France in the English Channel (in French: La Manche). In 1858, the first transatlantic cable was established between North America and Europe. However, problems were encountered in international application, since the transmission of the messages had to be stopped at each state border and it was necessary to translate them into the system of the next state. In order to simplify this problem in 1865, representatives of twenty countries met in Paris forming the International Telegraph Union. This was the **first international governmental organization**. The organization had its headquarters in Bern, Switzerland, and initially had only three employees. The first task of the organization was to standardize the international telegraph network, but it was soon associated with new communications inventions, such as the establishment of international regulations on telephone in 1885 or on radio broadcasting from the 1890s. The name of the organization was changed to International Telecommunication Union (ITU) in 1934. At present, it is responsible for issues that concern information and communication technologies, such as satellite systems, radio frequencies, internet, GPS, 3G and even more.[1]

Along the lines of what was done with the International Telegraph Union at the end of the 19th century and beginning ofthe 20th century, a dozen **international organizations of management and administration** were established by the states, such as for instance: the Universal Postal Union (1870), International Bureau of Weights and Measures (1870), International Meteorological Organization (1870), International Statistical Institute (1885), International Sanitary Bureau (1903) and International Institute of Agriculture (1905). In these organizations, government officials and experts worked together on international standardization and standards, which are crucial in improving the daily lives of people, such as the system of SI units, Greenwich Mean Time (GMT) as thetime calculation, global cross-border mail and postal codes.

The establishment of these organizations was not particularly difficult, since it was relatively easy to identify the common interests of the states and it did not affect any issues of power and national security. However, in the 1800s, more people suggested the establishment of international

[1] ITU website: www.itu.int

organizations that would have had more general functions other than these specialized and specific tasks. *Simón Bolívar* already presented the idea of the League of American Republics in 1826, which, as he imagined, would have dealt with mutual defence, military assistance and economic cooperation. All these plans came to nothing at the time, however, in 1890, the first regional cooperation with general competence was established, the International Union of American Republics. This organization represents the predecessor of one of the largest still operational regional international organizations, the Organization of American States (OAS).

Eventually, WWI brought about a change in the states' attitudes, and the League of Nations (1919-1940) was founded, where the goal was to unite all states in the world. Although the League of Nations never had universal membership, it was indeed an attempt of historical importance. Learning from the mistakes of the organization, the United Nations, formed after WWII, became capable of operating on a lasting basis with a universal membership.

After 1945, a **rapid spread** of international organizations could be observed. On the one hand, organizations with universal membership but special powers had been established (such as the World Health Organization, the WHO or the United Nations Educational, Scientific and Cultural Organization, UNESCO) and regionally-accredited organizations with general powers have been formed as well (such as or the OAS, the Arab League, the Organization of African Unity – now called African Union, or the European Union). Altogether, they are about fifty, however, thousands of intergovernmental international organizations operate in addition to these, with memberships covering only a few states and performing only special tasks. Known examples of this category include NATO, which is a military cooperation between North American and European states, or OPEC, the Organization of the Petroleum Exporting Countries, while a little-known example is the International Cocoa Organization, which is a cooperation of approximately 40 states on the regulation of production and trade of cocoa.

5.2. The Definition of the International Organizations

In conceptualizing the **definition of international organization** in Hungarian literature, the notion of Árpád Prandler is generally accepted: "*International organizations are forms of interstate cooperation that are established through an international treaty*, *between at least two or three states*, *with a permanent structure*, *generally consisting of at least one but usually more permanent organs and*, *under their founding treaty*, *they have international legal personality*."[2]

Elements of the Definition of International Organization:

- interstate cooperation;
- established through an international treaty;
- permanent structure;
- international legal personality.

Considering the elements of the definition of international organization, the following should be highlighted:

- international organizations are created by states, and they are often referred to as interstate or intergovernmental organizations (IGOs); accordingly, they can be distinguished from non-governmental international organizations (NGOs);

[2] Blahó–Prandler 2005, 60.

– states establish the organization with an international treaty, with its deed of foundation being a multilateral international treaty (founding treaty), in accordance with the rules of international law, typical names of which are treaty, statute, agreement and constitution;
– international organizations have a permanent institutional structure, therefore, it has one or more organs that are constantly operating
– international organizations receive, through the treaties based on which they are created, international legal personality (derived international legal personality), which only covers the areas to which they are empowered by the founding states (limited legal personality), and such legal personality would only apply against such international actors that acknowledge it (subjective legal personality).

5.3. The Classification of International Organizations

International organizations can be classified in a number of different ways, three of which appear to be essential: membership, power and the possibility of accession.

For the purpose of **membership**, it is a fundamental question whether the aim is the membership of only a few states or all states of the world. If the purpose of the organization is global membership, it is called universal. This is true even where the organization has not yet reached universal membership but declared this objective in its founding treaty and makes progress towards this. Such organization is the World Trade Organization (WTO) with 164 members (by summer 2018). At present, there are 193 generally recognized states in the world, that is the also the number of United Nations' members. However, there are also states that are not generally recognized, such as Kosovo or Palestine. Kosovo is not member of the UN, but member of some UN specialized agencies, such as the International Monetary Fund and the World Bank, which therefore have a larger number of memberships than the United Nations.

However, the vast majority of the organizations are not created for the purpose of universal membership, but with the aim of bringing together certain groups of states. These organizations are called particular organizations. A well-known example of this category is the OECD, the Organization for Economic Cooperation and Development, which now includes 36 members from all over the world. If the membership of a particular organization requires that each MS should belong to a geographical area, then it is called a regional organization, such as the Council of Europe and the European Union. Only European States canbe partiesthereto. The African Union includes countries only fromthe African continent.

On the basis of its **competence**, there are also two main subgroups. International organizations of general competence cover all aspects of life in their activities, therefore they have a political, economic, social and military functions and competence. Such organization is the United Nations and the large regional cooperation such as the EU, the AU and the OAS.

If an international organization does not deal with these possible four potential competences, it is called international organization with special competence. The NATO, for example, has only political and military powers, the OECD is limited to political, economic and social functions, the WHO has only political and social functions, and the IMF only has political and economic competence.

As for the distinction based on the **possibilities for accession**, we examine the conditions under which a state can be member of the organization. If the organization does not impose any requirements, we are talking about an open organization. In this case, there are enough grounds for the state to apply.

Such an organization is the UN, whose Charter says that only 'peace-loving' states shall be members; however, any applicant states are admitted to membership. However, if the organization lays down certain membership requirements, it is called half-open or half-closed organization. The entry into each organization is possible if the new states comply with the requirements. These may include objective factors such as the geographical location of the state (e.g. in the Council of Europe) or the level of economic development (e.g. in the OECD), however, there may be some subjective factors such as a common enemy (in the case of NATO at the time of its establishment), or cultural affiliation (e.g. in the case of Council of Europe). Closed organizations are those that cannot be joined by any states other than those founding it.

5.4. Characteristics of the Internal Operation of International Organizations

International organizations are established by the states in their own interests, however, it may also be useful for other states besides the MS to observe the work of the organization or participate therein, having a consultative status. Thus, many organizations have not only permanent members, but they also provide access to observer **status**. The founding states of the international organizations and its members initially could only be states, but for some organizations it has recently been accepted that, besides the states, another international organizations may also be full members (e.g. the EU in the International Sugar Organization) or observer member (e.g. the EU in the Organization of American States).

As an element of the definition of international organization, we have mentioned that the organizations have at least one but typically more **bodies**. The international organization should be able to have its own permanently operating bodies to achieve its objectives and carry out its activities. This is one of the main differences between the international organization and international groups, since the international organization has a permanent structure in one or more specified locations. In contrast, the different groups such as the Visegrad Group or the G8 nations do not have a permanent seat and institutional system.

Although there are substantial differences in the institutional structures of international organizations, there are some common characteristics. In most organizations, three main bodies can be identified:

- the plenary decision-making body to which all MS are members,
- the executive body, which is constantly operating with a smaller number of staff, therefore, it is not plenary,
- the secretariat, which administers and often represents the organization.

These bodies are often accompanied by advisory bodies (either plenary or with limited members), non-plenary decision-making bodies, courts or even banks.

Each member is represented in the **plenary decision-making body**, and typically each member has one vote. This is how the UN General Assembly operates, in which all 193 members have equal voting rights, regardless of their size, population or economic strength. The typical name of this body is the general assembly, conference or council. The plenary decision-making body is responsible for defining the organization's tasks and budget, decides on the admission or exclusion of members and it can deal with anything that it has been authorised to do under the founding treaty. Although this is the main decision-making body in which each MS is represented, its decisions are generally only recommendations and not mandatory for the MS.[3] Generally, decisions need to be made by simple or

[3] See: Hárs 2018a

qualified majority in these bodies, however, there may also be a requirement for unanimity, especially in the case of smaller organizations or important issues.

The **executive body** is responsible for managing the day-to-day operations of the organization. The plenary decision-making body usually has a much higher level of state representation and is slower in its operation, and it does not even hold meetings regularly. It needs to be complemented with a body that can carry out routine administration and make decisions quickly. The function of these bodies usually consists of a mixture of implementation and management tasks. The typical name may be the board, committee and board of governors. Within the UN such body is the Security Council, or within the European Union the Commission may be considered as such.

The **secretariat** is responsible for the management and administration of the organization. In general, the secretariats prepare the meetings of the other bodies and carry out the administrative tasks related to the work of the other bodies. They often perform not only administrative work but background documentation, collect materials and conduct analyses to assist the work of other bodies. The head of the secretariat, usually called secretary-general, represents the organization. The current head of the UN is, e.g, the Portuguese Secretary-General, *António Guterres*.

In addition to the typical three main bodies, practically any other body may be established by the founding states. Several organizations have their own judicial forum, such as the International Court of Justice in the United Nations, or the European Court of Human Rights in the Council of Europe. Financial institutions may also be found in several places, such as the European Central Bank and the European Court of Auditors in the EU. We can often meet with a parliamentary advisory body in which the parliaments of the Member States can delegate members. One example is the Parliamentary Assembly of the Council of Europe or the Pan-African Parliament of the African Union.

International organizations need to have headquarters (seat) necessary for the effective furtherance of their operations. For this purpose, the organization will conclude a contract with the state in which its headquarters will be located (**headquarters agreement**). The host state does not necessarily have to be member of the given organization, the key issue is that in the headquarters agreement it agrees to ensure diplomatic privileges and immunities to the organization (like what would be provided for an embassy). For example, Switzerland was not the member of the UN until 2002, while some UN bodies have been operating in Geneva since 1946. Austria is also not the member of OPEC, but its headquarters are still in Vienna.

The organization and its officials are beneficiaries of **privileges and immunities** similar to diplomatic immunity, and officials are often called international public servants. These rights include, among others, exemption from the criminal, civil or administrative procedures of the host state, exemption from duties and taxes, inviolability of documents, buildings and vehicles.[4]

5.5. The Importance of International Organizations in International Relations

As we have seen regarding the history of the emergence of international organizations, the formation of the first international organizations was induced by the development of science and technology. This, however, does not explain why dozens of collaborations were later formed for economic, military, political or other purposes.

[4] The issue of privileges and immunities is not only interesting in relation to the officials of the organization, but e.g. with regards to the soldiers, peacekeepers acting in the name of the organization. See e.g. Hárs 2018b, 71-90.; Hárs 2017, 533-541.

Based on the literature on the theory of international relations, *Karen Mingst* distinguishes three theories of the creation of international organizations.

1) **Federalism** originates in the ideological background of the Enlightenment, e.g., in *Kant*'s Perpetual Peace. The essence of the theory is that wars are caused by sovereign states and each of them have military potential, so if states abandoned a part of their sovereignty and it would be exercised in lieu by a superior body, that would ultimately lead to peace.
2) Followers of **functionalism** consider economic vulnerability and deprivation to be the main reason for war, however, states are not the appropriate ones to find a solution to this problem. Non-governmental experts should find answers to these problems, so that the interest of the entire community would be kept constantly in mind. This theory had major impact on the founders of the predecessors of the European Union, such as *Jean Monnet* in the early 1950s.
3) According to the **theory of common good**, the rational decision of an individual often leads to the fact that while the individual is better off in the short term, it is likely to have an adverse effect on the community. Discriminatory results to the community may eventually influence the individual who will in the long run also be much worse off by the deterioration of the situation of the community or common good. The most important example is the continuation of environmentally damaging production, which would lead to short-term economic gains, but in the long run, the environmental damage also affects the decision-maker. Thus international cooperation is necessary for the responsible handling of common goods.

In any case what lies behind the establishment of international organizations is that states recognize that it may be easier, faster and more efficient to achieve certain goals together. Idealist trends, such as liberalism deem international organizations necessary in the international system, while in accordance with the principle of realism, the role of international organizations is only marginal in international relations. According to recent theories, however, we live in such a complex world and face global challenges that make cooperation between the states necessary.

The importance of international organizations is that they create space and a legal framework for cooperation among states, enhance their willingness to cooperate and enable a more efficient and wider dissemination of information. Organizations help to resolve disputes and provide expertise on issues for which some states do not have the capacity. International organizations often initiate and unify international legislation, and, to a certain extent, they monitor compliance with it. The possibility of such monitoring depends heavily on the power conferred on the organization. For example, the United Nations Security Council enjoys broad rights of sanctioning, while other UN bodies may only submit recommendations and suggestions and make condemning statements of political significance that are not legally binding.

QUESTIONS FOR SELF-CHECK

1. What is the definition of international organization?
2. List the characteristics of the legal personality of an international organization!
3. Name the three typical organs of international organizations!
4. What does the headquarters agreement regulate?
5. What does it mean that an international organization is half-open or half-closed?
6. What is the significance of international organizations in international relations?

RECOMMENDED LITERATURE

Mingst, Karen A. – Arreguín-Toft, Ivan M.: The Essentials of International Relations. 7th ed., W. W. Norton & Company, 2016.

Karns, Margaret P. – Mingst, Karen A.: International Organizations: The Politics and Processes of Global Governance. 2nd ed, Lynne Rienner Publishers, 2009.

CHAPTER 6

OTHER ACTORS OF INTERNATIONAL COOPERATION

The typical actors of international relations are states and international organisations, however, not only these entities are considered important. Throughout the 20th century, the scope of the subjects of international law broadened and non-governmental organisations, private individuals and business enterprises started to play a role in international relations.

6.1. Non-Governmental Organisations

6.1.1. The Definition of Non-Governmental Organisations

Non-governmental organisations are forms of national or international cooperation (not subject to international law), established by private individuals or private institutions in compliance with the internal laws of the given state, with a management independent from the state. These institutions are either called non-governmental, civil or non-profit organisations, with the general abbreviation: NGO. In case we are talking about a civil organisation operating not only in one state, it is also called an *international non-governmental organisation* or INGO.

> In 1986, the Council of Europe defined the main characteristics of INGOs:
> – the organisation should not be for profit;
> – the organisation shall have been established under the national laws of a certain state;
> – and shall conduct actual activities on the territory of at least two states.
>
> Source: Convention of 1986 of the Council of Europe No. 124 on the recognition of the legal personality of international non-governmental organisations

We can see from the definition and the characteristics that the foundation of an NGO is not based on international law or an international agreement, but on the internal laws of one of the states. Therefore, it **does not have international legal personality** not even when it operates on the territories of multiple states. In this case, organisations performing the activities shall be formed, on the territory of each state, in compliance with the national laws of the given state. In order to work in a harmonised way, they may create an international coordinating committee but this will not be subject to international law either. An exception could be when the states decide that they confer rights and obligations on an NGO through an international agreement. This happened with the International Committee of the Red Cross (better known as the International Red Cross), which was formed as a civil organisation in 1863 in Switzerland but it could manage to receive from the states conferred essential powers in the field of the law of war and humanitarian law.

NGOs are typically established by **private individuals or private institutions**. It is not excluded that the state is also a founding party, however it is a requirement that the state cannot participate in its operation and governance. The state may provide financial support for a certain part of the operation but cannot take over the organisation's governance in this case either.

One of the main reasons of establishing NGOs is that the state cannot or does not want to perform certain tasks, which are **demanded by the society**. In this case private individuals join each other and

perform the activities instead of the state. Related to this, their operation is typically not profit-oriented; their purpose is not business advantage but the promotion of the interests of certain communities and the fulfilment of their needs. Since they do not operate with the purpose of profit-making their work is often assisted by volunteers and their operation is typically maintained by donations. The first charity organisations were related to the church, one of them was the Order of Malta established in 1099 by Italian merchants for the hospitalisation of sick people and to take care of pilgrims arriving to Jerusalem.[1]

6.1.2. The Scope of the Activities of INGOs

There are numberless NGOs operating in the world's states, there are around 60 thousand civil organisations solely in Hungary. There are far less **international NGOs** (INGOs), approximately 25,000. Among these there are around 2,000 which perform important activities on a global level. Examples for this are *Greenpeace*, the *International Red Cross*, *WWF* (World Wide Fund for Nature), *Amnesty International* or Caritas Internationalis.

INGOs may deal with basically any type of activities. However, some typical activities can be identified, such as religion, politics, science, sports, human rights, environment protection, trade unions or healthcare. The most ancient forms of international civil organisations are religious movements and **religion**-based relief organisations. The official relief organisation of the Catholic church has been *Caritas* since 1924, which has national organisations in more than 150 states. The Jesuit Refugee Service is present in more than 50 states and provides practical and moral support to refugees. The World Jewish Congress was established in 1936 and supports the protection of Jewish interests and culture in around 90 states.

International movements based on **political** views also have an important history, among which the first was the Socialist International formed in 1860. Its purpose was to harmonise the activities of national Socialist parties, conciliate politics and propagate Socialist world views. Similarly, the Liberal International and the Christian Democrat International were established in the first half of the 1900s. Formally, these organisations fulfil the requirements of INGOs, however taking into consideration the ambitions of the national parties and their presence in the government or the parliament, a lot of people have doubts whether they should be categorised as such.

The representatives of **science** formed a wide range of international associations, which amass the scientists working in the given field of science, organise professional events for them and help spread science. In the field of international law such an association is the *International Law Association* (ILA) established in 1873, with 3700 members interested in international law worldwide.

In the field of **sports** the most famous INGO is the International Olympic Committee (IOC) which was established by *Pierre de Coubertin* in 1894 with the purpose of reviving the ancient Olympic Games. Obviously, the Olympics nowadays can be organised exclusively with active state participation, however the IOC is still an INGO, the members of which, the national Olympic committees are civil organisations themselves. National and international associations of certain sports have the same system, like FIFA in football (soccer), or FINA in swimming and water polo. There are also INGOs in the field of sports, which undertake to propagate free time sports or use sports for peace-building in conflict-stricken territories (such as *Peace and Support*).

[1] Blahó–Prandler 2005, 476.

There are several INGOs for the protection of **human rights**, one of the most well-known among them being *Amnesty International* established in 1961 by an English lawyer, *Peter Benenson*. The lawyer and his friends started to send hundreds of letters to governments which detained people because of political or conscientious reasons, demanding their release. Besides releasing political prisoners their activities also covered a wide range of protections for other human rights. *Human Rights Watch* is another, similar international human rights organisation. For example the ban on landmines is a result of the cooperation of human rights civil organisations, for which a coalition including non-profit organisations had been fighting since 1992 with a campaign called *International Campaign to Ban Landmines*. One of the most famous supporters of the campaign was *Diana*, Princess of Wales. As a result of their campaign most of the countries adopted the Ottawa Treaty of 1997, the convention on the prohibition of the use and production of landmines. For their hard work, they have been awarded the Nobel Peace Prize.

Environmental protection is one of the newest areas of international law and relations; the states realised its importance for the first time in the 1960s. Now there are a lot of NGOs working in this field, *Greenpeace* is one the largest or WWF, known of its logo with the panda. The latter is the world's largest nature protection civil organisation, operating in almost 100 countries. The purposes of WWF include the preservation of biological diversity, decreasing pollution and promoting sustainable development. As the result of the WWF's work and campaign, the convention of 1971 on the protection of wetlands of international importance was concluded. Furthermore, WWF lobbied during the preparation of the Convention regulating the International Trade of Endangered Species of wild fauna and flora (also called CITES).

Similar to political associations, international associations of **trade unions** also have a long history; the interest organisations of industrialists on a national level existed already in the Middle Ages in the form of guilds and clubs. The first international organisation was related to the Socialist political movement, which was the International Workers' Association founded in 1864 in London with the merger of organisations representing English, French and German workers. In 1920, the World Confederation of Labour was established as the association of Christian trade unions. The largest world association is the *International Trade Union Confederation* (ITUC), with its seat in Brussels, having member trade unions from 162 countries worldwide, including 3 Hungarians.[2] Trade unions were formed not only at a global level but also in Europe. Among these the largest is the European Trade Union Confederation (ETUC) with its seat also in Brussels.

Health challenges have also been uniting people for a long time, either for the purposes of vaccines, modern healthcare services or any other objectives related to the welfare of people. *Médecins Sans Frontières* (MSF) and *Save the Children* are both well-known organisations on this field.

Evidently there are also international civil organisations which perform activities related to multiple areas, such as *Oxfam* that fights against **poverty**, for development and the welfare of people. The activities of the *Bill & Melinda Gates Foundation* (the foundation of Bill Gates and his wife) are also similar. CARE is also an important civil organisation, which besides the fight against poverty, is actively fighting for the rights of women and children.

6.1.3. The Cooperation of INGOs with Intergovernmental Organisations

One of the most important purposes of civil organisations has been from the beginning to draw the attention to a public need or value and influence national legislation. The conclusion of the international

[2] See ITUC website: https://www.ituc-csi.org/IMG/pdf/18_07_10_list_of_affiliates_ac.pdf

treaties mentioned in the previous part, e.g. in the field of environmental protection or the ban of landmines, were the results of the active lobbying of national and international civil organisations. Similarly, the ban on slavery or the adoption of women's voting rights were all the results of important civil movements. Certain civil movements had famous leaders such as *Martin Luther King* in the USA, the leader of the African-American civil rights movement in the 1950s and 1960s. In most cases the topics promoted by civil movements did not have an important impact on the territory of only one state; they became international movements aiming to influence not only the national legislation but also international law-making.

The **importance** of INGOs was recognised already in the beginning of the 20th century and states created different frameworks for such purpose. Its first appearance was ILO's special, tripartite structure. In 1918, when establishing the International Labor Organization (ILO), the founding states decided that the protection of the workers' interests and the international regulation of employment could not be achieved only from the top, on the part of the state. Therefore, within the frameworks of ILO they created a tripartite cooperation in which the representatives of governments, employers and employees had equal votes. (For more detail, see Chapter 7.)

In the case of most of the international organisations established after WWII, it became evident to ensure some form of **consultation possibilities** to INGOs. Traditionally the representatives of the states make the decision in international organisations, cooperating in certain cases with international officials or experts. It facilitates balanced and informed decision making if the representatives of the civil sector can also participate in decision-making in an organised way, with at least consultation rights. This was first institutionalised by the UN.

The Economic and Social Council (ECOSOC) of the UN created in 1946 the Committee on NGOs and the forms of **cooperation with NGOs** were laid down. ECOSOC has a list on those NGOs that are eligible to assist the work of the UN. There are three categories on this list. The first category is the so-called general consultative status. The biggest NGOs dealing with the most topics might fall into this category, also touching upon the most part of ECOSOC's activities. These organisations have general consultative rights, moreover they can propose agenda items for the meetings of ECOSOC. The second category is the special consultative status, and those organisations might fall into this, which deal with only one or a few topics of ECOSOC's activities. These organisations have consultative rights only in connection with meetings relevant to their topic. The third category is the "*Roster*"; these organisations are partially waiting to be accepted in the first or second category, and partially assist the work of ECOSOC now and then.[3] In 1946, there were only 41 NGOs on the list, however, the civil movement in the second half of the 20th century was blooming in a way that now there are more than 4,300 civil organisations on the list including the third category. Among these, almost 140 fall into the first category of general consultative status, while 3,200 into the second category of special status, and around 1,000 into the third category.[4] Therefore, considering the whole system of the UN, ECOSOC and the specialised agencies (e.g. ILO, FAO, WHO) cooperate with around 5,000 NGOs. In order to make the work of this huge number of organisations more effective and harmonised, the *Conference of NGOs* (CONGO) was created, which provides a forum for NGOs being in a consultative relationship with the UN.[5]

Numerous other international organisations benefit from the expertise of NGOs; the Council of Europe also introduced the **consultative status** in 1952, and currently 288 civil organisations can

[3] See UN website: http://csonet.org/index.php?menu=30

[4] List of NGOs in consultative status with the ECOSOC as of 1 September 2016 – Note by the Secretary-General, 29 December 2016, UN Doc. No. E/2016/INF/5. http://undocs.org/E/2016/INF/5

[5] In more detail, see: https://www.ngocongo.org/

participate in decision-making.[6] The activity of NGOs is especially strong in the European Union; masses of civil organisations are lobbying at the Commission and the European Parliament. The EU Commission supports the projects of NGOs with an annual amount of more than 1 billion euros, and more than 15,000,000 lobbyists are working in Brussels.[7] To reach a more significant influence, these civil organisations also form associations and networks (for example CONCORD, which coordinates the work of civil organisations in the field of humanitarian aid and development).[8]

Civil organisations are very important elements of a democratic society and informed legislation; however, it should also be emphasised that certain civil organisations represent only the interests of specific groups, and well-supported lobbyists with plenteous financial resources can perform activities with a stronger 'voice', even if they do not represent the interests of the wider layers of society. A typical example for this is that car factories can provide abundant resources to represent their interests and maintain the existing regulations, while environmentalists standing against them cannot necessarily do so, although the interest of the wider layers of society is to develop and produce more eco-friendly ('greener') cars. Based on these, it is important that national and international legislators provide access to consultation to the wide range of interest representatives.

6.2. Individuals in International Law and Interstate Relations

6.2.1. Individuals as Subjects of International Law

Individuals as subjects of international law bear rights and obligations based on international law. As we have seen in Chapter 2, the protection of individuals based on international law appeared as a result of the ban on slavery in the 1800s. This road led further to the foundation of the ILO in the beginning of the 20th century, and to the international regulation of the employment rights and obligations of people.

> Comprehensive conventions on the wide range of human rights are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966. Besides these, several other universal conventions were adopted regulating particular topics, such as the prohibition of racial discrimination (CERD, 1965), prohibition on discrimination against women (CEDAW, 1979), prohibition of torture (CAT, 1984), rights of children (CRC, 1989), rights of persons with disabilities (CRPD, 2006).
>
> Besides the global human rights protection system, states have also adopted regional conventions, in which European states are frontrunners. These states have been generally regulating human rights since 1950 in a dozen of international conventions within the frameworks of the Council of Europe (e.g. the ECHR, 1950) or special areas of human rights (e.g. the European Social Charter of 1961, the European Convention on the Legal Status of Children born out of Wedlock of 1975, the European Convention on the Compensation of Victims of Violent Crimes of 1983, the European Charter for Regional or Minority Languages of 1992 and the Framework Convention for the Protection of National Minorities of 1995). Although to a lesser extent, human rights conventions were also adopted on other continents, such as the Inter-American Convention on Human Rights, the Cairo Declaration on Human Rights in Islam and the African Charter on Human and People's Rights.

[6] See https://www.coe.int/en/web/ingo/participatory-status

[7] Global Policy Forum: NGOs and the EU. https://www.globalpolicy.org/component/content/article/177/31567.html

[8] See: https://concordeurope.org/

However, experiencing the horrors of WWII was also necessary to reach the broad protection of **human rights**. In 1948, the UN General Assembly created the first international document that covered a wide range of human rights. However, the Universal Declaration of Human Rights (UDHR) was not created to be a binding instrument; therefore, states adopted multiple human rights conventions after it.

However, the conventions would not have any meaning without any enforcement mechanism behind them. There are huge differences in this regard, since while e.g. the states of the European continent set up a court (European Court of Human Rights, ECtHR, Strasbourg) to enforce the European Convention of Human Rights and Fundamental Freedoms (ECHR), there is no such court in Africa or worldwide. Under the universal conventions adopted within the framework of the UN, typically there is one committee, consisting of expert and/or government-delegated members, to which a state or an individual can turn with complaints. Therefore, while based on the development of human rights, individuals clearly became subjects of international law, the domain, in which they can actually enforce human rights is strongly limited geographically.

Besides human rights, **international criminal law** is another field of international law, where the legal personality of an individual is evident. After WWII, in the Nuremberg and Tokyo war crimes trials individuals were held responsible for the violation of the law of war and international humanitarian law. The fact that war criminals were held responsible based on international law gave new life to the process in the beginning of the 1900s and now there are different types of international tribunals working in this field. (For me detail, see Chapter 13.)

6.2.2. The Role of Individuals in International Relations

The lobbying activities of civil organisations and individuals mentioned above are important driving forces behind the development of human rights and e.g. environmental protection. However, in international relations, individuals can show up and have an impact not only through NGOs but also individually or in crowds.

Persons who themselves have an impact on international relations due to their positions, have individual influence. Heads of states, of governments, foreign ministers, members of diplomacy, officials of international organisations belong to the **elite of foreign affairs**. Evidently, their level of influence depends on the institutional system in which they work as well as on their personality. Dictators such as *Hitler*, *Stalin*, *Saddam Hussein*, or the *Kim* family in North Korea had or still have a very important influence on foreign policy. However, the same is true for personalities who reached extraordinary effects with a solid and strong institutional background, like *Kennedy* during the Cuban Missile Crisis or *Winston Churchill* in WWII, or *Gorbachev* in the second half of the 1980s.

> According to Liberal and Constructivist theories, the human personality is extremely important and international relations are basically influenced by powerful persons. Contrary to this, Realists are more modest on the importance of certain individuals; they argue that foreign policy and international relations are developed more by the state itself and the positions of power. According to Realists, the interest of the state is continuous and it forces consecutive statesmen of different views to conduct similar foreign policies. Examining the history of the previous decades, it seems that reality is somewhere in the middle since the position of power and the interests of the states are influenced by the decisions of every statesmen, albeit individual views, identity and the characteristics of personality such as the spirit of cooperation (see e.g. *Konrad Adenauer*) or the predisposition for narcissism (see e.g. *Donald Trump*) are also important.

Besides leaders, private individuals also have the possibility to influence international relations. The UN asks more and more famous people to stand by different noble purposes: *Angelina Jolie* who has been the goodwill ambassador (now Special Envoy) of the UNHCR, *Nicole Kidman* and *Emma Watson* who are goodwill ambassadors of the UN's program dealing with women and *David Beckham* who is the goodwill ambassador of UNICEF. By now, it is a fundamentally established fact that private individuals can have an important role in **background diplomacy**. One of its most well-known areas is sports, which had an essential importance in the improvement of the relationship of the USA and China in the 1970s (the famous ping pong diplomacy), or in the fight against the apartheid system in South Africa (the IOC banned South Africa from the Olympics and a strong pressure was put on sportsmen not to participate in South African sport events).

Referendum is one of the commonly accepted forms of private individuals' impact on foreign policy. For Hungarians the referendum of 1921 deciding the territorial affiliation of the city of Sopron and its surroundings between Hungary and Austria is an important story; similarly, a referendum made the final decision for Hungary to join NATO and the EU. These referenda can have long-term consequences even for the whole of Europe, consider Brexit (the exit of Great Britain from the European Union) as an example. Therefore, it would be important that political elites assess the potential results of referenda with a sense of responsibility and properly inform the society thereon in advance.

Thanks to the development of information and communication technology it also became evident by the beginning of the 21st century that private individuals can form **crowds** fast and stand together for national and international purposes. The series of protests broken out in 2011 swept through North Africa and the Middle East (this is the so-called Arab Spring) and the protests and the revolution were organised on *Facebook* and other social media, thus far unprecedented in history. People could mobilise extremely huge crowds extremely fast, the consequences of which we are still facing as Libya's failed statehood, and Syria's endless armed conflict. Therefore, crowds form easily nowadays and their power is huge; however, the effect of their acts is impossible to be foreseen. Crowds can destroy the existing power, however they are not capable to establish a new operating state system, and this can lead to permanent problems.

6.2.3. The Role of Business Enterprises in International Relations

During the 20th century, due to the development of international law business enterprises also became the subjects of international law at a small scale, therefore they can have **international rights and obligations**. For example, within the frameworks of international protection of investments a business enterprise may sue the state before international arbitral tribunals (for more details: see Chapter 8). One part of the Nuremberg Trial after WWII concentrated on how German business enterprises contributed to the crimes committed against humanity and the executive directors of *Krupp*, famous in the field of steel production (now *ThyssenKrupp*), and *I.G. Farben* were convicted. The latter had an important role in the field of chemical and pharmaceutical industry; to date it ceased to exist, and its successors include *BASF*, *Bayer* and *Sanofi*. In the field of human rights, legal entities also have rights, e.g. they are undoubtedly entitled to the right of property based on the ECHR.[9] While legal entities clearly have rights based on international law, it is disputed in literature whether they have obligations based on international law.[10]

However, an important movement started to reach that business enterprises, especially multinational corporations, could have international obligations since they have a serious impact on international

[9] Article 1, Protocol No. 1. to the ECHR
[10] Wouters–Chané 2013

relations. States outsource more and more state tasks to business enterprises (for example private military corporations perform activities abroad besides the American and other armies, or e.g. there is a prison in Hungary operated by a business enterprise). However, while states can be held accountable for their activities to comply with international human rights, environmental protection and humanitarian or other rules, this cannot be achieved in the case of business enterprises.

Thanks to the world-wide spread of economic liberalization and globalisation by the 21st century, **multinational corporations** (MNCs) on the top of the economy have gained an incredibly huge importance. According to the idea of economic liberalism, the engines of economic growth are MNCs, which organise production in the most effective way and make the consumption of any goods possible at a global level. Economic liberalism considers the situation ideal when the state and the economy operate separately, with the state being responsible is to maintain social order, but being able to influence the operation of economy and market since the market regulates itself.

The forerunners of MNCs existed already in the Middle Ages, such as the Dutch East India Company. Until the end of WWII, the biggest MNCs were operating in the field of the production of goods (for example *General Motors*, *Siemens*, *Krupp*), which has significantly changed by now. The world's largest companies operate in the field of information technology, communication and financial services. These are *Apple*, *Microsoft*, *Alphabet*, owning *Google* and its affiliates, *Amazon*, *Facebook*, *Exxon Mobil* as one of the world's largest oil companies, *Johnson&Johnson* operating in the field of chemical and pharmaceutical industry, or the conglomerate of *General Electric*, members of which cover every field of industry from the energy sector through the pharmaceutical sector to the bank sector.[11]

Although there are thousands and thousands of MNCs in the world, among them the largest one thousand produce and receive 80% of the global profit. The annual income of the biggest MNCs is many times the income of most states of the world. The annual income of e.g. the Dutch *Shell* oil company is more than Mexico's or Sweden's annual income (or that of the remaining, approximately 170 smaller states of the world).[12] However, among the around 3 billion people who can work, only 100 million work for MNCs, rest of them work in small and medium-sized enterprises or in the public sector (furthermore, almost 200 million people are unemployed).[13] Based on these, several theories criticise the idea of economic liberalism, and all of them share that the state's economic governing position should be increased and free market should be limited (for example etatism and Marxism).

MNCs have indeed made production global; however, the intention behind the rationalisation of production was not only based e.g. on the location of raw material necessary for the good, but also on which states' work force is the cheapest due to the lack of social security and other taxes, or e.g. due to the lack of a set minimum wage, where taxes can be avoided, where there are no plant building standards, or where there is no complicated system of regulatory requirements for environmental protection, or for the protection of employees' interests. Therefore, for instance, it turned out in 2014 that the seafood distributed by large European and North American distributors (e.g. *Tesco*, *Carrefour*, *Walmart*) was produced by slave work in Thailand.[14] MNCs often contributed to the existence of regimes heavily violating human rights, pollution, or the maintenance of low work protection standards. Because of these, important civil movements condemn globalisation, and their main goal is to reach that MNCs be bound by obligations under international law, not only have rights.

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[11] Gray 2017

[12] Myers 2016

[13] Unemployment and decent work deficits to remain high in 2018. International Labour Organization: World Employment and Social Outlook – Trends 2018. 22 January 2018. http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_615590/lang--en/index.htm

[14] Hodal–Kelly–Lawrence 2014

The UN also stepped up to make MNCs respect and protect human rights and to provide compensation in case they cause damage. In 2011, the UN's Human Rights Council adopted **Guiding Principles on Business and Human Rights** which declares that economic enterprises shall respect the national laws of the state where they operate. On the other hand, states shall protect human rights on their territory and demand the compliance with the laws from business enterprises. One of the guidelines states that business enterprises should also provide for remediation of adverse impacts, such as to restore any polluted environment. In any event, it should be noted that these are only guidelines, not binding principles.[15]

Furthermore, the guidelines do not solve the problem that certain states refuse to undertake the protection of fundamental human rights based on international law; therefore, their laws require a low level of protection, easy for enterprises to comply with. A solution for this problem could be if business enterprises were required to comply with the requirements of the laws of that state where their seat is, regardless of performing activities in other states as well. Hence, for example a company with a seat in the USA should respect the human rights prescribed in the USA (for example ban on child work) even if it produces the goods in a factory in Bangladesh. Any enforcement of such measures is rather difficult and faces several legal problems; therefore, currently the movement of civil organisations is the most effective way to do so.

Campaigns were initiated in several states against the products of MNCs, which turned out to have been produced in developing, third world countries amid serious abuses. The principal means of these campaigns is awareness-raising, which might lead to the direct decrease of company profit, since outraged individuals will not buy their products. Therefore, consumers, through their own choice, can influence the companies' regulatory compliance. As a response to this, business enterprises developed the concept of **corporate social responsibility** (CSR) which is a self-regulating mechanism. Business enterprises have recognised by themselves that complying with international and national laws and regulations as well as fair operation could contribute to the image of the company as well as to sales. Consumers expect an increasingly responsible operation and at the same time the companies have decided to promote social welfare more effectively.

> Corporate social responsibility (CSR) is a self-governing mechanism as part of which – in the course of their operations – corporations comply with national and international laws and standards, ethical norms, take into consideration the principles of sustainable development, and in the course of their decision-making they properly assess the interests of affected social groups.

CSR appears in the practice of several companies. The English company, *The Body Shop*, producing natural cosmetics is at the forefront of the movement against animal experiments and promotes the purchase of materials resulting from ethical production and fair commerce.[16] *H&M's* global clothes collection program introduces sustainability to fashion.[17] Companies set environmentally conscious operational goals. *Coca-Cola*, for instance, wants to have everything made of recyclable packaging by 2025 and to have a 100% of collection and recycling rate regarding its bottles by 2030.[18]

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[15] Guiding Principles on Business and Human Rights – Implementing the United Nations. "Protect, Respect and Remedy" Framework. United Nations, New York–Geneva, 2011

[16] Enrich Not Exploit Sustainability Report 2016. The Body Shop. https://www.thebodyshop.com/about-us/our-commitment/enrich-not-exploit-sustainability-report-2016

[17] H&M Program of clothes collection: http://www2.hm.com/hu_hu/noi/vasarlas-kategoria-szerint/16r-garment-collecting.html

[18] Hulladékmentes világ: a Coca-Cola globális stratégiát hirdetett. Sajtóközlemény, [Waste-less world: Coca-Cola issued a global strategy, press release in HU, 19 January 2017.] https://www.coca-cola.hu/sajtoszoba/sajtokozlemenyek/hulladekmentes-vilag-a-coca-cola-uj-globalis-strategiat-hirdetet

QUESTIONS FOR SELF-CHECK

1. What are the characteristics of NGOs?
2. Which non-state actors can influence international relations?
3. In what areas NGOs operate?
4. List five important NGOs!
5. What type of consultative status NGOs have?
6. What does CSR mean?
7. In what ways can an individual influence international relations?
8. Why did the UN create the document with the title of Guiding Principles on Business and Human Rights?
9. List three universal human rights treaties!
10. Which was the first international human rights document that listed the fundamental human rights in a comprehensive manner?

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CHAPTER 7

THE UNITED NATIONS

7.1. On the UN – General Introduction

The United Nations (UN) is considered the world's foremost international organization.[1] Its activities cover all aspects of life, whether it is international peace and security, health, culture or industrial development. The UN possesses a special place in the world of international relations. Understanding this special status forms the essence of this chapter.

The UN has four centers located in **New York**, **Geneva**, **Vienna** and **Nairobi**. Four of the five working bodies are located in New York: the Security Council (SC), the General Assembly (UNGA), the Secretariat, and the Economic and Social Council (ECOSOC). Geneva serves a center for several related bodies concerning economic and humanitarian affairs, including the Human Rights Council (HRC), the UN High Commissioner for Refugees (UNHCR), the UN Conference on Trade and Development (UNCTAD). A number of UN specialized agencies, such as the ILO, WHO, WMO, which will be discussed later on in the Chapter also operate out of Geneva. Vienna hosts the UN Office for Outer Space Affairs and the International Atomic Energy Agency (IAEA). The UN Environment Program (UNEP) and some of the bodies responsible for being liaisons with regional organizations are set up in the capital of Kenya, Nairobi. Besides the four major headquarters mentioned above, there are a number of other 'UN Centers' in the world that are connected to specialized agencies (FAO – Rome), a principal organ (ICJ – The Hague), peacekeeping missions (UNAMID – El Fasher, Darfur), or a university (UN University – Tokyo).

7.1.1. The Process of Establishing the United Nations

The UN is a unique but not unprecedented international organization. Its predecessor, the **League of Nations** was created in 1919 after WWI with the aim of preventing a new cataclysmic event. It has been criticized for decades, for failing to accomplish its primary goal. Another problem was that it was not possible to achieve the simultaneous membership of all the great powers of the era. In addition to the criticisms, the organization achieved some success as it made important progress in the fields of peaceful settlement of disputes, as well as refugee- and minority protection.[2] With the outbreak of WWII, however, it became clear that the League of Nations failed, and as a result, the Allies decided to establish a new international organization.

In **June 1941**, upon the initiative of the UK, the governments in exile of German-occupied territories along with representatives of the UK issued a **joint declaration** in **London** to serve as framework for post-conflict cooperation. According to the signatories of the declaration, "*The true basis for enduring peace is the willing cooperation of free peoples*."

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[1] The official name of the organization is United Nations, although several States use the 'United Nations' Organization' name instead. It is used in such a manner in French: *ONU for 'Organisation des Nations unis*'. German however uses both variations: '*UNO*' and '*Vereinten Nationen*' respectively.

[2] Blahó–Prandler 2011, 54-55.

In **August 1941**, British prime minister *Winston Churchill* and US President *Franklin Delano Roosevelt* further clarified the nature of the cooperation set forth in the London Declaration in the so-called **Atlantic Charter** as it stated that the "*fullest collaboration between nations ... all the men in all lands may live out their lives in freedom from fear and want*." This revolutionary thought, that might seem self-explanatory for us now, establishes the roots of political and economic human rights later included in the preamble of the UN Charter.

The **Declaration of the United Nations** was adopted in **Washington** in **1942**. In addition to the Anglo-Saxon leaders, it counted among its supporters the USSR and China, the government-in-exile of France, as well as representatives of many Latin American states.[3] President *Roosevelt* is credited for coining the name 'United Nations' at this point, and also, the signatories agree to fight until complete victory has been achieved, all the while rejecting the idea of bilateral peace treaties with the Axis powers.

Another important step towards reaching the present form of the UN occurred when the foreign ministers of the four great powers-to-be (UK, USA, USSR and China) agreed in **Moscow** in **October 1943** to establish an organization based on the sovereign equality of peace-loving states and membership open to all, whose primary goal will be the maintenance international peace and security.[4] The main points of the agreement were promulgated one month later in **November 1943** at the level of Heads of State and Government in **Tehran**, where *Roosevelt*, *Churchill* and *Stalin* approved the most important provisions of the prospective organization regarding membership as well as its purpose.[5]

The major organizational issues were decided in **Dumbarton Oaks** in **1944**, where the parties agreed on set up the General Assembly and the Security Council and detailing their most important tasks. The structure of the emerging organization reached its final stage in **February 1945** in **Yalta**, when the representatives of the Great Powers agreed on the 'veto' power of the permanent members of the Security Council as well as incorporating the role of regional organizations and treaties into the prospective Charter.[6]

The conference of **San Francisco** which ended on **26 June 1945**, concluded the UN's formation. The 50 states participating at the conference finally agreed on all issues, sometimes through painful compromise. With that, the last obstacles hindering the entry into force of the UN Charter, eventually on **24 October 1945**, vanished. To this day, 24 October is commemorated as 'United Nations Day'.[7]

[3] Blahó–Prandler 2011, 170.
[4] Ibid. 171.
[5] Ibid. 171.
[6] Ibid. 172.
[7] Ibid. 172.

June 1941	London Declaration	Theoretical framework of post-war cooperation settled
August 1941	Atlantic Charter	Concretizing cooperation – the emergence of political and economic human rights
1942	Washington – Declaration of the United Nations	Coining the name 'UN'
October 1943	Moscow	Setting questions of membership and the objectives of the UN
November 1943	Tehran	Approval of the Moscow Agreement on the highest level
1944	Dumbarton Oaks	Decision on organizational issues (Security Council, General Assembly)
February 1945	Yalta	Conceptualization of the 'veto' power
26 June 1945	San Francisco	Signature of the Charter
24 October 1945	The UN Charter enters into force	

7.1.2. The Special Status of the UN Charter

The UN Charter has a special place among international treaties. According to Article 103 of the Charter, "I*n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement*, *their obligations under the present Charter shall prevail*."[8] Thus, UN Members cannot assume international obligations that would be contrary to the provisions of the Charter, therefore raising the Charter above other international treaties, forming a hierarchical relationship.

7.1.3. The Legal Personality of the UN

In terms of its categorization, the UN can be considered as a **universal international organization with general competence**. The general competence of the organization can be derived from the preamble of the Charter and the organization's objectives as the founding States have delegated to the organization all issues concerning international peace and security as well as any economic, social, cultural, humanitarian and human rights issues.[9] As for its membership, it is a universal international organization, aiming at the membership of all states regardless of their geographic location, economic development, military potential, political affiliation, etc.[10] The UN has a special place in the world of international organizations because of its **objective legal personality**. This means that the entity's legal status does not depend on whether individual states recognize it or not. Objective legal personality was needed precisely because of the bitter experience of the League of Nations, as the members of the UN's predecessor were not able to take appropriate action against states who were expelled or decided to leave the organization. Thus, for example, in 1931, when Japan was attacked by China, and in 1936, following the armed attack of Italy against Ethiopia, the organization was condemned to indecision and ineffectiveness.[11]

[8] UN Charter, UNTS 1., San Francisco, 26 June 1945. Art. 103. (promulgated in Hungary through Act I of 1956)

[9] UN Charter, Preamble, Art. 1.

[10] Becoming a member is not always as easy as it seems. For more information on admission criteria, see Subchapter 2.

[11] In UN history, several states threatened the organization with leaving, but so far none of them came through. The reason for this reluctance lies in the objective legal personality of the UN.

The Bernadotte Case

Swedish Count, *Folke Bernadotte* was asked by the UN Security Council to serve as special envoy in 1947 for the settlement of the situation in the Middle East for his proven diplomatic acumen as well as his commitment to the protection of human life during WWII. The Count's second plan of settlement, however, provoked the fierce anxiety of extremists who murdered him in Jerusalem in 1948. Setting its legal status has become of paramount importance to the UN, which has turned to the ICJ to this effect. In its advisory opinion, the Court pointed out that the UN may also claim compensation, the same way as a State, being a subject of international law. All the UN needs to prove is that the person incurring the damage acted in official capacity. Since the Count was acting as a UN Special Representative and was murdered as a result of his actions in this quality of his, the relationship was established. The Court's other substantial finding was the declaration of the objective legal personality of the UN. According to the ICJ, objective legal personality is indispensable to achieve the UN's goals, which is first and foremost the maintenance of international peace and security.[12]

7.1.4. The Short History of the UN since 1945

The apparent understanding of the Great Powers that peaked in the creation of the UN in the summer of 1945 soon vanished. The lightning-fast face-off of the Cold War between 1945 and 1991 affected the organization deeply. First, a palpable tension emerged between the Eastern and the Western power block concerning the question of membership, both fearing that their positions in the organization could be jeopardized with the admission of members from the other camp. Finally, the conflict was resolved during the first round of enlargement by accepting new members from the two blocks in pairs. From the 1950s onwards, the organization's fundamental agenda was to promote decolonization, i.e. to promote the independence of the former colonial territories and to integrate them into the UN. Cold War opposition was felt heavily in this context as well, although a third camp was also formed, that of the so-called 'non-aligned States' which, under the leadership of Indonesia, Egypt and Yugoslavia, sought to promote other points of view and interests than those of the superpowers. With the collapse of the colonial regimes and by the end of the Cold War, for a short time it seemed the UN had unprecedented opportunities. There were no longer 'oppressive colonizers', the Soviet veto disappeared in the Security Council and the MS regarded peacekeeping as a universal remedy to all armed conflicts. However, the short euphoric interval has passed by the mid-1990s, to which the organization has contributed greatly by proving unable to resolve the Yugoslav Wars (1991-1995), and the Rwandan Genocide of 1994.

The terrorist attack on the *World Trade Center* on 11 September 2001 was another milestone in the UN's life. Under pressure from the USA, the Security Council wanted to act against 'terrorism' with an elemental force previously unseen, but other members of the Council did not back the initiative, ending the short period of consensus among the Great Powers. In the 2000s, the so-called Millennium Development Goals (MDGs) became the central issue, in particular environmental issues, and UN reform, the latter of which still waiting to happen. In the era that has begun around 2010, the UN has restructured peacekeeping missions, successfully assessing the complex requirements that a modern operation must meet.[13] In 2015, the Sustainable Development Goals (SDGs) were formulated, which include the UN's detailed plans to achieve the goals set out in the Charter as well as increasing overall

[12] Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion of, 11 April 1949, ICJ Reports 1949,174.

[13] Bellamy–Williams–Griffin 2010.

prosperity.[14] To date, there are many criticisms of the organization, some of which are well-founded, but the achievements of the UN since 1945 cannot be overshadowed by these.

The activities of the UN are very diverse. As a result, we have selected the most telling examples from an almost endless list. The establishment of a human rights protection system, such as the HRC and the Office of the High Commissioner for Human Rights (OHCHR), are everlasting achievements responsible for monitoring human rights throughout the world. The adoption of comprehensive human rights documents, such as the Universal Declaration of Human Rights (UDHR) of 1948, the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (ICCPR and ICESCR), as well as numerous international treaties, serve to shield certain groups in need of protection.[15]

Significant improvements can also be observed in the field of peaceful settlement of disputes since 1945. With the general prohibition on the use of force, the organization the monopoly of peaceful settlement of disputes became the center of the mindset of the international community. As a result, armed conflicts between states have been significantly reduced, but regrettably, the number of conflicts within the respective states, often meaning civil war, has increased. The UN contributes to the peaceful resolution of conflicts between states primarily by the procedure before the ICJ as well as a number of other dispute resolution mechanisms (fact-finding, mediation, good offices[16]) while also providing a forum for states where disputes can be discussed in a civilized way, such as before the UNGA.

UN humanitarian activities coordinating the work of NGOs, while helping the population of areas struck by disaster are also noteworthy. Peacekeeping operations enable the organization to assist and restore stability in areas of the planet where no other state or international organization would help, as they wouldn't bear the costs in either financial or human resources.[17]

One of the main goals of the UN is to increase overall prosperity and raise people's living standards. The purest expressions of this aim are the program norms of the 2000 MDGs and the 2015 SDGs. In reaching these goals, the UN largely relies on its specialized agencies, which combine various areas of expertise, summarize and analyze state practice, develop them as necessary, and provide a synchronized response to global challenges. Thus, FAO and the World Food Programme (WFP) coordinate the fight against starvation, UNICEF harmonizes regulation for the protection of children, UNESCO made significant contributions to education and the preservation of world heritage, and WHO coordinates the activities of states at the international level in the field of health, prevention of pandemics and their spread. Already during the Cold War, the UN had been paying particular attention to nuclear safety, supporting nuclear non-proliferation and other nuclear-related conventions, and establishing the IAEA, providing a solid institutional framework for the supervision of conventions.

Last, but not least, the UN's development of international law deserves special mention. Over the last decades, the **International Law Commission**, operating under the aegis of the UN, has contributed significantly to the development of international law in areas such as the law of the sea, the protection of the environment, diplomatic relations or state responsibility.[18]

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[14] *Transforming our World: The 2030 agenda for sustainable development*, A/RES/70/1, 21 October 2015.

[15] Such as refugees, children, women, indigenous peoples, etc.

[16] See e.g. Szalai 2007.

[17] UNMIL – UN Mission in Liberia https://unmil.unmissions.org/un-peacekeeping-finishes-its-mission-liberia

[18] Shaw 2008, 121-122.; Szalai 2012.

7.2. Objectives, Principles, Membership, and Principal Organs

7.2.1. The Goals of the UN[19]

The Goals of the UN

We the peoples of the United Nations determined
- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

And for these ends
- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,

Have resolved to combine our efforts to accomplish these aims
Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.[20]
The Purposes of the United Nations are

1) To **maintain international peace and security**, to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or **settlement of international disputes** or situations which might lead to a breach of the peace;
2) To **develop friendly relations** among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
3) To **achieve international co-operation** in solving international problems **of an economic, social, cultural, or humanitarian character**, and in **promoting** and encouraging **respect for human rights and for fundamental freedoms** for all **without distinction as to race, sex, language, or religion**; and
4) To be a **centre for harmonizing the actions of nations** in the attainment of these common ends.[21]

[19] UN Charter, Preamble.
[20] UN Charter, Preamble
[21] UN Charter Art. 1.

Among the goals set out in the Charter, the first to mention the **peaceful settlement of disputes** and the **prohibition of the use of force**. **Maintaining international peace and security** is the primary task of the UN, the tool of which is the monopoly of force, meaning that other actors can only use force under exceptional circumstances (primarily for self-defense) and never for attack. If a state or non-state actor breaches this obligation, then the UN has the right to act against them.[22] The general prohibition on the use of force is a novelty in the international system and was unknown prior to 1945, but by now it has become commonplace. This also means that states shall resolve their differences in a peaceful way, but are not obliged to resolve the disputes. only to act in a peaceful manner, without the use of weapons, when they decide to move from the deadlock.[23] If we consider peaceful settlement of disputes an essential requirement of international relations, the UN Charter takes a step further and emphasizes international cooperation, for which it does not only serve as a forum but also focuses on **economic, social, cultural and humanitarian cooperation**. One of the first documents where **human rights and fundamental freedoms** manifested was the Charter, although ensuring human rights and the promotion of international cooperation remains a difficult objective to achieve as the Charter does not contain specific rules thereon, in contrast to the explicit prohibition on the use of force.[24]

7.2.2. Principles in the UN Charter[25]

Principles in the UN Charter

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1) The Organization is based on the principle of the **sovereign equality** of all its Members.
2) All Members, in order to ensure, to all of them the rights and benefits resulting from membership, shall fulfil in **good faith** the obligations assumed by them in accordance with the present Charter.
3) All Members shall **settle** their **international disputes by peaceful means** in such a manner that international peace and security, and justice, are not endangered.
4) All Members shall refrain in their international relations from the **threat** or **use of force** against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.
5) All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.
6) The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.
7) **Nothing** contained in the present Charter **shall authorize the United Nations to intervene in** matters which are essentially within the **domestic jurisdiction** of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII of the United Nations Charter.

[22] In practice, whether the UN is able to act or not will depend on political 'chess matches' instead of legal arguments.

[23] Since 1945, the prohibition of the use of force has become a peremptory norm of international law. If a state breaches this rule, the resulting unlawful situation cannot be acknowledged as lawful by other states. A prime example is the annexation of Crimea by Russia, which is still rejected by the vast majority of the international community.

[24] An exception to this rule is the obligation of states to cooperate with the Security Council and abide by its resolutions under Arts. 25., 48., 49 of the UN Charter.

[25] UN Charter Art. 2.

Among the principles laid down in the Charter, the principle of **sovereignty**, which is a legal equality between states, and as such states consider one another to be equal partners in their international relations. This apparent equality, however, does not prevail in its entirety. The UN Charter itself provides the most striking exception to legal equality for the permanent members of the Security Council by giving them additional powers, the so-called veto-right. However, relative legal equality does not constitute political or economic equality, meaning that there are significant differences between the levels of economic and financial influence of the respective states.

The principle of **good faith** initially only encompassed the fulfilment of obligations contained in the Charter, but by today it has been expanded to cover all international obligations. Thus, states act under the assumption that other states entering into an international treaty with them undertake to perform the contents of the treaty, as well as implicitly assume that the value of the treaty is not merely in the sheet of the paper, but that the other actually intends to observe the treaty (otherwise they would not conclude the treaty in the first place). International practice shows that states are reluctant to sign a treaty with another state that has previously proven to be untrustworthy.

Sections (3) and (4) under Article 2 of the Charter, i.e. the **prohibition of the use of force** and the **requirement of peaceful settlement of disputes** can only be interpreted conjointly. In practice, since 1945, the prohibition of the use of force has become a generally enforceable norm, with the Security Council holding the reins of such enforcement.[26] The Charter recognizes only two exceptions: individual and collective self-defense and coercive measures applied by the Security Council.[27]

The contents of the **prohibition of intervention** have also been extended since its incorporation into the Charter. According to a grammatical interpretation, it merely obliges the organization not to interfere in the internal affairs of its members. However, the Charter uses the expression 'domestic jurisdiction', a hard-to-grasp definition which leaves a lot of room for interpretation. True evolution does not necessarily lie in the definition of the sphere of domestic jurisdiction – since political considerations cannot be neglected in this regard – but in the fact that since 1945 the principle of (non-) intervention has not only obliged the UN, but all members of the international community, including all states.[28]

7.2.3. Membership

Although the UN is considered a universal international organization with the aim of having worldwide membership, there are several difficulties that arise regarding actual questions of admission into the organization. **In terms of admission**, the UN is categorized as a so-called **semi-closed** organization, meaning that the applicant state must fulfill certain conditions and then have to obtain support from the majority of members.[29] In the case of the UN, this means that the relatively objective, but in reality, rather subjective condition, is that the candidate state must be a **peace-loving** one that **accepts the obligations arising from the Charter and is able and willing to carry out these obligations**. The "peace-loving" nature of the state is decided by the Security Council, whose recommendation is needed before the General Assembly votes on the inclusion of a new member by a two-thirds majority. The

[26] Naturally, it is difficult to enforce the norm when one of the permanent members of Security Council is the one violating it.

[27] Scholarly literature extends the exceptions by adding a third category: the consent of the party involved. Although consent has a more important role as a circumstance precluding wrongfulness when a state's responsibility is being decided upon, rather than in cases concerning the legality of the use of force.

[28] Domestic jurisdiction is generally understood to encompass every aspect of state affairs, except those that concern international obligations. The ICJ deliberated on the issue of domestic jurisdiction in numerous cases. See: Case concerning the military and paramilitary activities in and against Nicaragua (Nicaragua v. USA), Merits, Judgment of 27 June 1986, ICJ Reports 1986, 14.

[29] Blahó–Prandler 2011, 60-65.

content of "peace-loving" existence is not at all clear, nor is it free from judgments of a political nature. During the disintegration of Yugoslavia in 1992, e.g., the Security Council refused to recognize the Federal Republic of Yugoslavia as the successor to the Socialist Federal Republic of Yugoslavia, therefore denying its UN membership claiming that it could not be considered a peace-loving State due to its participation in the Yugoslav Wars. The state eventually became a member of the organization in 2000 after the regime change.[30]

At the time of writing this book (in 2018), the UN has **193 members**. The veto power of permanent members of the Security Council has led in many cases to blocking the membership of a state – a practice which continues to this day. The membership of Taiwan, e.g., is blocked by China, Palestine is blocked by the US, and Kosovo by Russia.

UN practice on membership is not consistent in the case of the dissolution or division of a state. When Yugoslavia was dissolved, the successor states had to submit their application for membership one by one and, as we have seen, these were not always supported by the Security Council. The situation was quite different during the dissolution of the USSR, as Russia was automatically accepted as its successor without any necessity of a further approval. In this case, there was no need for an application procedure.[31] Nor did the break-up of the United Arab Republic cause any problems. The state, formed between 1958 and 1961 by Syria and Egypt existed for only a few years, but by the end of 1961, the membership of both states was automatically restored in the UN. Hungary has been a member since 1955.

It is also possible to **suspend** membership. A member against whom the Security Council has adopted preventive or coercive measures may temporarily be deprived of membership. Restoring membership is also decided by the Security Council.[32] **Expulsion** can take place in principle if a member persistently violates the principles contained in the Charter.[33] As of yet, there have been no examples of expulsion or the suspension of membership. Leaving the UN voluntarily is also a possibility, although there has not been a precedent. Until now, only one state, Indonesia initiated an exit in 1965, because of the admission of its regional rival, Malaysia. A few months later, Indonesia suspended the exit negotiations, noting that the organization's objective legal personality rendered the move unwise. This is because as a member they may somewhat influence the work of the UN (not able to do so without membership), while the UN could still adopt resolutions that are binding to every state, including Indonesia.

In addition to membership, it is possible to obtain an **observer status**. This is the case when a state is in close contact with several UN specialized agencies, but for some reason they do not become members. Observers can take part in the organization's activities, e.g., they may be present at meetings of the General Assembly, but do not have the right to vote and do not have to contribute to the budget either. Currently two entities possess permanent observer status in the UNGA: the Holy See and since 2012, the Palestinian National Authority.[34]

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[30] S/RES/1326 (31.10.2000)

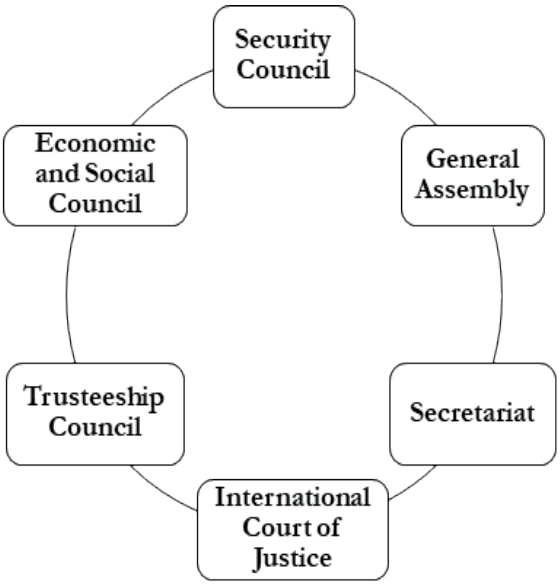
[31] The reason for this seemingly inconsistent behavior is that the continued participation of Russia in the work of the Security Council was considered indispensable by the other permanent members regarding the interests of the operability and legitimacy of the organization as well as of preserving a balance of power.

[32] UN Charter Art. 5.

[33] UN Charter Art. 6.

[34] Blahó–Prandler 2011, 68-70. For a list of UN permanent observes and non-member states: http://www.un.org/en/sections/member-states/non-member-states/index.html

Principle Organs of the UN



7.2.4. About the Principal Organs of the UN – Briefly

Under the Charter, the UN has 6 principal organs, out of which the Security Council is considered the main decision-making body whose main task is to maintain international peace and security. The UN parliamentary body is the General Assembly, in which each state is represented. The General Assembly also serves as a forum for discussing and adopting resolutions concerning policy. The ECOSOC is responsible for the realization of the cultural, humanitarian, economic and other goals of the organization. To make sure the principle of peaceful settlement of disputes is observed, the ICJ provides a platform that, through interstate litigation and advisory opinions promotes the development of international law and prevents states from settling disputes with arms. The Trusteeship Council used to be responsible for the supervision of former mandate areas and the promotion of their independence. As such, in 1994, when the last trust territory, Palau became independent, the Trusteeship Council ceased its work.[35] Assisting the work of the principal organs is the UN Secretariat, which provides the necessary conditions for the performance of the task. The Secretary-General leads the Secretariat and represents the Organization in person, while endeavoring to shape its policies and exercising employer's rights regarding the staff members.

[35] T/RES/2199 (LXI) (25.05.1994)

Principle Organs of the UN

Security Council	General Assembly
task: maintenance of international peace and security	parliamentary body, lobbying forum
headquarters: New York	headquarters: New York
15 members: 5 permanent, 10 non-permanent	all UN MS are represented (currently 193)
voting: 'veto' power in non-procedural questions	1 member – 1 vote principle applies
may adopt a binding resolution in accordance with Chapter VII of the UN Charter	may discuss any situation and adopt resolutions
may decide to apply force	its resolutions are non-binding (recommendations) but may reflect customary international law
International Court of Justice	**Secretariat, Secretary-General**
serves as a forum for peaceful dispute resolution between States	role of the Secretariat: ensuring the functioning of the UN, handling administrative matters
headquarters: The Hague, The Netherlands	role of the Secretary-General: representing the UN
one-tier procedure: no appeal available	the Secretary-General is elected for a 5-year term by the General Assembly on the recommendation of the Security Council; can be re-elected
consists of 15 judges elected for 9 years by the Security Council and the General Assembly	selection based on experience, competence and equitable geographic distribution
judges represent the major legal systems of the world	protected by full immunity, but shall submit an annual report to the General Assembly
Economic and Social Council	**Trusteeship Council**
task: to establish and operate the organizational framework in following areas: economic, social, cultural, economic, health and related matters and to realize the UN goals in those fields	task: supervision of former territories held under mandate and prepare their independence
54 member States	In 1994, as the last trust territory gained independence, it has suspended its operation
recommendations to the General Assembly, receives report from specialized agencies and NGOs	

7.3. The Security Council

7.3.1. Composition

The Security Council consists of **15 members**, of which **5** are **permanent** (USA, UK, France, Russian Federation, China) and **10** are **non-permanent** members.[36] Permanent members are also known as 'veto countries', referring to a denomination anchored in daily usage, according to which a negative (nay) vote of any permanent member may prevent the adoption of a Security Council resolution. The

[36] UN Charter Art. 23. para 1.

five permanent members are permanently represented in the Council; their seats cannot be challenged by election. The permanent members have only changed twice so far. First in 1971 when the seat of the Republic of China (Taiwan) shifted to the People's Republic of China, and then in 1991 when a representative of the Russian Federation obtained the place of the dissolved USSR. Many states have reservations about the permanent members of the Security Council not changing for over 70 years, citing the fact that since 1945 significant political and economic changes have taken place that would justify modifying the structure of the Council. There is consensus among all the states that the time for reform is nigh and that the Security Council is ripe for change; they cannot agree, however, on the nature of the necessary changes. **Reform attempts** have been on the rise since the '90s. Some states see the solution in the recruitment of new permanent members, others in ending permanent membership altogether, while a third group would introduce a so-called semi-permanent status.[37] Technically, the UNGA decides on any kind of modification with a two-thirds majority, although the current five permanent members of the Security Council must also provide support for the **Charter** to be **amended**.[38] Since the permanent members are not keen on relinquishing their special status nor are they willing to share their privileges with others, the realization of reform attempts remains to be elusive.

Non-permanent members are selected for a period of two years, and each state carries out intensive lobbying to become one. There is a clear ambition in showing some kind of **geographical equality** in the selection of non-permanent members, so according to the current division, prospective members are selected from each regional group. The geographic distribution of non-permanent members is as follows: Asia and Africa are represented by 5 members (2-3 members per continent, so Africa may delegate 3 states and Asia 2, then switching), Eastern Europe: 1 member, Western Europe and others: 2 members, and Latin America and the Caribbean: 2 members represent the region in the Council. The Western Europe and others group includes Northern and Southern Europe, Canada, Turkey, Australia and New Zealand. Until now, Hungary has been a member of the Security Council twice: first in 1968-1969 and then in 1992-1993. (For a story on the Hungarian membership, see the **Prologue**.) The Security Council sits on a permanent basis in New York, and state representatives of the Council must be ready to be called upon for session at any moment.[39]

7.3.2. Resolutions and Tasks of the Security Council

The **most important task** of the Security Council **is to maintain international peace and security**, which the Charter seeks to support on all sides. To this end, the Council may lawfully take any action, including armed action, which it deems necessary for the preservation of international peace and security. Such decisions by the Council are to be supported by the states; or, if contrary to their own political objectives, they must not be hindered by the members.[40]

The Council also has a significant role in **membership issues**. Its recommendation is necessary for putting the issue to a vote in the UNGA awarding membership to states aspiring to be members of the UN. The Council may also initiate the suspension of membership and the expulsion of a member. The Security Council's recommendation is also required for the election of the UN Secretary-General and the appointment of the judges of the ICJ. The international community has repeatedly raised the question of how far the Security Council's competence can reach or whether it has a tangible limit or control. As a political body, there is no legal or judicial control over it, but the norms of international

[37] Cox 2006, 92-93.
[38] UN Charter Art. 108.
[39] UN Charter Art. 28. para 1.
[40] Sulyok 2009

law that require unconditional enforcement still bind the Council.[41] However, based on the practice of the past decades, it may establish a judicial forum (the Yugoslavia and Rwanda Tribunals respectively), set up peacekeeping missions (currently 14 such missions are in place), decide in case of a dispute between states (such as in 1991 – defining the border between Iraq and Kuwait), and in some cases create general norms (e.g. resolutions to combat terrorism and its financing since 2001) although none of them is explicitly named in the Charter. [42]

A distinction can be made between the resolutions of the Security Council as to whether they are adopted based on Chapter VI of the UN Charter, which deals with the **peaceful settlement of disputes**, or based on Chapter VII, which deals with the applicable **procedure regarding the threat to peace**, the **breach of peace** and aggression.[43] Resolutions based on Chapter VI of the Charter are purely recommendations in nature, meaning that the parties shall respect its contents but are not required to implement the decision. The reason for this can be traced back to the core principles of the organization, as it was laid down that the disputes should be resolved peacefully, but no state can be obliged to resolve the dispute in the first place. If the Council decides that there is a dispute between the parties, it may call upon the parties to settle disputes using one of the peaceful settlement mechanisms (negotiation, enquiry, mediation, conciliation, judicial settlement, arbitration or the use of regional agencies or arrangements).[44] At the same time, the Security Council must respect the choice of parties concerning the of peaceful settlement mechanism and must accept it if the parties do not wish to accept the assistance it offers them.

Resolutions adopted pursuant to Chapter VII of the Charter have a distinctly different nature. Chapter VII authorizes the Security Council to accept decisions resulting in the most serious of consequences. There are only three cases in which these measures can be taken, such as **threat or breach of peace and aggression**. The Council will first examine the situation and determine whether there has been any breach or threat to peace and if it reaches a positive conclusion, decides what action it intends to take. It may occur that the Council's action is merely limited to **calling on the parties** not to aggravate the situation but to sit down and negotiate. In this case, the Council's decision remains a recommendation and does not become binding. However, if the Security Council decides that further steps are required to remedy the situation, it has several options to deal with the problem. The Council may decide the use provisional measures that will not exacerbate the disagreement between the parties until a permanent settlement is reached. The provisional measures do not constitute coercive measures and thus do not affect the rights and obligations of the parties.[45]

The Council may also decide to use **non-armed coercive measures** that may include the **total or partial suspension of economic relations, of railroad, sea, air, postal, telegraph (wire), radio or other traffic, as well as interruption of diplomatic relations**.[46] Most often, economic sanctions are imposed, as these might suffice to put considerable pressure on the state concerned. These may include the prohibition of the export or import of certain industrial goods (**embargo**), possibly a quantitative restriction, with a parallel prohibition of the export and import of arms and fuel. A well-designed sanction might cripple state economy, which can lead to major tension in domestic politics, as citizens might wonder whether the lack of goods, unemployment or inflation may be worth the support of the

[41] Klabbers 2012, 241.

[42] Art. 29 of the UN Charter might serve as basis for these actions, stating that „[*t*]*he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions*." However, since there is no judicial control over the Security Council, it is ultimately the Council itself that decides how far its competences can be stretched.

[43] Hárs, András: Nemzetközi szervezetek határozatai [*The Resolutions of International Organizations*], Hungarian Academy of Sciences, Online Encyclopaedia of Legal Sciences (IJOTEN): https://ijoten.hu/szocikk/nemzetkozi-szervezetek-hatarozatai

[44] UN Charter Art. 33. para 1.

[45] UN Charter Art. 40.

[46] UN Charter Art. 41.

government's dubious policies (e.g. the nuclear programs of Iran or North Korea). Economic sanctions, however, can never be directed to limit food or medicine, as it would be directed against the population and as such they would be contrary to the humanitarian goals contained in the Charter. Another tool in the arsenal of the Security Council are the so-called **targeted sanctions** and the usage of the associated **blacklists**. The essence of these is the fact that they limit the scope of the sanctions to natural and legal persons closely linked to the activities of the government, such as the ban on travel into UN MS, or the freezing of foreign bank accounts.[47] However, the list of sanctions is incomplete, as any decision that the Council finds fit to reach the desired goal can be adopted.[48]

Armed coercive measures do not necessarily constitute the use of force. A milder stage can be a **blockade** by which the Security Council intends to exert pressure on the state by deploying armed forces at land borders, ordering a fleet to block ports, or designating a no-fly zone.[49] Ultimately, if the Council deems that none of the above would be sufficient, it can order **the use of armed force**. However, one of the key issues regarding the use of armed force lies in the fact that the UN does not have an army or any armed force of its own. As a result, the fate of the decision to enforce the use of armed force always rests in the hands of the MS. In such a case, there are two possibilities. Either it 'collects' the armed force necessary itself based on the contribution of the individual MS, or it relies upon a group of states for the enforcement of the decision.[50]

The Security Council decides on the content of the resolution, including the coercive measure applied by considering the circumstances of the particular situation. It may well be that mild economic sanctions provide sufficient motivation for non-compliant states to return to the fold of states that respect international law, but it is also possible that only the use of armed force can achieve that result. In the latter case, the Security Council does not need to use all the coercive measures or even to maintain a step-by-step approach utilizing the different sanctions: it may decide to rely on armed force immediately.

Nature of Security Council Resolutions

	Chapter VI	Chapter VII
When to be applied?	in case the continuance of the dispute would endanger international peace and security	Threat to Peace Breach of Peace Act of Aggression
Meaning	Attempt at peaceful dispute resolution; the Council calls the parties attention to a conflict resolution mechanism	Applying military or non-military measures as coercive action to maintain international peace and security
Nature of the resolution	Recommendation – non-binding	Rarely recommendation, mostly binding decision
Voting	The involved parties may not vote	The parties involved may also vote

Source: Kardos–Lattmann 2010, 309.

[47] Hotton 2016, 101-105.

[48] In December 2017 – as a response to nuclear tests by North-Korea – the Council adopted a resolution prohibiting ships that violated previous sanctions from docking in any harbor. S/RES/2397 (22.12.2017)

[49] A notable example is the no-fly zone established above Libya in March 2011, which was created by the Council to stop the *Gadhafi*-regime from using its air force against its own citizens. Without a doubt, the aim of the no-fly zone was to deny Libyan forces usage of the airspace and thereby preventing a loss of human life. Nonetheless, it also allowed airplanes violating the resolution to be shot down through the use of force. SRES/1973 (17.03.2011)

[50] Regarding the above-mentioned no-fly zone, the UK and France volunteered to enforce the Council's decision.

7.3.3. Voting in the Security Council

In theory, the Security Council also applies the idea of a one member-one vote system, but other factors must also be considered. Regarding **procedural matters**, the votes of any 9 members are enough to adopt the resolution. A similar procedure is applied concerning **non-procedural matters**, but it will be of great importance how the permanent members are voting. The Charter had required the affirmative vote of all five permanent members to adopt a resolution, but this has been changed by customary law over the years for reasons of practical operability. Consequently, by now, veto power means that for the resolution to be adopted the permanent member cannot vote negatively on non-procedural matters. Despite the seemingly not too complicated voting rules, permanent members have found ways to gently indicate what they think of a question. If the permanent member does not participate in the work of the Council, it may wish to express his disagreement with the fact that the Council is discussing the matter at all. In case a permanent member participates in the Council meeting, but does not vote, it might express the opinion that the question has not been discussed thoroughly enough and voting is premature. If a permanent member abstains during voting, it may signal to the international community that it neither agrees nor disagrees with the contents of the resolution, but does not intend to prevent it from being adopted. Neither lack of participation in sessions or in voting, nor abstention mean that the permanent member exercised its veto power.[51] Still, in the majority of the cases, it can be foreseen whether a resolution violates the interests of the permanent member and hence it will prevent the adoption of the resolution. As a result, most of the draft resolutions will never be voted on, saving the time and energy of the Security Council. However, it is also a possible scenario that the other permanent members count on the possibility of the veto and want to force it, while using it as a political weapon in the eyes of their own population and of international public opinion, who will then know, why the Security Council remained indecisive.

Deciding whether a question should qualify as a procedural or a non-procedural matter could also be considered a non-procedural matter, so the permanent member also has the right of veto (the so-called **double veto**) in this respect. By doing so, a permanent member can prevent the members of the Council from categorizing issues on matters of importance to the permanent members as procedural matters, thereby circumventing the veto power. **Hidden or indirect veto** is exercised when a permanent member does not intend to exercise his veto, but does not want the resolution to be adopted, so it convinces a sufficient number of non-permanent members to vote 'no' or abstain, so that the proponents of the resolution cannot gather the 9 votes needed for the adoption of the resolution.

7.3.4. Sidebar: Peacekeeping

UN peacekeeping missions have grown out of nowhere, if you will, soon after the establishment of the organization. The reason for this is because the Charter still calculated with a unity of Great Powers and referred to a Military Staff Committee, which would have served as the extended arm of the Security Council controlling the pooled armed forces enforcing its will. Nevertheless, the Military Staff Committee was never created because of Cold War hostilities, although there was a serious demand for the UN to deploy armed forces. The solution was based on customary law by then Secretary-General *Dag Hammarskjöld*, first to deploy the Blue Helmets during the 1956 Suez Crisis.[52] Blue Helmets were also used earlier in the 1950 Korean War, which is regarded, however, as the enforcement of the UN Security Council's coercive measures. This is the likely source of the common misconception that in everyday life peacekeepers are considered a UN army, and peace operations are incorrectly

[51] UN Charter Art. 27. para 3.

[52] The first operation that was considered a peacekeeping mission was established even earlier, 1948 and was tasked with supervising the peace-process in the Middle-East (UNTSO).

classified as coercive measures. Peacekeeping arose out of necessity, to which the UN has been forced to respond, lacking the tools promised by the Charter to reach its goals. As a result, Secretary-General *Hammarskjöld* called peacekeeping a 'six and a half' power of the UN, as it could be placed somewhere between the recommendations for peaceful settlement of disputes (in Chapter VI of the Charter) and the obligatory coercive measures (in Chapter VII of the Charter), if states ever decided to include it.[53]

The first missions were built on three core principles: neutrality/impartiality, consent, and use of force in self-defense only. According to the principle of **neutrality/impartiality**, peacekeepers have no interest in the conflict, they do not support the objectives of either side, nor do they interfere with the affairs of either side. Their sole purpose is to close the conflict as soon as possible and to minimize human casualties and material losses. The principle of **consent** requires the permission and support of the receiving state and all parties involved prior to the deployment of troops. As such, the UN cannot force its help on the State, but the State must request the UN to initiate the mission. The **use of force in self-defense** initially meant that peacekeepers could only return fire, i.e. were to wait until they, their vehicle or camp came under fire and they were enabled to return fire only at that point to repel the armed attack. This extremely restrictive interpretation later caused a lot of problems to the organization until the contents of the principle were revised by the end of the 1990s.

The Commander-in-Chief in all peace operations is technically the Secretary-General of the United Nations, but as a civilian person without military expertise, the Secretary-General, while maintaining the nominal leadership, in practice, gives way to the force commander or special representative. The organization of operations, starting from contacting the host state through the synchronization of contributing states' forces, to the providing of the conditions of the mission, is carried out by two departments of the Secretariat.[54] The goals of the mission are defined in the **mandate**, which is compiled by the Security Council. Currently, more than a dozen operations are in progress, focusing mainly on the Middle East and Africa, but are not limited to those regions. There are several missions currently in operation, which have been set up decades ago, such as the UNFICYP in Cyprus since 1964, and the UNMOGIP in India and Pakistan, since 1949. The contribution of each state is different to peace operations. Generally speaking, states with developed economies are more likely to provide funds, while developing states contribute by providing manpower.

The **first generation of peace operations** (1948-1990) had precisely defined mandates with a narrow set of functions. They were usually given the task to monitor ceasefire agreements, and their job was to promptly and precisely inform the Security Council in the event of a breach of the ceasefire or truce. They operated with a very small number of troops, of only a few dozen or a few hundred people. Strict compliance with the core principles, in particular, the requirement of the use of armed force in self-defense only, was typical, but actual armed clashes rarely occurred.[55] The above-mentioned missions in Cyprus and on the border of India-Pakistan have proven capable of preserving lasting peace. It reflected the acknowledgment of the international community that the UN peacekeeping forces had received the Nobel Peace Prize for their commendable work in 1988.

During the euphoria caused by the end of the Cold War, the international community assessed the situation wrongly when deciding to use a tool previously applied to solve a much simpler task to solve complex problems. Operations of the **second generation** (1990-2000) were often deployed in civil war-like situations without providing adequate means, but expecting peacekeepers to bring the same high efficiency they could reach previously in simple observation missions. The insoluble disagreement between the expectations and opportunities led to the failures of the infamous Rwandan, Bosnian

[53] Tisovszky 1997, 18.

[54] UN Peacekeeping Group: Capacities to Ensure Integration https://peacekeeping.un.org/sites/default/files/visio-dpko-dfs_integratedorgchart_public_nov2017_0.pdf

[55] Tisovszky 1997, 18.

and Somali missions. Nonetheless, there were also remarkable initiatives in this era, such as the UN Secretary-General **Boutros-Boutros Ghali**'s **Agenda for Peace in 1992**, which considered peace operations as stages of a process.[56] In his understanding, **preventive diplomacy** must be used to avoid conflicts before they end up in armed clashes. If unsuccessful, **peace-making** follows, per Chapter VI of the UN Charter the Security Council would help to restore peace with its recommendations. In case this does not lead to success, then the Security Council may resort to **peace enforcement**, using force. Should peace be reached, traditional **peacekeeping** can be used to separate parties and prevent armed hostilities from recommencing. Finally, the most time-consuming phase is **peace-building**, which essentially means that the UN provides assistance in reconstruction, be it the restoration of public services, law enforcement, or infrastructure. The idea, however, has been criticized for many over the years, primarily because it does not make a clear distinction between coercive measures and peacekeeping, thereby blurring the boundary that was constantly reaffirmed by a strict adherence to the core principles of first generation operations.[57]

Third generation (2000-) peace operations could be best characterized as '**robust**'. Such a peace mission simultaneously means the presence of a large number of military, police and civilian personnel; their active involvement of regional organizations, states and NGOs, as well as the effective implementation of complex tasks. The ***Brahimi* report**, released in **2000**, paved the way for this new type of mission by being the first comprehensive review of peacekeeping operations by a group of experts for the UN and the international community. The report envisions a clear, realistic and feasible mandate as a precondition for the mission, coupled with continuing support from the Security Council, and more precise coordination between commanders and representatives in the field and the New York headquarters. The Brahimi report also considers the main task of peacekeeping to be the prevention of conflict and to make sure a conflict does not re-emerge following the departure of peacekeepers. Efforts to reduce the number of crimes committed during the mission and responsibility for the acts committed are underlined for the first time. The Secretariat endeavors to incorporate the findings of the report into current operations to a great extent.[58] Third generation missions are characterized by a return to the core principles, but it was not possible in the original form. For instance, it has become clear that use of force purely in self-defense cannot be maintained. Instead, the mandate is currently formulated in such a manner, that peacekeepers are allowed to use their weapons to protect the civilian population.[59]

These new types of missions provide active help to the governments in conducting elections, ensuring a fair environment, taking part in the training of police forces, judges and prosecutors, providing the state with economic advice and development opportunities as needed. As a result, these robust operations are long-term missions, with an average duration of 10 to 14 years. A recent positive example is Liberia and Côte d'Ivoire, where peacekeepers aided the states to hold two successful, democratic elections, and when the state concerned and the UN were having the impression that the country is sufficiently stable, they gradually began to recall Blue Helmets. However, a small number of observers remained in both countries, constantly checking whether the state sinks back into the conditions preceding the arrival of the mission.

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[56] An Agenda for Peace, Preventive diplomacy, peace-making and peace-keeping, Report of the Secretary-General. A/47/277 (17.06.1992)

[57] Bertrand 1995, 352-353.

[58] Comprehensive review of the whole question of peacekeeping operations in all their aspects. A/55/305-S/2000/809 (21.08.2000)

[59] There is another possibility to use force: 'in defense of the mandate". On the one hand, the use of force for the protection of the mandate might mean many things and in the case of unfit command it might lead to abuse. However, it is already possible for peacekeepers not to stand idly by and watch a catastrophe like Rwanda or Srebrenica to happen.

7.4. The General Assembly

The General Assembly is the **plenary body** of the UN, where every MS can have its voice heard and where the **one member-one vote principle** of is fully realized. Every year, only one regular session is held, starting on the Tuesday of the third week of September. The session usually takes months – for as long as states discuss all the current issues. It is also possible to convene a special session upon the initiative of the Security Council or a majority of the members. Under extraordinary circumstances, emergency special sessions can be convoked within 24 hours.[60] The latter has so far been done 10 times, one of which was due to the suppression of the 1956 Hungarian Revolution.[61] The work of the General Assembly is supplemented by a plethora of committees and subcommittees, such as the Sixth Committee which deals with legal affairs and the International Law Commission, which prepares key international multilateral treaties and labors towards the constant development of international law. There are six official languages at the sessions of the General Assembly: English, French, Spanish, Arabic, Chinese and Russian. The delegates may speak in another language if they have previously submitted the text of their speech in writing to the President of the General Assembly, who will arrange translation into all six official languages.

The UNGA has wide-ranging powers regarding both the internal and external activities of the organization.

7.4.1. External competences

The UNGA may **discuss any topic and make recommendations** (adopt resolutions) relating to the objectives of the UN set out in the Charter or any matter related to the competences and the duties of the UN principal organs. It **may call the attention of the Security Council** to all issues that endanger international peace and security, and **may discuss any issues** that concern the **maintenance of peace and security** and adopt recommendations.[62] Furthermore, it can **initiate studies and adopt recommendations** in order to promote international political, economic, social, cultural, educational, health and legal cooperation. A major limitation of UNGA powers is when the Security Council already discusses the issue of a "dispute" or "situation". In this case, the UNGA cannot adopt a resolution on the issue as long as the Security Council proceeds.[63]

7.4.2. Internal Competences

The General Assembly has a significant influence on organizational issues as well as issues concerning UN staff. As such, the non-permanent members of the Security Council, the members of the ECOSOC, as well as the judges of the ICJ and the Secretary-General are elected there. Another task of the UNGA is to approve financial agreements of the specialized agencies and the approval of the agreements between the ECOSOC and specialized agencies. In the event of a recommendation by the Security Council, the admission of new members to the organization is also decided here. The UNGA may opt to seek advice from the ICJ regarding any legal dilemmas and to set up subsidiary bodies to carry out its tasks. The most sensitive issue regarding the day-to-day operation of the UN is the adoption of the budget, during which the General Assembly examines the amount of MS contributions, makes

[60] UN Charter Art. 20.

[61] UNGA – Emergency special sessions http://www.un.org/en/ga/sessions/emergency.shtml

[62] UN Charter Art. 11. paras. 1-3.

[63] By now it has become an established practice of the Security Council to conclude its resolutions with the phrase: "*The Security Council remains seized on the matter*", thereby maintaining its competence to adopt a resolution concerning the issue.

necessary corrections and draws the attention of States if they have outstanding debt that needs to be paid to the UN.[64]

7.4.3. Resolutions of the General Assembly

The resolutions of the General Assembly are **recommendations in nature** and are not considered binding. Nevertheless, they are significant in international relations as they may indicate the position of the majority of states on a matter. At the same time, they can signal which topics are expected to be the object of future international treaties. The adoption of a resolution that is contrary to those adopted earlier may indicate departure from the previous customary norm and the creation of a rule with different content.[65]

Most UNGA resolutions will be adopted by a simple majority, but a two-thirds majority is required concerning the most important decisions such as the budget or a recommendation regarding the maintenance of international peace and security. The so-called **Uniting for Peace Resolution** has a special status (first adopted in 1950). This becomes necessary, when the Security Council would be rendered indecisive due to a veto by a permanent member and would be unable to exercise its powers in the interest of international peace and security. Then, in the case of threat or breach of peace or aggression, the General Assembly takes it upon itself to discuss the matter and may, if necessary, may recommend the implementation of measures involving use of force to the MS. The Uniting for Peace Decision has the advantage of providing an alternative solution during the inactivity of the Security Council if the overwhelming majority of the international community are ready and willing to take action.[66] However, its use is not without risk. As it impairs the competences of the Security Council, its frequent use would mean disregarding the veto power of permanent members as irrelevant, which may endanger the operation of the organization in the long run, cause international tensions, while not having legal basis in the Charter.[67]

7.5. The International Court of Justice

Although officially established in 1945 and started working in 1946, the ICJ cannot be regarded as an institution without precedent. Its activity is closely linked to the Permanent Court of International Justice, operating next to of the League of Nations. Although not a legal successor *per se*, it is not hard to find similarities and common characteristics between the operation of the two judicial fora. Both functioned in The Hague, in the Netherlands, their founding documents (or Statutes) bear striking resemblance and the last judges of the Permanent Court of International Justice moved on to become the first judges of the ICJ. The main difference is, that while the Permanent Court of International Justice has functioned independently of the League of Nations, the ICJ is one of the UN's principal organs. Nevertheless, the Court is an independent legal entity and each of the UN MS are parties to its Statute. The fact that a State is party to the Statute does not mean that the ICJ would automatically have jurisdiction over states. In its practice, the Court has shaped the progress of international law on a variety of issues, such as environmental protection in the Gabčikovo-Nagymaros case, or in the Nicaragua case regarding state responsibility and the use of force, or regarding the inviolability of diplomatic agents in the Tehran case.

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[64] UN Charter Art. 17.
[65] Joyner 1981, 453.
[66] Carswell 2013, 456-458.
[67] Kardos–Lattmann 2010, 302.

7.5.1. Judges of the ICJ

The judges of the ICJ are elected by the General Assembly and Security Council. The candidate must acquire the absolute majority (over half of all votes) in both principal organs simultaneously in session. The term of office of the 15 judges is 9 years and there is no restriction on their re-election.[68] The judges are elected on a rotational basis, meaning that five judges are chosen every three years. Staggered re-election was introduced because it was foreseeable that sometimes it would be difficult to fill the roster, as acquiring the absolute majority is often a lengthy political game in the Security Council and in the General Assembly. A high level of knowledge of international law is one of the selection criteria; furthermore, the composition of judges shall reflect the main forms of civilization and the world's major legal systems.[69] An additional criterion is that the candidates must be eligible for judgeship in the highest court of law of their respective states or be renowned scholars of international law making them suitable to carry out their duties. Strict rules of conflict of interests apply to judges, as they cannot pursue political or administrative activities, they cannot accept orders from or represent governments, they cannot practice law, and also cannot vote on any case they were previously involved in. To counterbalance these restrictions, during their term of office they receive diplomatic immunity, high salaries, reimbursement of expenses, later on a pension as well. The **president** and the vice president of the court are elected by the judges themselves for a three-year term. The duties of the president are to organize and oversee the work of the Court, to represent the Court and to chair its meetings. In case there is a tied vote, the president's vote shall decide. There is also a possibility for ***ad hoc*** or temporary **judges** to be appointed. This happens in case one of the states proceeding in front of the ICJ has a judge on the bench while the other has none. *Ad hoc* judges, regarding the case at hand, are full members of the Court as they have the right to participate and vote in the proceedings. However, when the case is decided, their mandate terminates. There had only been one Hungarian judge on the Court so far, Prof. *Géza Herczegh*, filling the position between 1993-2003.

7.5.2. Proceedings of the ICJ

There are two types of cases at the ICJ: contentious cases and advisory opinions.

Contentious cases involve **legal disputes between states**. First, the jurisdiction of the Court is established and then the admissibility of the claim. Once this is done, the written stage of the proceedings on the merits begins, where the parties try to prove the contents of the claim and the counterclaim by using experts and occasionally sight inspections. This is followed by the oral part of the proceedings, where the representatives of the parties try to convince the judges to decide the case in their favor with brief, concise, precise legal arguments. The hearing is generally open to the public, but the parties may also request a closed hearing. The judgment is reached behind closed doors, but its contents are public and accessible to anyone through the Court's website in authentic English and French versions. A simple majority decision is sufficient to reach the judgment, i.e. more than half of the judges present are required to support the decision. It is compulsory to provide an explanation to the judgment, but judges who do not agree with the Court's decision may express their views. If the judge agreed with the judgment itself, but not with the reasoning provided, the judge may attach a **separate opinion**. If the judges voted differently on the judgment, but remained in minority, they can attach a **dissenting opinion**. The judgment is binding on the parties. The ICJ has a one-tier procedure where it is not possible to appeal. Only a re-examination of the case is possible within a deadline. If any fact that could fundamentally affect the outcome of the case comes to the attention of any of the parties, a

[68] Re-election is a common practice, especially in case of Japanese judges who are generally serving 2-3 terms on the bench, or in other words 18-27 years representing the island nation.

[69] ICJ Statute Art. 2.

new procedure may be initiated only within six months of the discovery of the new fact, but not later than within 10 years after the judgment has been reached by the Court. After 10 years have passed it is presumed that a new judgment with a different content might detrimentally change the relations between the parties.[70]

An **advisory opinion** may be requested by the Security Council, the UNGA or UN bodies and specialized agencies on matters relating to their responsibilities and tasks (upon authorization by the UNGA).[71] The special nature of the procedure is that there are no opposing parties, and the Court is not obliged to answer the question. If it does, however, the advisory opinion remains non-binding. Such opinions can, however, indicate the direction of development, so their importance is not negligible.[72]

7.6. Other Principal Organs of the UN

7.6.1. Secretariat, Secretary-General

The New York-based Secretariat is the UN's principal administrative body. Its task is to ensure the conditions of everyday operation and to assist the implementation of the Secretary General's agenda. Although it was initially a small organ operating with a couple hundred staff members, it now employs tens of thousands of people, creating a layer of international civil servants.

The Secretary-General is the public face of the UN, with his name marking the respective eras in the history of the organization. Quite often a charismatic Secretary-General can have an extraordinary effect on the way of thinking of his age. Thus, the previously mentioned *Dag Hammarskjöld* transformed the institution of peacekeeping in the '50s, *Javier Perez de Cuellar* played an active role in mediating peace in the Middle East in the '80s, and *Kofi Annan* introduced environmental considerations as well as closer cooperation with regional organizations in the work of the UN. The Secretary-General's most important task is to represent the UN and to attend the meetings of the principal organs, and where necessary, drawing their attention, including that of the Security Council, to any situation that could threaten international peace and security.[73] The Secretary-General plays a prominent role in dispute resolution and coordinating preventive diplomacy. His special envoys, for instance, contribute significantly to ceasefire agreements. The humanitarian activity of the Secretary-General is also worth mentioning. Helping the lives of hundreds of thousands of people through various means may seem like an abstract concept to the general public, but with the help of celebrities in causes close to them, it becomes possible to bring humanitarian aid work closer to the people.

The Secretary-General is elected by the General Assembly upon the recommendation of the Security Council for a period of 5 years and may be re-elected once. **The Secretary-General is responsible solely to the UN**. No other organization, neither States, not even their state of nationality can hold them accountable. With the post comes total or full **immunity**, meaning that the Secretary-General cannot be arrested, cannot be prosecuted or brought before a court. This guarantee is indispensable for his activity to be carried out independently, impartially, without the possibility of a State influencing his decisions. The Secretary-General must submit an annual report to the General Assembly, where

[70] Kovács 2011, 527-528.

[71] UN Charter Art. 96.

[72] Advisory opinions cannot be requested or given regarding factual questions. There have been several examples however, when the Court issued them. Such a case was the 2004 "Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory", which had ample political effects.

[73] UN Charter Art. 99. Referring cases in front the Security Council is not an abstract or marginal duty. Most recently, in 2016-2017, Secretary-General *António Guterres* called the attention of the Security Council on the atrocities carried out against the Rohingya minority in Myanmar.

MS representatives can ask questions and provide feedback regarding the performance of the given year. The selection criteria include competence, experience, integrity and equitable geographical distribution.[74] His work is governed by strict rules of conflict of interest, according to which he cannot be a member of a government or private company and cannot receive orders from any such entities.[75]

7.6.2. The ECOSOC

The 54-member Economic and Social Council, or ECOSOC (also seated in New York), is the main discussion forum for world-wide economic and social issues and is the principal organ of the UN responsible for achieving the economic, social and cultural goals set out in the Charter. To this effect, it will adopt recommendations, initiate studies and compile reports to assess the global situation of the economy, society and culture, identify the areas in need of development and come up with proposals and suggestions to the international community on development opportunities. It coordinates the work of specialized agencies, and convokes international conferences to discuss various problems.[76] It keeps contact with a multitude of NGOs, summarizes their standpoints and presents them to the UN.[77] Its work is supported by functional and regional commissions, such as on statistics, population, social development, women's affairs, drugs, crime prevention, sustainable development, science and technology committees and expert bodies.[78]

7.6.3. The Trusteeship Council

The Trusteeship Council has been created to help manage colonial territories, and in the long run to make sure those territories achieve independence. The activities of the Council did not extend to all areas under colonial control. It concentrated mainly on areas that were formerly the mandates of the League of Nations. This system of mandates exclusively meant the management of colonial territories taken from those states who were defeated in WWI. Colonial administration, which was difficult to reconcile with the principle of self-determination in the Charter, has always been considered provisional by the UN. The Trusteeship Council can be considered one of the most successful principal organs, since after nearly 50 years of operation, in 1994, when the last trust territory (Palau) gained independence, the Trusteeship Council also completed its work. Although officially still considered to be one of the UN's principal organs, it has suspended its operation for an indefinite period, but practically, it ceased to exist.

7.7. Specialized Agencies and Related Bodies

The wider UN family includes many other organs, specialized institutions and other bodies besides the principle organs.

The first category includes some of the UN funds and programs, which are maintained by voluntary contributions and donations The UN's environment, child protection and development programs (UNEP, UNICEF, UNDP) fall into this group.

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[74] UN Charter Art. 101. para 3. Despite the above selection criteria, a lot of commentators have noted with regret that for over 70 years there hasn't been either a female Secretary-General, nor one from Eastern Europe.

[75] UN Charter Art. 100. para 1.

[76] UN Charter Art. 62. paras 1, 2, 4.

[77] Currently, the ECOSOC is in regular contact with over 3000 NGOs, thereby receiving up-to-date information on almost all segments of global processes.

[78] Subsidiary bodies of ECOSOC http://www.un.org/en/ecosoc/about/subsidiary.shtml

The so-called specialized agencies that have their own independent legal personality fall into the second category. These conduct their own affairs with significant autonomy and are connected to the UN via a treaty. Specialized institutions cover almost all areas of life from the field of labor (ILO), the financial sector (IMF, World Bank), health (WHO), agriculture (FAO) to cultural life (UNESCO).

The third category consists of organs or affiliated institutions which have a special status in that they are related to, or are loosely connected to one of the UN principal organs or one or more of the UN specialized agencies. We can enumerate UNHCR and IAEA as examples.

In this chapter, we discuss some of the most important specialized agencies.

7.7.1. The General Characteristics of Specialized Agencies

Specialized agencies are **international organizations** with special competencies, which have been established through an **international treaty** and are active – according to their founding documents – in economic, **social, cultural, educational, commercial, health** and related fields, carry out significant **professional work**.[79] All the elements of the definition are quintessential to talk about a specialized agency.

Being considered an international organization is a precondition for independent operation with its own legal capacity and personality, which in itself is a prerequisite for the effective performance of their tasks. An international treaty formed between governments provides the basis for the establishment of specialized agencies. Without this element, we can only talk about non-governmental organizations (NGOs) such as FIFA or *Médecins Sans Frontières* (MSF, Doctors Without Borders). The economic, social, cultural, educational, commercial and health fields in which they are active mean that they are active in pursuing the goals set out in the UN Charter, namely the promotion of economic development, legal protection or any area that is indispensable to these goals. For instance, one of the prerequisites for prosperity is access to adequate nourishment, which can only be assured by predictable and reliable agricultural production, for which it is necessary to anticipate environmental and climate change, so indirectly the World Meteorological Organization (WMO) is also serving the well-being of mankind. Some specialized agencies have been established before the creation of UN, such as the ILO, set up in 1919, or the UPU, already operating in 1874 for the goal of ensuring safe and fast delivery of mail and packages. These organizations have concluded an international treaty with the UN after it was created and thus became specialized agencies. Despite their considerable autonomy, they are linked to the UN in many ways. Their activity shall be reported on an annual basis to the ECOSOC, and the General Assembly is the principal organ that approves the financial agreements concluded between them and the ECOSOC.[80] It is also the General Assembly that may decide to establish a new specialized agency. If that is the case, the General Assembly convokes an international conference of its MS and smoothly signals the appearance of new needs.

7.7.2. ILO

The ILO's Constitution was adopted in **1919** and it became the first UN specialized agency in 1946. Seated in **Geneva** (although during WWII, it temporarily relocated to Montreal, Canada), its approach to labor and workers was best expressed in the 1944 International Labor Conference when it was stated that ILO sought to promote social justice and internationally recognized human and labor rights as well

[79] Blahó–Prandler 2011, 203-204.
[80] UN Charter Art. 63-64.

as the principle that everyone has the right to material well-being, spiritual development, freedom and human dignity, economic security and equal opportunities. When transformed to the world of labor, the ILO's four operating principles were born, according to which:

1) **Freedom of expression and of association** are essential to sustained progress.
2) **Poverty** anywhere constitutes a **danger to prosperity** everywhere.
3) **The war against want** requires unrelenting vigor for the promotion of the common welfare.[81]
4) **Labor is not a commodity.**

A so-called ***tripartite* structure** is characteristic to the organization. According to this, the **International Labor Conference**, as the most important body of the ILO, must involve all three actors in the world of labor, so each state sends a four-member delegation, of which two are members are representatives of the **government**, one member is sent by the **employees** and one member by the **employers**.

The ILO's objectives include achieving full employment, increasing the overall standard of living, promoting free movement of training and labor, the possibility of collective agreements, the continuous improvement of work environment and health protection rules, the extension of maternity and child protection regulation, and the creation of an even playing field regarding vocational training and employment.

Its work covers many work-related issues, primarily represented in drafting international treaties based on the findings of experts and supported by the representatives of states, employers and employees participating in the International Labor Conference. International agreements drawn up by the ILO are generally flexible, and can be implemented to domestic regulation in a variety of ways according to the needs of the state concerned. In addition, the ILO has created numerous programs, such as its fight against child-labor to improve the lives of millions of children.[82]

7.7.3. FAO

The Food and Agricultural Organization was established in **1945** and is currently seated in **Rome**. This specialized agency has become the flagship of the UN's agricultural, forestry, fishing and rural development activities. FAO's agenda involves stopping and overcoming famine and poverty in the developing world, provide better nutrition and living standards, improve production and distribution, guarantee food security, and develop international cooperation in these fields.

Its activity is very diverse. FAO provides country-specific and global information on the state of agriculture and food supply, provides development assistance to those countries that require help, supports government action with political and planning advice, encourages the introduction of technical innovations and serves as an international forum for the discussion of food and agriculture issues. Its special programs help prepare countries for unexpected food crises and, if necessary, also provide relief. FAO cooperates closely with other specialized agencies and UN bodies such as WMO or WFP.[83]

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[81] Declaration concerning the aims and purposes of the International Labour Organization (Declaration of Philadelphia) Annex to the Constitution of the ILO, 1944, Art. 1.

[82] IPEC – The International Programme on the Elimination of Child Labour https://www.ilo.org/ipec/programme/lang--en/index.htm

[83] Blahó–Prandler 2011, 207-208.; FAO website http://www.fao.org/in-action/fao-projects/en/

7.7.4. UNESCO

The United Nations Educational, Scientific and Cultural Organization was established shortly after WWII in **1945**. Seated in **Paris**, it is now present in 195 states worldwide. The scope of its activities extends to the improvement of cultural relations, the provision of accessible education to everyone, the protection of works of art, memorials, antiquities and especially cultural heritage, as well as the preservation and dissemination of the culture of peoples.[84]

The most well-known achievement of UNESCO is the creation of a World Heritage List, based on the **1972 Convention Concerning the Protection of the World Cultural and Natural Heritage**, which aims to protect the most significant built legacy of mankind as well as natural diversity. Hungary joined the Convention in 1985 and contributes, at present, with one natural and 7 cultural sites to the World Heritage List.[85]

7.7.5. WHO

The World Health Organization, established in **1948** and based in **Geneva**, currently has 195 members. The WHO supports **technical cooperation** between nations in the field of **healthcare**, carries out **programs for the control and eradication of diseases** and seeks to improve the general quality of life. Its most important goal is to reach **the highest possible level of health** for everyone.[86] The WHO's current work program is centered around sharing information on infectious diseases, combatting dangerous superstitions and beliefs. WHO is working in close cooperation with several NGOs (MSF, *Médecins du Monde*, Save the Children) and the ICRC.[87] WHO continually updates the country-specific compulsory and recommended vaccine list and encourages the international community to follow good practices. In the event of a medical emergency, such as epidemics, WHO possesses the unique authority to establish mandatory quarantines. However, the affected states have the option of preventing infectious diseases through other means.[88]

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[84] Ibid. 208-210.

[85] Law Decree 21 of 1985 on the promulgation of the treaty on the protection of world cultural and natural heritage, adopted on 16 November 1972 at the Paris session of the UNESCO conference [HU].

[86] WHO Constitution Art. 1.

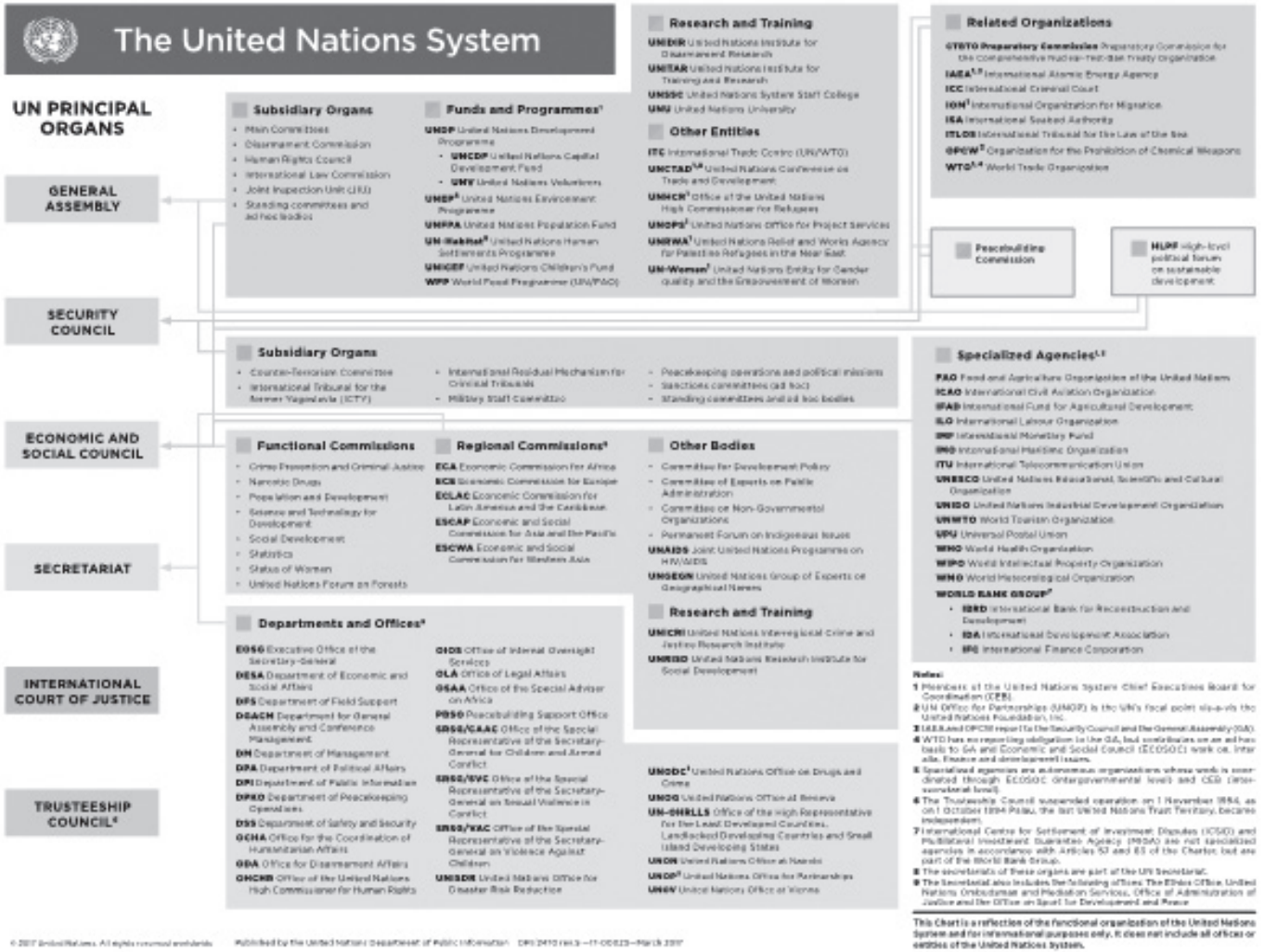
[87] Some of the most significant campaign topics are e.g., that the consumption of certain endangered species does not help with health issues; that the absence of mandatory vaccinations might help prevent the spread of epidemics worldwide; or that through timely detection, the survival rates of several diseases (such as diabetes, certain types of cancer, etc.) can significantly be increased.

[88] See e.g., the Ebola outbreak in 2014-2016 in West-Africa, where the WHO has recommended quarantine regulation to be implemented in several countries in order to contain the epidemic.

Abbreviation	Name
FAO	Food and Agriculture Organization of the United Nations
ICAO	International Civil Aviation Organization
IFAD	International Fund for Agricultural Development
ILO	International Labour Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
ITU	International Telecommunications Union
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
UNWTO	World Tourism Organization
UPU	Universal Postal Union
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
	World Bank Group*

*The World Bank Group incorporates three Specialized Agencies – the first three in the table below (an another two bodies, which are not UN Specialized Agencies):

IBRD	International Bank for Reconstruction and Development
IDA	International Development Association
IFC	International Finance Corporation
MIGA	Multilateral Investment Guarantee Agency
ICSID	International Centre for Settlement of Investment Disputes


The United Nations System
UN PRINCIPAL ORGANS
GENERAL ASSEMBLY
SECURITY COUNCIL
ECONOMIC AND SOCIAL COUNCIL
SECRETARIAT
INTERNATIONAL COURT OF JUSTICE
TRUSTEESHIP COUNCIL[6]
Subsidiary Organs
Main Committees
Disarmament Commission
Human Rights Council
International Law Commission
Joint Inspection Unit (JIU)
Standing committees and ad hoc bodies
Funds and Programmes[7]
UNDP United Nations Development Programme
UNCDF United Nations Capital Development Fund
UNV United Nations Volunteers
UNEP[8] United Nations Environment Programme
UNFPA United Nations Population Fund
UN-Habitat[9] United Nations Human Settlements Programme
UNICEF United Nations Children's Fund
WFP World Food Programme (UN/FAO)
Research and Training
UNIDIR United Nations Institute for Disarmament Research
UNITAR United Nations Institute for Training and Research
UNSSC United Nations System Staff College
UNU United Nations University
Other Entities
ITC International Trade Centre (UN/WTO)
UNCTAD[5,6] United Nations Conference on Trade and Development
UNHCR[1] Office of the United Nations High Commissioner for Refugees
UNOPS[1] United Nations Office for Project Services
UNRWA[1] United Nations Relief and Works Agency for Palestine Refugees in the Near East
UN Women[7] United Nations Entity for Gender Equality and the Empowerment of Women
Related Organizations
CTBTO Preparatory Commission Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization
IAEA[1,3] International Atomic Energy Agency
ICC International Criminal Court
IOM[1] International Organization for Migration
ISA International Seabed Authority
ITLOS International Tribunal for the Law of the Sea
OPCW[3] Organization for the Prohibition of Chemical Weapons
WTO[5,6] World Trade Organization
Peacebuilding Commission
HLPF High-level political forum on sustainable development
Subsidiary Organs
Counter-Terrorism Committee
International Tribunal for the former Yugoslavia (ICTY)
International Residual Mechanism for Criminal Tribunals
Military Staff Committee
Peacekeeping operations and political missions
Sanctions committees (ad hoc)
Standing committees and ad hoc bodies
Functional Commissions
Crime Prevention and Criminal Justice
Narcotic Drugs
Population and Development
Science and Technology for Development
Social Development
Statistics
Status of Women
United Nations Forum on Forests
Regional Commissions[4]
ECA Economic Commission for Africa
ECE Economic Commission for Europe
ECLAC Economic Commission for Latin America and the Caribbean
ESCAP Economic and Social Commission for Asia and the Pacific
ESCWA Economic and Social Commission for Western Asia
Other Bodies
Committee for Development Policy
Committee of Experts on Public Administration
Committee on Non-Governmental Organizations
Permanent Forum on Indigenous Issues
UNAIDS Joint United Nations Programme on HIV/AIDS
UNGEGN United Nations Group of Experts on Geographical Names
Specialized Agencies[1,2]
FAO Food and Agriculture Organization of the United Nations
ICAO International Civil Aviation Organization
IFAD International Fund for Agricultural Development
ILO International Labour Organization
IMF International Monetary Fund
IMO International Maritime Organization
ITU International Telecommunication Union
UNESCO United Nations Educational, Scientific and Cultural Organization
UNIDO United Nations Industrial Development Organization
UNWTO World Tourism Organization
UPU Universal Postal Union
WHO World Health Organization
WIPO World Intellectual Property Organization
WMO World Meteorological Organization
WORLD BANK GROUP[7]
IBRD International Bank for Reconstruction and Development
IDA International Development Association
IFC International Finance Corporation
Departments and Offices[4]
EOSG Executive Office of the Secretary-General
DESA Department of Economic and Social Affairs
DFS Department of Field Support
DGACM Department for General Assembly and Conference Management
DM Department of Management
DPA Department of Political Affairs
DPI Department of Public Information
DPKO Department of Peacekeeping Operations
DSS Department of Safety and Security
OCHA Office for the Coordination of Humanitarian Affairs
ODA Office for Disarmament Affairs
OHCHR Office of the United Nations High Commissioner for Human Rights
OIOS Office of Internal Oversight Services
OLA Office of Legal Affairs
OSAA Office of the Special Adviser on Africa
PBSO Peacebuilding Support Office
SRSG/CAAC Office of the Special Representative of the Secretary-General for Children and Armed Conflict
SRSG/SVC Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict
SRSG/VAC Office of the Special Representative of the Secretary-General on Violence Against Children
UNISDR United Nations Office for Disaster Risk Reduction
Research and Training
UNICRI United Nations Interregional Crime and Justice Research Institute
UNRISD United Nations Research Institute for Social Development
UNODC[1] United Nations Office on Drugs and Crime
UNOG United Nations Office at Geneva
UN-OHRLLS Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States
UNON United Nations Office at Nairobi
UNOP[9] United Nations Office for Partnerships
UNOV United Nations Office at Vienna
Notes:
1 Members of the United Nations System Chief Executives Board for Coordination (CEB).
2 UN Office for Partnerships (UNOP) is the UN's focal point vis-à-vis the United Nations Foundation, Inc.
3 IAEA and OPCW report to the Security Council and the General Assembly (GA).
4 WTO has no reporting obligation to the GA, but contributes on an ad hoc basis to GA and Economic and Social Council (ECOSOC) work on, inter alia, finance and development issues.
5 Specialized agencies are autonomous organizations whose work is coordinated through ECOSOC intergovernmental level and CEB (inter-secretariat level).
6 The Trusteeship Council suspended operation on 1 November 1994, as on 1 October 1994 Palau, the last United Nations Trust Territory, became independent.
7 International Centre for Settlement of Investment Disputes (ICSID) and Multilateral Investment Guarantee Agency (MIGA) are not specialized agencies in accordance with Articles 57 and 63 of the Charter, but are part of the World Bank Group.
8 The secretariats of these organs are part of the UN Secretariat.
9 The Secretariat also includes the following offices: The Ethics Office, United Nations Ombudsman and Mediation Services, Office of Administration of Justice and the Office on Sport for Development and Peace.
This Chart is a reflection of the functional organization of the United Nations System and for informational purposes only. It does not include all offices or entities of the United Nations System.
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QUESTIONS FOR SELF-CHECK

1. Which steps have led to the establishment of the UN?
2. How does the three generations of peacekeeping missions differ?
3. What is the difference between a concurring and a dissenting opinion in the practice of the ICJ?
4. What kind of non-armed coercive measures do you know?
5. Summarize the essence of the Bernadotte case briefly.
6. How would you characterize the legal personality of the UN?
7. Under what conditions can a state join the UN?
8. List the principles in the UN Charter.
9. What are the principle organs of the UN?
10. What is the difference between Security Council resolutions based on Chapter VI and Chapter VII of the UN Charter?
11. Can peacekeeping be regarded as an armed coercive measure?
12. How can the UN Charter be modified?
13. What is the difference between a double veto and an indirect veto?
14. List four specialized agencies.
15. What are the principles of peacekeeping?
16. Where can the centers of the UN be found?
17. Define the concept of a specialized agency.
18. What is the meaning of *tripartite* consultation concerning the ILO's work?
19. What do we mean by robust peace operations?
20. Briefly describe the essence of the General Assembly's Uniting for Peace resolution.
21. Who can request an advisory opinion from the ICJ?
22. How is the UN Secretary General's independence guaranteed?

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CHAPTER 8

INTERNATIONAL ECONOMIC AND FINANCIAL ORGANIZATIONS

International economic and financial organizations (IEFOs) are a natural byproduct of a global word. However, these organizations themselves are often responsible for strengthening globalization. We can hear about them daily in the media: "The IMF is preparing to save Venezuela, but they won't be allowed to…", "New low for oil prices: the OPEC might intervene shortly" or "IMF and maids".[1]

Most of these organizations came to existence through multilateral international agreements, and they possess international legal personality.[2] For certain organizations, membership may be tied to certain requirements, and there might be multiple types of members: full members, founding members, partnered members, partial members, observers, etc. OPEC is a good example for this, as the founding members possess special veto rights, while it also has observers.

Based on the objectives they were founded to serve, IEFOs can be divided into several different categories:[3]

- general international organizations, which among others, also deal with economic issues (e.g. UN, as described in Chapter 7),
- specialized international economic organizations, such as:
  - financial (IMF, IBRD),
  - investment (MIGA, ICSID),
  - trade (WTO),
  - advancing production and export (OPEC),
  - advancing industrial cooperation,
  - advancing agricultural cooperation,
  - general economic (OECD),
  - established to create economic integration (e.g. NAFTA)

In this chapter, we will only deal with the organizations deemed most important.

8.1. Specialized International Economic Organizations

8.1.1. The International Monetary Fund – IMF

The necessity of creating the **IMF** was first raised at the Bretton Woods Conference, in 1944, primarily for the purpose of **ensuring the stability of the international financial system**. Other goals include advancing international financial cooperation, advancing the balanced development of international trade, advancing the creation of the multilateral payment system, ensuring the stability of payment methods, as well as providing loans to members with balance of payments issues.[4] This last one could help countries in trouble (e.g. overspent ones), while they strengthen their reserves and stabilize

[1] Portfolio www.portfolio.hu/gazdasag/az-imf-es-a-szobalanyok.149745.html

[2] According to Prof. Bruhács, the legal personhood of international organizations can be stated explicitly by their founding agreements (EU, WTO), but legal personhood can also be implicitly derived for international organizations whose founding agreement contains such rights and obligations that would implicate their legal personhood. Source: Bruhács 2014

[3] Voitovich 1995, 21.

[4] See www.imf.org

their domestic currency. Accompanying these goals, the IMF monitors the economies of MS, and if necessary, provides advice, develops programs for members facing an economic crisis.[5]

The IMF currently has 189 members,[6] including Hungary[7], meaning that with a few exceptions, every country in the world is a member. Its headquarters are in Washington, D.C. The IMF is led by a Managing Director, who is also the Chairman of the Executive Board. The Executive Board of the IMF nominates him/her for five years. It is an important rule, that unlike with the UN, where each member has one vote, votes here are tied to quotes, so countries with stronger economies, who pay more into the organization's budget, receive more votes as well. Similarly, the money necessary for loans is also ensured by members through their quota payments.[8]

In 1969, the IMF created an international reserve asset, known as Special Drawing Rights (SDR). The SDR was initially defined as equivalent to 0.888671 grams of fine gold—which, at the time, was also equivalent to one US Dollar. After the collapse of the Bretton Woods system, the SDR was redefined as a basket of currencies, which is reviewed every five years. The current currencies in the basket are the US Dollar (41.73%), the Euro (30.93%), Chinese Yuan (8.33%), Japanese Yen (8.09%) and English Pound (10.93%).[9]

The shifting rates of the price of gold in the past decades

In relation to this, it is interesting to examine how the exchange rate of gold changed, compared to the dollar. In the graph blow, we can see the price change of one troy ounce gold (31.1 gram) in the last five years, as expressed in dollar. After the public debt crisis following the 2008 economic crisis, the price of one troy ounce reached 1900 USD in 2011. The IMF possesses significant, 90 million troy ounces gold reserves.[10]

The changes in gold price between 1970 and 2014 (1 ounce/USD)

Source: World Gold Charts

However, it also must be mentioned that even before the 2008 economic crisis, the IMF faced criticism that (for the benefit of developed Western countries) it forces developing countries to adopt

[5] IMF website www.imf.org
[6] Ibid.
[7] Law Decree No. 6 of 1982 on the proclamation of the IMF founding treaty [HU]
[8] IMF website www.imf.org
[9] Ibid.
[10] Ibid.

liberal economic policies, which ruins their not-yet competitive economies, or uses loan-guarantees to plunge them into debt.[11] After the crisis, the IMF was mostly criticized that with the policies of the last decades, it only increased societal inequalities and thus societal tensions as well.

The Case of Greece

One of the biggest "clients" of the IMF is Greece. In the years following the 2008 world economic crisis, the country came close to bankruptcy, which it managed to temporarily escape through IMF loans (among others). The Greek crisis has several roots. Here, a few of the most important ones should be mentioned. One is corruption: e.g. one could read about how the relatives of the deceased did not announce the death to authorities, allowing them to receive the deceased's pensions, or how employees of the public administration received pay bonuses for being on time for work.[12] However, we can also assign some other problems to corruption, such as ineffective taxation, or governmental corruption. Another reason for the debt crisis is that when Greece became a member of the Eurozone, international lenders started treating the Greeks with nearly the same low-interest advantageous loans that they treated other Eurozone countries with strong economies, assuming that if they get into trouble, the other MS will help them. And the Greeks used this opportunity of cheap loans to its maximum, which resulted in becoming extremely indebted. However, Greeks often claim that because of their membership in the Eurozone, they could not devalue their own currency to stimulate exports, which ruined their economy in recent years. In theory, the country should slowly devalue its own currency (i.e. sliding devaluation). The local producer, when it makes the product, pays the workers, materials, energy, and whatever else is necessary for production in domestic currency at the end of the month. So, if the product (e.g. gadget) is finished at the beginning of the month (when the National Bank exchanges 1 Euro for 300 forints), and this product is exported by the producer for 1 Euro per piece, then when it converts its gains in Euro to Forints (HUF) at the end of the month (when the National Bank pays 310 Forint for each Euro as a result of the sliding devaluation), the producer will be incentivized to produce for export, since its costs are paid in Forints at the end of the month. As can be seen from Greece's example, however, one cannot enjoy the benefits of a currency union (e.g. cheap loans) and complain about not being able to intervene into the economy with monetary methods for incentivizing exports.

8.1.2. The World Bank Group[13]

For young lawyers, the first thing that comes to mind about the **World Bank** is an international institution where one can earn quite well. The documents leaked by *Wikileaks* support this presumption. In one of the poorest countries of Asia, East-Timor (Timor-Leste), the World-Bank-paid foreign governmental advisor had a salary of 219,765 USD in 2008.[14]

The **World Bank Group** is made up of five international institutions, out of which the latter two will receive more detailed attention. These are the following:

– The IBRD, which mostly provides loans to the governments of developing countries.

[11] Harvard University https://scholar.harvard.edu/barro/files/98_1207_imf_bw.pdf accessed 4 July 2018

[12] Napi.hu www.napi.hu/nemzetkozi_gazdasag/itt_az_uj_nyugdijbotrany_gorog_halottak_ezrei_kapnak_jarandosagot.485613.html accessed 4 July 2018

[13] The World Bank Group www.worldbank.org 7 July 2018

[14] Wikileaks https://wikileaks.org/wiki/East_Timorese_go_begging_as_foreign_advisers_rake_it_in:_World_Bank_file_on_Ines_Almeida,_2008 accessed 7 July 2018

– The IDA, which provides interest-free loans to the poorest countries. The IBRD and the IDA form together the World Bank within the World Bank Group.
– The IFC, which is an international development institution, focusing on the private sector of developing countries. It finances investments, and provides advice for actors in the private sector.
– Multilateral Investment Guarantee Agency (MIGA)
– International Centre for Settlement of Investment Disputes (ICSID)

The MIGA was created to counter one of the biggest obstacles to the fast spreading of foreign direct investments in the second half of the last century, which was that non-trade risk in developing countries was significant (e.g. expropriation, controlling exchange of the local currency, or war). The Seoul Agreement (signed in 1985, came into force in 1988) created **MIGA** with a headquarters in Washington, D.C. Its goal was to advance **foreign investment** in developing countries by insuring foreign investors and lenders for their non-trade risk. IBRD MS could join it, so Hungary did as well.[15]

Among the goals of MIGA are to help the economic growth of developing countries, to reduce poverty and improve quality of life. Since its inception, it has provided more than 28 billion USD of **investment insurance**. When it comes to decisions, the quota principle applies, thus the one who pays most into the organization, has the most votes in decision-making.[16]

It is important to note that insurances can only be applied for by legal persons and citizens of a MS, and only for foreign investment. If the insurance event comes to pass (e.g. the investment is expropriated), the MIGA (provided the requirements are met) will pay compensation for the insured. After this, the claim for indemnification against the host country will pass to the MIGA, which is quite convenient for most insured investors.[17]

The **ICSID** was created by the *Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States* in 1956. Its goal was to create a venue **for resolving investment disputes** between MS and other MS legal and natural persons **through conciliation and arbitration**.[18] ICSID currently has 162 members,[19] including Hungary.[20] The headquarters of the organization is in the central office of the IBRD, in Washington, and the organization has international legal personhood.

As for its structure, the chief decision-making body is the Administrative Council, into which each MS delegates one member. The President of the above-mentioned IBRD acts as the Chairman of the Administrative Council *ex officio*. The ICSID also has a Secretariat, which deals with administrative matters, led by the Secretary-General who represents ICSID as a whole. Furthermore, the ICSID Convention also provides for setting up the two panels of conciliators and arbitrators, respectively. Each MS has the right to nominate four experts into each panel (they don't have to be citizens of the nominating state). Furthermore, the President many nominate ten experts into each panel. These must have different nationalities, and must possess recognized expertise in the field of law, trade, industry or finances, and must be able to make unbiased decisions. Knowledge of law is exceptionally

[15] Law Decree No. 7 of 1989 on the proclamation of the 1985 Seoul Agreement about the creation of the Multilateral Investment Guarantee Agency [HU]
[16] MIGA website: www.miga.org
[17] Vörös 2004, 150.
[18] Act LX of 2017, the Hungarian arbitration law, defines arbitration as follow: in disputes concerning trade-based legal relations, instead of state-based court procedure, the case is resolved by a method chosen by the parties, whether it is an *ad hoc* or permanent arbitration institution that is involved.
[19] International Centre for Settlement of Investment Disputes (ICSID) https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx accessed 12 July 2018
[20] Law Decree No. 27 of 1987 on the proclamation of the 1965 Washington Convention [HU] For Hungarian cases before the ICSID, see: Nagy 2017a, 291-310.

important for those nominated into the panel of arbitrators. During nominations, the President also should consider that the major legal systems of the world be represented in the panels. Members of the panel serve for 6 years, which can be renewed.[21]

The **jurisdiction** of the ICSID extends to every legal dispute originating directly from investment, in which the parties in dispute are a MS (or any subordinate agency or body of the MS) and a natural or legal person of another MS, provided both parties give their written consent to taking the dispute before the ICSID. Once parties have given their consent, neither of them can revoke it unilaterally. Such consent is typically given by the host state in bilateral investment treaties, or in singular investment contracts with the investor (typically in cases of larger, more significant investments). Unless stated otherwise, the consent to arbitration under the Convention closes off any other legal remedy (e.g., legal recourse to their respective domestic courts).[22]

As noted elsewhere, **two types of procedures** can be initiated with ICSID: conciliation and arbitration. Each procedure can be initiated by any MS, or any natural or legal person of a MS, in writing. The application must contain information concerning the questions of the legal dispute, the identification of the parties and their consent to conciliation. In case of **conciliation**, the ICSID set up a conciliation committee after the arrival of the application, which consists of an odd number of conciliators, as per the agreement of the parties. Concerning the procedure itself, ICSID has a Rules of Procedure for Conciliation Proceedings[23], but the main essence of it is that the conciliation committee is obliged to clear up the questions of law in the dispute between the parties and to try to find an agreement between the parties, based on mutually agreeable conditions. It is also important to note that the parties involved in the conciliation proceedings may not refer to the views, comments, or settlement proposals of the other party.[24]

Unexpected difficulties of being an arbitrator

Being an international arbitrator can be dangerous. For example, there is the case of the Iran–United States Claims Tribunal (created in 1981, headquartered in The Hague), which arbitrated over the compensation and indemnification claims against the new Iranian regime concerning the foreign investment it expropriated. In one of its sessions, two Iranian arbitrators attacked and severely beat their Norwegian colleague.[25] In another case, the Indonesian government kidnapped the arbitrator they themselves nominated in order to obstruct the proceedings.[26] In certain cases, members of international arbitration tribunals were imprisoned, given death threats or even murdered.[27]

When initiating **arbitration** proceedings, the ICSID creates an arbitration panel. This panel consists of either one arbitrator, or an odd number of arbitrators (per the parties' agreement). If the parties could not agree regarding the number of arbitrators and their nomination, the panel consists of three arbitrators. One is chosen by both parties, the third one (who is the chairman of the panel) is selected based on the parties' agreement. If they once again could not reach an agreement, and if 90 days have passed since the Secretary-General informed the other party about the recording of the claim, then the

[21] ICSID website http://icsidfiles.worldbank.org/ICSID/ICSID/StaticFiles/basicdoc/main-eng.htm; Law Decree No. 27 of 1987 on the proclamation of the 1965 Washington Convention [HU]

[22] Ibid.

[23] ICSID website: http://icsidfiles.worldbank.org/ICSID/ICSID/StaticFiles/basicdoc/partE.htm

[24] ICSID website http://icsidfiles.worldbank.org/ICSID/ICSID/StaticFiles/basicdoc/main-eng.htm

[25] Showdown in The Hague Brawl stalls U.S.-Iranian claims tribunal, United Press International www.upi.com/Archives /1984/09/15/Showdown-in-The-Hague-Brawl-stalls-US-Iranian-claims-tribunal/8388464068800/ accessed 30 August 2018

[26] Horn–Kroll–Kröll 2004, 28.; Horvath–Wilske 2013

[27] Whittington 2014, 429.

Chairman of the ICSID will appoint the missing arbitrators, at either party's request. The arbitrators examine their jurisdiction (i.e. whether they have the right to proceed) *ex officio*. Regarding substantive law (i.e. the body of law summarizing the rights and obligations of the parties), parties may freely make an agreement. In case there is no agreement regarding this, the arbitrators will use the host country's law as the basis (including the private international law norms regarding conflict of laws[28]), as well as the applicable norms of international law. The arbitration tribunal may decide the case based on equity, but only if the parties agree to it.[29] The arbitrational proceeding also has its own body of procedural rules, the Rules of Procedure for Arbitration Proceedings.[30] What is important is that the panel decides the questions based on a majority vote of all members. The **award** is presented in a written form, and is signed by all arbitrators voting in favor. The award extends to all questions presented to the panel, and includes the reasoning behind the answers. The Secretary-General will promptly send the authenticated copies of the award to the parties, which cannot be made public without their consent.

It is interesting to note that the average procedural cost of international arbitration reaches 8 million USD. This means that small and medium enterprises (SMEs) have very little chance of disputing with the host countries in front of the ICSID.[31]

If any dispute would arise between the parties regarding the interpretation of the award, either party can ask for official interpretation. Either party can request in writing from the Secretary-General the review of the award based on a new fact that could significantly influence the award, provided this fact was not known to the arbitration tribunal and the plaintiff at the time of the award, and it was not a result of the applicant's carelessness that they had no knowledge of this fact. This request must be submitted within 90 days of the disclosure of such fact, but no later than 3 years after the award has been rendered. Either party can request in writing from the Secretary-General **to annul the award**, based on the following possible reasons: (*a*) the Tribunal was not properly formed; (*b*) the Tribunal has manifestly exceeded its powers; (*c*) there was corruption on the part of a member of the Tribunal; (*d*) there has been a serious breach of a fundamental rule of procedure; (*e*) the award does not contain due justification.[32]

The award is binding to the parties, and there is no place for any kind of appeal or other types of remedy, except for those listed above. Every MS of the ICSID Convention recognizes the awards as binding, and will make due of the resulting financial obligations as if it was arising from a judgment of their own domestic court.[33]

However, disputes may arise between the MS regarding the interpretation or application of the ICSID Convention. If these issues cannot be resolved through negotiation, they must be presented to the ICJ in The Hague.

[28] The conflict of laws part of private international law seeks to answer the question of what country's law should be used in a given legal issue. See Nagy 2017b, 23

[29] Ibid.

[30] ICSID website http://icsidfiles.worldbank.org/ICSID/ICSID/StaticFiles/basicdoc/partF.htm accessed 12 July 2018

[31] Gebert 2017, 294.

[32] ICSID website http://icsidfiles.worldbank.org/ICSID/ICSID/StaticFiles/basicdoc/main-eng.htm

[33] Ibid.

Veolia v. Egypt

A big French MNC, Veolia, initiated proceedings in 2012 against Egypt in front of the ICSID. The case concerned several hundred million USD worth of compensation, based on the bilateral investment treaty between France and Egypt. The corporation, rather its Alexandrian subsidiary, was in the business of waste management. As a result of the Arab Spring and the societal tensions, the Egyptian government increased minimum wage, which increased the operational cost of Veolia (thus we can assume most of its employees received minimum wage). Veolia based its argument on that this measure (increasing minimum wage) had a negative impact on its investment, thus Egypt was in violation of the mentioned bilateral investment treaty. The case was won by Egypt, as the arbitration tribunal found that raising the minimum wage did not violate the treaty.[34]

8.1.3. The World Trade Organization (WTO)

The possible creation of an international trade organization was raised all the way back at the Bretton Woods Conference in 1944. It was in the interests of the USA, as the largest economic power in the world, to **liberalize international trade**. This was the reason behind planning the creation of the International Trade Organization (ITO) in 1948. However, ironically as a result of domestic political disputes within the USA it is not created, and in 1947, only an international agreement was signed: **GATT** (entering into force the next year). This agreement greatly contributed to the liberalization of international trade in the second half of the 20th century, and it became the foundation of the Marrakesh Agreement (which created the WTO) as **GATT 1994**.

The Marrakesh Agreement was proclaimed in Hungary through Act IX of 1998.[35] It is important to note that the WTO possesses legal personality. The Marrakesh Agreement has provisions on the functions of the WTO, which, among others, includes assisting the enforcement, management and administration of the Agreement itself and the accompanying trade agreements, as well as providing a venue of negotiation and dispute resolution for members.[36]

The structure of the WTO greatly resembles other international organizations. The most important decision-making body is the Ministerial Conference, in the work of which each member takes part. Between the meetings of the Ministerial Conference, its functions are fulfilled by the General Council, into which each MS delegates representatives. This body also fulfills the functions of the Dispute Settlement Body and the Trade Policy Review Body. The Council for Trade in Goods (Goods Council), the Council for Trade in Services (Services Council) and the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) all fall under the control of the General Council. The WTO's administrative duties are fulfilled by a Secretariat, led by the Director-General.[37]

In the following, we will briefly touch upon the most important principles and articles of GATT 1994, namely the most favored nation (MFN) principle, the national treatment clause, the elimination of quantitative restrictions, the exceptions and the rules of dispute resolution.

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[34] Investment Policy Hub http://investmentpolicyhub.unctad.org/ISDS/Details/458

[35] The dual membership of EU and its MS in the WTO should be mentioned here, with attention to the fact that a significant portion of WTO issues is now under the jurisdiction of EU trade policy.

[36] WTO website www.wto.org; Art. III. of Act IX of 1998 on the proclamation of the Marrakesh Agreement and its annexes establishing the WTO as part of GATT [HU]

[37] Articles IV-VI of Act IX of 1998 on the proclamation of the Marrakesh Agreement and its annexes establishing the WTO as part of GATT [HU]

The **MFN principle** set forth under Article I, means that every advantage, benefit, privilege or immunity that any MS gives to a product originating from another country or targeted towards another country should be granted (immediately and unconditionally) to all similar products originating from other MS or targeted towards them.

The **national treatment clause** from Article III means that imported products cannot be placed in a disadvantageous position in the domestic market, compared to similar domestic products, through taxes, fees or regulations concerning sale, commercialization, purchase, transportation, distribution and use.

Regarding **anti-dumping duties**, Article VI forbids bringing products of a MS into another MS at a price lower than the consumer price in the country of origin, if this import would cause or threaten significant damage for the receiving country. If it happens, the receiving country can impose dumping duties on the dumped product. This duty can't be higher than the dumping margin on the product, that is the difference between the price in the country of origin and the price in the receiving country. Unfortunately, it happens ever more frequently that a receiving country imposes a dumping duty without legitimate reasons, being pressured to do so by the domestic industrial lobby, as WTO dispute resolution may take years, and during this time, these duties can help strengthen the domestic enterprises of the receiving country in the given sector. Thus, they abuse WTO law to serve as protectionist measures.

Chicken War

We can hear a lot in the media about anti-dumping proceedings, which are chiefly concerned with steel and fishing products, as well as automobiles. One of the recent interesting trade wars between two great economic powers broke out over poultry products. In 2010, China imposed a rather high dumping duty on US broiler chicken (this is the type of chicken meat that grilled chicken is made from), which caused a significant reduction in the import of American chicken. The USA initiated consultations with China in front of the WTO, and finally asked for a panel to be set up. The panel, as well as the Dispute Settlement Body agreed with the USA in the most important questions, and China partially implemented the results. But the story didn't end here. When the bird flu epidemic hit the USA, China banned the import of American chicken almost immediately. As a result, the USA asked the WTO in 2016 to set up a panel, tasked with determining whether China implemented the earlier proposals. This panel agreed with the USA regarding the most important issues.[38]

The Indian Steel Sheets Case

In 1999, American authorities performed an anti-dumping procedure (according to American regulations) against cheap steel sheets imported from India. According to an agreement based on the implementation of the above-mentioned Art. VI GATT, they had to ask for information from the Indian party, which was needed to impose the anti-dumping duty. Some of the information provided by India was false. Based on this, the American authorities decided to ignore all data sent by the Indian party, and determined a very high, 70% dumping margin, based solely on their own data. As a result, India initiated consultations with the USA in front of the WTO. As the consultations didn't bear fruit, India requested the creation of a panel, and to find that the USA behaved erroneously during the calculation of the dumping margin. The panel and the Dispute Settlement Body found that the USA should have considered the truthful information provided by India, and determine a dumping margin based on that.[39]

[38] WTO website www.wto.org/english/tratop_e/dispu_e/cases_e/ds427_e.htm accessed 28 July 2018; Agrárszerktor.hu www.agrarszektor.hu/elemiszer/csirkehaboru-egymasnak-feszult-a-ket-nagyhatalom.10225.html

[39] In more details, see Vörös 2004, 163.

Elimination of quantitative restrictions under Article XI means that as a rule, the members may not introduce or uphold other bans or restrictions (whether they manifest as contingents, import or export permits, or any other type of measure) besides duties, taxes and other fees. The goal of GATT and WTO is to erase every type of trade restriction besides the easily manageable duties. However, it should be mentioned that exceptions exist regarding this article. For example, if the goal of the restriction is to ease the lack of some agricultural or otherwise critically important products in the MS.

The Chinese Rare Earth Metals Case

Rare earth metals, such as tungsten or molybdenum, are primarily used in the electronics industry. One of the greatest reserves in the world is held by China. However, the extraction of these metals is extremely harmful to both health and environment. As a result, (even if there are reserves) such metals are mined in limited quantities in developed Western countries. China attempted to use this situation to its advantage by only selling these metals to Chinese companies, and foreign companies that moved their production to China or found a Chinese partner. This didn't sit well with the USA or other developed countries like Japan, EU MS and Canada. As a result, they initiated consultations with China in 2012, referring to Articles VII, VIII and XI GATT, for their violation due to this Chinese practice, and they also claimed it violates the Chinese WTO accession protocol. As these consultations failed to achieve a result, the USA initiated the creation of a WTO panel. The panel determined in its report that China used three types of restrictions regarding the export of rare earth metals: (1) export duties, which are opposed to Chinese commitments and the referral on Article XX (b) GATT[40] is not substantiated, (2) export quotas, which are also opposed to the country's commitments, and the referral to Article XX (g)[41] is also not substantiated, and (3) demanding trade permits in case of rare earth metal exports, which was also opposed to the commitments. The essence of the panel's argument was that if China refers to the protection of human life, environment, and exhaustible natural resources, then why doesn't it reduce the extraction rate of rare earth metals, why only restrict exports? After the parties turned to the Appellate Body, it upheld the observations of the panel and China finally implemented the proposals and decisions of the Dispute Settlement Body in 2015.[42]

General Exceptions. Article XX lists the possible exceptions to the obligations of the GATT, i.e. the reasons through which a sovereign state can restrict international trade. Such a restriction will usually be in violation of Article I (general MFN principle), Article III (national treatment clause), as well as the ban of discrimination in Article XI. Article XX consists of a *chapeau* and a list. The general part states that a member may only refer to the exceptions listed in the article, if its application does not mean arbitrary or unreasonable discrimination, and if they don't constitute veiled restriction of international trade. These requirements shall be considered in all cases. Only a few exceptions are mentioned here: if the measure is necessary for protection of public morals, or for the protection human, animal, plant life or health, or it is relevant to the conservation of exhaustible natural resources – if these measures express themselves through restricting domestic production or consumption.

Security Exceptions. Besides the above-mentioned general exceptions, the GATT names a few exceptions specifically. Article XXI, e.g. allows MS to depart from the GATT's provisions in the name of fundamental national security interest, or – if necessary to protect the balance of payments – as

[40] Article XX (b) GATT 1994: necessary for the protection of human, animal or plant life or health.
[41] Article XX (g) GATT 1994: related to exhaustible natural resources, if these measures become effective alongside the restriction of local production or consumption.
[42] *China Rare Earths case* (DS431)

according to Article XII, the MS may limit the quantity of products allowed for import with a few requirements attached.[43]

The question of **dispute settlement between WTO members** is dealt with by Annex C/2 of the WTO Agreement (Dispute Settlement Understanding – DSU). This document creates the Dispute Settlement Body (DSB), the decision of which is binding on MS. Among the duties of the DSB is the creation of the panel in given disputes, the adoption of the panel's and Appellate Body's reports, as well as overseeing the implementation of its decisions and recommendations, and approving the suspension of obligations in necessary situations.

Three dispute settlement principles are to be respected during dispute settlement. The first is the principle of good faith. The second is that complaints made in individual cases cannot be joined. And finally, that there is a presumption that violating the rules affects other members negatively, and the burden of proof for disproving this is on the member responsible for the violation.

The dispute settlement process is made up of multiple phases. The first is an obligatory **consultation** between the parties in dispute. The other party must agree to the request for consultation within 10 days of its receipt, and the consultation itself must start within 30 days. If this does not happen, the party initiating the consultation may request the creation of a panel. The request for consultation must be announced to the Dispute Settlement Body. The consultation, as well as anything said during it (and offers or proposed settlements) do not affect the later proceedings.

If the consultation is unsuccessful or if the parties cannot find a solution to their dispute within 60 days after the receipt of the consultation request, the Dispute Settlement Body establishes a **panel** at the written request of the complaining party, in which the party must note whether consultations happened, what are the concrete measures being disputed, and the legal basis of the complaint. The DSB can only refuse the establishment of the panel if every member refuses the request. The DSU will determine who can be members of the panel. These can be independent governmental or non-governmental experts, but cannot be from the same MS as the parties (except if the parties agree to it). In general, the panel has 3 members, but parties can request a five-member panel as well. The WTO Secretariat will make recommendations for the constitution of the panel to the parties, against which they cannot object, except if they have a 'compelling' reason.

The functions of the panel are also determined concretely by the DSU. Its task is to assist the DSB in carrying out its duties, which in practice means that it objectively measures up the given case, establishes the facts, the applicable treaties based on that, and finally makes statements regarding the facts, which assists the DSB in making its recommendations and decisions. The panel is of course obligated to consult with the parties in dispute during the examination. The DSU also provides for the possibility of any WTO member (who has substantial interest in the case and informed the DSB of this interest) to submit its positions, opinions and arguments in writing to the panel. Articles 12, 13, 14 and 15 of the DSU, as well as the Annex 3, deal with the proceedings before the panel in detail.

The panel must submit a **report** to the DSB within 6 months. The report is approved by the DSB, except if any disputing party proclaims its desire to appeal, or if the DSB rejects the report with full consent. This latter one is rather rare, as the parties involved also have a vote each in the DSB.

If one of the parties seeks to **appeal** against the panel's report, then the case goes to the Permanent Appellate Body, which is created by the DSB. Only the parties in dispute may appeal, but other parties with substantial interests (which they officially announced) may make written submissions and request

[43] Vörös, 2004, 100.

hearings from the Appellate Body. The appeal is restricted to the panel report's legal questions and the legal interpretation developed by the panel. The Appellate Body may uphold, modify or reverse the panel's legal statements and conclusions. The Appellate Body's report is approved by the DSB.

Banana War

In the seventies, the European Union (back then European Communities) provided an opportunity to countries of the Caribbean (with the aim of fostering their economic development) to sell as many bananas in the community market duty-free, as they wished. This was not a significant number even at the beginning of the nineties, when about 7% of the total banana consumption in the EU was supplied by the Caribbean. However, without these measures, they would have been forced out of the community market (which is also the world's largest banana market), as the grand Latin American banana plantations (which were mostly in the hands of American MNCs) could grow bananas more effectively and thus could sell them much cheaper. These MNCs put pressure on the US government during the nineties to stop the protectionist European practice. Thus, the US (which provides about 0.01% of the world's banana production)[44] initiated WTO proceedings against the EU alongside multiple Latin American countries. The EU lost the "war", whose true casualties were the small-scale banana producers of the Caribbean.[45]

In practice, the problem with the WTO dispute settlement is the same as with any international organization's dispute settlement: there is no world police to enforce the decisions of the DSB. Thus, the following 'solutions' exist for disputes between the parties:

1) The parties try to find a compromise that is mutually acceptable, with attention paid to the DSB's recommendation,
2) the responsible party revokes its measure,
3) maybe even pays compensation to the offended party, or if this is not possible,
4) the offended party may 'legitimately' suspend its obligations towards the offending party (e.g. revokes some duty benefits for products imported from the offending party's country).

8.1.4. The Organization of Petroleum Exporting Countries (OPEC)

Petroleum, and its derived products, is the most important energy source in the economy. When the world economy does well (there is a conjuncture, a boom), then the price of petroleum usually increases, as the economy consumes more energy, and when there is a crisis, it drops. However, there are exceptions to this in the history of world economy, as the market can be manipulated to a certain extent by the increase or decrease of production. In recent years, for instance, many accused the US of keeping the oil price low through its allies (e.g. Saudi Arabia) to weaken the Russian economy, which depends heavily on revenues generated by oil export.

[44] US bananas are mostly gown in Hawaii and Florida. University of Florida EDIS http://edis.ifas.ufl.edu/fe901

[45] *WTO EC – Bananas III* www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htmKey facts; European Parliament www.europarl.europa.eu/news/en/headlines/world/20110121STO12285/ending-the-banana-wars-who-wins-and-who-loses; The Banana Wars, The Guardian www.theguardian.com/world/1999/mar/05/eu.wto3

Statistical data on crude oil production

Interestingly, the statistics regarding oil extraction can be quite varied depending on the source, the contradictions regarding oil reserves are even greater. According to the statistics of the OPEC and BP, the OPEC provided about 30% of the extracted petroleum in 2017, while 70-80% of the world's petroleum reserves are found in OPEC MS. The greatest reserves are possessed by Venezuela, Saudi Arabia, Canada, Iran and Iraq.[46]

Following WWII, the world's oil market was ruled by seven great western oil companies (the 'seven sisters')[47] as a cartel. The **OPEC** practically came into being as a response to this in 1960 (Baghdad) as the permanent intergovernmental organization of the world's most important oil exporting countries, which coordinates the petroleum extraction policies of its members.[48] The Secretariat of the organization and its headquarters are currently located in Vienna. In reality, the OPEC functions as a cartel as well. The founders were Iran, Iraq, Kuwait, Saudi Arabia and Venezuela. Qatar, Indonesia (its membership is currently suspended), Libya, the United Arab Emirates, Algeria, Nigeria, Ecuador, Gabon, Angola, Equatorial Guinea and Congo joined later. Thus, there are currently 15 members of the organization. Although the oil fields of Algyő (near Szeged) possess an almost inexhaustible supply of petroleum, Hungary is not a member of the organization. According to its statute, any significant net oil exporting country, which possesses similar goals, can become a member of the organization if three-quarters of the members vote for its accession.[49] When the organization was created, the members were developing countries. We can find a very culturally diverse range of membership, from Venezuela to Indonesia. These are mostly autocratic or only partially democratic countries. As the main income of these nations come from petroleum, it is in their interest to keep its price relatively high and stable. The self-interest-based nature of the organization is evident in that despite the constant conflicts between the countries of the Persian Gulf, the organization's functioning is not significantly affected by it.[50]

8.2. The Organization for Economic Cooperation and Development (OECD)

Following WWII, the US had to face two serious problems. First, the economy started slowing down (mostly due to the decrease in arms productions). The machines were easy enough to repurpose from wartime production to peaceful economic purposes, and there was a skilled workforce, but they had to find buyers for the American products. The newly freed European countries were interested, as they were lacking in almost everything, except they had no money. The other problem was caused by the USSR spreading its influence across Europe. The solution to both problems was the **Marshall Plan**. This was basically an assistance program, in which the US gave potential buyers money to spend on American products, which practically saved the economy from a crisis. The USSR could most effectively spread its ideology in capitalist countries where workers lived in squalid conditions due to the bad economic situation. The American loans significantly raised the quality of life and strengthened the economy in Western European countries that partook of them. To better manage the distribution of

[46] OPEC website https://asb.opec.org/index.php/interactive-charts/oil-data-upstream; British Petrol website https://www.bp.com/content/dam/bp/en/corporate/pdf/energy-economics/statistical-review/bp-stats-review-2018-oil.pdf

[47] These were: Anglo-Iranian Oil Company (currently BP), Gulf Oil (later became a part of Chevron), Royal Dutch Shell, Standard Oil Company of California (currently Chevron), Standard Oil Company of New Jersey (currently part of ExxonMobil), Standard Oil Company of New York (currently part of ExxonMobil), Texaco (currently part of Chevron). Source: https://www.financial-dictionary.info/terms/seven-sisters-oil-companies

[48] OPEC website: www.opec.org/opec_web/en/

[49] Art. 7. (C), OPEC Statute www.opec.org/opec_web/static_files_project/media/downloads/publications/OPEC_Statute.pdf

[50] However, some MS frequently extract more petroleum than the earlier pledged quotas, deceiving each other. For example, the NSA found this out about Saudi Arabia only a few years ago. See: How the NSA and GCHQ Spied on OPEC, Spiegel online www.spiegel.de/international/world/how-the-nsa-and-gchq-spied-on-opec-a-932777.html

the aid and to organize (and supervise) the rebuilding efforts, the Organization for European Economic Cooperation (OEEC) was created in 1948. The **OECD** (headquartered in Paris) came into being as the OEEC's legal successor in 1961, as an economic policy venue for MS. The organization currently has 35 members,[51] including Hungary.[52] Its goal is to sustain economic growth and financial stability in its MS and the world, and to provide a venue for the development of international economic relations. In practice, experts of the OECD concern themselves with a great many things, e.g. they compare and analyze different school and pension systems, try to understand the economic, social or environmental changes, and develop solutions to problems that rear their head.[53]

8.3. Regional Economic Integrations

Throughout history, we can find many examples of successful economic integrations.[54] The US itself owes its existence to economic integrations, or there is the German Federal Republic. These, however, have surpassed economic integrations, and function as federal states. Nonetheless, as a result of their successes, integration efforts in Europe after WWII have strengthened. Among the various theories of integration, neo-functionalism finally emerged as the dominant theory, which promoted **gradual integration**. This means that they first began cooperating on fields where there was already a degree of cooperation between the countries. These were primarily trade and its related fields, and were later expanded to cover other conjoining areas (such as transportation of goods, etc.).

In the past almost seventy years, the European Union underwent the following **stages of integration**:
- free trade area – when the countries abolish duties between themselves but outwardly still decide their duties independently,
- customs union – when members of the union start using the same tariffs and procedures outwardly as well,
- common market – when not only free movement of goods, but also free movement of services, capital and labor are guaranteed between the members,
- single internal market – when all obstacles, including all manners of administrative ones, are abolished,
- economic and monetary union, where the EU currently is.

However, it should be noted that as a regional economic integration, the EU has a *sui generis* aspect, i.e. it cannot be compared to other integrations, and given its institutional and legal system, it is far more than a simple economic integration. Therefore, it won't be dealt with here in more detail (However, Chapters 9 and 10 are recommended reading on the subject).

8.3.1. The EU-Canada Comprehensive Economic and Trade Agreement (CETA)

Fundamentally, **CETA** is a **comprehensive free trade agreement** between the EU and Canada, which surpasses traditional trade questions to deal with a diverse range of topics, such as investment, competition law, intellectual property law, labor law or environmental law. The agreement came into temporary force in 2017 September. In practice, this means that except for the provisions concerning investments, every other part of the agreement is in use. Before the full agreement can come into

[51] OECD website: www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm
[52] Act XV of 1998 on the proclamation of the OECD Convention [HU]
[53] OECD website: www.oecd.org
[54] For more on new generation free trade agreements and regional economic integrations, see Nagy 2018a, 197-216., Nagy 2018b, 394-404.

force, however, the ratification of national parliaments is necessary, as well as the closure of the EU ratification, which is currently pending on the outcome of advisory process no. 1/17 in front of CJEU. To summarize the most important trade elements of the agreement, it removes duties on 99% of goods, and similarly to Article III GATT, provides national treatment to the other party's product in the domestic market, therefore forbidding discrimination. Similarly, the agreement has provisions on the parties not imposing export duties or taxes on exported goods, and will cease all quantitative restrictions. Another notable aspect of the agreement is the part concerning investment, which contain similar substantive law to other investment treaties, but procedurally, the CETA seeks to replace the traditional arbitration system with a permanent court system.[55]

However, the agreement still receives numerous criticisms, and its negotiation process was also heavily **criticized** because its secretiveness. During the negotiations between the Commission and the Canadian government, only the opinions of important economic actors were considered, while environmental and other civil organizations were shut out of the proceedings. This was further amplified by the various leaked documents during this period, which showed that the original CETA was to be a much more traditional free trade agreement. Upon public pressure, the Commission was forced to choose an alternative approach, which led to the final version of the CETA.

Other problems still persist, however, out of which I will only highlight two. The first is the so-called **regulatory chill**, which is a hypothetical phenomenon related to investment dispute settlement. The essence of it is that the host country will not introduce regulations or make policy decisions that would infringe upon the interests of the foreign investors. And this would be because of the high legal fees, and fears of a highly-valued award that would cause significant distress to the host country. Especially developing countries and post-Socialist countries are considered at risk by this potential phenomenon. The host countries thus cannot introduce legislation, especially on important fields like environmental law or labor law, because they fear that the foreign investor will turn to international arbitration, and will demand compensation.[56] The above-mentioned Veolia case is a good example of this. Despite its procedural innovations, this risk could still be present for CETA. The newly established permanent courts do not have any precedents or established practice of their own to draw on, so it will be probable that in the years following the CETA fully entering into force, their decisions and awards will either be unpredictable for the parties, or they will partially adopt the already inconsistent arbitral practice. This situation breeds uncertainty, which would theoretically lead to regulatory chill.

The other noteworthy problem is the '**Trojan horse issue**'. CETA's investment provisions apply to investors of the contracting parties. However, the term investor is rather loosely defined by the agreement.[57] Especially in relation to Canada, as most important American corporations possess Canadian subsidiaries with independent legal personality. This could lead to American investors gaining access to the privileges provided by CETA, if their investment in the EU is made through a Canadian subsidiary. Therefore, the US could gain an economic advantage by making it possible for them to enter the EU and reap the benefits of the CETA through their 'Trojan horse' Canadian subsidiaries, while EU enterprises obviously would lack the means of doing the same to American markets. All in all, the CETA will probably remain a controversial agreement in the future too, and the truth of its criticism cannot yet be ascertained factually.

[55] European Commission website http://ec.europa.eu/trade/policy/in-focus/ceta/
[56] Víg–Hajdu 2018, 49.
[57] Ibid. 52.

8.3.2. The European Free Trade Association (EFTA)

The **free trade agreement** that created the **EFTA** was signed by those European countries in 1960 that didn't intend to join the Treaty of Rome (creating the EEC). Out of the seven founding members, only Norway and Switzerland remain, though Iceland and Liechtenstein joined in the meantime. Regarding trade of goods, the EFTA is in the ninth place worldwide, while in the trade of services, it is in the fifth place, despite its MS having less than 14 million population combined. It is also an important trade partner of the EU.

The European Union and three EFTA members (Iceland, Liechtenstein and Norway) have signed an agreement that created the **European Economic Area** (EEA), which came into force in 1994. This created a common internal market between the EU and these countries. This agreement provides equal rights within the market to the citizens and enterprises of the aforementioned three EFTA countries. However, regarding the four freedoms (goods, services, persons and capital), the three EFTA country uses the EU norms. Besides these, the agreement also deals with cooperation in other fields too, such as education, environmental protection, consumer protection, etc. The common EU agricultural and fishing policy (CAP), the customs union, the common trade policy, the CFSP, the JHA, as well as the financial union do not fall under the EEA. Switzerland is not a member of the EEA, but has made multiple bilateral agreements with the EU.[58]

Bank Secrets in Liechtenstein

The small Liechtenstein Principality created the roots of its current economy after WWI. Following the upheavals of the war, the former elite realized the necessity of hiding their wealth. The principality primarily ensured this through foundations, and continues to do so to this day. The system is quite simple: one must create a foundation or trust, which takes relatively little money to manage and sustain. There is a confidential trustee (which activity requires a specific permit in Liechtenstein) who manages the wealth, and based on the directions of the founder, may make payments to specific beneficiaries. The trustee may not reveal the personal details of neither the founder nor the beneficiaries under local law. The foundation or trust pays minimal taxes, and may pay money to anyone tax-free.[59] Since 2017, Liechtenstein shares the details of natural person bank account owners with EU MS through an agreement, but this does not affect foundations and trusts. This, however, is still not a perfect system for those seeking to hide their wealth from tax agencies. In 2008, for example, an IT technician of the princely family's bank copied the details of the bank's clients, and sold the information to German authorities for 4.2 million Euros. Thanks to these details, it turned out that German parties, businessmen, athletes and drug smugglers all utilize Liechtenstein's services.

8.3.3. The North American Free Trade Agreement (NAFTA)

During the early nineties, the US planned to make separate free trade agreements with Canada and Mexico, from which sprung the idea of making a **trilateral** agreement. This became **NAFTA**, the main goals of which include lifting the restrictions on trade, fostering the movement of goods and services across the borders (i.e. the creation of a free trade area), increasing investment opportunities,

[58] European Free Trade Association (EFTA) www.efta.int accessed 6 August 2018

[59] Ospelt and partner 24. www.ospelt-law.li/Portals/0/publikationen/Common%20Company%20Forms%20Liechtenstein.pdf accessed 3 August 2018

effectively and adequately protecting intellectual property, as well as providing an adequate framework for further cooperation between members.

The agreement counts as ***lex specialis***[60] in the member countries, except for the exhaustively listed environmental agreements. Regarding its scope, it only extends to the goods listed in its annexes. It provides national treatment for these goods, and clarifies that tariffs can't be raised, new tariffs should be created and must be gradually reduced. Similarly to GATT, it contains measures unrelated to tariffs, e.g. it prohibits quantitative restrictions. It regulates denomination of origin and customs procedures. Certain product groups, such as energy, petroleum and its derivatives as well as agricultural products receive their own chapters. Similarly, it deals with standards applying to goods, because these can potentially be classified as measures restricting trade (Think of electronic sockets, for instance: if the plug on the device is not compatible with these, then it is impossible to sell the product on the given market without extra costs for replacing the plugs with compatible ones).

NAFTA has separate chapters on other important questions, like public procurement/government contracts (where in certain cases, it provides national treatment to the enterprises of other MS), investment (where it provides national treatment), expropriation, dispute settlement, and regulates the freedom of services that cross the borders, but only in a relatively narrow manner, which means that there is no free movement of labor between MS.

It is difficult to measure **the effects of the NAFTA**, as since its inception, there have been multiple economic crises, and the MS have signed other free trade agreements. It is a fact, however, that before NAFTA, Mexico had a strong agricultural sector, while today, the dumping of American MNCs have led to the bankruptcy of many Mexican farms, and the country is no longer self-sufficient in food. On the other hand, because Mexican labor is cheaper, and the environmental and other standards are lower, many American corporations moved their production to Mexico, which affected the rise of unemployment in the US in recent decades. Another problem is that the strict border system on the Mexico-US border impedes the movement of goods. However, the three economies have become too intertwined to reverse the current level of integration.

The Chinese Aluminum Case

In 2016, the Americans discovered a massive aluminum deposit (amounting to 6% of the world reserves according to some appraisals) in the Mexican desert, not far from the US border. According to the Americans, the Chinese brought the metal to Mexico, with the goal of later using the provisions of NAFTA (as if it was Mexican goods) to take them into the US, as the latter imposes a high tariff on aluminum directly originating from China. The Chinese were finally forced to transport the aluminum back to Vietnam (not China, because that would have been an admission of the metal's true origin).[61]

8.3.4. The Caribbean Community (CARICOM)

The **CARICOM** came to be in 1973, through the Treaty of Chaguaramas, amended in 2002 to provide for the possibility of later creating a single market. The CARICOM has fifteen permanent members and 5 partnered members, which are mostly developing Caribbean island nations, with a very diverse population, language and culture, which in practice, also affects the integration process. CARICOM

[60] During the application of law, lex specialis precedes the general rule (*lex generalis*). This is the so-called "*lex specialis derogat legi generali*" principle in Latin. See: Trócsányi–Schanda 2014.

[61] A Chinese billionaire may have hidden 6% of the world's aluminum in the Mexican desert www.businessinsider.com/a-chinese-billionaire-may-have-hidden-6-of-the-worlds-aluminum-in-the-mexican-desert-2016-9

rests on four pillars, which are economic integration, foreign policy coordination, human and social development and security. The most important goal is to increase the quality of life and to stabilize the economies of the MS.[62] While the official position of the organization is that there is a functioning single market, the leaders of MS often refute this in their comments.[63]

The Caribbean region is rich in fish and petroleum, and tourism can be considered the driving industry. Besides these, some MS and partnered members are off-shore tax havens like Liechtenstein (Belize, Cayman Islands, etc.).

8.3.5. The Association of Southeast Asian Nations (ASEAN)

The **ASEAN** was created in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand. The creation of the organization was mainly driven by political reasons, they sought to cooperatively combat the spread of Communism in the region (having denied this officially ever since), and to stabilize peaceful relations between the members. After the Cold War, the organization managed to remain and expand due to political reasons as well. Fearful of China's regional ambitions, the organization was joined by Vietnam, Myanmar, Cambodia, Brunei and Laos, which means there are currently 10 members. The main goals of the organization are economic, social and cultural cooperation, and the sustainability of regional peace and stability. Besides these, the MS successfully cooperate in other fields like education, technical development and infrastructural development. The ASEAN Charter, which came into force in 2008, has the goal of creating the ASEAN Community, which would have three pillars: security policy cooperation, economic community, and a social and cultural community.[64]

The South China Sea Dispute

The South China Sea is important for both China and nearby countries for multiple reasons: strategically critical trade routes pass through it, most notably the large quantities of oil tankers heading towards China, and the cargo ships transporting Chinese goods from China. Furthermore, it is also important from a military perspective, as it is easier to exit to the Pacific Ocean from here. Furthermore, it also makes monitoring nearby countries easier. And it shouldn't even be mentioned that the area is rich in petroleum and gas deposits and has an abundant fish population. The middle of the sea is occupied only by tiny island chains and reefs (Paracel Islands, Spratly Islands). A few years ago, China created artificial islands using these, and created military bases and airports on them, referring to historical rights. The nearby countries (Taiwan, Vietnam, the Philippines, Malaysia, Indonesia, Brunei) questioned this, referring to the 1982 UN Convention on the Law of the Sea. They had the opinion that the sea and reefs 200 nautical miles from their coasts belonged to their exclusive economic areas, and that the sea beyond those was international waters. As China remained uncompromising, the Philippines turned to the Permanent Court of Arbitration in The Hague, arguing that China was in violation of the UN Convention on the Law of the Sea. China refused to take part in the proceedings, stating that the Permanent Court had no jurisdiction over matters concerning its sovereignty.[65] China otherwise prefers bilateral negotiations, since it is easier for them to exert economic and military pressure on their weaker neighbors in the region. The Permanent Court decided in favor of the Philippines. However, China is still aggressively expanding in the region, which will likely end up strengthening the cooperation within ASEAN.

[62] CARICOM website https://caricom.org

[63] http://pridenews.ca/2018/02/26/can-caricom-survive-caribbean-single-market-economy-csme/

[64] ASEAN website www.asean.org

[65] *The South China Sea Arbitration* (The Republic of Philippines v. The People's Republic of China), PCA www.pcacases.com/web/view/7

South China Sea dispute

Source: CIA Central Intelligence Agency

QUESTIONS FOR SELF-CHECK

1. What would be the disadvantage of introducing Euro in Hungary, which has an export-based economy?
2. Explain the arbitration proceedings of the ICSID briefly!
3. Explain the most important provisions and principles of GATT 1994 briefly!
4. What two types of anti-dumping duties can you name?
5. What 'solutions' exist for dispute settlement between WTO members?
6. What motivated the US to create the predecessor of the OECD, the OEEC, after the war?
7. What stages of integration did the EU go through historically?
8. What problems can be raised regarding the CETA?
9. What are the biggest challenges for NAFTA as a free trade area?
10. What motivated the Southeast Asian nations to create ASEAN?

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CHAPTER 9

EUROPEAN INTERNATIONAL ORGANIZATIONS (COUNCIL OF EUROPE, OSCE) AND EUROPEAN REGIONAL COOPERATION (V4, NORDIC COUNCIL)

The rapprochement of European states is nothing new since they have always been in looser or closer cooperation with each other for centuries. The formation of today's integration organizations is a **20th century** event, the result of all that political and economic change and development that has shaped the image of the continent over the last century. The purpose of this chapter is to get the reader acquainted with the cooperation on the European stage through two closer international organizations, the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE). In addition, this chapter also deals with the less formal Visegrad Cooperation (V4) and the Nordic Council. The way through which these organizations have developed as well as their significance and organizational structure will be described below.

9.1. European International Organizations

Several major international organizations were established through the membership of the countries of the European continent. The Council of Europe, which can be seen as an important milestone in European integration after WWII, has become known in the area of human rights protection and due to the intensive adoption of conventions. While the military issues have been completely excluded from the purview of the Council of Europe, the other major international organization on the European stage, OSCE, specifically addresses security and military issues. The membership of the two organizations, however, goes beyond the borders of the traditional Europe (in geographic terms) due to membership conditions.

9.1.1. The Council of Europe (CoE)

Establishment

Inconceivable damage was caused by WWII in Europe. The universal international organization established after WWI, the League of Nations, was unable to prevent a new destruction. At the international level, the establishment of the UN was a great step in safeguarding peace and security. Meanwhile, at the European level, from the 1950s onwards an integration process went down, resulting in the present European Union. Looking back on the post-WWII period and the beginning of European integration, we would think that economic cooperation was its basis. This idea originates from the fact that the foundation of the organizations preceding the European Union was indeed based upon collaboration in economic sectors, but as a first step, European states were concerned with **cooperation based on political foundations**.

The activity of *Winston Churchill* must be noted from the period after WWII. *Sir Winston Leonard Spencer Churchill* (1874-1965) was one of the most influential politicians of the past century, Prime Minister of the UK from 1940 to 1955. He also played a decisive role in setting up the CoE. On 19 September 1946, he held his famous speech in Zurich, in which he proposed the establishment of a regional association, the 'United States of Europe', obviously based on the pattern of the USA. The creation of the 'European Family' started from 1947, the basis of which was clearly political

integration. In May 1947, the first General Assembly of the United European Movement was held in London, and at the end of that same year the International Committee for the Coordination of the European Movements was formed. The Committee also organized the **first Congress of Europe** from 7 to 10 May 1948 in The Hague. This negotiation process led to the signing of the Statute of the Council of Europe on May 5 1949, in London.

> On 5 March 1946, Winston Churchill told his famous speech at Fulton. Many people count the beginning of the Cold War from that speech.
> "*From Stettin in the Baltic to Trieste in the Adriatic*, *an iron curtain has descended across the Continent.*"
> In September 1946, the Zurich speech was delivered, which was also significant in the European integration's perspective.
> "*Yet all the while there is a remedy which*, […] *in a few years make all Europe* […] f*ree and happy*. *It is to recreate the European Family*, *or as much of it as we can*, *and to provide it with a structure under which it can dwell in peace*, *safety and in freedom*. *We must build a kind of United States of Europe*."

The beginning of European integration is mostly linked to the federalist idea, so the politicians and organizations involved have imagined the cooperation of European states on a political basis. However, after the establishment of the Council of Europe, it became clear that the integration based on political foundations would be replaced by economic cooperation.

This paradigm shift is relevant to French Foreign Minister *Robert Schuman* recognizing that lasting peace can only be achieved through the collaboration of Germany and France. However, the centuries-old opposition of the two countries made approaching them impossible in a political field, so the cooperation was first initiated based on economic affiliation, after WWII. This process has led to the establishment of the European Union.[1] With the signing of the Treaty of London in 1949, the **Council of Europe** (*Conseil de l'Europe*) was set up, which has 47 member states in 2018. The founding MS were the Benelux states, Great Britain, France, Denmark, Norway, Sweden, Ireland and Italy. Hungary joined to the organization on 24 November 1990 as the twenty-fourth MS.

The Aims and Membership of the Organization

The main objectives of the organization are defined in the London Treaty. The founders of the Council of Europe, fundamentally, prescribe a devotion to spiritual and moral **values** as a precondition for the work of the Council. These fundamental values are individual freedom, political liberty and the rule of law, which form the basis of all genuine democracies.[2] The aim of the CoE is to achieve a greater unity between its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress. Matters relating to national defense, however, do not fall within the purview of the Council of Europe.[3] The main values defined by the organization are parliamentary democracy, rule of law and respect for human rights and fundamental freedoms.[4]

Since 1950, the **membership** of the organization has grown dynamically. The significant expansion of the membership was made possible after the end of bipolar world order and the dissolution of the USSR. Looking into the 47 MS, we can find more that cannot be categorized as geographically European, such as the Russian Federation and Armenia. This is possible because of the membership requirements, which, as sets the criterion of 'Europeanism' as a precondition, not that the acceding

[1] Gombos 2012, 20-23.
[2] Preamble of the Statute of the Council of Europe
[3] Ibid Chapter I, Article 1
[4] Ibid Chapter II, Article 3

state shall be geographically located on the European continent. Of course, this issue had particular importance in connection with the accession of the post-Soviet states, so the Parliamentary Assembly (PACE) adopted a recommendation on **membership requirements** in 1994.[5]

> The membership requirements of the Council of Europe are:
> 1) 1. The requirement of a European state: membership of the Council of Europe is in principle open only to states whose national territory lies wholly or partly in Europe. However, traditional and cultural links and adherence to the fundamental CoE values might justify a suitable cooperation with the organization.
> 2) 2. The requirement of democratic rule of law: the state respects and embodies the characteristics of a democratic rule of law in its constitutional system, such as free elections, free press, separation of the branches of power.
> 3) 3. Respect for human rights, fundamental freedoms and the rights of minorities.
>
> The state shall also accede to the ECHR by ratifying the Convention and provide for the possibility of individual complaints. The acceding state must recognize the jurisdiction of the ECtHR.

The USA, Canada, Mexico, Israel, Japan and the Vatican have observer status in the work of the Council of Europe.

The membership **process** takes several steps. Candidate countries may participate in the work of the Parliamentary Assembly in a special invitation status. The PACE issues a questionnaire to the candidate state, the assessment of which will have particular importance regarding the adoption of an opinion on accession. The PACE shall discuss the draft opinion and adopt it by a two-thirds majority. The new MS will then be invited by the Committee of Ministers (CM).

Any state so invited shall become a member upon depositing an instrument of accession to the Statute with the Secretary General.[6] After 1990, requiring more and more **commitments** from the acceding states has been typical to membership admissions. Commitment requirements were first formulated in Romania's accession procedure in 1993. During the accession of Moldova in 1995, the amendment of the Moldovan constitution was explicitly requested as a condition of accession. The monitoring of the fulfillment of the commitments will take place through a monitoring mechanism developed by the PACE, checking compliance with the requirements through political and human rights committees. In 1997, an independent monitoring committee was also set up.[7]

Organizational Structure

The CoE is based in **Strasbourg** (France), the official languages are English and French. Among its bodies we can find organs which deal with general tasks, but in the last decades, a number of specialized bodies have been established. As for the latter, some committees, such as human rights and the monitoring committee, which was already mentioned in the membership procedure, are significant.

[5] PACE Recommendation No. 1247 (1994)
[6] CoE Statute Chapter II, Article 4
[7] Blahó–Prandler 2014, 377-378.

The organs of the CoE are: The Committee of Ministers (CM) is the most important decision-making and executive body of the organization; the Parliamentary Assembly (PACE) is the consultative body of the Council of Europe; the Secretariat carries out the management and administration of the organization. The Special Representative bodies of the Council of Europe are: The Congress of Local and Regional Authorities of Europe (CLARE) and the European Court of Human Rights (ECtHR).

The **Committee of Ministers** is the most important decision-making and executive body of the organization. Based on the principle of intergovernmentalism, each MS may delegate one representative. CM representatives are generally the ministers for Foreign Affairs, who – in case of another engagement – might be substituted by an alternate designated and sent by the Government of the MS, preferably from among the members of the Government. The ministerial deputies appointed by the ministers shall act between sessions. Each MS has one vote in the CM, so the principle of one state – one vote determines decision-making.[8] The CM shall adopt its rules of procedure, and its work is assisted by preparatory and other committees. Rapporteur groups are informal working structures of the ministers' deputies and have no decision-making power as their duty is to prepare CM decisions. There are currently seven Rapporteur Groups including Education, Culture, Sports, Youth and Environment, Democracy, External Relations and Human Rights.[9] The Statute provides the opportunity for the establishment of advisory and technical committees. The CM shall, upon the recommendation of PACE or on its own initiative, examine actions required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters.[10] A number of outstanding international conventions have been adopted under the aegis of the Council of Europe.

The **Parliamentary Assembly** is a parliamentary body based on the representation of national parliaments, i.e. the deliberative organ of the Council of Europe (designated as the Consultative Assembly of the Council of Europe in the Statute). The PACE has no strong decision-making powers, it has the right to comment on CM decisions. It shall debate matters within its competence and present its conclusions, in the form of recommendations, to the CM. [11] The PACE representatives are delegated from MS national parliaments or appointed from among national MPs based on a specific procedure. Representatives must be citizens of the MS they represent. Substitutes can also be appointed, who speak and vote on behalf of the absent member.[12] Hungary currently has 7 representatives and 7 deputy representatives. Within the PACE, MPs are organized into political groups, there are currently six such groups. The PACE shall meet in ordinary session once a year, the date and duration of which shall be determined so as not to overlap with national parliamentary sessions of MS. In no circumstances shall the duration of an ordinary session exceed one month.[13]

The **Secretariat** shall consist of a Secretary General, a Deputy Secretary General and such other staff as may be required. The Secretary General and Deputy Secretary General shall be appointed by the PACE. The remaining staff of the Secretariat shall be appointed by the Secretary General. No member of the Secretariat shall hold any salaried office from any government or be a member of the PACE or of any national legislature or engage in any occupation incompatible with his duties. The Secretary General, the Deputy Secretary General and every member of Secretariat staff shall make a solemn declaration prior to taking office. They may not accept instructions in connection with the performance

[8] CoE Statute Chapter IV, Articles 13-14.
[9] CoE – *Rapporteur Groups* https://www.coe.int/en/web/cm/rapporteur-groups
[10] CoE Statute Chapter IV, Article 15.
[11] Ibid. Chapter V., Articles 22-24.
[12] Ibid. Article 25.
[13] Ibid. Article 32.

of their duties from any government or authority independent of the Council.[14] The current Secretary General of the Council of Europe is Norwegian *Thorbjørn Jagland*, who was first elected in September 2009 for five years and then re-elected in June 2014. Deputy Secretary General *Gabriella Battaini-Dragoni* holds her office since June 2015.

The Council of Europe's two **specialized** bodies includes the Congress of Local and Regional Authorities of Europe and the European Court of Human Rights (ECtHR).

The **Congress of Local and Regional Authorities of Europe** (CLARE) which presents the views of Europe's regions and cities was not originally included in the CoE Statute. Local government and local representation, however, have always taken a prominent place among the values of the Council of Europe, since they are indispensable components of rule-of-law democracies. The CLARE was established in 1994 as an advisory body instead of the Standing Conference of Local and Regional Authorities of Europe, and consists of two chambers: the Chamber of Local Authorities and the Chamber of Regions. The CLARE has 318 members and the same number of substitutes elected from representatives of local and regional authorities in CoE MS. The CLARE, on the one hand, has an advisory role to the CM and the PACE on all local and regional policy issues. On the other hand, it provides a forum to the members for consultation and helps strengthen local and regional self-government and ensure its effective functioning.[15] The Council of Europe adopted the **European Charter of Local Self-Government** on 15 October 1985.[16]

The **European Court of Human Rights** (ECtHR) is „*the highest judicial forum for the protection of fundamental rights*". The jurisdiction of the ECtHR was broadly extended in 1970, with Protocol No 2 to the ECHR, the Convention on which the operation of the Court is based. Until then, it had jurisdiction to interpret the ECHR and since then it also has the power to decide legal disputes over those States which have fully accepted its jurisdiction.[17]One of the most important achievements of the Council of Europe was the adoption of the ECHR (European Convention on Human Rights and Fundamental Freedoms)[18] in 1950, which entered into force in 1953. The ECHR not only requires Contracting Parties to ensure the rights and freedoms defined in the Convention for everyone within their jurisdiction, but also establishes a control system. The ECHR provides a unique way of ensuring that individuals can file an application. Chapter I of the Convention lists the rights and freedoms to be protected, while Chapter II deals with the ECHR. Of course, the Convention has undergone a number of changes since 1950, a total of 16 (additional) Protocols (APs) have been adopted to it. The ECtHR may examine **interstate claims** and **individual applications** or give an **advisory opinion**. This latter may be requested by the CM, to interpret the Convention or the Protocols thereto. Article 34 provides the opportunity, for any person, non-governmental organization or group of individuals claiming to be victims of a violation by one of the Contracting Parties of the rights set forth in the Convention or the Protocols thereto, to file individual applications. These must meet certain admissibility criteria for the Court to examine the case, such as the exhaustion of all domestic remedies or the fact that the application cannot be anonymous or manifestly ill-founded.

It is not necessary for the applicant to be a citizen of a CoE MS, it is sufficient if the violation complained of was committed against the applicant under the jurisdiction of any Contracting Party (usually within its territory) for which the Convention is binding or the applicant will be in such a position due to the procedure of the authorities of such Contracting Party that the rights provided by

[14] Ibid. Chapter VI., Article 36.

[15] Congress of Local and Regional Authorities of Europe https://www.coe.int/en/web/congress

[16] In Hungary, it was promulgated by Act XV of 1997

[17] Berger 1999, 1-2.

[18] In Hungary, it was promulgated by Act XXXI of 1993. Hungary promulgated the Convention and the first 8 Protocols at the same time.

the Convention are violated. The latter situation may arise in the case of extradition or expulsion to third county [19]

Rights protected by the European Convention on Human Rights: the right to life; prohibition of torture, inhuman or degrading treatment, or punishment; the prohibition of slavery and forced labor; the right to liberty and security; the right to a fair trial; the prohibition of retroactive effect; the right to respect for private and family life; the freedom of thought, conscience and religion; the freedom of expression; the freedom of assembly and association; the right to an effective remedy; the prohibition of discrimination. Additional rights were ensured in the Protocols of the Convention (such as): protection of property, right to education, right to free elections, freedom of movement, prohibition of expulsion of nationals, prohibition of collective expulsion of aliens, prohibition of death penalty and general prohibition of discrimination.

> Interestingly, the Convention does not explicitly include the right to a healthy environment. Nevertheless, the ECHR has developed extensive case law in cases where the rights protected by the Convention are hindered by environmental damage or environmental hazards. Such rights are, e.g., the right to life and the inhuman or degrading treatment. This principle prevailed in the proceedings initiated in the case of the Tisza Cyanide pollution, just as in *Tatar v. Romania*.[20]

The Court shall consist of a number of judges equal to that of the Contracting Parties (CoE MS), so in 2018 there are 47 judges. The judges shall be of a high moral character and must either possess the qualifications required for appointment to a high judicial office or be jurists of high repute and recognized professional knowledge. The judges shall be elected (for a period of 9 years) by the PACE by a majority of votes cast from a list of three candidates nominated by the MS. They may not be re-elected.[21] From February 1, 2017, the Hungarian Judicial Post was filled by *Péter Paczolay*,[22] law professor in Szeged, who replaced *András Sajó*.

The Court usually sits in a Chamber of seven judges. If the applications are deemed admissible, the Chamber will attempt to settle the case in amicably. If this proves impossible, the Chamber will deliver its judgment.[23] The Convention defines in detail the jurisdiction of the single judge, the committees, the chambers and the Grand Chamber. The procedure of the Grand Chamber of 17 judges is only possible in exceptional cases, e.g., if there is a serious, substantial question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might be inconsistent with a judgment previously delivered by the Court.

From its establishment in 1959 to 2017, the increasingly popular ECtHR had to examine nearly 800,000 (!) applications. However, due to the strict admissibility criteria, only a fraction of this, approximately in 21,000 cases ended with a judgment. The Court found in more than 80% of the delivered judgments that the defendant state had infringed a complainant's human rights. The Court has already ruled against all the Contracting Parties, but against some of them very often: forty percent of the 21,000 decisions concern only three states, namely Turkey, Italy and Russia.

From Hungary, more than 21,000 applications have been filed with the ECtHR, but in the end, only about 600 concluded with a judgment as the vast majority of applications did not meet the admissibility

[19] ECtHR Questions and Answers https://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf
[20] Environment and the European Convention on Human Rights. 2018 https://www.echr.coe.int/Documents/FS_Environment_ENG.pdf
[21] Cf. Chapter II, Articles 19-23 ECHR
[22] Former President of the Constitutional Court, former Roman ambassador.
[23] Cf. Article 26 ECHR (for competences and relevant rules: see Articles 27-29)

criteria or the state settled with the applicant. Most of the ECtHR's cases deal with the right to a fair trial, and in most of the cases, forty percent, the violation of such right was determined. Hungary had many of such cases, mainly due to the excessive length of court proceedings.[24]

If the Court finds that a Contracting Party has violated the applicant's human rights, it typically obliges the offending state to pay compensation (called just satisfaction). The amounts can be very different, but on average vary between 3000-5000 Euros.

The Court had a lot of interesting cases involving all rights under the ECHR; to pick a few examples from Hungarian cases, for instance, the Court stated that real (actual) life imprisonment, without the possibility of parole (LWOP), is considered inhumane treatment for depriving individuals from the right to hope.[25] In another case, it was declared that the mass enrollment of Roma pupils in institutions for children with intellectual disabilities violates the right to education and the prohibition of discrimination.[26] The right of assembly was also said to protect those who, against Hungarian rules, do not report the assembly to the police in advance.[27]

The institution of the **Commissioner for Human Rights** was established in 1999. The Commissioner's duties are fundamentally different from the functions of the ECtHR, as they are explicitly preventive. It can assist the MS with advice on how to overcome their legislative deficiencies and make suggestions on the prevention of human rights violations. Thus, the duties of the Commissioner are carried out through suggestions, advice and analysis. The Commissioner has issued several reports and recommendations on a number of occasions following a country visit. In its recommendations, the Commissioner calls the attention of the MS and the Council of Europe to the most pressing human rights issues.[28] In the past, for instance, special attention was paid to the human rights aspects of artificial intelligence and robotics,[29] the special human-rights needs of older people,[30] and the human rights issues raised by migration.[31]

The Human Rights Commissioner is elected by the Parliamentary Assembly. The first Commissioner was the Spanish *Alvaro Gil-Robles* from 1999. Other Commissioners were *Thomas Hammarberg* (2006-2012) and *Nils Muižnieks* (2012-2018). From April 2018 *Dunja Mijatović* holds the office.

The **Venice Commission** (i.e. the European Commission for Democracy through Law or CDL) is an independent consultative body working together with CoE MS, with interested states that are not CoE members, and with international organizations. The activities of the Commission are carried out in the service of democracy. It currently has 61 MS, but several observers and associate members assist in its operation. Cooperating international organizations are provided a special status. Its main areas of activity are democratic institutions and fundamental rights, elections, referendums and political parties,

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[24] European Court of Human Rights: Overview 1959-2017, Strasbourg, 2018. https://www.echr.coe.int/Documents/Overview_19592017_ENG.pdf

[25] ECtHR, Magyar v. Hungary, No. 73593/10, decision of 20 May 2014.

[26] ECtHR, Horváth and Kiss v. Hungary, No. 11146/11, decision 29 January 2013.

[27] ECtHR, Bukta v. Hungary, No. 25691/04, decision 17 July 2007.

[28] Commissioner's Reports: https://www.coe.int/en/web/commissioner/country-monitoring

[29] *Dunja Mijatović*: Safeguarding human rights in the era of artificial intelligence, Human Rights Comment of the Commissioner for Human Rights, https://www.coe.int/en/web/commissioner/-/safeguarding-human-rights-in-the-era-of-artificial-intelligence?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner

[30] *Dunja Mijatović*: The right of older persons to dignity and autonomy in care, Human Rights Comment of the Commissioner for Human Rights, https://www.coe.int/en/web/commissioner/-/the-right-of-older-persons-to-dignity-and-autonomy-in-care?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner

[31] Oral submission of the Commissioner for Human Rights, Hearing of the Grand Chamber of the European Court of Human Rights in the cases N. D. and N. T. v. Spain, 26 September 2018. https://rm.coe.int/oral-submission-of-dunja-mijatovic-council-of-europe-commissioner-for-/16808d9e61

and constitutional justice. Its primary task is to provide 'constitutional assistance', i.e. to comment on the draft legislative proposals or the already adopted legal standards. The Commission also prepares studies and reports on current human rights issues. Opinions on legal standards may be requested by the MS, their governments, parliaments or heads of state; the Council of Europe (Secretary General, CM, PACE, CLARE); and some international organizations such as the European Union. In proceedings pending before the ECtHR, CDL may give an *amicus curiae*[32] opinion in comparative constitutional and international law matters. The opinion of the Venice Commission is not legally binding but bears political significance. The members of the Commission are internationally known and recognized lawyers, so their legal opinion is professionally substantiated and credible, and can be relied on by other international bodies or judicial fora. The most discussed topics nowadays include examining draft bills or laws related to gender, gender identity (homosexuality, transsexuality etc.), terrorism and migration.

> Since 1996, the Venice Commission has adopted a number of opinions regarding Hungary.[33] One of the most well-known and most significant of these is the Opinion on the Fundamental Law, which has raised a great deal of excitement, because of the criticism voiced in it.[34]

Adopting Conventions

Adopting conventions stands out of the framework of the Council of Europe. Forum-type bodies provide an opportunity for the MS to negotiate the adoption of international treaties. The 'contracting' activities of the CoE cover several areas such as human rights and fundamental freedoms, self-government and environmental protection. Some examples to international conventions adopted by the Council of Europe follow below.[35]

1950 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Rome, 04.11.1950
1959 European Convention on the Equivalence of Diplomas leading to Admission to Universities[36]
1961 European Social Charter (the current version was adopted in 1996)[37]
1977 European Convention on the Suppression of Terrorism[38]
1979 Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention)[39]
1985 European Charter of Local Self-Government
1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment[40]
1992 European Convention on the Protection of the Archaeological Heritage[41]
1993 European Charter for Regional or Minority Languages
1997 European Convention on Nationality[42]
2000 European Landscape Convention (Florence)[43]
2001 Convention on Cybercrime[44]

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[32] 'Amicus curiae' (Latin) means: 'friend of the court'. It refers to an activity already known in Roman law, where persons (jurists) otherwise not involved in litigation could bring their opinion to the court.
[33] For the full list, see: https://www.venice.coe.int/webforms/documents/?country=17&year=all
[34] CDL-AD(2011)016-e, 621/2011 Opinion on the New Constitution of Hungary
[35] The list of the CoE conventions: https://www.coe.int/en/web/conventions/full-list
[36] Promulgated in Hungary by Act C of 2001
[37] Promulgated in Hungary by Act C of 1999 (Act VI. of 2009 about the modified Charter)
[38] Promulgated in Hungary by Act XCIII of 1997
[39] Promulgated in Hungary by Ministerial Decree of the Ministry for Environment and Water-management 7/1990
[40] Promulgated in Hungary by Act III of 1995
[41] Promulgated in Hungary by Government Decree 149/2000 (VIII.31.)
[42] Promulgated in Hungary by Act III of 2002
[43] Promulgated in Hungary by Act CXI of 2007
[44] Promulgated in Hungary by Act LXXIX of 2004

The Council of Europe's Relationship with NGOs

NGOs, especially INGOs have been playing an important role in the activities of the Council of Europe since the 1950s. While cooperation with the so-called civil sector was difficult for many international organizations and their precise role was unclear, the involvement of NGOs was not a question to the Council of Europe. Cooperation with NGOs goes back to 1952 when several organizations have obtained **consultative status**. Over the last decades, the Council of Europe has developed a closer and more effective cooperation. The process was completed in 2003 when the group of NGOs gained a **participatory status**, so they could actively participate in the design of the Council of Europe's programs. The Conference of INGOs was established in 2005 and it manages consultations of some 400 participatory NGOs with the CM, the PACE and the CLARE.[45]

9.1.2. The Organization for Security and Cooperation in Europe (OSCE)

Establishment and the Ratification of Helsinki Final Act

In the post-WWII period, the need to create a pan-European security system became more and more urgent. However, the Cold War era, the opposition of the two blocs and the isolation made it almost impossible to create an international organization where states of the two blocs could sit down to a negotiating table. The biggest question was how to create a **forum** where parties could negotiate security issues impartially, in a neutral space. For the 1960s the boundaries of the influence zones were consolidated, meanwhile the USA and the USSR also sought how to reduce the dangers and tensions arising from nuclear weapons.

The two blocs were forced to face foreign policy pressures and internal political difficulties. In the USA, President *Nixon*'s iconic Moscow trip diverted public attention from the protracting Vietnam War, imminent social changes and racial equality issues. In May 1972, President Nixon was the first US President to visit Moscow. In returning the visit, *Brezhnev* went to the US in June the next year. As a result of the negotiations, the USA and the USSR signed **SALT** (*Strategic Arms Limitation Talks*) agreements. On the basis of SALT, the two superpowers pledged not to increase their opposing rocket arsenals in the future. SALT-I was signed in 1972, while SALT-II, in 1979 during the presidency of *Jimmy Carter*. The encounters were the outcome of a so-called '**politics of détente**', i.e. the developing foreign relations between the USA and the USSR since 1967.[46] The possibility of communication between the two blocs was further supported by the **new Eastern policy of Germany** (*Neue Ostpolitik*), linked to the name of the Fourth Chancellor of the Federal Republic of Germany, *Willy Brandt*. From 1969 onwards, politicians re-evaluated the policy of the Federal Republic of Germany toward Eastern Europe, especially the GDR (German Democratic Republic). The above attenuation processes greatly contributed to the emergence of the Helsinki Process, which led to the convening of the Conference on Security and Cooperation in Europe (CSCE).

> In a broader sense, the Helsinki process is understood as the convening of CSCE and subsequent meetings between 1975 and 1990.

After *Nixon*'s resignation in the wake of the *Watergate scandal*, the results achieved during the attenuation period were compromised. In the US, intensified domestic political pressures burdened the new president due to the protracted war and the losses suffered in Southern Vietnam. The American public said the USA stands to lose the Cold War, so President *Gerald Ford* and Foreign Minister *Henry*

[45] Conference of INGOs website: https://www.coe.int/en/web/tbilisi/conferenceofingos

[46] *Tarján M. Tamás: 1972. május 26. A SALT–1 egyezmény aláírása* [26 May 1972 Signature of SALT-1 Agreement] http://www.rubicon.hu/magyar/oldalak/1972_majus_26_a_salt_1_egyezmeny_alairasa

Kissinger joined the initiative of the *Brezhnev*-led USSR to convene an **International Conference on Cooperation**.[47]

The direct history of the **OSCE** dates back to 1975. The CSCE convened on Soviet and American initiatives, beginning on July 30, 1975, where the leaders of 35 countries appeared and were led to sign the **Helsinki Final Act** on August 1, 1975, after three days of negotiations. Representatives of all the European states, except Andorra and Albania, the USSR, the US and Canada participated at the meeting. The Helsinki Final Act is not an international legally binding document as it can be considered a closing document of a conference. However, the values of fundamental importance defined therein also defined the actions of the two superpowers of the bipolar world order during the Cold War period and created a negotiating basis between the two parties.

> The Helsinki Final Act laid down the foundations for East-West cooperation. The principles accepted can be classified into three areas, known as '**three baskets**' in common knowledge. The document is thus divided around three main issues:
> 1) European security issues (security policy basket);
> 2) Cooperation in the fields of economy, science, technology and the environment (economic policy basket);
> 3) Cooperation in humanitarian and other fields (human rights basket).

In the field of European security, ten principles have been defined as the basis of their relations between states, also known as the **Helsinki Decalogue**, which defined the following principles:

1) Sovereign equality, respect for the rights inherent in sovereignty.
2) Refraining from the threat or use of force.
3) Inviolability of frontiers.
4) Territorial integrity of states.
5) Peaceful settlement of disputes.
6) Non-intervention in internal affairs.
7) Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief.
8) Equal rights and self-determination of peoples.
9) Cooperation among states.
10) Fulfillment in good faith of obligations under international law.

The Helsinki Movement

The signing of the Helsinki Final Act was followed by the launch of the **Helsinki Movement**, the first group of which was established in 1975 in Moscow. Its main purpose was to entice the Soviet government to observe the rights contained in the Final Act and to follow up on the principles. Of course, in the Communist country, leaders were opposed to this and those in charge of the group (*Jurij Orlov*, *Ludmila Alekseeva*) and several members were imprisoned or forced to leave the country. The movement did not remain unnoticed in the USA, and in 1978 *Helsinki Watch*, the predecessor of *Human Rights Watch*, was created, which is still an NGO with a worldwide reach today. At that time, the Helsinki movement was unstoppable, and the Helsinki Committees in the countries of Europe developed. In 1983, the International Helsinki Federation for Human Rights began its operations. In Hungary, during the time of political transition, the movement was completed in 1989, the Hungarian Helsinki Committee was established in 1989.

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[47] *Tarján M. Tamás: 1975. július 30. Az Európai Biztonsági és Együttműködési Értekezlet megnyitása* [30 July 1975 Opening of the Conference on Security and Cooperation in Europe] http://www.rubicon.hu/magyar/oldalak/1975_julius_30_az_europai_biztonsagi_es_egyuttmukodesi_ertekezlet_megnyitasa/

The Helsinki Process

The Helsinki Process meant several **meetings** where further deliberations took place in light of the Helsinki Final Act. In 1977-78, negotiations continued in Belgrade. In February-March 1979, an expert meeting was held as part of economic, scientific and cultural cooperation. In June 1979, the USA and the USSR signed SALT-II in Vienna. The attenuation period went in remission when the USSR stormed into Afghanistan in 1979. Between 1980 and 1983 the CSCE was held in Madrid, and from 1986 to 1989, the negotiating parties met in Vienna. In the 1990s, the negotiations continued in Vienna, where the Conference held its first discussion about military issues. In spring 1990, a conference on economic cooperation was held in Bonn. Between 19 and 21 November 1990, 31 state leaders met in Paris, where they signed the Charter of Paris. After Helsinki, this conference was the second CSCE summit. The Charter was written in the spirit of ending the Cold War, of the New European Unity, Democracy and Justice. At the Paris Summit, the *Council of Ministers*, the Permanent Secretariat in Prague, *the Conflict Prevention Center* in Vienna and the *Office for Free Elections* in Warsaw were established. In 1992, the Third Summit of the Conference was held again in Helsinki, and in July this year, the Parliamentary Assembly held its first annual meeting in Budapest. At the third summit, the *Forum for Security Co-operation*, the *Economic Forum* and the *High Commissioner on National Minorities* were set up. Also in 1992, they decided to set up the Secretary-General's position and an intergovernmental decision-making forum that should be seen as the forerunner of today's Permanent Council. Further special agreements were reached on conflict prevention and crisis management issues, including fact-finding and rapporteur committees and peacekeeping missions by the CSCE. The Office for Free Election has been transformed into *Office for Democratic Institutions and Human Rights* (ODIHR). In spring 1993, the first economic and environmental forum was held in Prague. The Fourth CSCE Summit was held in Budapest, where 54 states have signed the closing document of the conference. The Permanent Council met in Vienna in December 1994 for the first time. From here we date the transformation of CSCE into a real organization, the Organization for Security and Cooperation in Europe.[48] OSCE, therefore, was not developed in a traditional manner typical of international organizations (when states come together and decide to establish an international organization and then devise its organs), but 'in reverse'. Over the years, more and more permanent bodies have been established by states and ultimately stated that a permanent international intergovernmental organization was established.

Importance

The greatest **achievement** of the CSCE is that those Cold War parties and superpowers sat to the negotiating table who were unable to engage in substantive negotiations with each other through other forums. In the context of the meetings, each state spoke in its own name, and they were treated as independent parties. Although the principles of the Helsinki Final Act did not fully apply to the conditions of the bipolar world order, their value-creating nature was unquestionable and a negotiating basis for meetings between the USA and the USSR. In Europe, the OSCE is one of the most important international organizations dealing with disarmament, human rights and economic matters, which was expanded through many specialized bodies since its institutionalization in 1994, further increasing the organization's importance. The activities of the OSCE are based on a comprehensive approach, including political, military, economic, environmental and human rights aspects. In 2018, the OSCE has 57 MS that enjoy the same rights within the organization and make their decisions by consensus. OSCE decisions are not binding in an international legal sense, but they are politically mandatory for all MS.

[48] *The History of OSCE* https://www.osce.org/whatistheosce

Summits of MS Heads of State and Government and the subsequent Follow-up Meetings are of key importance in the OSCE. Within the organizational structure, the Secretary-General and the Secretariat have a leading role in assisting the work of the Chairmanship. Standing institutions are the Council of Senior Officers, the Permanent Council, the Forum for Security Co-operation, and the Parliamentary Assembly. The High Commissioner on National Minorities, the Office for Democratic Institutions and Human Rights (ODIHR), the Representative on Freedom of Media are OSCE institutions with special competences. A Court of Conciliation and Arbitration was also established in parallel with the OSCE, but none of its services have yet been used by any state.

Summits

Despite institutionalization, summits remain of great importance for the OSCE. The Summits are attended by MS Heads of State or Government. There are no general rules determining how often these take place. Between summits, decision-making and governing powers lie with the Ministerial Council. Summits were held in the following places and years: 1975 Helsinki, 1990 Paris, 1992 Helsinki, 1994 Budapest, 1996 Lisbon, 1999 Istanbul and 2010 Astana. Each of these events produced declarations and documents that are important milestones in the history of the organization.[49]

Review Conferences

In the Helsinki Final Act of 1975, the participating states declared their resolve to continue the multilateral process led to the organization of the first Conference. Within this framework, in the years following these summits, review meetings have been organized not only the evaluation of the previous summits but also as platforms preparing for the next ones. Review Conferences earlier typically took place at the summit location, while today, following institutionalization, they take place in Vienna. The name 'Review Conference' was adopted at the Paris Summit and confirmed at the Budapest Summit, previously, the term 'Follow-up Meeting' was used. Review Conferences were held: 1977-1978 Belgrade, 1980-1983 Madrid, 1986-1989 Vienna, 1992 Helsinki, 1994 Budapest, 1996 Lisbon and Vienna, 1999 Istanbul and Vienna, 2010 Warsaw, Astana and Vienna.[50]

Secretary General, Secretariat

The Secretary-General's position was established with the Charter of Paris. The Secretariat supports the organization's chairmanship, supports OSCE programs and missions, maintains contacts with international and non-governmental organizations, organizes conferences, and provides linguistic, administrative, financial and personnel resources, information technology. OSCE Secretaries-General were: *Wilhelm Höynck* (Germany, 1993-1996); *Giancarlo Aragona* (Italy, 1996-1999); *Ján Kubiš* (Slovakia, 1999-2005); *Marc Perrin de Brichambaut* (France, 2005-2011) and *Lamberto Zannier* (Italy, 2011-2017). The current Secretary-General is *Thomas Greminger* (Switzerland, elected in 2017). The Secretariat is functionally divided into a number of smaller units that work in specific areas such as conflict prevention, economic and environmental activities, cooperation with partner states and organizations, gender equality, illegal trade practices, smuggling, transnational crime and threats, countering terrorism, border management and political reforms.[51]

[49] *Summits* https://www.osce.org/summits
[50] *Review Conferences* https://www.osce.org/mc/43198
[51] *OSCE Secretariat* https://www.osce.org/secretariat

Council of Senior Officers

Formerly, the body of political directors of foreign ministries was responsible for preparing meetings and decisions of the Ministerial Council. Formerly, it has been organizationally independent but has been holding meetings since 1997 in the frame of Permanent Council, in Vienna.[52]

Permanent Council

The Permanent Council is the principal decision-making body for regular political consultations and for governing the day-to-day operational work of the OSCE between the meetings of the Ministerial Council. It implements, within its area of competence, tasks defined and decisions taken by OSCE Summits and the Ministerial Council. The Permanent Council is composed of delegates of the participating States (currently 57), meetings take place once a week in Vienna. During the negotiating process, the Permanent Council is a forum for traditional political consultation and delegations may propose any matter within the competence of the Council. Council decisions shall be taken by consensus, which will be politically binding for all MS when adopted. The Council has a number of informal subsidiary bodies, including one committee for each of the three dimensions of the OSCE security concept, i.e. politico-military, economic and environmental, and human.[53]

Forum for Security and Co-operation

The Forum works to increase military security and stability in Europe area. It helps the exchange of military information and mutual reinforcement between MS. The Forum is a body dealing with arms restraint and confidence-building measures, covering, among others, the issue of the democratic control of security forces, the restriction of weapons of mass destruction and such security risks as the spread of small arms and light weapons. The Chairmanship of the Forum rotates every four months according to (French) alphabetical order. The Chairperson is assisted by the incoming and the outgoing Chairpersons (who together form the Troika) to develop the Annual Working Program of the Forum.[54]

Parliamentary Assembly

The history of the Parliament goes back to April 1991, when at the invitation of the Spanish Parliament, high-level parliamentary leaders gathered in Madrid for the particular purpose of creating the Parliamentary Assembly. The Madrid Declaration determined the task, the rules of procedure, mandate and distribution of votes of the Assembly. Since then, the Parliamentary Assembly has become one of the most important institutions of the OSCE, with newer and newer proposals to help the organization's operations and development. The Parliamentary Assembly has 323 members from 56 national parliaments, holding its meetings in Copenhagen. The Vatican (which stands without a parliament) may send two representatives to the meetings. The Assembly is a forum for parliamentary diplomacy and deliberation and in this context, it carries out extensive tasks. By strengthening international cooperation, it supports engagement in political, security, environmental, human rights areas, observes MS elections and is responsible for the transparent and accountable operations of the OSCE.[55]

Chairmanship, Chairman-in-Office

The term of the Chairmanship is one year, based on the decision of the Ministerial Council. The function of the Chairman-in-Office is exercised by the Minister of Foreign Affairs of that State. In 2018, the position of the Chairmanship is fulfilled by Italy. Basically, the Chairmanship is tasked with the highest level of leadership and unification of the OSCE's activities, but each Chairmanship has its own priorities. Italy's main priorities include supporting the Mediterranean region, in particular, the issue of migration, increased activity in the economic and environmental sphere and cybersecurity. In the frame

[52] Blahó–Prandler 2014, 366.

[53] *Permanent Council* https://www.osce.org/permanent-council

[54] *Forum for Security and Co-operation* https://www.osce.org/forum-for-security-cooperation

[55] *Parliamentary Assembly* http://www.oscepa.org/

of Troika, the current Chairmanship cooperates with the outgoing and forthcoming MS. In 2017 Austria presided, in 2019 Slovakia will take over the leadership of the OSCE.[56]

High Commissioner on National Minorities

The High Commissioner on National Minorities intervenes when a conflict situation affecting national minorities or internal, MS political tensions could turn into such a situation which could infringe minority rights. Much of the day-to-day work is to identify these tension-burdened situations. The High Commissioner addresses short- and long-term inter-ethnic problems. If a MS does not follow international norms or fails to fulfill the commitments it has undertaken, the High Commissioner will draw the attention of the MS in question and may provide recommendations to it. The High Commissioner publishes Recommendations and Guidelines that give advice on best practice. Since 2017, *Lamberto Zannier* has been in charge of this post. The High Commissioner on National Minorities is seated in The Hague.[57]

Office for Democratic Institutions and Human Rights

ODIHR is committed to promoting democracy, the rule of law, strengthening human rights and tolerance, and combating discrimination, supporting the MS. It provides advice to governments in the MS on how to establish and maintain democratic institutions. The practical activities of ODIHR include the oversight of the elections. Although the OSCE' has essentially been created as a security organization, focusing on broader security issues such as disarmament, restriction of arms and military security, the so-called 'human dimension' has become increasingly pronounced. The latter is based on the recognition that long-term security cannot be achieved without the absolute enforcement of human rights and democracy. The establishment of the ODIHR in 1991 is the result of this idea. The ODIHR operates in Warsaw and from 2017, its director is the Icelandic *Ingibjörg Sólrún Gísladóttir*.[58]

Representative on Freedom of the Media

The inalienable component of democracy is the freedom of media and speech. The most important task of the Representative on Freedom of the Media is the early warning and quick response if a serious non-compliance with the above values can be established in a MS. The Representative assists MS in adopting media laws that are suitable and compatible with international rules and engages in important areas such as hate speech and security of journalist. The current Representative since 2017 is the French *Harlem Désir*. The position of the Representative was established in 1998 with its seat in Vienna. Between 2004 and 2010, the Hungarian *Miklós Haraszti* held the office.[59]

Court of Conciliation and Arbitration

The dispute settlement forum is responsible for settling disputes between OSCE MS at the request of any parties in dispute. The Court is seated in Geneva and was established in 1992 by the Stockholm Convention. Its services have never been used, and in his most recent report, the president of the court draws attention to the need to promote recourse to dispute settlement procedures between the MS.[60]

OSCE Missions

The OSCE deployed missions to numerous countries suffering from internal conflicts, which are primarily directed to restore democratic institutions and to protect human, community and minority rights. OSCE missions, for instance, extend to the following countries: Bosnia and Herzegovina, Kosovo, Serbia, Montenegro and Moldova. In the context of the crisis in Ukraine in 2014, a special

[56] *Italy's 2018 OSCE Chairmanship* https://www.osce.org/chairmanship/priorities-2018

[57] *High Commissioner on National Minorities* https://www.osce.org/hcnm

[58] *Office for Democratic Institutions and Human Rights* https://www.osce.org/odihr

[59] *Representative on Freedom of the Media* https://www.osce.org/representative-on-freedom-of-media

[60] *OSCE Court of Conciliation and Arbitration publishes its report of activities for 2013-2016* https://www.osce.org/cca/295041

OSCE observer mission was sent in and a special project coordinator was appointed to oversee the crisis management operations in the country.[61]

9.2. European Regional Cooperation

In Europe, examples can be found not only to international organizations but also to looser, forum-like forms of cooperation between countries. The Visegrad Cooperation is of great importance for Hungary, which was established during the period of political transition. The post-WWII processes also affected the Northern European states, thus the Nordic Council was established as an exemplary demonstration of regional cooperation. The basis for regional cooperation in the form of non-international organizations is the historical, cultural, religious and economic similarity and connections between states. They often come to achieve common goals such as catching up on integration processes or promoting the common development of countries.

9.2.1. The Visegrad Cooperation (V4)

Establishment and Visegrad Declaration (*1991*)

The Visegrad Cooperation was established in 1991. In the first years after the political transition, only a few people thought that a cooperation with a history of more than a quarter of a century had been established. In 1991, at the meeting of the President of the Czechoslovak Republic, *Václav Havel*, the President of the Republic of Poland, *Lech Walesa* and the Prime Minister of Hungary, *József Antall*, a commitment was made to establish interstate cooperation. The negotiations took place in the Hungarian castle of Visegrad , which is of symbolic significance. 650 years earlier, in 1335 Central Europe's leaders, *Charles Robert* (Charles I) Hungarian King, *Casimir III* Polish, and *John of Luxembourg* Czech Kings met to examine the possibility of an eventual cooperation. Over the past three decades, the Visegrad Cooperation, can be considered successful, despite ups and downs, which has an impact on the foreign policy of the V4 states. The Visegrad Cooperation is largely based on the similar fate of the four nations that existed as part of different states, but now they are autonomous and democratic, with their security being guaranteed by the Euro-Atlantic community. The Visegrad Cooperation has further strengthened the stability of the Central European region and deepened cooperation among the states in many areas. Cooperation has strengthened in the fields of education, culture, science, environment, fight against organized crime, regional development and development of civil society and trade. This form of regional cooperation facilitated the **integration efforts** of the MS with European organizations, in particular, the European Union. At the same time, the States had to face many changes and difficulties to maintain cooperation. First, because of the dissolution of Czechoslovakia, a fourth member joined the cooperation in 1993, forming the V4 countries. In the 1990s, the accession of the countries involved both to the European integration and then to the NATO more and more intensively. The cooperation contributed greatly to these processes, as the countries mutually supported one another. The Visegrad Cooperation is based on political cooperation, although the common interest of Central European states does not always correspond to national interests or foreign policy ambitions. At the same time, the states of the region have many common and overlapping interests that always give new impetus to the cooperation of the V4 countries.[62]

The Visegrad Cooperation is based on the **Visegrad Declaration** adopted in 1991. The Declaration on State Cooperation was formulated with the title "through European Integration".

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[61] *OSCE Missions* https://www.osce.org/where-we-are

[62] Gyárfášova–Mesežnikov 2016, 7-8.

The Declaration sets out the basic objectives, achieving which is in the common interest of the states because of their similar situation. These objectives are:

Full restitution of state independence, democracy and freedom.

1) Elimination of all existing social, economic and spiritual aspects of the totalitarian system.
2) Construction of a parliamentary democracy, a modern rule-of-law state, respect for human rights and freedoms.
3) Creation of a modern free-market economy.
4) Full involvement in the European political and economic system, as well as the system of security and legislation.

To achieve the goals the cooperating states were to face similar tasks in the first decades of the 1990s. The question of joining the European integration, and of catching up with the rest of Europe, has been particularly prominent. At the same time, the V4 countries put great emphasis on the preservation of national specificities. The similar and major changes that took place in the countries, their historically developed relationships, their common cultural, intellectual and religious development, and the common traditions of their heritage provided a fertile ground to the cooperation of the initially three, now four, states.

The signatories of the Declaration have also formulated **their common will to take practical steps** in several areas:

1) Harmonization of cooperation with the European institutions, consultation on security issues.
2) Ensuring smooth cooperation between their citizens, institutions, churches and social organizations.
3) Development of market-based economic cooperation to support free flow of labor force and capital. Mutually beneficial trade in goods and services, and creation of incentives for foreign investments along with the development of corporate cooperation.
4) Development of transport infrastructure, with special focus on the Northern-Southern directions. Development of power (energy) systems and telecommunication networks.
5) Developing ecological cooperation.
6) Creation of favorable conditions for free flow of information, press and cultural values.
7) Facilitation of the appropriate cooperation between the territorial and governmental bodies of the countries and establishing their sub-regional relations.

Results

One of the added values of the Visegrad Cooperation was the establishment of the **Central European Free Trade Agreement** (**CEFTA**) in 1992. The original CEFTA convention was signed by the Visegrad countries on 21 December 1992 in Krakow, and it entered into force in 1994, having been amended in two cases, on 11 September 1995 in Brno and 4 July 2003 in Bled. As a result of the EU accession, the membership of a number of countries ceased, but as a result of the opening to the Balkans, the Agreement currently has seven members: Macedonia and after 1 May 2007 Albania, Bosnia and Herzegovina, Kosovo, Moldova, Montenegro and Serbia were admitted into the zone. The Croatian, Romanian, Bulgarian, Czech, Polish, Hungarian, Slovakian and Slovenian memberships terminated with their accession to the European Union. The opening to the Balkan states was implemented in the framework of the Stability Pact for South-Eastern European, which was based on bilateral free trade agreements already existing between numerous states. The enlarged convention was adopted in 2006, and entered into force in August 2007. The reason for the establishment of CEFTA was to stimulate trade, with the aim of eliminating the barriers on industrial and agricultural products, and the various trade barriers. Reaching total trade liberalization was set to be achieved by 2001. Current priorities include stimulating trade and increasing transparency, dismantling technical trade barriers, such as

speeding up and simplifying customs clearance procedures. CEFTA's regulation on such new fields like trade of services should also be mentioned.

The Visegrad Declaration also stated that one of the main objectives of the cooperation was to support **accession to the European integration**. Over the last decades, the Visegrad countries have become members of the European Union and NATO. The Czech Republic, Poland, Hungary and Slovakia joined the European Union in 2004. The Czech Republic, Poland and Hungary in 1999, and Slovakia in 2004 became NATO members. Following the closure of the accession processes, new common goals were needed for the Visegrad states.

The **International Visegrad Fund** is the only institutionalized organization for the Visegrad Cooperation. Established in 2000, the Fund aims to support the civil initiatives of the MS and the mobility of students from different institutions. The tool of this is a system of grants and scholarships funded by the Fund open to any person with the nationality of any of the four countries or any NGO registered there. The Visegrad **Grants Program** supports regional cooperation between the V4 countries and innovation and sustainability projects in Central and Eastern Europe. The Visegrad Grants program is open to legal and natural persons from all over the world. It was defined as a tender condition that at least three project partners from the V4 country should be involved in the program. Eligible projects cover a wide range of areas such as culture and common identity, education, innovation, research, development, regional development, environmental protection, tourism and social development. The Fund's headquarters are in Bratislava. Its supreme body is the Conference of Ministers of Foreign Affairs, which consists of the current MS Foreign Ministers. Its main task is to define the development of the organization and to adopt the programs and the budget. The members of the Council of Ambassadors are ambassadors accredited to the presiding MS, and in accordance with the objectives of the Fund, they are responsible for the award of grants and the preparation of the meetings of the Conference of Foreign Ministers. The Executive Director is elected by the Conference of Foreign Ministers for a period of three years, the main task is to ensure the proper functioning of the objectives pursued.

One of the latest achievements in the Visegrad Cooperation is the creation of the **Visegrad Think-Tank Platform**. As a network of higher education institutes and research centers in the Visegrad countries, the Platform deals with issues of concern to V4 states and provides recommendations to governments, the current presidency, and the International Visegrad Fund. Current priorities include energy security, the internal cohesion of the V4 states, the institutions and policies of the European Union, the Western Balkans, relations with the Eastern Partnership countries, security issues, environmental protection, Roma-related issues and migration. The establishment of the network was one of the main objectives of the Czech Visegrad Presidency in the 2011-2012 period. The platform was established in 2012, funded by the Visegrad Fund. The network has core and cooperating members. The core of the forum is the *EUROPEUM – Institute for European Policy and the Center for Euro-Atlantic Integration and Democracy* (*CEID*). In Hungary, several institutions work with the Platform, such as the National University of Public Service, the Corvinus University, the Central European University (CEU), the University of Pécs and Kitekinto.hu.[63]

The Future of the Visegrad Cooperation

The Visegrad Cooperation is basically a **regional political-economic cooperation** that was established in 1991 aimed at helping Central European states join Euro-Atlantic organizations. There is no doubt that the Visegrad Four are **linked** by the common historical past, the similarities of traditions, religion and culture, but the common historical past encapsulates old and new grievances and conflicts, making successful cooperation difficult. Basically, the financial resources provided are not overly generous as the Visegrad Fund manages approximately 6-7 million Euros annually, which does not

[63] *Visegrad Fund* https://think.visegradfund.org/

mean a large amount of money regarding a cooperation involving four countries. In 2004, the Visegrad Cooperation fulfilled its primary task and the V4 joined the European Union and NATO. After that, **new cornerstones** had to be found for the cooperation, but it can be stated that an equally important objective has not yet been determined. Over the past decade, the government of Hungary has confronted mainly with Slovakia. It is enough to think about the issue of the Act on dual citizenship adopted as a response to the accelerated naturalization process, which has been called – on behalf of Slovakia – an 'unfortunate and non-standard decision' by *Iveta Radicová*.[64] Of the Visegrad countries, Poland has the same significance and weight as the combined power of the other three states, so many expect Poland to take the lead. However, in light of the past two decades, Poland does not aspire to do this, but is satisfied with the adoption of mutual security guarantees. Among the V4 countries, Slovakia is already a member of the Eurozone, while the Czech Republic is one of the most Euro-skeptic states in the region. Hungary has been planning to introduce the Euro for a long time, but it is not expected that the country will join the Eurozone in the near future. The current Polish political position is also opposed to the premature introduction of the Euro, given that the current Prime Minister, *Mateusz Morawiecki*, argues that the introduction of the Euro is only justified in countries with similar production structures and competitiveness. Therefore, it is expected that among the Visegrad countries, Slovakia will remain the only member of the Eurozone for some time. Other EU MS do not always look positively on the preliminary negotiations of the V4 since the V4 countries have the same voting power in the Council of the European Union as the votes of France and Germany, so the common position had and continues to have a great importance in qualified majority voting. However, despite the tension between the V4 countries, we can find sectors where successful cooperation can be achieved. This includes energy security as all four states rely heavily on Russian energy imports. Further successful cooperation could be the support of Eastern Partnership, important for reasons of geographical proximity. In sum, over the past 27 years, the states participating in the Visegrad Cooperation have shown that they are able to cooperate and work together for **common goals**. However, after the EU accession process completed in 2004, there are still some uncertainties in finding new sectors of cooperation since the Visegrad countries have slightly become politically opposed in the last decade.[65]

9.2.2. The Nordic Council (NC)

Establishment

The Nordic Council is a loose, forum-like cooperation between the states of the so-called Nordic region. The Council and the cooperation of states was established for the primary aim of shaping the Nordic region into an area where people are happy to live and work. Out of the 510-million large European population, 27 million people live in the countries of the Nordic Council. These Nordic countries are considered among improved and advanced European states, whose economy has grown by 28 percent since the turn of the millennium. The Nordic Council countries are: Denmark, Faroe Islands[66] (Denmark), Greenland[67] (Denmark), Finland, Åland[68] (Finland), Iceland, Norway and Sweden.

[64] Prime Minister of Slovakia (2010-2012)

[65] See more: Csicsai 2012

[66] A volcanic archipelago, inhabited since the Middle Ages, lies in the Northern part of the Atlantic, between Norway, Scotland and Iceland. His name means 'sheep islands' in Hungarian. Since 1948, it has a wide range of autonomy.

[67] Greenland is the largest ice-covered island in the world. It is part of Denmark, but since 1979 it has wide autonomy.

[68] Called *Ahvenanmaa* in Finnish, and located between Finland and Sweden, in the Bay of Botten, an archipelago of more than 6500 islands belongs to Finland, with a predominantly Swedish-speaking population.

In the aftermath of post-WWII integration efforts, **tighter cooperation of the Northern European states** was also raised. The Nordic Council was established in 1952, with the founding members being Denmark, Iceland, Norway and Sweden. Finland joined in 1955, while the Faroe Islands, Åland and Greenland in 1970. These last three gained more influence in 2007, when the Nordic Council of Ministers adopted the so-called Åland Documents.

During WWII, Denmark and Norway were under German occupation, Finland was suffering due to the Soviet attacks, and Sweden, despite its neutral status, bore the weight of the war. After the end of the war, the Nordic countries supported the establishment of the Scandinavian defense cooperation to ensure mutual protection. However, Finland could not participate, due to its political situation at that time. The Nordic countries have been looking for ways to unify their foreign policy and ensure their protection without joining NATO. However, the program collapsed due to the pressure of the USA and the accession of Denmark, Iceland and Norway to NATO. Thus, cooperation has moved away from the world of defense policy and the Nordic politicians have turned to the economy and development. At that time, in 1951, then Danish Prime Minister *Hnas Hedtof* proposed the convening of an interparliamentary forum. The proposal was welcomed by Iceland, Norway and Sweden, and in 1952 the **Nordic Council** was established.

The Helsinki Treaty, emphasizing and detailing the work of the Council, came into force in 1962. In 1963, newer results were achieved as part of the Nordic cooperation: the Nordic School of Public Health and the Nordic Cultural Fund were set up. In 1968, Danish Prime Minister *Hilmar Baunsgraad* proposed full **economic cooperation** (*Nordek*). Although the plan for cooperation was adopted in 1970, Finland finally rejected it due to its close relationship with the USSR. As a result, Denmark and Norway submitted applications for accession to the EEC and set up a Nordic Council of Ministers in 1971 to ensure cooperation. In the 1970s, this continued to develop when the Council decided to set up the Nordic Industrial Fund and the Nordic Investment Bank. Over the same decade, the Council's attention has shifted to environmental protection, especially in the Baltic Sea and the Northern Atlantic Ocean, but cooperation also extended to the issue of energy security. The Nordic Science Policy Council was established in 1983, supporting scientific cooperation between states. After the collapse of the USSR, the Nordic Council has worked more closely with the Baltic states and the new organizations. Because of the membership of Denmark, Finland and Sweden in the European Union, certain tasks and functions of the Nordic Council have partially ceased. In 2010, Iceland also applied for membership of the European Union, for which substantive negotiations were already underway, when it withdrew in 2015.[69]

The Organization and Decision-making Mechanism of the Nordic Council

Organizationally, the **Council** is composed of the MPs of states and autonomous regions. There is no possibility of a direct election of the Nordic Council, they are nominated by the political parties of the parliaments. The Council has 87 members. The Council is governed by the Presidium, which holds regular meetings twice a year, but it is possible to convene extraordinary meetings as well. At the Presidium meetings, decisions will be taken that call on the Nordic governments to be implemented in practice. The President, Vice-President, and members of the Presidium are elected for the forthcoming year every fall during the ordinary meetings, with the presidency alternating between the countries. The political work of the Council is supported by six committees (among others, the Committee for a Sustainable Nordic Region, Election Committee, and Committee for Welfare in the Nordic Region). Members of the Council are organized into five political groups or are independent representatives.[70]

[69] *History of the Nordic Council* http://www.norden.org/en/nordic-council/bag-om-nordisk-raad/the-nordic-council/the-history-of-the-nordic-council/the-history-of-the-nordic-council

[70] *About the Nordic Council* http://www.norden.org/en/nordic-council/bag-om-nordisk-raad/the-nordic-council

The **Nordic Council of Ministers** was established in 1971 aiming at the cooperation of MS governments. The name is misleading, as it refers to many Councils, depending on which ministers are negotiating. In the summer of 2018, the following Nordic Councils convened: Labor; Sustainable Growth; Fisheries, Aquaculture, Agriculture, Food and Forestry; Gender Equality; Environment and Climate; Health and Social Affairs; Education and Research; Finance.[71] The work will be assisted by the Secretariat of the Nordic Council of Ministers, headquartered in Copenhagen.

Proposals and ideas may come from a single member, several members or a party group. If a member of the Nordic Council is to make a proposal, it will be taken to Nordic Council of Ministers. Proposals from the Nordic Council and the Nordic Council of Ministers should also be sent to the Presidium. The Presidium shall send the proposal to the relevant committee. After consultation with and gathering information from the relevant bodies, organizations and authorities of the Nordic Council, the committee will discuss the proposal and prepare a white paper.[72] The proposal will then be returned to the Nordic Council, and in case the plenary session does not support it, rejected. If the proposal receives the support of the Nordic Council, it will be adopted in the form of a recommendation. The recommendation is sent to governments, who may suggest further measures. If they are decided by the Nordic Council, further measures may be taken. The outcome of the proposal is transposition when it is implemented in practice by the Nordic governments. Thus, the decisions of the Nordic Council are adopted in several stages. The proposal will be discussed in Presidium, in relevant committees, at the plenary session of the Council, and following the adoption of the **recommendation**, further steps may be taken and the Nordic governments will implement them in the practice of the countries. Taking feedback into consideration provides an opportunity for forward-looking and practically useful proposals to be accepted.[73]

Importance

Despite certain functions having ceased or been rendered less significant with the accession of the cooperating countries to the EU, the cooperation within the Nordic Council is still **exemplary**. The Council was able to find new areas of cooperation that go beyond classical defense and economic policy issues, establish proper organizational structure, and provide funding for them. For the 2018 Presidium, beyond the response to new security challenges, cooperation in health technology and the protection of marine life are priorities for a sustainable, stable and secure Nordic community.

[71] *Council of Ministers* http://www.norden.org/en/nordic-council-of-ministers/council-of-ministers Please note that the structure and division of the Councils, as well as the name mimics the structure and divisions specific to the Council of the EU, which also sits in different formations, depending on the field of the ministers negotiating.

[72] A white paper is a concise report or guide that informs readers clearly about a complex issue and presents the philosophy of the body issuing it on the matter discussed. It is meant to help readers understand an issue, solve a problem, or make a decision.

[73] *Decision-making process in Nordic Council* http://www.norden.org/en/nordic-council/policy-documents-and-processes-1/decision-making-process-in-nordic-council

QUESTIONS FOR SELF-CHECK

1. Describe the historical circumstances and the most important stages of the establishment of the Council of Europe.
2. What requirements shall a state fulfill if it wants to join the Council of Europe?
3. What does the requirement of "being European" mean as a precondition for joining the Council of Europe?
4. Enumerate the bodies, institutions of the Council of Europe and briefly explain their tasks.
5. Enumerate some of the international conventions adopted by the Council of Europe with the exact dates and titles.
6. Describe the historical circumstances of the creation of the OSCE.
7. What do the three baskets theory and the Helsinki Decalogue mean?
8. How and why was the Visegrad Cooperation established?
9. Why are the Nordic Council and the regional cooperation of Nordic countries successful as regional cooperation?
10. What are the challenges that European regional cooperation is facing as a result of geopolitical changes and new events of the 21st century?

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CHAPTER 10

THE ROLE OF THE EU IN INTERSTATE RELATIONS

The aim of this chapter is to present the ambitions for European unity and the progress and functioning of the European Union as their result.

10.1. The History of the Idea of European Unity

10.1.1. The Beginnings

From the 15th century until now, a myriad of papers and drafts attest to the fact that Europeans have been long interested in the possibility of the cooperation between states and nations. The proponents of the idea of European unity were primarily seeking ways to establish peace and to humanize power. They found the peaceful future of the world and Europe in the confederal and federal democratic development of the rule of law.

Erasmus of Rotterdam (1469-1536) should be mentioned from among them. As one of the most excellent philosophers of humanism, the writer from the then Low Countries had analyzed questions of war and stability of the European countries in his 1515 publication "The Complaint of Peace", wherein he concluded: the divergence of the European princes can endanger Europe, and only some kind of cooperation could be the solution.[1]

Spanish humanist *Juan Louis Vives* (1492-1540), who lived at the prime of the Turkish conquests, also researched the legal framework of restraining war. According to his view, pan-European peace could be reached within a supranational political integration, in which the monarchs and their counselors endeavor to broker peace between the states.[2]

The *Duke of Sully* (1560-1641), a seminal personality of French political life in the 16-17th centuries, visualized a European confederation of 15 states cooperating. The plan included the remarks of Henry IV, king of France from 1589 to 1610, the first monarch from the House of Bourbon. Accordingly, a balanced political situation, allowing for an integration overarching the kingdoms, could have been created through the mitigation of the European influence of the House of Hapsburg.[3]

Émeric Crucé (1590?-1648) (elsewhere Émeric de la Croix) French monk was optimistic as he had hoped that humanity had already been convinced of the futility of every type of war. That was why he saw the course of long-term development in **European cooperation** based on the development of economic relations.[4]

From among the philosophers of the 17th and 18th centuries the following stand out: *Comenius* (1592-1670) Czech writer, *William Penn* (1644-1718) English philosopher and *Charles-Irénée Castel*, *abbé de Saint-Pierre* (1658-1743), one of the leading figures of the French **Enlightenment**, the author of the "Project for an Everlasting Peace in Europe". They also thought that war could possibly

[1] J. Nagy–Kövér 2000, 9.
[2] J. Nagy–Kövér 2000, 12.
[3] J. Nagy–Kövér 2000, 14.
[4] J. Nagy–Kövér 2000, 21.

be avoided through a higher level of integration. Penn proposed the establishment of a European Parliament with the delegates of MS. While analyzing the reign of Louis XIV, the famous philosopher of the French Enlightenment, *Montesquieu* concluded that "*one nation's reign over the others is moral impossibility*".[5]

The hegemony of nation states in the politics in the 18th and 19th centuries lead to searching for new points of connection in Europe. The German philosopher *Kant* had seen the incarnation of the ideal condition of eternal peace in the picture of Europe.[6] *Giuseppe Mazzini*, as a member of the *carbonari* movement, believed in creating a European unity after the Italian unity. The first proposal envisioning Europe as a system managed by a sovereign central body instead of the nation state model, was published in the pamphlet "On the Reorganization of European Society" by *Saint-Simon* in 1814. In his view, the decision making in the matters of common concerns would happen in the European Parliament, which comprises the parliaments of the nation states.[7]

Interestingly, the introduction of the expression "United States of Europe" into the public domain is from *Victor Hugo*, the famous writer, member of the French Romantic Movement. His aim was to give emphasis to the similarities with the transatlantic American Federation.[8]

10.1.2. The Thought of Unity in the 1920s, Kalergi and the Paneuropean Union

In 1918, in connection with the peace treaties ending the First World War (1914-1918), American president *Wilson* worked out a fourteen-point model for the new world order. From his ideas, the **League of Nations** was materialized, which was set up by the signature of the delegates of the 44 founding states on 28 June 1919. Hungary asked for membership in 22 August 1922. The organization seated in Geneva, with its two main organs being the General Assembly and the Council.

In the '20s, the role of the USA increased, while Europe's diminished. The cumulation of bitterness, lost hope and unresolved conflicts was characteristic to post-war society, politics and economy. According to those looking for a way out of this critical situation, one of the possible solutions was proposed as a league of the European states. Those who supported the idea of European integration, in turn, strongly opposed the methods of the system of the Treaty of Versailles as part of the Paris Treaty concluding WWI. Pacifist members of the League of Nations supported cooperation in economy, trade and industry.

The serious economic situation of Europe, the desire for peace and security, the American economic power, and the fear of Soviet ideological influence were the determinative emotions of this period, along with the knowledge that the nations of Europe have several common cultural and intellectual features.[9]

The intelligentsia of the era proficient in international perspectives – primarily in Germany, Austria and France – urged the political and economic integration of European states. This was done most impressively by the Austrian count, *Richard Nikolaus Coudenhove-Kalergi* (1894-1972). *Kalergi* was an aristocrat with a real European spirit, who became one of the greatest minds of the history of the European federalism. His work influenced the times between the two world wars and during and

[5] J. Nagy–Kövér 2000, 52.
[6] Chalmers–Davies–Monti 2010, 5.
[7] Chalmers–Davies–Monti 2010, 7.
[8] Kende 1995, 20.
[9] Váradi 2006, 173.

after WWII, thus essential in the setup of the Council of Europe, and the development of European integration politics after WWII.[10]

The book on his thoughts, *Pan-Europe* was published in 1923.[11] In his view, the key to the renewal of Europe is transformation into a regional political and economic federation during post-war consolidation within the framework of the League of Nations. He hoped thereby to prevent another World War and founding a great European market without internal customs. Interestingly, when drawing up the borders of Pan-Europe, he introduced the definition of the so-called 'Little Europe', excluding Russia and the United Kingdom, as he thought that these "have outgrown" Europe and broke ties with the politics of the Continent.[12] *Kalergi*'s views gained followers quickly, founding the **Pan-European Movement**. *Aristide Briand*, French Foreign Minister became the president of the movement, who saw the organization as a possible forum of cooperation with the Germans.[13] The movement was supported by leading politicians, historical figures and famous artists such as *Churchill*, *Stresemann*, *Konrad Adenauer*, *Thomas Mann*, *Einstein*, *Freud*.

It must be stressed that the **Briand Memorandum**, created and submitted to the League of Nations by *Briand* in 1930, was the plan that has been negotiated between the states at the highest-level and got the greatest publicity, containing the wish for the federal unification of Europe on an economic base. However, the proposal was left unanswered when Europe was drifting towards war in the 1930s.[14] Afterwards, the question of European unity appears once again only in the last phase of WWII, when practical realization can be put in motion. By relying on the experiences of the earlier unity plans, such as *Kalergi*'s. This points to the significance of his personality and ideas.[15]

10.1.3. The Direct Antecedents of European Integration

During WWII, the Allies started to work on post-war settlement plans. Nevertheless, by the end of the war it became clear, that Europe will be torn in two. While Central Europe, Eastern Europe and the Eastern part of the beaten Germany fell under Soviet occupation, other parts of Germany and the Western part of the Continent were influenced by the USA.[16]

One important moment of the beginning of the **cold war** between the USA and the USSR was the congressional speech of *Harry S. Truman*, the 33rd president of the USA on 12 March 1947, in which he announced the *Truman Doctrine*. According to this doctrine, it is the obligation of the USA to interfere with economic and military instruments in states where Communism gains ground. Truman asked for 400 million dollars from Congress to aid Greece and Turkey in economic and military issues, and safeguard these states as parts of the free world. The Doctrine defined US politics until 1989, as the US military interfered in Korea and Vietnam to avoid expansion by the USSR.[17]

Europe suffered serious economic losses during WWII, large part of the population was starving. In his speech at Harvard, US Foreign Minister, *George C. Marshall* proposed a comprehensive American aid program to all European state willing to cooperate with the USA during reconstruction. The aim of the **Marshall Plan** was a politically and economically integrated Western Europe, as the USA could

[10] Bóka 2001, 161., Váradi 2006, 173.
[11] Coudenhove-Kalergi 1926.
[12] Németh 2001, 199-205.
[13] Maller 2000, 66.
[14] Gombos 2017.
[15] Váradi 2006, 196.
[16] Osztovics 2012, 29.
[17] Dedman 2010, 21.

have expected the USSR and the Central- and Eastern European states under the Soviet influence will reject it – just as it had happened.[18] The aid, the European Recovery Program distributed more than 22 million dollars among 16 Western European states during a four-year-period.[19]

The **Organisation for European Economic Cooperation** (OEEC) was established in 1948 to help the distribution of the aids, which also started cooperation and communication between the Western European states gaining aids. This organization is an important preliminary of European economic integration, already having several of its important future components, such as the gradual reduction of customs duties between the participating states, and increasing European trade, although without a supranational element, only on a strictly intergovernmental basis, albeit with the possibility of veto.[20] (See further in Chapter 8 above.)

As part of the organization, Britain proposed a British-French customs union, albeit there was no consensus on this issue.[21] In lieu, the UK and France entered into an agreement of mutual defense in the Treaty of Dunkirk (Dunquerque) in 1947, which was expanded with the Treaty of Brussels on the Western Union in 1948. Thereby, the States Parties (Belgium, France, the Netherlands, Luxembourg and the UK) decided on economic, social and cultural cooperation, and collective self-defense. The latter would have been the instrument of defense of the members against a possible German aggression. The organization later became and operated as the Western European Union (WEU).[22]

The intended economic, social and cultural cooperation eventually had not been realized, the MS concentrated more and more on a defense community. However, the WEU did not gain the "strength" embodied by the USA and Canada. On 4 April 1949, in Washington, the **North Atlantic Treaty Organization** (NATO) was established with the cooperation of the USA, Canada and 10 Western European states.[23]

The establishment of NATO could be seen as a consequence of the *Truman* Doctrine, as the direct result of the arms race of the cold war. The aim of the organization was to protect the freedom and security of the MS, as the first Secretary General, *Lord Hastings Lionel Ismay* said: "*to keep the Russians out*, *the Americans in*, *and the Germans down*" in Europe. Iceland, Italy, Norway and Denmark also acceded after the founding members. Today, it has 29 members, and the organization has peacekeeping operations beyond the borders of the MS. Hungary has been a member of the organization from 1999.[24]

According to Article 5 of the North Atlantic Treaty, the organization is based on the principle of collective self-defense. The Parties agree that an armed attack against one or more of them from a third state, a non-NATO MS, shall be considered an attack against them all and they provide protection to the state concerned.[25]

Meanwhile, on 25 January 1949, in Moscow and upon Soviet initiative, the **Council for Mutual Economic Assistance** (CMEA) was established as the economic integrational organization of Eastern Europe, to counterpoint the *Marshall Plan* for the reconstruction of Western Europe. The founding members were the USSR and Bulgaria, Czechoslovakia, Hungary, Poland and Romania. The aim of the CMEA was to strengthen the economic cooperation between the Socialist states, the catching up of the

[18] Dedman 2010, 33.
[19] Dedman 2010, 22.
[20] Urwin 1995, 19-20.
[21] Dedman 2010, 33.
[22] Dedman 2010, 34.
[23] Urwin 1995, 23.
[24] The official website of the NATO: https://www.nato.int/cps/us/natohq/declassified_137930.htm
[25] The official website of the NATO: https://www.nato.int/nato-welcome/index.html

economically weak countries with division of labor and specialization. The organization strengthened the mutual dependence between the USSR and the MS.[26]

The establishment of NATO and the acceptance of the Western part of the divided Germany into its ranks was not left without an answer. On 14 May 1955, upon Polish initiative and lead by the USSR, the Warsaw Pact was concluded as a military, defense community of all Central- and Eastern European Socialist countries within the sphere of interests of the USSR.[27] The members were: Albania, Bulgaria, Czechoslovakia, East Germany, Hungary, Poland, Romania and the USSR. The Warsaw Pact ceased in parallel with the disintegration of the USSR in 1991.

10.1.4. Churchill – One of the Founding Fathers of European Integration

A significant statesman, *Winston Churchill*, should be mentioned in connection with the foundations of European integration. *Churchill* was the Prime Minister of the UK from 1940 to 1945 and from 1951 to 1955. Having drawn the conclusions from WWII, it became his conviction that only a united Europe can guarantee peace. He was one of the first supporters of the establishment of the "United States of Europe". His aim was to end nationalism and warmongering, which often infected the Continent, once and for all.[28]

From the aspect of European integration, **two of his speeches** have far-reaching importance. The first is the one given in Westminster College, **Fulton**, USA on 5 March 1946, when he was awarded an honorary degree. In this famous speech, *Churchill* emphasized the community of interest between the USA and the UK while condemning the expanding foreign policy of the USSR. He said: "*From Stettin in the Baltic to Trieste in the Adriatic*, *an Iron Curtain has descended across the continent*", so the democratic half of Europe is in real danger as well. This speech, besides the *Truman* Doctrine, is considered the overture of the cold war, as the expression 'Iron Curtain' was one of the most important symbols thereof.[29]

On 19 September 1946, the **Zurich** University, he spoke about the rise of Europe and said that to avoid a new war, there is a need for a "United States of Europe" which can successfully integrate the states and support development. He thought that the first step was to develop the partnership between France and Germany. According to his view, instead of the central role of one strong state, a united Europe must be established, where the small and the big states have the same role in creating peace, security and prosperity for the common good. He warned that there is only a little time for this action, as there is only a short "breathing room" after the war, immediate action is needed. To support the progress of connections between France and Germany, he recommended the establishment of a Council of Europe, which hopefully will be supported by the USSR, with the aim of strengthening the friendship with them.[30]

Excerpt from the Zurich Speech of Churchill

> "*Yet all the while there is a remedy which*, (…) *would in a few years make all Europe* (…) *as free and happy as Switzerland is today*. (…) *It is to recreate the European fabric*, *or as much of it as we can*, *and to provide it with a structure under which it can dwell in peace*, *safety and freedom*. *We must build a kind of United States of Europe*."

[26] Van Meerhaeghe 1987, 206-207.
[27] Crump 2015, 19.
[28] The official website of the EU: https://europa.eu/european-union/about-eu/history/founding-fathers_hu#box_4
[29] Harbutt 1986, 184-185.
[30] *Winston Churchill'*s speech, Zurich University 19 September 1946. http://aei.pitt.edu/14362/1/S2%2D1.pdf

To realize *Churchill*'s idea, the international commission of the Movement for United Europe, led by his son-in-law, *Duncan Sandys*, organized the first Europe Congress in the Hague, where 800 delegates from every state of Europe participated, with the USA and Canada sending observers. The importance of the congress was the agreement on future cooperation. As a result of actual political cooperation, on 5 May 1949 the UK, France, Belgium, Netherlands, Luxembourg, Denmark, Greece, Ireland, Iceland, Norway, Italy, Sweden and Turkey signed the statute of the **Council of Europe** in London.[31]

The establishment of the Council of Europe can be considered a significant milestone in the road toward European integration. The aim of the new international organization was to further the cooperation of the MS and to secure peace and the protection of human rights in Europe while respecting the values of freedom, democracy and rule of law.[32]

Originally, the organization would have been created based on federalist ideas, where the participating MS would have approximated their legal systems and political structures step by step, which would have led to a much tighter unity.[33] However, the MS were not ready to give up their sovereign competences. Thus, the Council of Europe became a classic, archetypical regional international organization, being the 'vanguard' of human rights protection. Its greatest achievement is the *European Convention on Human Rights and Fundamental Freedoms* (ECHR), adopted in Rome in 1950. The ECHR is protected by the Strasbourg-based *European Court of Human Rights* (ECtHR). Nowadays the organization has 47 members from Europe.[34] (See in detail in Chapter 9 above.)

10.2. The Establishment of the European Coal and Steel Community

Seeing as the Council of Europe did not respond to the need for closer unity, efforts to create said unity have returned to the development of **economic cooperation** instead of the political unity based on the proposals of *Kalergi* and *Briand*. Two factors had basic role in the progress: the demand for economic cooperation and the intent to avoid a future war.

The Allies were ready to recognize the Western part of Germany as a sovereign state in 1949 on the condition of having the *Ruhrgebiet* under international control. This area produced strategically important coal and steel, thus it has been the former stronghold of German arms manufacture, with coal and steel being the basic materials for manufacturing arms. Whichever country has control over this area, it will gain advantage in the arms race, that was why France wanted to gain control of the area after the WWII. To avoid this and the opportunity of secret armaments, the International Ruhr Authority was established upon British initiative with the membership of the USA, the UK, France and the Benelux states. The rivalry between the West and the East made it clear that the Allies will release West Germany from every restriction. France was in an impossible situation.[35]

As the German coal and steel production was the economic engine of Europe, which could have given a new impetus to European economy as a whole, and as Franco-German relations became intolerable, two French statesman, *Jean Monnet*, president of the French Planning Committee, and *Robert Schuman*, French Foreign Minister, proposed a plan for the solution of the situation.[36]

[31] Weiss 2017, 5-6.
[32] Weiss 2017, 16.
[33] Osztovics 2012, 30.
[34] Dörr 2017, 467.
[35] Milward 1984, 154.
[36] Osztovics 2012, 32.

Schuman and *Monnet* gave a press conference about the **Schuman Declaration** in the Clock Room of the French Foreign Ministry on 9 May 1950. The Schuman Declaration was prepared by *Monnet*. The key point of this plan was to have France and Germany start negotiations to put their coal and steel market under mutual control. The association would be governed by an independent High Authority with a wide scope of activity. The solution unambiguously demonstrated the desire for peace and made common development with equal chances possible.[37]

The Schuman Declaration

"*World peace cannot be safeguarded without the making of creative efforts proportionate to the dangers which threaten it*. (…)
Europe will not be made all at once, *or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity. The coming together of the nations of Europe requires the elimination of the age-old opposition of France and Germany*. (…)
It proposes that Franco-German production of coal and steel as a whole be placed under a common High Authority, *within the framework of an organization open to the participation of the other countries of Europe*. *The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe*, *and will change the destinies of those regions which have long been devoted to the manufacture of munitions of war*, *of which they have been the most constant victims*. (…)
any war between France and Germany becomes not merely unthinkable, *but materially impossible*. *The setting up of this powerful productive unit*, *open to all countries willing to take part* (..) *will lay a true foundation for their economic unification*.
(…) *The common High Authority entrusted with the management of the scheme will be composed of independent persons appointed by the governments*, *giving equal representation. A chairman will be chosen by common agreement between the governments. The Authority's decisions will be enforceable in France*, *Germany and other member countries*. (…)"[38]

The UK was invited to the negotiations based on the plan, albeit they declined participation especially because of the idea of the High Authority. The novelty of the proposal was the **supranational** character of the High Authority, pursuant to which the High Authority would have operated independently from the MS with the participation of international officials.[39]

Beside the actively negotiating *Schuman* and *Monnet*, *Konrad Adenauer*, the first Chancellor of West Germany, *Alcide de Gasperi*, Italian Prime Minister and *Paul Henri Spaak*, Belgian Prime Minister participated, who – together as such – are considered the **founding fathers of** European integration and the future **European Union**. The anniversary of the Schuman Declaration, on which the foundations of the future European Union have been laid down, is celebrated as Europe Day on 9 May each year in every EU MS.

The first integrational organization based on the Schuman Declaration was the **European Coal and Steel Community** (ECSC). The founding states are the 'inner six': Belgium, the Netherlands, Luxembourg, the German Federal Republic, France and Italy.

[37] Milward 1984, 398.
[38] Source: The Schuman Declaration https://europa.eu/european-union/about-eu/symbols/europe-day/ schuman-declaration_hu
[39] Lord 1998, 25.

The ECSC, otherwise called Montanunion was established by a treaty signed in Paris on 18 April 1951, which entered into force in 25 July, the effect of the treaty was limited to fifty years. It ceased to exist on 1 January 2003, when its legislation and organizational system was absorbed by the European Community. Proof to the openness of the Treaty can be found under Article 98 of the ECSC Treaty meaning that third-party states could join subsequently. Consequently, any European state could have requested accession to the Treaty.[40]

When the ECSC Treaty was drawn up, *Schuman* underlined that the conditions of accession to the treaty should demonstrate the openness of the community. The criterion of being a 'European state' was based on the patterns of membership in the Council of Europe. As a matter of fact, the Council of Europe only sends invitations for such European states to accede to it, which are able and willing to accept the principles and the ideals of the common European heritage. *Schuman* proposed the idea of not only examining the conditions of being European based on geographical factors, thereby only such states would be enabled to join the community, which, in the spirit of European traditions and in accordance therewith, have a structure that build on the principle of freedom and the respect of human rights.[41]

The supranational High Authority became one of the main institutions of the ECSC, whose members were appointed by the governments of the MS, albeit it decided independently from the MS, bearing in mind the interests of the community. The first president of the High Authority was *Jean Monnet*.[42]

As the ECSC and the supranational High Authority operated with success, the MS decided on preparing a deeper and more direct economic integration based on the results and foundations of the ECSC, incorporating different sectors of the economy, with its supranational character being dominant.[43]

10.3. The Establishment of the European Economic Community and the European Atomic Energy Community

At their 1955 Messina summit, the Foreign Ministers of ECSC MS entrusted a commission to examine the possibility of establishing a common European market. *Paul-Henri Spaak*, Belgian politician was elected as president of the commission. The document prepared by the Commission was the **Spaak Report**, which resulted in the intergovernmental conference on the establishment of the common market and the Euratom in 1956. The **Treaties of Rome** were signed in 1957.[44]

The 'inner six' signed two treaties in Rome on 25 March 1957. They signed the Treaty of Rome, which established the **European Economic Community** (EEC),[45] and the Euratom Treaty, which established the **European Atomic Energy Community** (Euratom).[46] The two treaties together are called Treaties of Rome, while in singular, the Treaty of Rome is the Treaty establishing the EEC. The treaties entered into force at the same time on 1 January 1958, and they both had indefinite duration.

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[40] Treaty establishing the European Coal and Steel Community. Paris, 18 April 1951. https://www.cvce.eu/en/obj/treaty_establishing_the_european_coal_and_steel_community_paris_18_april_1951-en-11a21305-941e-49d7-a171-ed5be548cd58.html

[41] Mosler 1958, 285.

[42] Gombos 2012, 24.

[43] Chalmers–Davies–Monti 2010, 11.

[44] McAllister 1997, 15.

[45] Treaty establishing the European Economic Community – Vertrag zur Gründung der Europäischen Wirtschaftsgemeinschaft (1957) https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:11957E/TXT&from=DE

[46] Treaty establishing the European Atomic Energy Community (Euratom) (1957) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012A/TXT&from=EN

The Treaty of Rome and the Euratom Treaty[47] created a **supranational** legal system (existing above the nations) based on the partial transfer of the practice of their sovereignty to the Communities, first by the 'inner six', then by the acceding countries becoming MS.[48] These so-called founding treaties (as international treaties) besides creating rights and obligations, simultaneously transferred competences from the MS to the bodies of the integration as well.[49]

The Euratom community is an international organization with the aim of developing the atomic energy industry and looking for peaceful ways of atomic energy usage. It meant the harmonization of research in the field of atomic energy, the creation of common defense rules, and establishing a common market in all sectors connected to the production of atomic energy. In order to reach its goals, the organization can conclude international treaties and develop diplomatic relations. Its establishment was based on the great expectations of atomic energy in the 1950s. However, it became clear quite early, that besides the EEC, Euratom only has a small part in establishing European integration. Its institutions were the Commission, the Assembly, the Council and the Court.[50]

The main aim of creating the EEC was to establish a customs union between the MS – the key point of this being the termination of customs imposed on each other and defining common customs duty rates against external, third countries. The next step was the establishment of the common market encompassing the so-called **four freedoms**: the free movement of goods, persons, services, and capital. Besides these, social and political aims have also been established, like developing life and labor conditions, strengthening peace and freedom, creating the bases of European integration. Common policy was drawn up in the field of agriculture, traffic, and a common competition policy was established to ensure free competition.[51] The customs union between the MS started in 1970. The institutions of the EEC were the Commission, the Assembly, the Council and the Court.

The ECSC, the EEC and the Euratom were three distinct international organizations with the same MS: the 'inner six'. However, all organizations had their own independent institutions which controlled the functioning of the Community, so they decided to merge the institutions charged with similar roles. This happened by signing the Merger Treaty (*Fusionsvertrag*) in Brussels in 1 July 1967. The High Authority of the ECSC was merged with the Commission of the Treaty of Rome and the Euratom Treaty establishing the common European Commission and the common Council. The European Court and the Assembly were already common from the establishment of the three organizations. The Assembly became the European Parliament.[52] The title '**European Community**' is officially used from the time the Merger Treaty entered into force, uniting the EEC, the ECSC and the Euratom.[53]

In 1960, the UK and six other states which did not access the European Communities signed the Stockholm Convention establishing the **European Free Trade Association** (EFTA) founded on a strictly intergovernmental basis. The organization was an alternative to those states, which did not want to access the European Communities; these were: Austria, Denmark, the UK, Norway, Portugal, Switzerland, Sweden, Iceland, Finland, and Liechtenstein. They established a full customs union with the European Communities in 1977. Most of the members accessed to the Communities gradually, therefore, today the EFTA has four members: Norway, Switzerland, Iceland, and Liechtenstein.[54]

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[47] Mallard 2008, 463.
[48] Blutman 2013, 49-50.
[49] Bodnár 2009, 41-56.
[50] Södersten 2018, 1-2.
[51] Urwin 1995, 78-81.
[52] Kertészné Váradi 2014, 36.
[53] Merger Treaty https://www.cvce.eu/en/unit-content/-/unit/b9fe3d6d-e79c-495e-856d-9729144d2cbd/fd7200ae-bfc9-4979-84e3-c1f48ff07724#be427f35-bec6-4872-9afa-e9602d628aea_en&overlay
[54] The official website of EFTA: http://www.efta.int/about-efta

The economic successes of the EEC made the organization more attractive in the eyes of states on the outside. After it was founded, Ireland was the first to apply for EEC membership in 1961. News of the application made it to the UK and Denmark as well, who also indicated their intention to join as members, then Norway applied for membership in 1962.[55]

Charles De Gaulle, the President of France in 1963, said at a press conference that the UK is not compatible with the structure of the EEC and its MS, which are in a more or less similar economic situation. The UK has trade and market connections with several different remote states, its character, structure and economic system basically differs from the states of the Continent, so it is not European enough.[56] *De Gaulle* objected the accession of the UK because he thought that the cohesion of states with several different features would not last long. In his vision, he saw a gigantic Atlantic community with American dominance and control, which would absorb the European community. *De Gaulle* was afraid of a breach in the dynamics of the integration by the means of the enlargement.[57]

Furthermore, from 1966, based on the Treaty of Rome, the Council consisting of the sectorial ministers of the EEC needed to switch unanimity to qualified majority in making their decisions. *De Gaulle*'s France did not want to accept this change, as in the qualified majority system the states did not have veto right, so they can be outvoted when in minority. *De Gaulle* used the **policy of empty seats** as means of his objection from July 1965 to January 1966. France called back the French delegate from the Council to boycott the operation of the community institutions. This practically meant the paralyzing of the decision-making as the presence and approval of every MS was necessary to make decisions. The solution was the *Luxembourg compromise* which created the possibility for every MS to ask for unanimity for a decision by reference to its significant national interest, in these cases the specific decisions could only be adopted through unanimous decisions. This effectively created a national veto right regarding every key decision.[58]

The UK, Ireland, Denmark and Norway asked for accession to the European Communities in 1967, albeit only the change of the French president opened the door of accession in front of them. The substantive accession negotiations were started in 1970, which resulted in the **Northern Enlargement** on 1 January 1973. As the majority of the population voted negatively on the referendum confirming the accession to the EEC in Norway, only the UK, Ireland and Denmark became members of the Communities.[59]

Greece asked for accession to the European Communities after the downfall of the military dictatorship in 1975. It is here, in relation to Greece, where based on the proposal of the Commission, as a specific condition of membership appears: the requirement of a democratic system as well as protection of human rights and freedoms. Besides, the Commission strongly emphasized that the Communities must be able to preserve their capacities to effective operation alongside the enlargement as well. Greece became a member of all three communities in 1 January 1981, thereby increasing the number of the MS to ten.[60]

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[55] Kertészné Váradi 2014, 23-30.

[56] Press Conference by President Charles De Gaulle, Paris, 14th January 1963. Reproduced from WEU, Political Union of Europe. 85-87. In: Archive of European Integration (AEI), University of Pittsburgh, University Library System. http://aei.pitt.edu/5777/

[57] Kertészné Váradi 2014, 31-32.

[58] Kertészné Váradi 2014, 39.

[59] Kertészné Váradi 2014, 51.

[60] Kertészné Váradi 2014, 55-60.

Spain and Portugal, two fresh democracies leaving dictatorial systems behind, asked for accession in 1977. During the first enlargement, the integration of the new MS was smooth as they had strong economies and their level of development was the same as of the original, founding MS. However, the enlargement with Southern states will later constitute a great financial burden to the Communities as well as for the founding MS (Besides the applications of Spain and Portugal, the negotiations were still well in progress with Greece). Nonetheless, the stabilization and the safety of the region was a significant goal for the Communities. Therefore, albeit their preparation for accession took longer, the Community also provided them with financial aid, as they could not have left these fresh democracies without support. The so-called **Southern Enlargement**, i.e. the enlargement of the Communities to the South, thus ended with the accession of Spain and Portugal on 1 January 1986.[61]

The history of the Communities became the story of enlargements and amendments of the founding treaties. The *Single European Act* (SEA)[62] entered into force in 1987, through which the aim of the then twelve MS was to create a **common internal (single) market**, such an area without internal borders, where the free movement of the four freedoms: i.e. of goods, persons, services, and capital, is possible. The single market was then created by 1 January 1993. The SEA was the foundation of further integration into a political one and towards a monetary and financial union.[63] Environmental protection, consumer protection, and regional policy became part of the fields of activities at that time as community policies.[64]

10.5. Road to the European Union

Drastic processes were in motion in Central and Eastern Europe in the end of the 1980s. There was **regime change**, firstly in Poland, then in Hungary in 1989, then, by 1990, in all of Central and Eastern Europe, in all states formerly under the influence of the USSR.

In September 1989, Hungary opened its borders to every citizen of the Eastern European states, during which time 13,000 East-German citizens could reach the Western part of divided Germany. All these events gave great impetus to the freedom movements of East Germany.[65]

On 31 August 1990, delegates of the German Democratic Republic (GDR, *Deutsche Demokratische Republik* – DDR, the Eastern part), and the Federal Republic of Germany (Federal Republic, *Bundesrepublik Deutschland* – BRD, the Western part), signed the treaty of the (re)unification of Germany, which entered into force on 3 October 1990.[66] According to the treaty, the former Länder of East Germany "enter" the Federal Republic as a founding MS of the EEC, the GDR ceases as an independent state, the Länder become integral parts of the Federal Republic of Germany. This did not affect the continuous statehood of the Federal Republic in international law, furthermore, not even the name Federal Republic of Germany was modified.[67]

German unification did not take the Communities as a surprise. During the negotiations on the Treaty of Rome, the delegation of the Federal Republic made a statement on 28 February 1957, in

[61] Kertészné Váradi 2014, 61-68.
[62] Single European Act, OJ L 169., 29.5.1987.
[63] Chalmers–Davies–Monti 2010, 20-22.
[64] The official website of the EU: https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=LEGISSUM%3Axy0027
[65] Osztovics 2012, 41.
[66] Vertrag über die Schaffung einer Währungs-, Wirtschafts- und Sozialunion zwischen der Bundesrepublik Deutschland und der Deutschen Demokratischen Republik. http://www.verfassungen.de/de/ddr/waehrungsunionsvertrag90.htm
[67] Giegerich 1991, 398.

which they reserved the right to revise the Treaty of Rome and the Euratom Treaty if Germany is eventually reunited. Furthermore, the government of the Federal Republic continuously informed the institutions of the Communities about the developments during the unification process. The Council, the Commission and the Parliament paid special attention to. Then, in September 1990, France, the UK, the USA, Russia and the two Germanies signed the treaty which made the reunification of Germany possible.[68]

After the disintegration of the USSR in 1990-1991, the Iron Curtain also was quickly taken down, thus putting an end to the cold war as well.[69]

Another important step forward was when the MS of EFTA (except Switzerland) signed the treaty on the **European Economic Area** (EEA) with the European Community in Porto, which is in force since 1994. The EEA extended the single market of the EU with the market economies of the EFTA states, which do not intend to became members of the political community of the EU. The rules of the single market and the jurisdiction of the European Court of Justice for the most part extend to the whole EEA.[70]

The comprehensive or radical amendment of the founding treaties was materialized with the **Treaty of Maastricht**, which entered into force in 1 November 1993.[71]

The **European Union** was created with the Treaty of Maastricht, with an structural system modelled on Greek pillars. The first pillar embodies the European Communities, the former three integration organizations: the ECSC, the EEC that since has become EC, and the Euratom Community. The law of the first pillar is the so-called Community law, this was the supranational pillar. The second pillar rendered Common Foreign and Security Policy (CFSP) independent, while the third pillar operated justice and home affairs (JHA) cooperation. These last two pillars were regulated as traditional intergovernmental cooperation. The law of the three pillars comprised the so-called EU law. Following 1 November 1993, there was only one international organization.[72] The Treaty of Maastricht introduced the status of **EU citizenship** to the citizens of the MS to express entitlements, rights complementing national citizenship.[73]

10.6. From the Fourth Enlargement to the Treaty of Amsterdam

Austria was the first applicant from the EFTA members in 14 July 1989, then Sweden, Finland, Norway, and Switzerland asked for membership in the European Communities.

At their session in Lisbon, on 26-27 June 1992, the European Council, comprising the Heads of States and Governments of the Communities, based on the comprehensive opinion of the Commission called "Europe and the challenges of enlargement" reached a consensus on starting the negotiations with the EFTA members as soon as possible after the successful ratification of the Treaty of Maastricht.[74]

[68] Kertészné Váradi 2014, 69-80.
[69] Harbutt 1986, 267-300.
[70] The official website of EFTA: http://www.efta.int/eea/eea-agreement
[71] Chalmers–Davies–Monti 2010, 26-27.
[72] Kertészné Váradi 2014, 90.
[73] Kertészné Váradi 2014, 85-86.
[74] The European Council [Lisbon Summit 1992], Lisbon, 26-27 June 1992. In: Bulletin of the European Communities, 6/1992.7.

The European Council used the expression of '*candidate country*' for the first time for Austria, Sweden, Finland and Switzerland.[75]

Austria, Sweden and Finland were all economically strong and thanks to the EEC Treaty, properly prepared states; however, all three were engaged in a policy of neutrality. Austria and Sweden had permanent neutrality policies, while Finland meant safeguarding its own defense powers and not joining any military organizations under neutrality.[76] From the angle of Community law, difficulties might have occurred in the area of CFSP, as these states could have become the automatic and systematic opposition of some measures based on their neutrality.[77]

From the beginning of European integration it has been the obligation of the MS to guarantee the harmonization of their national legal systems with Community law, as domestic law cannot contradict Community law. As the main reason of their application to the EEC was to share in the economic advantages of the membership, these states needed to redefine the actual content of their neutrality.[78] At last, all three states declared that as members of the Communities they aim to actively participate in CFSP, in the creation of economic and monetary union (EMU) and in other important stages of the development of the integration. The Treaty of Maastricht would not create a new military block.[79]

Switzerland and Norway also asked for accession in this round. However, Switzerland soon withdrew the application, and in Norway a referendum of accession repeatedly decided against it, so these two states are not – to this day – members of the European Union. Following exceptionally quick accession negotiations, Austria, Sweden and Finland became members of the EU on 1 January 1995. The fourth enlargement was the first enlargement of the EU as well.[80]

The next amendment of the founding treaties was materialized by the *Treaty of Amsterdam*, which entered into force on 1 November 1999.[81]

The largest change was apparent in the third pillar. Asylum and immigration, visa policy, the external and internal border control, and the judicial cooperation in civil matters were transferred from the third EU pillar to the first. This is important because the intergovernmental nature of these areas thereby ceased, and they became supranational, becoming unanimous instead of qualified majority decisions. Only police and judicial cooperation in criminal matters remained in the third pillar. An important aim of the treaty was to create an area of freedom, security and law, which is based on the free movement of persons.[82]

The treaty was, however, disappointing in the area of decision-making and institutional reforms, significant decisions on these issues were adjourned. These unsettled questions are called the 'Amsterdam leftovers',[83] which required another amendment.

It is important to mention, that the Schengen Convention was incorporated into the institutional framework of the EU.[84] France, Germany, Belgium, the Netherlands and Luxembourg signed the **Schengen**

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[75] The European Council [Lisbon Summit 1992], Lisbon, 26-27 June 1992. In: Bulletin of the European Communities, 6/1992.10.
[76] Kertészné Váradi 2014, 104-111.
[77] Váradi 2014, 106.
[78] Kartos 1992, 673-683.
[79] The Challenge of Enlargement. Commission opinion on Sweden's application for membership. Document drawn up on the basis of SEC (92) 1582 final, 31 July 1992. In: Bulletin of the European Communities, Supplement 5/92. 6.
[80] Kertészné Váradi 2014, 125.
[81] Treaty of Amsterdam amending the Treaty on the European Union, the Treaties establishing the European Communities and certain related acts, HL C 340., 1997.11.10.
[82] Tatham 2009, 212.
[83] Tatham 2009, 403-404.
[84] Tatham 2009, 174.

Agreement in 1985, and its aim was to gradually terminate the internal border control of the members on joint borders, eventually with no internal border control remaining as a prospective goal. To realize the Convention, they signed the *Convention Implementing the Schengen Agreement* on 19 June 1990, whereby the MS abolished control of all person on all internal borders, while external border controls were strengthened. The agreement and the convention both entered into force in 1995 with the membership of the five founding members, as well as Spain and Portugal. Subsequently, other states decided on joining the Schengen zone, currently it includes 24 countries. Hungary is a member since 2007.[85]

10.7. From the Treaty of Nice to the Fifth Enlargement

To guarantee the effective operation of the EU, it became necessary to start negotiations on the necessary institutional reforms when the Treaty of Amsterdam entered into force, already in May 1999. The aim of the next round of amendments to the founding treaties was to decide on the 'Amsterdam leftovers' as well as the preparation of the EU institutional system for the following enlargements in order to guarantee effective operation. These were the reasons behind the *Treaty of Nice*, signed on 26 February 2001, and entering into force on 1 February 2003, amending the founding treaties for the fourth time.[86]

In addition to the fifteen EU MS, those candidate states were accounted for, who were in negotiations with the EU during the amendment of the founding treaties. These were Malta, Cyprus, the Central and Eastern European states, the Baltic states, Romania, and Bulgaria.

After tearing down the Iron Curtain, the former Socialist states, marking the start of democratization, started to build connections with the European Communities, then with the developing European Union. To improve the economy, the political system and the legal system of these states, the EU signed association agreements with them, called **European Agreements**. After these entered into force, the candidate states asked for accession to the EU one after another.

The most well-known event of the fifth round of enlargement, or **Eastern Enlargement** is the European Council held in Copenhagen in June 1993. The Heads of States and Governments of the MS agreed on that the Central and Eastern European states can only accede the European Union if they comply with political, legal and economic membership conditions.[87] These conditions are the so-called **Copenhagen criteria**.

Copenhagen Criteria

1) The candidate country has stable institutions of guaranteeing democracy, rule of law, human rights and respect for and protection of minorities,
2) A functioning market economy which can cope with the competition in the European Union,
3) The given state take on the obligations of membership, including consensus in the aims of political, economic and financial union
4) The ability of the European Union to let new member join the community and keep the impetus of the integration (so-called absorption capacity), as the further enlargement cannot stop the impetus of the integration.[88]

[85] The official website of the European Commission: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen_en

[86] Kertészné Váradi 2014, 177.

[87] The European Council Copenhagen 21-22 June 1993. In: Bulletin of the European Communities No. 6/1993. I.1

[88] The European Council Copenhagen 21-22 June 1993. In: Bulletin of the European Communities No. 6/1993. 13.

In 1998, accession negotiations started with 12 states (the 10 Central-Eastern European states, Cyprus and Malta). During these negotiations, were Poland and Hungary were proven to be the most prepared. Upon the successful conclusions of the accession negotiations, the Treaty of Accession was formally signed in Athens on 16 April 2003.[89] The treaty entered into force on 1 May 2004, by which the EU got an additional 10 new MS: Cyprus, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Hungary, Malta, Slovakia and Slovenia.

Two from the above twelve states, namely Bulgaria and Romania, were unprepared to close the accession negotiations at the end of 2002. The closure of their accession negotiations took place only at the end of 2004, but the accession process of Bulgaria and Romania was not completed. Interestingly, it was the first time when such an accession date was set, which could be delayed as a sanction if the candidate states were not complying with the conditions, so there was an element of uncertainty. It was also a novelty, that the Commission was stricter in supervising of the candidate states contrary to previous enlargements, which was exceptionally continued even after the Treaty of Accession was signed and entered into force. (Currently the freshest reports can be found from 2017 on the dedicated website of the Commission). Bulgaria and Romania became MS of the European Union on 1 January 2007, thereby increasing the number of the MS to 27.[90]

10.8. From the Treaty of Lisbon to Present Day

The ever closer cooperation and the increasing membership of the EU gave the idea of a so-called Constitution for Europe from when the Treaty of Amsterdam was created. On the 2011 Laeken summit, the MS decided on establishing a European Convention to draw up the **Constitutional Treaty**. The Convention, regarding itself as a constitutional assembly, was led by former French president, *Valéry Giscard d'Estaing*, and the members were delegates of the governments and parliaments of the MS, as well as of the European Parliament and the Commission.[91]

International organizations have statutes, while states have constitutions. The Constitutional Treaty would have been somewhere between the two, repealing the former founding treaties (the ECSC Treaty, the Treaties of Rome and their amendments until the Treaty of Nice), defining every basic rule of the operation for the EU in one document. The aim of the new treaty was to make the operation of the EU more effective and transparent, creating a Europe closer to its citizens. It would have incorporated (thereby making it obligatory) the **Charter of Fundamental Rights** of the European Union containing the human rights catalogue of the EU, which was ceremonially pronounced on 7 December 2000.[92]

The Constitutional Treaty was signed by the MS in Rome on 29 October 2004, upon which the MS started the process of confirmation according to their own constitutional rules, the so-called ratification. The treaty was rejected in the French and Dutch referenda in 2005, which was the point of no return for the treaty, it was finally taken off the agenda.[93]

The results of the two referenda created one of the deepest crises of the EU, with Eurosceptics straight out predicting the dissolution of the integration, while the MS were negotiating and searching for a solution. The halted process of reform got a new impetus in the first half of 2007 during the German, then the Portuguese Presidencies of the Council, through costs of serious compromises.

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[89] Treaty of Accession. HL L 236., 2003.9.23., 17-31.
[90] Kertészné Váradi 2014, 201-204.
[91] Osztovics 2012, 51.
[92] Osztovics 2012, 53.
[93] Gombos 2012, 35.

The renewal of the integration was essential from time to time to guarantee smooth operation and to adapt to the increased membership and the challenges of new times, as well as to extend the integration to further areas. This could and still can only happen by amending the founding treaties with the consent of the MS, which was sometimes very hard to reach. During the creation of the Reform Treaty replacing the Constitutional Treaty, several caricatures were published on the different methods of reaching unity and compromises. In one of them, French president *Nicolas Sarkozy* massages the shoulders of the reluctant Polish president *Lech Kaczynski*, while *Angela Merkel*, the German chancellor, massages his feet to persuade him to accept the treaty. The Reform Treaty was signed in Lisbon on 13 December 2007, and it entered into force as the Treaty of Lisbon after successful ratification on 1 December 2009.[94]

The **Treaty of Lisbon** is currently the last amendment of the founding treaties, which contains the essential and detailed rules of the operation of the EU. It reorganizes the founding treaties, whereby now the two documents provide the framework of the operation for the EU together. The EC Treaty became the Treaty on the Functioning of the European Union (TFEU), while the other became the Treaty on the European Union (TEU). The pillar structure of the EU was terminated. The legal successor of the Community is the EU, therefore we now talk about a unified European Union. According to the Treaty of Lisbon, the EU has legal personality, so it can conclude international treaties (primarily it was possible only with all Member States), and can join international organizations. The new text of the founding treaties mostly preserved the achievements of the draft Constitutional Treaty, albeit left out the elements objected to by several MS, along with the UK, namely those, which would show the Union as a state (e.g. the flag, the anthem and the Foreign Minister of the EU).[95]

The Treaty of Lisbon systematizes and clarifies the competences of the Union. For the first time, it has provisions on the possible withdrawal from the EU in the Article 50 TEU. The Treaty of Lisbon closed the process of breaking the intergovernmental character of police and judicial cooperation in criminal matters in the area of freedom, security and justice.[96]

The **Charter of Fundamental Rights** of the European Union has the same binding force as the founding treaties according to the provisions of the Treaty of Lisbon. The treaty also prescribes the accession of the EU to the European Convention on Human Rights (ECHR).[97]

In the area of CFSP, the Treaty of Lisbon contains a clause of mutual defense, under which MS must provide assistance to another MS under attack. The clause of solidarity sets forth the Union and its MS must help in every possible way if a MS is under terror attack or natural disaster or man-made disaster.[98]

The last enlargement of the EU happened after the Treaty of Lisbon entered into force. Croatia, as a Western Balkan state, asked for accession to the EU already in 2003. Here, we can also see the EU-motivation to use the enlargement to stabilize an area. To democratize the Western Balkans' states after the devastating Yugoslav War, the EU started to sign the association and stabilization agreements with them aiming at their development. Two basic requirements appeared in terms of the states, as well as Croatia. One was cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) to apprehend Yugoslav war criminals to bring them to justice; and the other was regional cooperation with each other.[99]

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[94] Blutman 2013, 37.; Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, OJ C 306, 17.12.2007. 1-229.

[95] Summary of the Treaty of Lisbon, from the official website of the European Parliament: http://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon

[96] Summary of the Treaty of Lisbon, from the official website of the European Parliament: http://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon

[97] Article 6 (1) and (2) TEU

[98] Article 222 TFEU; for more details see: Juhász 2015a; Juhász 2015b

[99] Kertészné Váradi 2014, 214.

Croatia needed to meet a very complex system of conditions to become a MS.[100] Accession negotiations started in 2005, albeit they ended only after the Treaty of Lisbon entered into force, in 2011. After all MS successfully ratified the Croatian Treaty of Accession, the number of the MS became 28 with Croatia after 1 July 2013.[101]

10.9. The Institutional Framework of the European Union

The signs of intergovernmental cooperation and supranational operation of the MS can both be found in the institutions of the EU.

10.9.1. The European Council

The first session of the Heads of State and Government was held as the European Council in 1974, then these sessions became more and more frequent. Representation of a MS by a head of state or government depends on the constitutional system of the respective MS. France is represented by the President as Head of State, while all the other MS are typically represented by the Head of Government.[102]

The European Council was given the rank of institution by the Treaty of Lisbon. The role of the institution is to give the Union the 'necessary stimulus for the development' and define the 'directions and priorities of general politics'. The European Council became **the highest-level decision-making institution of the EU**. However, the European Council does not have legislative duties. The European Council elects its own president for two and half years. The members of the European Council are the Heads of State and Government of the MS, the president of the European Commission, and the High Representative for Foreign Affairs and Security Policy of the EU. The European Council is assisted by the Secretariat.

It can initiate new policies, decide on political questions related to the enlargement of the EU, and any intention of withdrawal must be notified to the European Council. In the area of CFSP, it can decide on general guidance and can represent the Union to third countries, without prejudice to the competences of the High Representative. The European Council shall have minimum two summits per semester in Brussels, or in the MS which has the rotating (trio) Presidency in the Council (of the European Union). In the summit meetings, they debate those complex and sensitive issues which cannot be resolved on lower levels of intergovernmental cooperation.[103]

10.9.2. The Council of the European Union (the Council)

The Council (*Council of the European Union*) is the **most important legislative institution** of the EU. The members of the Council are the delegates of the MS from the ministerial level: ministers or state secretaries, who can undertake obligations and vote for their government.[104]

The Presidency of the Council is rotating between the MS, with a different one having the Presidency every six months. To improve the continuity of the work, three successive MS form a trio presidency

[100] Kertészné Váradi 2014, 220.
[101] Kertészné Váradi 2014, 242-244.
[102] Osztovics 2012, 64.
[103] Gombos 2012, 52.
[104] Article 16 (2) TEU

for 18 months, cooperating closely and deciding together on the long-term aims and priorities during this time.[105]

The Council can hold meetings in different formations connected to the topic of the agenda, as an example, the General Affairs Council, the Foreign Affairs Council and the Economic and Financial Affairs Council. The chairman of the formations is the rotating president, the only exception is the Foreign Affairs Council, where the High Representative of the Union for Foreign Affairs and Security Policy is the permanent chairman. The Council decides by a simple majority, a qualified majority or by unanimity, based on the decision that needs to be brought.[106]

It decides on EU legal norms and on the annual budget jointly with the European Parliament based on the legislative proposals of the European Commission. The Council harmonizes the policies and represents the interests of the MS. It creates the CFSP of the EU based on the guidance of the European Council. The Council concludes international treaties between the EU and other countries or international organizations.

10.9.3. The European Commission

The European Commission is the politically independent **executive institution** of the EU and embodies the interests of the Union. The seat is in Brussels, and it has representations in the MS and delegations in several capitals of the world. The Commission consists of Commissioners, called the College of Commissioners, with one Commissioner from each MS, which is 28 members at present. The term of office of the Commission is 5 years. The Commission is led by the president who can decide on the area of policies within the field of responsibility of the respective Commissioners. One of the vice presidential positions is permanently filled by the High Representative of the Union for Foreign Affairs and Security Policy.[107]

The day-to-day operation of the Commission is taken care of by the employees (lawyers, economists, etc.), who work in departments called Directorates-General (DGs). Every Directorate-General is responsible for a specified policy, for instance, the Directorate-General for Competition or the Directorate-General for the Enlargement of the EU.[108]

The Commission creates legislative proposals to the European Parliament and the Council and is responsible for the execution of the decisions made by the European Parliament and the Council. The Commission drafts the annual budget of the EU, which must be approved by the Parliament and the Council.

It oversees compliance with EU law, and – in cooperation with the Court of the European Union – controls the implementation of EU law in the MS. The Commission also represents the EU on the international level, it can negotiate international treaties for the EU.

10.9.4. The European Parliament

The European Parliament is one of the main institutions of the EU. It seats in Strasbourg, the committee meetings are held in Brussels. The members are representatives of European citizens (MEPs). The

[105] The official website of the Council: http://www.consilium.europa.eu/hu/council-eu/presidency-council-eu/
[106] The official website of the Council of the European Union: http://www.consilium.europa.eu/hu/council-eu/configurations/
[107] Article 17 TEU
[108] The official website of the European Commission: https://ec.europa.eu/info/strategy/strategy-documents_en

number of MEPs was maximized in 750, plus the President. The MEPs are elected based on direct and universal suffrage, on free and secret elections from 1979 for 5 years by the citizens of the MS: the citizens of the EU. The number of seats in the Parliament for the MS tries to adhere to the number of population of the respective MS, with the upper cap (limit) being reduced to 96, and the lower increased to 6 per state.[109] The MEPs form parliamentary groups, i.e. factions, based on their political beliefs, not on their citizenship.

The roles of the Parliament increased continually to act against the so-called **democratic deficit**. The aim is to make the EU decisions in a more understandable and transparent way with the participation of EU citizens.[110] That was the reason why the Treaty of Lisbon made the Parliament and the Council co-legislators and created full equality between the Parliament and the Council in adopting the annual budget. The Parliament now also has the right to appointment and control regarding the other institutions.[111] The Parliament cooperates with the national parliaments to create a proper flow of information.[112]

10.9.5. The Court of Justice of the European Union

The Court of Justice of the European Union (formerly ECJ, European Court of Justice) as the **judicial authority of the EU**, is responsible for the uniform interpretation and application of EU law in cooperation with MS courts. The Court seats in Luxembourg, consisting of two justice bodies: the Court of Justice and the General Court (the former Court of First Instance).

The Court of Justice consists of 28 judges and 11 Advocates General (AGs). The judges and AGs are appointed by MS governments by common accord, after consultation with the panel responsible for giving an opinion about the candidates. The term of office is 6 years and it is renewable. The AGs support the work of the Court, their role is to issue impartial and independent opinions in all cases in front of the Court.[113]

The General Court consists of minimum one judge from every MS (now there are 46 judges, but by 2019, there will be 56). The General Court differs from the Court of Justice in that it has no permanent AGs. The tasks of the AG can be assumed by an judge exceptionally appointed for this purpose.[114]

Since its establishment in 1952, it has been the duty of the Court of Justice of the European Union to ensure the respect for the law of the European Union in the interpretation and application of the founding treaties. In the interest of ensuring its successful operation, the Court does not have any general jurisdiction, it exercises its power in concrete types of action. The language of a case could be any of the 24 official languages of the EU, and communication with the parties must take place in the language of the case, and its case law must be published in every MS. This solution is unique in the field of administration of justice on the international level, as other international judicial fora normally work with 2 or 3 official languages.[115]

[109] Article 14 TEU
[110] Fejes 2013, 175-176.
[111] Article 284 TFEU
[112] The official website of the European Parliament: http://www.europarl.europa.eu/portal/en
[113] Article 253 TFEU
[114] Article 19 (2) TEU
[115] The official website of the Court of Justice of the European Union: https://curia.europa.eu/jcms/jcms/Jo2_7033/en/

10.9.6. The European Court of Auditors

The European Court of Auditors, as the **financial 'conscience' of the EU**, was established in 1977, and seats in Luxembourg. The members of the European Court of Auditors, one from each MS, are appointed by the Council (of the European Union) after consultation with the European Parliament. The term of office is 6 years and it is renewable. The auditors have complete independence during their examinations.[116]

It audits the revenue and the spending of the EU to decide whether EU funding has been spent acquired and properly, whether they have been properly accounted for, and whether their use was cost-effective. It audits persons and organizations managing EU financial resources, the MS and the states receiving EU aids and assistance. Its findings and recommendations are compiled in so-called audit reports for the attention of the European Commission and the governments of the MS. In the case of suspicion of corruption or other illegal activity, it shall notify the European Anti-Fraud Office (OLAF). It creates an annual report to be submitted to the European Parliament and Council.[117]

10.9.7. The European Central Bank

The Treaty of Maastricht decided on the establishment of the **European Economy and Monetary Union** (EMU) and its detailed schedule. To this effect, the Treaty prescribed the establishment of the European System of Central Banks (ESCB) and the European Central Bank (ECB). They started to operate officially from 1 June 1998. The ESCB consists of the ECB and every MS central bank, irrespective of whether the Euro as the official currency was introduced or not.[118] The monetary policy of the EU is being directed by the Frankfurt-based ECB and those MS national central banks (currently 19), that have introduced the Euro.[119]

Its most important tasks are to sustain price stability within the Eurozone and to preserve the purchasing power of the uniform currency, to conduct independent foreign exchange market operations, and to issue and produce currency and the authorization such activity.[120]

10.10. The European Union at Present

At present, the EU faces several political, economic and security challenges. One of these is the negotiation process infamously called '*Brexit*', which supposedly will end with the UK Kingdom leaving the EU,[121] decreasing the number MS for the first time in the history of the integration. One of the challenges is to continue enlargement with the aim of stabilizing third countries and specific areas, like stabilizing the Western Balkans for the purposes of security policy. At present, the following states are candidate states: Albania, the former Yugoslav Republic of Macedonia (soon to become North Macedonia expectedly), Montenegro, Serbia, and Turkey. It means that accession negotiations and the implementation of EU law are proceeding without a concrete closing date.

[116] TFEU Article 285
[117] TFEU Article 287
[118] TFEU Article 282 (1)
[119] The official website of the European Central Bank: https://www.ecb.europa.eu/ecb/history/emu/html/index.hu.html/
[120] TFEU Article 282 (2)
[121] Interestingly enough, in its most recent decision, C-621/18 (Wightman et al; ECLI:EU:C:2018:999), the CJEU argued that it is possible for the UK to go back on its withdrawal notification under Article 50 TEU in accordance with their own constitutional requirements by affirming an unconditional commitment to EU membership.

The greatest external challenge to the EU is migration, only partly caused by the flow of refugees, and also including economic migration. The management of this issue is one of the key questions at present for the EU and its MS.

As it can be seen from the above, the EU was originally established on an economic basis, however, to this date, the scope of activities expanded (spilled over) to many different areas, furthermore, there are efforts to realize security policy integration as well. Albeit, in the case of the EU, we talk about a *quasi*-international organization with a supranational character, one has to keep in mind that the whole integration is based on the cooperation of the MS. This can be closer between some MS, and looser in the case of others, but the key is to preserve the unity and the achieved results.

QUESTIONS FOR SELF-CHECK

1. What was common in the unity ideas of the 16th and 17th centuries?
2. Who proposed first the establishment of a supranational integration in Europe?
3. Which significant expression can be linked to *Victor Hugo*?
4. What conception was created by *Kalergi*, what was the point of his theory?
5. Which two factors lead to the establishment of the ECSC?
6. Who are the founding fathers of European integration?
7. How many states signed the Treaty of Rome in 1957 to establish the European Economic Community?
8. Which important treaty was signed between the European Community and the EFTA in 1992?
9. Which treaty established the EU?
10. Which is the most important decision-making institution of the EU?
11. Which interests are represented in the European Commission?

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CHAPTER 11

INSTITUTIONAL BACKGROUND AND TYPICAL FORMS OF BILATERAL INTERSTATE RELATIONS

This textbook mostly concentrates on the issues of global international relations and multilateral cooperation, especially in the institutionalized form of international organizations. Nevertheless, it is important to mention that for several thousands of years the relationship between states almost exclusively meant **bilateral relations**, which are still significant today. Hungary has embassies in 87 states and consular relations with 127 states. Furthermore, Hungary has concluded approximately 1750 bilateral treaties with almost 130 states. Thus, it is visible that a huge mass of international norms exists in this field.

Bilateral relations are typically created between states when they have a common interest. Naturally states which are geographically close have numerous 'common matters', from the regulation of border control, through criminal legal assistance to cultural and scientific cooperation. Hungary for instance, has the most bilateral treaties with Austria, partly due to the common history, and partly to neighborly relations. Two countries cannot only be connected to each other if their relationship is friendly, though this is usually essential for the establishment of relations. However, it was often the case in history that although the relationship between two states had become severed, they did not terminate diplomatic or other contractual relationship between themselves.

As it could be read in the chapters describing the historical part, the bilateral relations of states had already started in Ancient times, and permanent envoys have already been sent in the Middle Ages. The provisions of the peace treaties of Westphalia and of the Congress of Vienna show that by then European states had deep and complex bilateral diplomatic relations among them. Until the mid-20th century customary international law contained these rules, when, in 1961, states adopted the **Vienna Convention on Diplomatic Relations**, which codified them.[1] This convention fundamentally defines diplomatic relations to this day, both at a bilateral and at a multilateral level.

11.1. The Institutional Background of Bilateral Relations

Typically, several state organs can participate in defining state foreign policy aims and directions and in managing the tasks related to the administration of foreign affairs. In Hungary, the Government, the Parliament, the Ministry of Foreign Affairs and even the President of the Republic (head of state) has a role in this. It is not only within the state where it is worth establishing the proper institutions and division of competences for the administration of bilateral relations, but also in the other state concerned. The most important form of this is the establishment of a diplomatic representation (usually in the form of embassy).

The **President** (head of state) represents Hungary, and shall have the power to recognize the binding force of an international treaty based on parliamentary authorization to do so. The head of state does normally also have tasks in connection with the promulgation/transformation of concluded treaties into Hungarian law, and he sends and receives ambassadors and envoys.

[1] Vienna Convention on Diplomatic Relations, 1961.

The **National Assembly** (parliament) also has tasks relating to the management and administration of bilateral and other international relations. It can also take part in defining foreign policy aims and principles. The parliament participates in the conclusion of treaties, can provide mandate for their conclusion (i.e. to the President as head of state). Furthermore, it also has a role in the promulgation/transformation of treaties into Hungarian law.[2]

The parliament itself can have foreign relations, with the parliaments of other states, and they are also entitled to deal with foreign policy issues. In Hungary, this is primarily done in the parliamentary **Committee on Foreign Affairs**, which e.g. regularly holds hearings where the Minister of Foreign Affairs summarizes his governmental work. The Committee on Foreign Affairs regularly discusses current questions of foreign policy, and to these debates not only the heads of the Ministry of Foreign Affairs are invited, but also the representatives of other state organs, institutions, as well as independent experts. A widely-followed part of their work is the hearing of ambassadors prior to their appointment. Another important field of their operation is parliamentary diplomacy. They keep close ties with the ambassadors accredited to Hungary, and regularly receive parliamentary and other delegations from abroad. The representatives of the Committee on Foreign Affairs, with the permission of the Speaker of the National Assembly, can participate in negotiations abroad in the frame of bilateral relations, as well as the leaders and members of the Committee are frequent guests at professional conferences both in Hungary and abroad. A close and regular connection has been established with the partner committees of the Visegrad countries.

The foreign policy activity of the state is primarily defined by the head of the government and the **minister of foreign affairs**. The Ministry of Foreign Affairs is responsible for the worldwide representation of national interests, for the achievement of state foreign policy goals, and for the establishment and maintenance of international relations. The minister of foreign affairs harmonizes the achievement of state foreign affairs and foreign economic interests, and coordinates the activity of other members of the Government in relation to their activities concerning foreign policy and foreign economic interests.

The minister collects information on the state of international relations, the international situation, and informs the members of the Government about these. The Ministry of Foreign Affairs directs the foreign (diplomatic and consular) missions, and the above-mentioned information collection is primarily conducted through them.

A significant task of the Hungarian Ministry of Foreign Affairs is the formation of European Union policy and the representation of the state interest in the EU. The Ministry of Foreign Affairs forms the position of the Government on national security issues, especially regarding Hungary's NATO membership.

The ministry prepares and takes care of the treaties to-be-concluded or already concluded by the Hungarian state. Recommendation as to the conclusion of treaties are made by the minister, who also directs the procedure of conclusion, and supervises to the execution of treaties.

The minister of foreign affairs cooperates with the other ministers in those questions, which have an international aspect – e.g. with the ministers of finance, trade, economy – about investments, trade agreements and about the international development policy.

The minister, through the Ministry of Foreign Affairs, assumes organizational, diplomatic and protocol tasks in relation to the visit of heads of states and/or governments, as well as regarding the organization of intergovernmental conferences.[3]

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[2] For more detail see Act L of 2005 on the procedure regarding international treaties.

[3] For more detail see Government Decree 94/2018. (V. 22.) on the powers and functions of the members of the Government.

The minister shall propose the recognition of newly created states, and the establishment, suspension, restoration or termination of diplomatic and consular relations. It recommends the establishment or termination of diplomatic or consular representations. It establishes and terminates honorary consular representations.

In the management of Hungary's foreign policy more than 1,500 persons participate, approximately 900-1,000 work in the ministry and 500-600 in the diplomatic and consular missions. The minister of foreign affairs proposes the accreditation and recall of the heads of foreign missions. It appoints the head of the honorary consular mission and decides on the revocation of such appointment. The minister shall also appoint diplomatic and consular staff.

Main tasks of the minister of foreign affairs

- definition of foreign policy goals;
- worldwide representation of national interest;
- formation and coordination of international relations;
- collection of information on the state of international relations, the international situation, and information of the members of the Government about these;
- direction of Hungary's representations abroad;
- representation of Hungary in international organizations;
- participation in the conclusion of treaties;
- harmonization and coordination of the activity of other members of the Government in relation to issues having an international aspect;
- recommendation for the recognition of newly created states, and the establishment, suspension, restoration or termination of diplomatic and consular relations.

The main tasks of the **diplomatic mission** are the representation of the sending state in the receiving state; the protection of the interests of the sending state in the receiving state; negotiation with the Government of the receiving state; ascertaining by all lawful means the conditions and developments in the receiving state and reporting about it to the sending state; and the promotion of friendly relations and the development of economic, cultural and scientific relations.[4] Naturally, these tasks can only be executed by a person who is accepted by the Government of the receiving state, and they shall have the right to deny the acceptance of the accreditation of the proposed diplomat, as well as to subsequently declare the person '*persona non grata*'. The improvement of bilateral relations is not possible without trust toward the diplomat and mutual respect. Ambassadors is are the only persons doing diplomatic work. Typically, they have a second in command, who is called deputy chief of mission. The members of the staff can have different tasks and titles/names, thus one can hear about different attachés, like military attaché or cultural attaché. The work of the diplomats is aided by the administrative and technical staff. Based on this, the headcount of a diplomatic mission can vary, as it is greatly influenced by the sending state's financial possibilities and prestige. Traditionally, big states maintain big diplomatic missions even in such states which are not their most important partners. Thus, approximately 50 people work e.g. in both the American and Russian embassies in Budapest. (The USA has more than 11 thousand diplomats present in 190 states of the world.[5])

Consular missions have been established to protect the citizens of the sending state. Thus, the protection of the interests of Hungarian citizens abroad is ensured primarily by the consuls. Naturally, if it is necessary the diplomatic mission can also act in the interest of its citizens, but this is usually only typical when there is no consular mission in a given state. A sending state can have only one

[4] Vienna Convention on Diplomatic Relations, 1961, Art. 3.
[5] Roberts 2013.

diplomatic mission in a receiving state, which is typically seated in the capital city, to be 'close to the fire'. Contrary to this, a sending state can have multiple consular missions in the receiving state, and they can be seated in any of the cities. Usually consular missions are in those cities, where the presence and activity of the sending state's citizens are significant. The embassy of Hungary in Washington, for instance, performs consular tasks as well, besides which there are three more consulates general in the USA: in New York, Los Angeles, and Chicago. Besides the official and professional consulates, the state can appoint honorary consuls as well. These persons typically have a good personal relationship with the sending state, they live in the territory of the receiving state, and thus they can assist the citizens of the sending state, supplementing the work of the professional consuls. In the USA, e.g., besides the three consulates general 19 honorary consuls work, in such cities as Atlanta, Boston, Denver, Honolulu, Houston, Miami or New Orleans. Similarly, it can be mentioned, that the Romanian state has a consulate general in Szeged, and six other states have honorary consuls: France, Finland, Israel, Italy, Austria and Serbia.

The tasks of the consul can be very diverse. The 1963 Vienna Convention on Consular Relations lists the protection of the interests of the receiving state in the sending state and of its nationals, both individuals and corporate bodies, as consular functions. It is also the task of the consul to further develop the commercial, economic, cultural and scientific relations between the two states and to gather information and to report about these to the sending state. The consul also has administrative tasks, such as issuing passports and travel documents, e.g. visas or appropriate documents to persons wishing to travel to the sending state. It helps and assists the nationals of the sending state (e.g. if their official documents are lost or if their money is stolen, or if they suffer an accident), as well as it can perform public notary and civil registrar functions. The consul can represent and arrange appropriate representation for nationals of the sending state before the tribunals and other authorities of the receiving state.[6]

Main tasks of the diplomatic mission

- representation of the sending state in the receiving state;
- protection of the interests of the sending state in the receiving state;
- negotiation with the Government of the receiving state;
- getting information, by all lawful means, on the conditions and developments in the receiving state and reporting about it to the sending state;
- promotion of friendly relations and the development of economic, cultural and scientific relations.

Main tasks of the consular mission

- protection of the interests of the receiving state in the sending state and of its nationals, both individuals and corporate bodies;
- furthering the development of commercial, economic, cultural and scientific relations between the two states and gathering information as well as reporting to the sending state about the above;
- issuing passports and travel documents, e.g. visas or appropriate documents to persons wishing to travel to the sending state;
- helping and assisting the nationals of the sending state;
- performance of public notary and civil registrar functions; representation and arrangement for appropriate representation for nationals of the sending state before the tribunals and other authorities of the receiving state.

[6] Vienna Convention on Consular Relations, 1963, Art. 5.

Besides diplomatic and consular representations, states frequently establish **offices** to enhance trade and cultural relations on the territory of certain states. The Balassi Institute works worldwide in 24 cities (e.g. in New York, Paris, London, Rome, Beijing, Istanbul and Delhi) to develop closer relations and to promote Hungarian culture, education and science. Hungarian Tourism Offices have been established in 23 countries for the promotion of tourism.

11.2. Typical Areas of Bilateral Relations

In previous centuries, those areas, in which states wish to cooperate with each other have become wider and wider. The classical spheres of bilateral cooperation were trade and military assistance. Compared to this, several dozens of cooperation areas can be mentioned at the beginning of the 21st century in addition to the above.

Treaties of **good neighborliness and friendship** typically create the consensus necessary between the two states and constitute a foundation for further joint endeavors. Commerce between the two states and economic investment directed into each other's territory are promoted thereby.

Besides economic and commercial relations states establish cooperation in **education, culture, science, technology, communication and transportation**. They assist their citizens in participating in educational programs in the other state, they support the organization of joint cultural events, and participation in scientific and research projects, as well as joint developments of the transportation system important for both, e.g. to build a railway-line together. They may also conclude agreements to start scheduled flights between them.

Neighboring countries shall agree on the order of the **border** between them, and about the locations of land and water border-crossings. Several further questions can arise with respect to the border between them, e.g. shipping and fishing in the frontier-river, the use of its water for irrigation, or building a power plant on it. It is also useful to decide regarding the common border how they can cooperate in the prevention of transborder criminal activities as cooperation against transnational crime is not only important for neighboring states. The institutions of mutual assistance in criminal matters and extradition are old territories of bilateral cooperation. (For more detail, see Chapter 13.)

Besides cooperation in the field of criminal law, **mutual assistance** in civil and family law matters is also significant. This is especially important for those states which have considerable number of citizens or nationals of the other state living in their territory.

Plant- and animal **health**, the protection of the environment are also important fields of cooperation, let's just mention the transborder effect of water- or aerial pollution, for instance). In the field of human healthcare the prevention of epidemics is significant.

Numerous bilateral agreements concern **tax issues**, especially the prevention of double taxation, namely when the two states agree that the tax-payer does not have to pay a tax in both countries after the same income. These treaties contain unique conditions, and separately regulate the tax to be paid e.g. after the income from employment and after income from purchasing a property. Nowadays, these agreements also regulate the means of cooperation between the states to fight tax evasion. The exchange of information in tax affairs is one of the examples of the increase of information sharing between states. Information cooperation can also cover national security and intelligence matters.

Many states have agreements on the **amicable, peaceful settlement of disputes**, in which they agree which procedures they shall use to seek resolution in case of a dispute. These agreements usually propose diplomatic resolution and negotiation, but frequently also provide for arbitration or the use of one of the international courts.

States can decide to organize **sport** events together; Austria and Switzerland, for instance, jointly organized the European Football Championship in 2008, and Poland and Ukraine did the same in 2012. Hungary, together with Croatia, also applied for the organization of this latter.

Different kinds of cooperation can also be found in **energy sector**, e.g. states can purchase natural gas, oil or electricity from each other. Such cooperation can also cover the issue of one state assisting the other in building a nuclear power plant.

Military cooperation might extend to the organization of joint trainings and war games, military exercises, and the states can agree on the sale and purchase of weapons and military vehicles, or they can even establish closer alliance in the event of an armed conflict.

The bilateral cooperation of states can practically cover any of the areas which are not in contravention of the principles of international law and fundamental human rights. Thus, e.g. while there is no limit to military cooperation, it is forbidden by international law to agree to commit an armed attack or aggression against a third state, or to jointly execute genocide or torture of people.

QUESTIONS FOR SELF-CHECK

1. Name at least three state organs which participate in the formation of international relations.
2. What are the foreign affairs functions/tasks of the President?
3. How can the National Assembly participate in the execution of foreign affairs?
4. List the tasks of the minister of foreign affairs.
5. What is the difference between the tasks of the diplomatic and consular mission?
6. List at least five typical areas of bilateral cooperation.
7. What are the typical agreements in relation to the border between two states?
8. What does the agreement for the prevention of double taxation mean?

RECOMMENDED LITERATURE

Vienna Convention on Diplomatic Relations, Vienna, 1961.
Vienna Convention on Consular Relations, Vienna, 1963.

CHAPTER 12

INTERNATIONAL COOPERATION IN ECONOMIC RELATIONS

12.1. Introduction

It is no exaggeration to say that **free trade** has become one of the most important questions of the 21st century. Recent events have opened a new chapter in international economic relations, and these changes made it necessary to rethink some of our fundamental concepts such as global governance, state sovereignty and regulatory autonomy.[1]

> Free trade means exchange of goods and services free of customs duties and quantitative restrictions.

The most recent period of world trade created a very **special political and social context** for the tree trade 'boom' we experience today.

First, the failure of the most recent, Doha Round of WTO negotiations suggests that, in global trade, **multilateralism reached its limits** and pushed pro-free-trade states towards bilateralism (or restricted multilateralism). Furthermore, while some states reverted to protectionism, others considered free trade as a way out of the current economic crises.

> Protectionism is the umbrella term of state measures and efforts that aim to protect the local economy from the pressure of foreign competition. It is used to designate state measures which are seemingly motivated by public interest goals, but their actual purpose is the protection of the local economy.

This resulted in a new generation of free trade agreements, like the Transatlantic Trade and Investment Partnership (TTIP), the Trans-Pacific Partnership (TPP), which has been reinstated by the parties in March 2018 under the name Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) due to the USA leaving the cooperation. We could also mention the EU-Canada Comprehensive Economic and Trade Agreement (CETA)[2], the EU-Japan Economic Partnership Agreement (JEFTA) finalized in 2017 December[3], and the Trade in Services Agreement (TiSA), a multilateral agreement of restricted geographical scope.

Second, it appears that the global system fulfilled its mission by minimizing traditional trade restrictions[4] and the **focus of world trade shifted** from traditional trade restraints to seemingly non-discriminatory regulatory restraints, and was extended to other subjects of trade, such as services,

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[1] The erosion of sovereignty (as it is traditionally understood) has of course started long ago. See: Jackson 2006, 57-78.

[2] CETA came into force on 21 September 2017. Council Decision (EU) 2017/38 of 28 October 2016 on the provisional application of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its Member States, of the other part. OJ L 11, 14.1.2017, p. 1080-1081. See Press Release: EU-Canada trade agreement enters into force (20 September 2017), available at http://trade.ec.europa.eu/doclib/press/index.cfm?id=1723

[3] JEFTA is currently waiting on the approval of the European Parliament and the member states. Press Release: EU and Japan finalise Economic Partnership Agreement (8 December 2017), available at http://trade.ec.europa.eu/doclib/press/index.cfm?id=1767

[4] See for example Factsheet on Trade in goods and customs duties in TTIP, available at http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_152998.1%20Trade%20in%20goods%20and%20customs%20tariffs.pdf

technology and capital. It shall be taken into account that in the last period the social role of regulation strengthened extraordinarily and, today, its significance in the market is incomparably higher than it was at the age when the principles of the law of economic relations were worked out.

This chapter examines two questions. On one hand, it showcases the results of the cooperation arising from this international, global trade regime. On the other, it also examines the most important aspects of new generation free trade agreements.

> The primary goal of traditional free trade agreements was to eradicate abolish quantitative restrictions and customs duties (tariffs) between the MS. In addition to this, new generation free trade agreements aim at securing the 'smooth course' of trade through ironing out different regulatory obstacles. In both cases, MS reserve all freedom to shape their trade policy regarding third countries. In contrast, in a customs union, the MS not only abolish customs duties and quantitative restrictions between each other, but at the same time they apply unified tariffs and quantitative restrictions in relation to third countries.

12.2. The Comprehensive Liberalization of World Trade

The contemporary history of world trade was opened by the conclusion of 1947 General Agreement on Tariffs and Trade (**GATT '47**) and was consummated by the creation of the **World Trade Organization in 1994** (WTO). Revolutionary changes took place in world trade during this period. Initially, GATT '47 constituted a forum of cooperation for market-based economies and was rejected by Socialist countries.[5] The collapse of Communism considerably expanded the club's membership, and in essence, the WTO's rules became universally effective. With the accession of China and Russia, the WTO became the one and only global framework for trade. In contrast to GATT '47, founded by 23 countries, WTO currently has more than 160 members. With the accession of China in 2001 and Russia in 2012, the WTO **became a truly universal trade organization**: its member countries account for 96.4% of the global GDP.

WTO law considerably limits the use of traditional trade restrictions. It virtually prohibits all kinds of **quantitative restrictions** (quotas) and significantly restricts tariffs. GATT '47 prohibited quantitative restrictions at large[6] and forced MS to transform their quantitative restrictions into tariffs (tarification). In addition, it created a system under which – regarding their own tariffs – MS accepted 'tariff-bindings' in the form of **bound tariffs**.

The era hallmarked by GATT '47 resulted in a **remarkable tariff reduction**. The pre-1947 20-30% average tariff rate[7] fell considerably. The 2007 WTO World Trade report concluded that in developed countries the average duty rate of industrial products fell to less than 4%.[8] UNCTAD's 2013

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[5] With the notable exception of Czechoslovakia and Cuba, which were founding members and remained a member after the Communists seized power. China was also a founding member but subsequently withdrew from GATT after the Communists took power. Interestingly, it was not the People's Republic of China but the Republic of China governed by the Kuo Min Tang, having fled to Taiwan, which notified the withdrawal as the entity occupying China's seat at the relevant time. Hsiao 1994, 433-434.

[6] Article XI GATT

[7] WTO (2007)*World Trade Report: Six Decades of Multilateral Cooperation*, *What Have we Learnt*? Geneva: WTO. p. 207. available at https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report07_e.pdf. Cf. Bown–Irwin 2015 (Finding that the average tariff level in 1947 was about 22%).

[8] WTO (2007)*World Trade Report: Six Decades of Multilateral Cooperation*, *What Have we Learnt*?Geneva: WTO. p. XXXI. After the Uruguay Round, the weighted bound tariff average of the United States, Japan and EU (at that time having 12 Member States) was 3.1%, with the US having 3.5%, Japan 1.7% and the EU 3.6%. Ibid. p. 209.

Key Statistics and Trends in Trade Policy reported that in 2012 the average applied tariff was 1% in developed countries and between 4%-10% in developing countries.[9] As for the distribution of tariff burdens, it reported that approximately 40% of international trade was duty-free, while about 10% faced tariff charges of over 10%.[10] In EU-US relations, more than half of the trade is duty-free, while the remaining half faces rates from 1-3% to 30% (for goods like clothes and shoes). The EU tariff on motor vehicles is 10%, the US tariff for train carriages is 14%. In extremely rare cases, though, tariffs exceed the actual value of the product: the USA tariff on raw tobacco is 350% and on peanuts is over 130%.[11] This implies that in developed countries tariffs represent a significant trade barrier merely in a few product categories.

The diminution of applied tariffs was paralleled by a similar process concerning bound tariffs (legally binding duty rate caps established for specific product lines). These were agreed on in a series of **rounds** providing a platform for GATT '47. Article II GATT '47 makes these tariff promises (undertakings) binding under international law. The representatives of MS arrived to these rounds with a request list and an offer list and tried to convince countries representing their export markets to reduce tariffs in exchange for the tariff reductions they were inclined to offer. Because bilateral arrangements and concessions were excluded under the MFN Clause of Article I GATT, MS were not able to discriminate among each other. If one MS reduces the tariff of certain products, that reduction immediately and unconditionally applies to all products coming from any MS. Although the promises to reduce customs duties were, in a legal sense, not based on bilateral or multilateral agreements, mutual economic benefits and advantages were apparent, and the system operated on the basis of the logic of *quid pro quo*. States characteristically decreased the tariff rate of a particular product because other states made similar reductions for products being exported by them. This reciprocity is reflected in Article II GATT, which provides that commitments to decrease (maximize) tariff rates (tariff-bindings) are legally binding and may not be unilaterally revoked without duly compensating the affected parties.

WTO members' tariff bindings were included in the Schedule of Concessions and Commitments annexed to GATT 1994 (incorporating GATT '47, so it was basically the same body of rules). The Uruguay Round, between 1986 and 1994, was extremely successful in extending binding coverage: in developed countries bound rates were virtually extended to all products (99% of product lines), same as in transition economies, which increased their binding coverage from 73% to 98%. This was paralleled by a similar process in developing countries, where binding coverage increased from 21% to 73%.[12] Bound tariffs were also significantly reduced, though they remained high in developing countries.

[9] UNCTAD, Key Statistics and Trends in Trade Policy United Nations, New York and Geneva, 2013. p. 5.
[10] UNCTAD, Key Statistics and Trends in Trade Policy United Nations, New York and Geneva, 2013. p. 7.
[11] Factsheet on Trade in goods and customs duties in TTIP http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_152998.1%20Trade%20in%20goods%20and%20customs%20tariffs.pdf
[12] WTO (2007) World Trade Report: Six Decades of Multilateral Cooperation, What Have we Learnt? Geneva: WTO. 221.

The world's ten largest economies[13] by GDP (representing 80% of world GDP) are characterized by almost full binding **coverage** (except India) and relatively low bound tariffs. The first three economies, EU, Japan and the USA (representing 52% of world GDP) have a less than 5% simple average bound tariff.

	Binding coverage	**Simple average bound tariff**	**Simple average applied MFN tariff**	**Simple average bound tariff of non-agricultural products (NAMA)**	**Simple average applied MFN tariff of non-agricultural products (NAMA)**
Australia	97,05	9,95	2.52	10.96	2.75
Brazil	100	31,36	13.53	30.75	14.12
Canada	99,7	6,52	4.08	5.17	2.16
China	100	10	9.92	9.13	8.98
EU	100	4,97	5.16	3.94	4.19
India	74,42	48,47	13.39	34.52	10.17
Japan	99,66	4,49	4.03	2.51	2.51
Russia	100	7,58	7.15	7.06	6.51
South-Korea	94,89	16,47	13.90	9.83	6.76
USA	99,94	3,43	3.48	3.22	3.20

Source: WTO, data of 2016[14]

It shall be added that the actual tariff rates are usually considerably lower than the bound tariffs, which at times might produce a huge difference (overhang) in case of countries having a high bound tariff rate. For instance, India has exceptionally high bound tariff rates (48.47%) but a lower simple average applied MFN tariff rate (13.39%) than Brazil (13.53%) and South-Korea (13.9%), which have otherwise considerably lower bound tariffs (31.36% and 16.47% respectively). Interestingly, China and

[13] Based on the 2017 GDP data (current prices, U.S. dollars) of the IMF data, available at http://www.imf.org/external/pubs/ft/weo/2018/01/weodata/index.aspx.

Country	**GDP**
Australia	1,379.548
Brazil	2,054.969
Canada	1,652.412
China	12,014.61
EU	17,308.862
India	2,611.012
Japan	4,872.135
Russia	1,527.469
South-Korea	1,538.03
USA	19,390.6
Total	64,349.647
World	79,865.481

[14] WTO, International Trade and Market Access Data, available at: https://www.wto.org/english/res_e/statis_e/statis_bis_e.htm?solution=WTO&path=/Dashboards/MAPS&file=Tariff.wcdf&bookmarkState={%22impl%22:%22client%22,%22params%22:{%22langParam%22:%22en%22}}

Russia, though developing countries, have a modest average bound tariff (10% and 7.58% respectively), and their actual tariff rates are close to the ceiling (9.92% and 7.15% respectively).

> Traditional measures of trade restriction are customs duties (tariffs) and quantitative restrictions.

The above numbers demonstrate well that in global trade **traditional tools of trade restriction** (such as tariffs and quantitative restrictions) no longer have a significant role. Quantitative restrictions have been banned already by GATT '47, while tariffs have been gradually decreased by MS. Developed countries apply very low bound tariffs, in particular as to non-agricultural products (except Australia where the simple average bound tariff of agricultural products is 3.44%, while that of non-agricultural products is 10.96%). This implies that in developed countries the overall significance of tariffs has diminished very considerably (albeit they are still relevant in agriculture and specific economic sectors), and that the prerogative of developed countries to discretionarily use tariffs as an effective tool to restrict imports has been confined to a limited number of products. Nevertheless, developing countries having a huge tariff overhang may continue to make use of this trade policy opportunity.

It is noteworthy that, due to the **most favored nation (MFN) principle**, prohibiting discrimination among WTO MS, tariffs cannot be targeted at products arriving from a particular MS. Developed countries may not increase their tariff rates on products flowing in from developing countries, only the tariff rates of a given product can be increased in general (as non-WTO MS naturally do not enjoy the benefits of MFN). Let us assume that the US government plans to shield American producers from competition created by German imported cars, in this situation they cannot impose a higher customs duty on European Union imports (even less specifically against German imports), but they shall increase American customs duties on motor vehicles in general, which will detrimentally affect e.g. Japanese manufacturers as well.

A similar framework prevails as to **trade in services**. In the application of the General Agreement on Trades and Services (GATS) two obligations apply to the MS based on a separate, express commitments: market access (Article XVI GATS) and national treatment (Article XVII GATS) These commitments have been made by the MS regarding certain sectors, and their relevant commitments are summarized by the Schedule of Commitments. The Schedules of the respective MS set forth, by economic sector, whether the MS at hand undertook to observe the principles of market access and national treatment as to a given sector, and for which of the four modes of supply. Furthermore, the schedules also contain those restrictions and conditions that the MS set when making the commitment. GATS distinguishes between four modes of supply. The first is cross-border supply, when service is provided from the territory of one MS to the territory of another. The second is consumption abroad, when service is provided in the territory of a MS to the consumer of another. The third is commercial presence, in which case service is provided through the business presence of a MS provider in another MS's territory. The fourth is physical presence or presence of natural persons, in which case service is provided by a MS provider through the presence of natural persons in another MS's territory. Similarly to tariff bindings, GATS commitments cannot be revoked unilaterally, except the affected parties are duly compensated.[15]

[15] Article XXI GATS. This happened for example in the US Gambling case. Wohl 2009, 133-134.

12.3. New Generation Free Trade Agreements

The new generation of free trade agreements (eg. TTIP, TPP, CETA, TiSA) not only erases tariffs and quantitative restrictions (as traditional agreements did), but also **opens up national** (regulatory) **sovereignty to international regulation**. It reforms regulatory autonomy and internationalizes certain national competences, which raises serious questions of (democratic) legitimacy. These new-generation free trade agreements cover the whole spectrum of trade (goods, services, technology, capital, etc.) and do not restrict themselves to demolishing traditional trade restrictions (tariffs and quotas), but ambitiously touch every state action with relevance to trade restriction or the economy (e.g. regulatory differences, public procurement/government contracts, or certain fundamental rights issues) in a comprehensive manner.

The blend of the above various political and social factors resulted in a **new age of regional economic integration law**, which intrudes considerably into national regulatory sovereignty and fundamentally re-shapes its basic notions, also necessitating the rethinking of our notions of economic relations, sovereignty and democratic decision-making. Firstly, new-generation free trade agreements address regulatory restraints that are socially rooted and closely intertwined with national regulatory autonomy, thus, entailing a major shift of sovereign regulatory powers onto international governance. According to a radical opinion, "[*t*]*hese agreements are no ordinary free trade deals*; *they raise questions about the political future of independent nations*, *about sovereignty*, *democracy and indigenous self-determination*, *and*, *above all*, *the people's right to know what governments are doing*."[16] Secondly, while the excessive promotion of free trade may suppress local legitimate regulatory policy considerations and may display free trade as unregulated trade in the eyes of the local electorate, impairing the legitimacy of the notion of free trade,[17] seemingly non-discriminatory regulation is frequently used by local economic interest groups to cut out foreign trade.

12.3.1. Free Trade, National Interest and International Governance

All free trade systems, including the WTO, allow states **to restrict trade** if justified by a legitimate local interest. States may introduce standards, shape taxation, impose public (utility) service duties on enterprises or maintain monopolies in a way that restricts trade and free competition. Since the regulatory frameworks contain vague and fluid concepts and notions, states are normally afforded a wide margin of appreciation and the application of the law becomes a social and mental process, blending economic, social and legal considerations and aspects.

Among others, there is one constant element in the world's free trade systems: they forbid MS from restricting free trade and competition, but allow this in cases where restrictions are justified by a **legitimate local interest**. In these systems, courts face similar issues, as they shall decide in cases that are not only similar, but sometimes exactly the same.

We can observe differences between the systems in relation to what **constitutes a trade restriction**. In this regard, the law of the EU internal market is quite strict: even non-discriminative measures are forbidden, in case they restrict trade. In other words: measure that restrict market access for imported goods (services, investments, etc.) are forbidden, even if they equally restrict the market access of both imported and domestic goods, services, investments, etc. As a result, the measures adopted by a MS could be in violation of free movement, even when there is no protectionist motivation behind them.

[16] Kelsey 2010, back cover
[17] See e.g. Kelsey 2012, 1719.

In contrast, Australian internal market law is based on forbidding protectionist measures, and it mostly considers discriminative measures as protectionist. If the actual purpose of the MS regulation is to determine some sort of product or service standard or some standard related to commercial activity, then it is not usually based on protectionism, and does not infringe the free trade clause under Article 92 of the Australian Constitution.[18] Under the dormant commerce clause of the US constitution, measures that are non-discriminative but disadvantageous to international trade may violate the constitutional ban, in case they restrict interstate commerce disproportionately compared to the local public interest. However, when it comes to non-discriminative measures, states enjoy a wide margin of appreciation,[19] and mainly discriminative measures are quashed by the courts.[20]

If a state measure qualifies as restrictive of trade, it can still be valid, provided it is justified by (legitimate) **local public interest** and it is **proportionate**. Determining whether a measure is proportionate requires a complex examination, because it involves comparing different types of values: free trade on the one hand and some legitimate local interest (public health, morality, environmental protection, etc.) on the other. Comparing these different types of values is essentially a political question, not a legal one, so it is difficult for courts to handle it.

The various systems developed different methods for examining the question, which **encroach upon state discretion with varying intensity**. From this perspective, the CJEU's practice seems quite interventionist: it does not hesitate to balance the value of legitimate local interests (ends) with the principle of free movement. In contrast, the US Supreme Court, which claims to engage in balancing (as it compares two different types of values to each other), practice has shown that in case of non-discriminative measures, if the state can present credible justification for the introduction of the measure, the court will accept it, based on the wide margin of appreciation afforded to states. However, discriminative measures are almost viewed as *per se* unlawful, and although there is a theoretical possibility for justifying these through public interest, there is only a slight change it will pass 'judicial scrutiny'. The most accommodating solution, unsurprisingly, is the one in WTO law, since WTO is a global system based on principles of international public law, in contrast to the domestic US dormant commerce clause or the *sui generis* EU law. In WTO law, the analysis used in cases where the question of local public interest arises is not considered a test of proportionality, but rather an investigation into possible less restrictive alternatives. Here, the relevant question will be whether the state, to achieve the given end, had the option of introducing an alternative measure with the same effectiveness, but less restrictive to trade.

The test of proportionality could be best represented **through an example**. In the US, chlorine was used to disinfect slaughtered chicken. As a result, notwithstanding every effort to the contrary, the chickens meant for human consumption retain a small dose of chlorine, which gets into the human body through the consumption of the meat. The restriction of trade concerning these goods can be justified by both public health, and consumer safety reasons. Based on the intensity of state intervention, three regulatory options can be identified. First, the state can decide not to regulate these goods. In this case, trade in the value of 30 million Euros will be realized, while 1 million consumers will unknowingly buy chlorinated chicken yearly. Second, the state can ban the product entirely. In this case, there will be zero trade but also zero consumers who unknowingly bought a potentially dangerous product. The third option is an intermediary one: the state can demand that consumers be informed about the chlorination through warning signs placed on the product. In this situation, trade valued at 10 million Euros will be realized, but there will also be 100,000 consumers every year, who will not read the warning and will

[18] *Cole v Whitfield* [1988] HCA 18; (1988) 165 CLR 360, 2 May 1988
[19] *Pike v. Bruce Church*, *Inc*., 397 U.S. 137 (1970)
[20] See CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 87 (1987)

buy the product with the mistaken belief that it does not contain chlorine (which they would not buy if they were aware of this fact).

If we compare the three different regulatory approaches, we can see that although warning signs are not as restrictive as a complete ban, they do not provide the same level of protection (100,000 consumers) as the latter (zero consumers). However, it does restrict trade to a significantly lesser extent (trade in the value at 10 million Euros will be realized, while the complete ban will result in zero trade).

When comparing these options, the court needs to decide whether trade in the value of 10 million Euros is more important than 100,000 consumers, and their potential health issues. Thus, the court must make a value-based judgment to answer this question. In contrast to the test of proportionality, the WTO-approach investigates whether there was a less restrictive alternative. In this case, the WTO dispute resolution panel will examine whether there was a less trade-restrictive alternative measure (warning signs), which can provide the same (or essentially the same) level of protection as the complete ban, considering that the one has 100% effectiveness, while the other has a 90% ratio of success.

12.3.2. Value Standards

While, at first glance, **fundamental rights** might not appear to be relevant to free trade, (and there is no international endeavor to create a global regime for these universal values),[21] states have realized that compliance with fundamental rights requirements has economic effects because it has cost implications, and domestic producers are put at a competitive disadvantage if they shall comply with higher standards. It is not a surprise that, for instance, labor[22] and environmental standards have become major issues of world trade.[23] Furthermore, rule of law, transparency, and due process (fair trial)[24] became hot issues mainly for similar reasons. International (inter-state) dispute resolution can mainly address national rules and visible government actions. The net of free trade law can scarcely catch under-the-radar violations such as hidden discrimination and undue influence on judicial proceedings.[25]

Of course, **there is nothing new under the sun**. The proliferation of free trade agreements just brought an old phenomenon to light. At the time of establishing the EEC, the founding fathers have set in stone equal treatment for men and women as a principle, which appeared unfit for the founding treaty of economic inspirations due to its rather fundamental-rights character. However, if we observe the circumstances of the adoption more closely, we can see that France insisted on accepting it based on purely economic reasons. The principle of equal pay was well entrenched in French law and France feared that French enterprises would suffer a competitive disadvantage, if other MS allow women to be paid less.

Trade policy protective of fundamental rights may appear not only in the negotiation phase, through linking trade concessions to the protection of fundamental rights, but also in **justifying trade restrictions**. Under WTO law states may be possibly allowed to restrict trade not only based on the products' characteristics but also the process used to produce the goods even if the process itself did

[21] See Aaronson–Zimmerman 2006, 998.

[22] See Alston 2004, 457.

[23] See European Parliament, Resolution of 25 November 2010 on Human Rights and Social and Environmental Standards in International Trade Agreements, (2009) 2009/2219(INI), 15(a).

[24] Wolfe 2003, 157.

[25] Sally 2007, 8.

not affect the characteristics of the product/goods. Although the relevant cases emerged in the context of the protection of the life of animals,[26] this practice may open the door other local values, too.

12.3.3. Investment Protection: Substantive Law and Procedural Mechanisms

The **first investment protection treaty** (Germany-Pakistan Treaty of 1959) was meant to convert certain constitutional requirements (such as expropriation, and protection of legitimate expectations) into international obligations to guarantee them. Consequently, the first bilateral investment protection treaties were normally concluded between developed and developing countries and led by the concerns regarding the latter's legal systems. The obligations assumed were, as a matter of courtesy, mutual, that is, reciprocal. However, these treaties did not aim at establishing higher or in any sense different investment protection standards than the ones already part of the constitutional traditions of Western democracies. The rationale was to convert the relevant constitutional rights and principles into international law guarantees in the form of bilateral agreements, so they could not be nullified unilaterally.

Nonetheless, despite all effort, there was no global agreement and especially no uniformity as to investment protection standards. It is noteworthy that although goods, services and knowledge (intellectual property) are regulated in the WTO framework, investment issues, including investment protection, were almost entirely left out, except the relatively insignificant provisions of TRIMs.

The major turning point was when even developed democracies started concluding bilateral investment treaties with each other. Today, investment protection has become an integral part of new generation free trade agreements, some of which are concluded between developed democracies (Canada, European Union, United States). With this, the guarantee function faded into the background, and investment protection law became **fully detached from its original *raison d'être***.

Albeit investment protection, at least as far as substantive standards are concerned, has always remained bilateral, without a realistic chance of a multilateral system, during this half-century, created a labyrinth of bilateral investment protection arrangements, and **international investment protection took a life of its own,** not acting as the alter ego of national constitutional requirements but as an autonomous parallel system. Furthermore, investor-state arbitration subjected genuine public-law disputes to an arbitral procedural pattern, initially designed for purely commercial disputes, which is devoid of democratic legitimacy due to its secrecy, non-transparency and *ad-hoc* nature.[27] The above developments were topped by new generation free trade agreements, which are blamed for introducing too flexible standards and the attached dispute settlement mechanism lacking democratic legitimacy into relations between developed democracies.

The major sources of uncertainty are the investment protection treaties' '**treatment provisions**' including fair and equitable treatment, security and protection, non-discrimination and national treatment. These principles center around fluid concepts, and confer extremely wide powers on arbitral tribunals to review national policy decisions and national administrative and judicial proceedings. The doctrine of legitimate expectations, deduced from the fair and equitable treatment standard, may raise separation-of-powers issues: a state may be called to account for breaking the promises the executive made also as regards issues falling under legislative competence.

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[26] United States – I*mport Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc WT/DB58/AB/R; Dispute Settlement Panel Report On *United States Restrictions On Imports of Tuna*, 30 I.L.M. 1594, 1599 (1991).

[27] Cf. Weiler 2014, 963.

The above developments were **topped by new generation free trade agreements** which treat investment arbitration as a constant element.

12.3.4. Standards and Regulatory Cooperation

Nowadays, the **most important hurdles to trade** are not traditional trade restrictions but **regulatory disparities** between national technical, sanitary, consumer protection, environmental etc. standards. While there is a general understanding that discriminatory measures should be prohibited, the status of non-discriminatory measures is dubious. The more tolerant approach opens the way to veiled protectionism, while the more interventionist approach goes hand in hand with the risk of subordinating local regulatory values to free trade. New generation free trade agreements champion **regulatory coordination**, which also raises sensitive issues of democratic legitimacy.[28]

Under EU law, even non-discriminatory measures are prohibited, if they restrict trade, while the regulation of the Australian internal market builds on the prohibition of protectionist measures, and here, mainly discriminatory measures are considered protectionist (with discrimination either being legal or factual). In the US, primarily discriminatory measures are caught in the net of judicial control based on the Dormant Commerce Clause, though measures detrimental to interstate commerce may also be prohibited, if they restrict interstate commerce to an unambiguously excessive extent compared to local public interest. WTO law fundamentally prohibits discriminatory state measures and the prohibition of non-discriminatory measures is limited. Accordingly, the tolerant approach opens the way to veiled protectionism and preserves the partitioning of the free trade area along national borders. At the same time, the interventionist approach subordinates local public interest to free trade and may entail legitimacy issues. All these approaches have their merits and drawbacks and they both point to regulatory coordination being the best solution. There are some regulatory disparities that are attributable to serious differences in terms of public policy (such as GMOs or hormone treated beef); however, there are no exigent circumstances behind many of the differences between standards, they are due to diverging traditions and randomness (such as the size of fenders or the color of turn lights).

12.3.5. Regulatory Sovereignty and Protectionism

The purpose of the states' margin of appreciation is to preserve regulatory autonomy and the free trade system's legitimacy, since the excessive promotion of free trade may suppress legitimate local regulatory policy considerations. Although states are granted a certain margin to enforce local values, **this also implies the risk of disguised protectionism**, since regulatory decision-making is frequently impregnated by nationalistic and protectionist trade interests. Although this flexibility is meant to ensure that states have the appropriate margin of appreciation to protect public interest and to enforce local values, it also implies the risk of protecting the market. Under the veil of good faith balancing, regulatory decision-making is frequently impregnated by nationalistic emotions and protectionist lobbying activity; thus, this wide margin of appreciation increases the possibility of these dysfunctions.

While some authors argue that only those measures should be prohibited where protectionist intent is proved,[29] the question remains, how can veiled protectionism be uncovered? One cause of the problem is that the background of accepting state measures often resembles the 'Baptist-bootlegger' coalition. Both support Prohibition – the former for moral, the latter for business reasons (if Prohibition were to be lifted, the bootlegger would lose its market). Thus, e.g., if a country blocks the import of shrimp

[28] As to financial services, see Bickel 2015, 557.
[29] Regan 1986, 1091.

because the technique used for harvesting them affects sea turtles adversely, this may be supported both by animal rights organizations and fishing companies. The latter may be less concerned about the life of sea animals and more about their local market.[30]

> The background of restrictive state measures often resembles the 'Baptist-Bootlegger' coalition. Both support the prohibition – the former for moral, the latter for business reasons (if the prohibition were lifted, the bootlegger would lose its market).

[30] See e.g. United States – *Import Prohibition of Certain Shrimp and Shrimp Products*, WTO Doc WT/DB58/AB/R; Dispute Settlement Panel Report On *United States Restrictions On Imports of Tuna*, 30 I.L.M. 1594, 1599 (1991).

QUESTIONS FOR SELF-CHECK

1. When did the current age of world trade begin?
2. Can states use quantitative restrictions?
3. What do bound tariffs mean and what is their importance in world trade?
4. In what lies the novelty of the new generation free trade agreements?
5. What value standards are contained in the new generation free trade agreements?
6. What is the essence of investment protection law?
7. Why is international cooperation important in the field of standards?
8. What is the relationship between regulatory sovereignty and protectionism?
9. What is the 'Baptist-Bootlegger coalition' in international economic relations?

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CHAPTER 13

INTERNATIONAL COOPERATION IN THE FIELD OF CRIMINAL JUSTICE

13.1. Introduction

Criminal accountability is a state monopoly, a right and obligation at the same time. The state has the right to exercise the so-called punitive power against the citizens (individuals), and may enforce its power by force in accordance with the laws – and citizens shall abide. Also, it is an obligation in all cases where injury has been suffered due to the violation of the legal order (the rules of social coexistence), if e.g. there are natural person victims as well (assault, robbery, theft, homicide, etc.), In these cases neither the victims or their families, nor the community cannot legally exercise punitive power against the offender, since there is no legal revenge, and vigilantism or vigilante justice is punishable by law. Therefore, victims of a violation are „in need" of receiving protection. Consequently, it is an obligation to exercise punitive power – this rule cannot be ignored in the case of unlawful acts punishable under the criminal code. Punitive power and the several rights that are parts of it are exercised by state organs, such as the authorities acting in criminal matters (investigative authority, prosecution service, courts of law, penitentiary institutions). In a democratic rule-of-law state, the **punitive power** is: the state's – constitutionally limited – public power to hold the perpetrators of a crime accountable under criminal law.

Under our modern circumstances, the types of criminal activities, the movement of perpetrators are not bound by country borders; in many cases, the crime committed shall *ab ovo* affect more countries (smuggling of narcotic drugs). Sometimes, due to escape, the perpetrator should most certainly be tracked down in a foreign country. The right and practice of **criminal cooperation** define those forms, in which the states concerned can ask for help from each other in these cases (see in Subchapter 4).

There are incidents or events, which – due to their extraordinary (negative) significance – are not restricted to one state, we could say that these violate the values of a larger geographical region (Europe) or the whole civilized world. Their prevention and tackling are also such questions, which require the cooperation and joint, synchronized action of the states. These issues are considered regulatory issues by **international criminal law** (see in Subchapter 3).

In this chapter, in addition to the above, we will also deal with the position of the joint fight against transnational crime in the European legal framework, thanks to the Union's development (see in Subchapter 5).

13.2. The Characteristics and National Nature of Criminal Law

One fundamental characteristic of criminal liability is the principle of legality (see Textbox 1). The philosophic-moral fundament of this is that criminal liability is typically guilt-based, i.e. the perpetrators deliberately chooses between "right and wrong", by making a choice about their criminal action. If that is the case, so they know the crimes and their punishments, it is to be expected that they choose the "right", but if not, they shall bear responsibility for their actions.

In modern rule-of-law democracies, the legislator (parliament) representing the people decides what constitutes a crime, and accordingly, this entity also makes a decision on the applicable punishments.

This also embodies the so-called criminal demand: i.e. if any conduct is declared to be punishable, then the state's criminal demand is expressed thereby.

> **Principle of legality**: the most important and generally recognized principle of criminal law, included in numerous state constitutions. It means that criminal law accountability may occur only for such action, which was declared to be a crime by law at the time it has been committed, and that only such punishment may be imposed, which was provided by law at the time of the commission of the crime. Another name used for this principle is the principle of substantive law legality. The two essential elements are normally indicated with Latin expressions: *nullum crimen sine lege* and *nulla poena sine lege*.

Therefore, **what constitutes a crime** in a country, could, in principle, paint a very diverse picture in the different countries, but it still can be declared that the violation of the most important and fundamental rules of the people's peaceful coexistence is similarly a crime everywhere, such as taking a life (homicide), assault, libel, violation of private property, violation of sexual self-determination, but, e.g., counterfeiting legal tender (forgery of a legal payment instrument) as well.

In addition, there may be such interests, value approaches rooted in social past, cultural traditions, which, in case they are violated, are met by the given society choosing the instrument of criminalization to prevent or sanction them. Such typical issue is, even today, the culpability of prostitution, use of narcotic drugs, abortion, suicide – we can see quite significant differences in this field even in Europe. As for our topic, the details bear no significance, but it is clear that there is a (small) part of criminal prohibitions, which thus demonstrates a so-called cultural dependency. Those culpability rules should be treated as a further category, which – contrary to the above two points of origin – are justified by considerations of rather political nature; such as, the provisions punishing homeless people or those assisting refugees in Hungary.

Also, it is important to briefly mention that the scope of culpability varies over time as well, and as the **social value system** along with the mindset of the people living in it, and he interests of the ones in need of protection change as well, so must criminal law also be transformed: today, adultery is no longer punishable, neither are sexual relations between couples of the same sex, and, *mutatis mutandis*, earlier the intrusion into IT systems, the "forgery" of electronic money, the falsification of a tax return, or cloning human tissue were not punishable, while these are now considered crimes based on the legislator's decision. If we continue this train of thought, we need to ask the question, whether we should connect criminal law liability to those actions, which cause injury through the application of automation, robotization or artificial intelligence (e.g. when an autonomous self-driving car kills a human, a factory robotic arm causes permanent disability to a human due to malfunction).

Likewise, the legislator decides what kind of **sanctions** (punishments) should the judge apply against perpetrators, and while imprisonment and fines are considered as generally applicable punishments, work or labor punishment or the "variety" of other deprivation punishments is quite colorful.

Criminal law regulation and the operation of the criminal justice system are necessarily and traditionally connected to the territory of the country, to the social organization (state) that exercises supreme public power thereon, and the country borders enclose the administration of justice as well: in that very moment, when a **foreign element** appears in the criminal justice system, e.g. an evidence needs to be acquired from abroad (i.e. from another country, from its territory), or the escaped perpetrator needs to somehow be brought back from abroad, then the given country's justice system is, basically, in need of the other state's assistance, if it wants to enforce its criminal demand. This "help" by the other state could be achieved through complicated legal procedures and political-diplomatic negotiations (international criminal cooperation, see below in Subchapter 4).

13.3. International Crimes and the Accountability of Perpetrators

It was in the aftermath of World War II (WWII), when for the first time in world history an attempt was made to hold the **war criminals** – not just politically – accountable. The work of the international military tribunals in Nuremberg and in Tokyo, and the actual results of their administration of justice could be interpreted in many ways, but it is beyond doubt that by their action the paradigm of individual liability was consolidated, and the conceptual clarification of the crimes against peace, against humanity and war crimes finally happened. War crimes were substantially on-going at that time, when – first separately, then – in 1943, the later victorious allied powers (USA, the USSR, and the UK) issued the Moscow Declaration, in which, basically, they forecast legal accountability and instead of the former war practices, neither mass executions, nor politically-based retaliations took place, but justice was administered by international tribunal.

> "*The United Kingdom, the United States and the Soviet Union have received from many quarters evidence of atrocities, massacres and cold-blooded mass executions which are being perpetrated by the Hitlerite forces in many of the countries they have overrun and from which they are now being steadily expelled. The brutalities of Hitlerite domination are no new thing and all people or territories in their grip have suffered from the worst form of Government by terror. What is new is that many of these territories are now being redeemed by the advancing armies of the liberating Powers and that, in their desperation, the recoiling Hitlerite Huns are redoubling their ruthless cruelties. This is now evidenced with particular clearness by the monstrous crimes of the Hitlerites on the territory of the Soviet Union which is being liberated from the Hitlerites and on French and Italian territory. Accordingly the aforesaid three Allied Powers, speaking in the interests of the 32 United Nations, hereby solemnly declare and give full warning of their declaration as follows: At the time of the granting of any armistice to any Government which may be set up in Germany, those German officers and men and members of the Nazi party who have been responsible for or have taken a consenting part in the above atrocities, massacres and executions will be sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries and of the Free Governments which will be erected therein. Lists will be compiled in all possible detail from all these countries having regard especially to the invaded parts of the Soviet Union, to Poland and Czechoslovakia, to Yugoslavia and Greece including Crete and other islands, to Norway, Denmark, the Netherlands, Belgium, Luxembourg, France and Italy. Thus, Germans who take part in wholesale shootings of Italian officers or in the execution of French, Dutch, Belgian or Norwegian hostages or of Cretan peasants, or who have shared in the slaughters inflicted on the people of Poland or in the territories of the Soviet Union which are now being swept clear of the enemy, will know that they will be brought back to the scene of their crimes and judged on the spot by the peoples whom they have outraged. Let those who have hitherto not imbued their hands with innocent blood beware lest they join the ranks of the guilty, for most assuredly the three Allied Powers will pursue them to the uttermost ends of the earth and will deliver them to the accusers in order that justice may be done. The above declaration is without prejudice to the case of the major criminals whose offences have no particular geographical location and who will be punished by a joint decision of the Governments of the Allies*."
>
> Excerpt from the Moscow Declaration, October 1943;
> Three Allied Powers Declaration on Atrocities

Exactly this preemptive warning established a significant obstacle for the defendants of the Nuremberg cases to refer that there were no rules, which would have declared their actions as crimes, before their commission.

> **International crime** is every crime that violates or endangers the interests of international community, and the culpability of which is based directly or indirectly – i.e. through internal law – on international law. There are two groups: international law crime is the crime that endangers or violates the most fundamental values or interests of the community of nations, and the peace of human societies. Classifying an action as such a crime does not depend on national law, but its culpability is based directly on international law, and the perpetrator's (individual) criminal liability derives directly from the rules of international law (e.g. crimes against humanity, war crime, aggression, piracy etc.). The other group includes the so-called transnational crimes (e.g. trafficking of narcotic drugs), in this case, the obligation to criminalize a given conduct by the states is based upon an effective international treaty, customary law or other source of international law.

Therefore, the issue of **international-law-based criminal law liability**, obviously, is the most important development of the recent decades, and with it the regimes that exercise otherwise unlimited supreme public power on their own territories are subject to certain limitations: the perpetrators are to be held liable for committing the most severe crimes against humanity and war crimes (e.g. genocide, slavery etc.) even if some power groups commit these in "traditional" armed conflict; for state purposes; in civil war; under military invasion, or maybe under revolution. This issue is dealt with by the so-called law of armed conflicts and the international humanitarian law, which will be not discussed in this chapter.

The most important station of this development was, in 1998, the incorporation of the Statute of the (permanent) **International Criminal Court** (ICC) into an international treaty signed by the UN Member States in Rome, on 17th July 1998. The Court started the preparation of its work in 2002, and the first case was the procedure against the leader of the Congolese Militia, Thomas Lubanga (with the judgment delivered in 2012). Except the Criminal Court established by the treaty, there are other international criminal tribunals as well, but these concern violations committed in geographically specific or time-specific conflicts and operate as ad hoc or temporary tribunals (e.g. actions committed in the territory of the former Yugoslavia, actions committed during the genocide in Rwanda). The ICC proceeds if the national courts are unable or unwilling to proceed in high profile crimes (this is the so-called principle of complementarity). The work of the court is burdened by many difficulties, because there are still some great powers, which are not members of the treaty (e.g. USA, China, India), but still, more than 120 countries of the world – including Hungary – ratified it, and after several conflicts, its activity is necessary to hold the criminals accountable and to mitigate the victims' injuries, and in general, to curb global violence. In the last 20 years since the signing of the Statute, 86 million civilians died and more than 170 million people became victims in more than 250 conflicts.[1] There is a Hungarian judge at the ICC, seated in the Hague, Péter Kovács, former constitutional court judge.

Child Soldiers – The Lubanga case

In April 2002, the Democratic Republic of the Congo (DRC) ratified the Rome Statute (thereby contributed to its entry into force in July 2002), thus the case could be brought before the ICC and the investigation could be commenced. Pursuant to this, several people were accused, including *Thomas Lubanga Dylio*, the leader of the armed group exercising power in Congo. The charge was **enlisting** and using **children** under the age of 15 years. The ICC examined the guilt of *Lubanga* between 1 September

[1] Coalition for the ICC: www.iccnow.org

2002 and 13 August 2003. According to the charges, in the mentioned period, the organization was responsible for the voluntary and forced joining and use of many youths under the age of 15 years, which is considered as a war crime under the ICC's jurisdiction. One of *Lubanga*'s enlistment methods could be mentioned as an example, according to which families living in the territory under his control were obliged to hand over one cow, money or one child to the armed group. Therefore, if a family had no such animal or enough fortune, they were forced to "submit" their child. The trial was opened in January 2009. A total of 67 witnesses were heard and 1373 items of evidence were presented. On 14 March 2012, the Court found *Lubanga* unanimously guilty, and on 10 July 2012, sentenced him to 14 years of imprisonment, as co-perpetrator, for the felony of forced and voluntary enlistment and use of children under the age of 15 years. The verdict does not mean that *Lubanga* is not guilty in other crimes, he has committed several others as well, such as the killing of nine UN peacekeepers in Ituri in February 2005 or the felony of sexual violence. These were not part of the charges brought by the ICC, because the jurisdiction of the Court has a so-called **complementary characteristic**, so it only proceeds if the national authorities of the defendant's home state are unable or unwilling to proceed. Since the national (Congolese) rules had no provisions regarding child soldiers, and *Lubanga* was already in custody at the national level for other crimes – e.g. killing peacekeepers –, he only had to face the charges of enlistment and use of children before the international forum. Evidence was found that children in *Lubanga*'s organization received hard training and in the case of disobedience severe punishment was imposed. Mostly girls were used for housekeeping and sexual purposes. However, sexual violence was not part of the accusations. The enlistment of children, happening in any way, and their use as soldiers is a permanent, continuous violation of international criminal law, which ends if the child attains the age of 15 or gets out of ranks of the armed force or group. Until mid-2007, approximately 34,000 children were released from different armed forces in Congo.[2]

13.4. Interstate Cooperation in the Field of Criminal Matters

The oldest form of tackling internationally mobile perpetrators and international crimes is **cooperation** between the respective countries' law enforcement (justice) authorities. Its original purpose was to prevent the perpetrator from avoiding criminal law accountability, thus cooperation was exercised against the interests of the person concerned. Since the middle of the 20th century, the importance of resocialization (reintegration into their own social environment after the prison life) of the perpetrators (convicts) has increased as well; therefore, today, in most forms of international criminal cooperation the interests of the person concerned are taken into consideration. Consequently, three interests prevail in international cooperation: the state asking for help, the state providing it, and the person concerned.

However, pursuant to the general principles of international law and the universally acknowledged doctrines of sovereignty, states – when exercising their right to hold someone criminal accountable, the so-called *ius puniendi* – have, in principle, unlimited jurisdiction, so it is possible that several states have **jurisdiction** regarding the same action (so-called positive jurisdictional conflict). Nonetheless, the criminal law rules exactly determine the jurisdiction as well. May the relevant provisions of the first Hungarian Criminal Code, the so-called Codex Csemegiensis, be presented here as an example to this, along with the similar provisions of currently effective criminal law. However, one rhyme by *Doctor Deodatus* is an interesting curiosity, who, in 1884, rhymed the then effective Criminal Code. Herein, we present here those lines (translated), which dealt with jurisdictional issues.

[2] Description of the case: Molnár–Tóth 2016, 66–76.

Act V of 1878 (Codex Csemegiensis, the first Hungarian Criminal Code)	Legal rhymes of Doctor Deodatus (1884)	Act C of 2012 (effective CC) and other Acts
5. § The scope of this Act shall apply to the whole territory of the Hungarian State, with the exception of Croatia and Slavonia. Felonies and misdemeanors committed in this territory by either native Hungarians, or aliens shall be punished under the provisions of this Act. (...)	5. § This present Bill shall lay out the law of the whole land, Not for Croatia and all Slavonic-held land. And this shall be it all, On this land we own, For those who sinned in here, Regardless of their home. (…)	3. § (1) Hungarian criminal law shall apply a) to crimes committed in Hungary, b) to crimes committed on watercraft sailing or aircraft flying under Hungarian flag outside the territory of Hungary,
8. § Native Hungarians, who committed any felony or misdemeanor defined herein abroad shall be punished according to this Act.	8. § If Hungarians native act against this Bill, Even if abroad (the law does apply still) We'll only use this law against all of them (If their luck turns bad and they end up back home then.)	3. § (1) Hungarian criminal law shall apply (…) c) to any act of Hungarian citizens committed abroad, which are criminalized in accordance with Hungarian law.
9. § Under the provisions of this Act the alien who committed any (...) felony or misdemeanor abroad – if his extradition has no contractual or customary ground, and the minister of justice thereby ordered the initiation of criminal procedure, shall be punished according to this Act.	9. § We also punish foreigns, if they indeed did the crime, Even if our peoples don't agree to extradite. But process can only and only then be called to open, If said so by those, who surveil law and order.	3. § (2) Hungarian criminal law shall apply a) to any act committed by non-Hungarian citizens abroad, if aa) it is punishable as a crime under Hungarian law and in accordance with the laws of the country where committed (…) (3) In the cases described in Subsection (2) criminal proceedings are initiated by order of the Prosecutor General.
11. § In case of felony or misdemeanor committed abroad, criminal procedure under §§ 8 and 9 shall not be initiated if the act is not punishable under the law of the country where it was committed neither under Hungarian law; or it ceased to be punishable under any of the above; or if the punishment was released by the competent foreign authority.	11. § For felonies and misdemeanors committed abroad, There is no proceedings by anyone to be brought: If under these here rules, or those in forum delicti commissii, It's already been punished, exempted or dismissed.	(no such rule)

Act V of 1878 (Codex Csemegiensis, the first Hungarian Criminal Code)	Legal rhymes of Doctor Deodatus (1884)	Act C of 2012 (effective CC) and other Acts
14. § If such punishment shall apply under the alien law to any felony or misdemeanor committed outside of the territory of the Hungarian State, which is not accepted by this Act: it shall then be changed to a type of punishment in this Act, which is most suitable to it.	14. § If need be for a punishment Not known to us here, We'll look into our law, Till there's one that fits the bill.	According to the second sentence of Article 48 Subsection (2) of the Act XXXVIII of 1996 on international mutual legal assistance in criminal matters: If a punishment or measure imposed by a foreign court judgment does not fully comply with the Hungarian law, the court, in its final order, shall determine the applicable punishment or measure under the Hungarian law in a way that it complies the most with the punishment or measure imposed by the foreign court (...).
17. § Native Hungarians cannot be subject to extradition to another state's authority. Natives of another state of the Monarchy can be subject to extradition only to his own state authority.	17. § Hungarian natives We shall never extradite To another country, But we'll let Austrians be returned home in a round-trip.	Article 13 (1) of the Act XXXVIII of 1996 on international mutual legal assistance in criminal matters: Except this Act provides otherwise, Hungarian citizen can only be subject to extradition if, a) the person subject to extradition is simultaneously a citizen of another state, and b) has no address in the territory of Hungary.

Interstate cooperation fortified by traditional international treaties or so-called reciprocity provides the framework for classic forms of criminal cooperation, and the specific procedure is determined by the **request principle**, i.e. wherein the requesting state applies to the state requested with a request for mutual legal assistance, and the state requested will decide under its internal law rules of criminal cooperation. According to international law, the requesting and the requested states are equals, their sovereignty applies equally.

If following their acts, perpetrators successfully flee to another country or anytime escape during an ongoing procedure against them (with them being "on the loose"), it is a highly important question for the given state to get them back to successfully conduct the criminal procedure and impose punishment. Since, in a physical sense, none of the states can reach for the person sought after, i.e. it is legally not allowed to e.g. send police officers to the territory of another state to capture the person concerned, the states are both forced to and need cooperation with the other state. A classic institution of this is **extradition**. It is worth to mention that in many cases, extradition – even though it means a legally established procedure – serves as a political-diplomatic tool, in case of an important person or case,

states set aside their law enforcement interests without hesitation, if they might count on any benefit on their part on the stage of world or bilateral politics. A situation, when a sentenced person is transferred back to his/her home country to continue the execution of punishment there could be considered as a similar tool: in a professional (i.e. resocialization) aspect, it is more efficient if somebody serves out the punishment in their home country, but it is beyond doubt that political-diplomatic considerations may be primary in the background of such decisions. Let's look at some examples.

Transfer of Sentenced Persons – the Ramil Safarov case

In 2004, a brutal homicide was committed whereby an Armenian soldier attending an English language course held by the Zrínyi Miklós National Defense University died in Budapest. An Azerbaijani soldier, *Ramil Safarov*, was accommodated in the next room to the Armenian officer (*Gurgen Margarjan*), who decapitated *Margarjan* with an ax one night. In 2006, for this action of felony homicide committed deliberately with premeditation, with particular cruelty and malice aforethought, the Hungarian courts sentenced him to life imprisonment (subject to review no earlier than after 30 years – pursuant to the criminal laws effective at that time) and expulsion from Hungary for 10 years. Azerbaijan requested the **transfer of the inmate**, who has already been serving his sentence in a Hungarian prison, from the Hungarian Government under a 1983 (Council of Europe) Convention. The transfer took place on 31 August 2012. With the solidified Azeri-Armenian conflict in the background, *Safarov* was celebrated as a hero in his country and upon his return, he received Presidential pardon and was promoted instead of continuing the execution of his imprisonment.

Armenia immediately interrupted the diplomatic relations with Hungary, which are still not reestablished on the level as they were before the case transpired. According to the joint statement of the then Ministries for Public Administration and Justice, and Foreign Affairs "*Hungary acted in a transparent manner*, *respecting the relevant rules*. *Hungary respects the international law concerning every State and expects from its international partners to do the same*. *Hungary keenly appreciates Christian Armenia*, *and the culture and traditions of the Armenian people*. *Hungary considers the Armenian party's steps regarding diplomatic relations regrettable*." (*1 September 2012*)

Interpol

Interpol is an international organization (*International Criminal Police Organization*), which was established in 1923 with a purpose to facilitate the work of national police forces in the fight against transnational (cross-border) crime. Currently, 192 countries are members, its headquarters is located in Lyon, and Hungary was among the founders (even though, left for political reasons, and rejoined in 1981). The most important activity of Interpol is the operation of a global wanted persons system that allows any country's police authority to request wanted person (red notice) or wanted object notice applicable to all member states. "Interpol notices" are very effective tools in looking for fugitive criminals, stolen artifacts or counterfeit documents all over the world. Moreover, the Interpol staff can provide effective help to national authorities with data and legal assistance, work supporting criminal cooperation, but it is important that – contrary to the popular, but misguided belief – they cannot autonomously investigate in any state's territory.

> **International police cooperation**: international crime prevention and law enforcement, i.e. the cooperation of state police authorities has great significance in the field of crime prevention, crime detection and investigation, when procedural actions need to be carried out in the territory of more countries amounting to a subsequent accountability for a crime, or gathering evidence (searching, collecting, recording, eventual analysis thereof). However, the international mutual legal assistance in criminal matters is the legal framework of the international coordination of the so-called justice authorities'.

13.5. The Regional Achievements of the European Union

The need for **joint action to combat crime** as part of European integration, essentially and in a legally relevant way, appeared in the ’90s, more precisely with the creation of the European Union (1993), when the Member States (MS) determined it a so-called common concern. In the past twenty-five years, there has been a significant development of law in this field as well, including, in general, the followings: it is a key question to the MS, how much of their punitive power deriving from sovereignty and how exactly will they transfer to the organization they established for the sake of progress, with particular attention to the fact that in many cases, combating transnational crime is more effective and more successful at the EU level. The protection of sovereignty is guarded by the balancing system of mutual guarantees and principles, which not only sets up a framework, but also excludes effective cooperation in urgent cases, or when the case concerns more than two states. However, in Europe and in the European Union, the development of law is going through a **fundamental change of approach** regarding the system of rules in criminal cooperation. Even though community integration, originally, did not extend to criminal cooperation, the European Union established by the Maastricht Treaty opened room for it as well, and it could be said that the EU MS tightened the web of EU legal protocols in the field of criminal cooperation.

As a general characteristic of the relevant regulation it may be mentioned that the conventions and treaties concluded by the MS, on the one hand, reflect and reinforce the former agreements – mostly adopted under the aegis of the Council of Europe –, but on the other hand, operating with such **novel** and hitherto desirable tools, which truly show the commitment of the states to develop a more effective criminal cooperation, and its introduction is verified by the slowly ubiquitous European integration.

For these reasons, the development basically proceeds with baby steps. It has **two directions**: political consensus precedes legal changes, which are then reflected in some legislative act being enacted, the execution of which will strengthen the change. The other way of development is when change becomes a necessary consequence, as a result of the existing legal situation, primarily due to the activity of the Court of Justice of the European Union and the courts of the MS. The landmark decisions of the courts indicate the path of this development, but these innovations and changes only apply to a small section of law (to a specific type of case, to a specific legal institution). As an example, the earlier battle of the Council and the Commission may be mentioned on whether EU law regarding crimes damaging the environment should be issued by so-called directive or framework decision. The problem is easy to understand without a detailed explanation: considering that the EU policy on environmental protection is an EU competence, the question was, whether this power includes criminal law as a means of protection and the establishment of its frames at the EU level. Not a political consensus was necessary here, but the interpretation of one provision of the EU Founding Treaty, which was done by the Court of Justice by declaring that in the interest of implementing EU policy, criminal law as a regulatory system is applicable, such regulation does not behave differently.[3]

In the **establishment of the legal framework** evolving along the above two lines, we may see the following substantial key points:

- facilitating and legalizing criminal cooperation between the MS (legal assistance type of cooperation and police cooperation as well),
- working on achieving the joint European justice region (e.g. development concerning jurisdictional conflicts, prohibition of double jeopardy, *ne bis in idem*, etc.),
- approximation of the facts and sanctions of crimes,

[3] C-176/03 Commission v Council, on 13 September 2005; ECLI:EU:C:2005:542

– legal approximation in criminal procedure, primarily by introducing the same standards in the fundamental rights context,
– strengthening the obligation of EU-conform interpretation of criminal law rules.

Below, we will provide a sneak peek into the results of this development: some significant achievements will be briefly introduced to present the dynamics and some important directions of development.

13.5.1. The European Arrest Warrant

Extradition, in the traditional sense, is conceptually excluded between the European Union MS, as they eliminated the difficult system full of political constraints in their relations, and introduced the institution of the **European Arrest Warrant** (EAW, 2002). The arrest warrant is such a justice decision, which obliges the authorities of the MS regardless of their place of operation, and concerns the arrest and transfer of the person wanted. Therefore, essentially, the extradition is replaced by the so-called **transfer procedure** that has lost its political characteristic, functions as a purely legal process, and it is a very successful EU "project". Instead of the former, average 18-24 months long extradition procedures, today the transfer of wanted persons takes place within 90 days between EU MS.

13.5.2. One Crime, One Conviction?

The unique legal development represents a particularly important achievement of the EU cooperation regarding judgments in criminal matters. If someone committed a crime and was held accountable for it (for instance, already served the imposed imprisonment), this accountability, essentially, is only linked to the given state. This means that the criminal judgment is the ultimate embodiment of the given state's criminal demand (more precisely, the final criminal judgment consumes the criminal demand), but it has no relevance in relation to other states. Therefore, if a case emerges, which invokes the criminal demand of more states, a judgment delivered in one state does not satisfy the criminal demand of another state. For instance, we could mention a case where a Hungarian citizen would become a victim of a homicide or robbery in Spain, committed by a German citizen perpetrator. In the case at hand, all three countries' criminal demand (and jurisdiction) apply to the act, and most likely, first, the Spanish criminal procedure would be conducted against the perpetrator (in case he was apprehended there), but the traditional rules and customs do not exclude that following the first criminal procedure the other countries may also proceed against the perpetrator. There is a right to free movement in the European Union, which is applicable to EU citizens and, on certain conditions, other people as well, however it caused a paradigm-shift in this field, since there is the **mutual recognition** based on mutual trust between the EU states: if the perpetrator was already punished in one state and served its sentence, he does not need to expect that another EU state will enforce its criminal demand against him.

> **Principle of transnational *ne bis in idem***: this principle means the prohibition of double (two-times) conviction or punishment. Currently, respecting this prohibition is a legal obligation for the European Union states, and Article 5. of the Charter of Fundamental Rights of the European Union declares that "[*n*]*o one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law*."

13.5.3. The European Public Prosecutor's Office

In 2020, the European Public Prosecutor's Office (EPPO) will be established and will start its work as a new institution, its most important task being to investigate crimes against the EU's financial interests (e.g. corruption, fraud, money laundering etc.) that affect more MS, within its own jurisdiction with the territorial competence over the whole of Europe (the territory of EU countries), and to coordinate and to provide assistance in similar investigations for the authorities of MS. The EPPO will be established under a special legal framework (so-called enhanced cooperation), which means that only those MS may participate, which explicitly declare it. For now, Hungary does not participate in the enhanced cooperation.

13.5.4. The European Police Office

Europol is the law enforcement agency of the European Union, with its task being to assist the MS law enforcement and the work of police and other authorities with similar tasks. As part of this task, it coordinates and provides on-site support in transnational law enforcement operations, promotes the exchange of information between MS authorities and conducts forensic science work for them. Europol does not deal with wanted persons or objects. Europol officials are typically police officers delegated by any MS, but they have no right to directly investigate in the territory of MS. It is seated in The Hague.

QUESTIONS FOR SELF-CHECK

1. What is criminal law accountability and what is its connection with punitive power?
2. What is the general definition of legal order?
3. What is the general characteristic of criminal liability?
4. Define the principles of *nullum crimen sine lege* and *nulla poena sine lege*!
5. What does it mean that criminal liability is guilt-based?
6. On what basis does the legislator classify an act as a crime?
7. What does it mean that criminal law has a culture-dependent aspect?
8. What does it mean that culpability changes over time as well?
9. What states adopted the Three Allied Powers Declaration? What was its essence and significance?
10. When (and how) the ICC was established, since when does it operate?
11. What cases are administered by the ICC?
12. What does the principle of complementarity mean?
13. Introduce the essence of the *Lubanga* case!
14. What is the purpose of international criminal cooperation?
15. Look for contemporary press releases (2012-2013), which suggest possible political reasons regarding the *Safarov* case!
16. Examine under the Convention adopted in 1983 (Act XX of 1994, adopted in Strasbourg on 23 March 1983 on the promulgation of the Convention on the transfer of sentenced persons), whether the legal requirements were met to transfer the Azeri citizen?
17. What is the most important conceptual difference between the states' traditional criminal cooperation and the EU countries' criminal cooperation?
18. What is the EAW?
19. What is the difference between extradition and transfer procedure?
20. What will be the task of the EPPO?
21. What is the difference between Europol and Interpol?

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CHAPTER 14

INTERNATIONAL COOPERATION IN THE FIELD OF INTELLECTUAL PROPERTY PROTECTION

14.1. International Development of the Intellectual Property Protection

The international phylogeny of intellectual property protection (copyright and industrial property) paints a colorful picture in both time and space. Albeit some form of protection existed in the Roman Empire for company names and authors of literary works, but – absent their formal state recognition and enforcement – these did not amount to independent rules of intellectual property protection.[1] Therefore, it is a generally accepted notion that the need for copyright regulation first appeared when the **printing press** was invented by *Gutenberg*, in the mid-15th century. The protection of patents developed in the 18th century era of the industrial revolution. In both cases, it was a decisive factor that the technological developments incorporated the possibility of mass reproduction and marketing.

The 15th century, hallmarked also with the appearance of the printing press, meant the simultaneous beginning of the Renaissance and the Age of Discovery, and it also gradually brought into question blindfolded religious dogmas. In the Middle Ages, for instance „*people believed that art was inspired by superhuman forces rather than by human feelings*. *The hands of painters*, *poets*, *composers and architects were supposedly moved by muses*, *angels and the Holy Spirit. Many a time when a composer penned a beautiful hymn*, *no credit was given to the composer*, *for the same reason it was not given to the pen. The pen was held and directed by human fingers which in turn were held and directed by the hand of God*."[2]

The spread of the printing press – and in time every achievement of the **industrial revolution** – made it possible to express and disseminate opinions questioning the monocracy of the Roman Catholic Church. Due to the spectacular and tight interconnection of the State and the Church at that time, a monopolistic privilege given based on a decision by the monarch (or religious leader) of a given geographic territory was a prerequisite of practicing activities related to production and distribution of publisher's and inventor's works. The works/inventions, the term of protection, and the content of the legal relationship was determined in such charters, 'patents'.

> The Hungarian version of the foreign expression of '*pátens*' is patent or letter of privilege. The original word of *patent* in modern legal terminology can be used only for the special forms of patents in industrial property law. This is especially true compared to author's rights which is translated to *copyright* as the word 'copyright' is traditionally derived from the name of the first ever English act by that name.

The spread of the Renassaince in the 15th century led to the emergence of another important circumstance relevant to the creation of copyright regulation: **individualism** suddenly appeared. Unknown and anonymous medieval troubadours and Minnesängers were replaced by the geniuses of their times, especially in the field of fine arts, literature, architecture, the mechanical and natural sciences. The Italian polymath *Leonardo da Vinci*, embodying an artist, an author, an inventor, a military

[1] Lendvai 2008, 61-78.
[2] Harari 2017, 198-199.

engineer and a teacher in one person, was far ahead of everybody else. Different discoveries in physics came to light not only as authors' works, but also provided indispensable assistance to the activities of modern inventors. The stronger and stronger fame of family and company names characterized the industrial revolution. Enormous (private and state-owned) firms were established to expolit the commercially beneficial assets of inventions, which had a growing interest in institutionalized legal protection independent of the ruler's grace.

All in all, a total of three phylogenetical events outlined during the 15th and 17th centuries, which led to the emergence of modern copyright: **technological novelties**, **strengthening markets** and 'exhibitionist' **authors wishing to show themselves** to the world. The first place where the system of privileges, maintained for more than two centuries without any problem, was dismantled was England. The *Stationers' Company* simultaneously operated as both a printer's guild and the organ of the king's censorship. At the end of the 17th century, however, winds changed and monopolistic book publishing, under siege already from several places, was replaced by the new statutory legal construction of *copyright* in 1709.

The first patent acts were issued in the 15th-17th centuries, first in Venice (1474), then in England (1624). In both cases the aim was to grant monopoly for a limited time based on state regulated and enforced rules to make use of beneficial knowledge that can be useful to the industry.

Copyright and patent acts were adopted worldwide in the 18th and 19th centuries. Nevertheless, all of these acts suffered from the same problem rooted in the **territorial scope of the laws**. National laws exclusively protected nationals in the given country and their works/inventions. Consequently, in most cases, the authorities were helpless against the cross-border trade of these works and inventions, and the unlawful exploitation thereof by 'pirates'.

An exemplary debate relevant to the history and international development of copyright erupted regarding reprints of French books by Belgian publishers. Belgian publishing practice was, as a matter of fact, detrimental to almost everyone, except for the publishers themselves. The French authors, publishers and the state as well suffered economic losses due to the Belgian books being cheaper as a result of being printed on inferior quality paper, and due to the lack of payments of any royalties to the rightholders. Many of the purchasers felt defrauded, too, due to excuses over lower quality. Belgian authors also lost manifold on the practice, as the Belgian publishers, governed by the Belgian law, became more and more unwilling to publish French-language manuscripts by Belgian authors, since they should have been paid royalties. In a country like Belgium, being strongly divided by languages, only gaining its independence in 1830, making national literature stronger was an essential cultural interest. Thus, unsurprisingly, it was France and Belgium, who – although not at all for the first time in history – concluded a bilateral agreement in 1881, wherein they granted reciprocal protection to each other's national authors. This protection was based on the **principle of reciprocity (mutuality)**, which substantially meant that one party would only grant protection to the other's citizens, if and to such extent as the other party was also willing to protect the interests of the first country's authors. In a manner of speaking, the principle of reciprocity can be considered as the minimum standard of international copyright protection.

Bilateral copyright agreements – the number of which was estimated at 35 prior to 1886, according to authors *Ginsburg and Treppoz*[3] – provided limited international protection in practice, since their scope was limited to the specific conlcuding parties. Broadening international trade, also affecting works and inventions, and the ever more regular industrial and cultural world exhibitions, however, acted as catalysts to negotiations taking place in the 1870s and 1880s aiming at concluding multilateral conventions.

[3] Ginsburg–Treppoz 2015, 15.

Chronologically, the first in line was the **Paris Convention for the Protection of Industrial Property**, adopted in 1883 by 11 countries (Belgium, Brasil, El Salvador, France, Guatemala, Italy, the Netherlands, Portugal, Serbia, Spain, and Switzerland). According to the convention, the subject matter of industrial property encompasses patents, utility models, industrial designs, industrial or commercial trademarks, service marks, trade names, certificates of origin, apellations of origin, as well as the repression of unfair competition.[4] Besides ascertaining the minimum standards regarding the above subject matter, the convention also declared the **principle of national treatment**.[5] All countries acceding to the convention shall grant, based on this principle, the same level of protection to the nationals of the countries of the (Paris) Union as the one they grant to their own nationals.

More or less simultaneously, famous artists (among them the French *Victor Hugo*) took a stand for concluding copyright conventions of wider scope. Intergovernmental negotiations started in 1883, resulting in the adoption of the **Berne Convention** in 1886 by ten countries (Belgium, France, Germany, Haiti, Italy, Liberia, Spain, Switzerland, Tunisia and the UK).

The Berne Convention unified many substantive norms in copyright law. It set forth economic rights subject to mutual protection, originally extending only to the rights of reproduction and adaptation. Later, moral rights were added to the scope of protection, while the minimum term of protection was also defined (currently being 50 years counted from the beginning of the year after the death of the author – *post mortem auctoris*). The Convention first allowed but over time prohibited any formalities conditioning the existence or exercise of copyrights. The Convention also gave up the principle of reciprocity and made the principle of national treatment[6] a precondition of protection. These created an optimally harmonized level of protection (which was continuously widened until the 1970s).

14.2. BIRPI, WIPO and UN – The Cultural Aspect of Protecting Intellectual Property

Between 1883 and 1886, the first two multilateral agreements of intellectual property law were born. Slowly but decisively growing membership, emerging doctrinal, procedural, regulatory (as in modifications of the norms), and financial questions soon necessitated the development of an organizational structure. In the case of both the Paris and the Berne Conventions, the **BIRPI** (*Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle*), established in 1893, undertook these tasks. As at that time, no such global organization like the UN existed neither in Europe nor elsewhere in the world, BIRPI could function independently under the oversight of the Swiss government.

As part of this activity, both the Paris and the Berne Conventions were amended and modified several times. Nonetheless, many new industrial property and copyright-related agreements were adopted over time, requiring close international coordination. Conseuquently, the **World Intellectual Property Organisation** (WIPO, in French OMPI) was established during the 1967 Stockholm Conference.[7] The WIPO started its work in 1970 and since 1974, it has been functioning as one of the specialized agencies of the UN.[8]

The growth of the number of multilateral agreements is continuous and apparent. The primary reason of this is that while the Berne and the Paris Conventions do not cover every problem, amending

[4] Berne Union Convention, current Article 1 (2).
[5] Berne Union Convention, current Article 3 (a).
[6] Berne Union Convention, current Article 5
[7] Deer Birkbeck 2016, 55-58. See the text of the agreement: http://www.wipo.int/treaties/en/convention/
[8] Deer Birkbeck 2016, 58-60. See the text of the agreement: http://www.wipo.int/treaties/en/text.jsp?file_id=305623

them necessitates consensus. Considering the number of the members of both conventions (more than 180 states in 2018), it is difficult (i.e. practically impossible) to find room for compromise.[9] Thus, continuous technological and social change, the growing need of the fast and effective registration of different forms of industrial protection, the emergence of new interests to be protected and new questions to be regulated justified new treaties to be drafted by the WIPO from the 1980s.

Accordingly, **administering** (managing) the 26 international intellectual-property-protection **agreements** is one of the most important tasks of WIPO. In addition to its own founding document, 15 more property protection-related (substantive law), 4 registration-related (classification), and 6 global protection agreements (regarding the international validity of the registered forms of protection) are among the administered agreements. Furthermore, the WIPO provides administrative and monetary assistance for the realization of the convention on the International Union for the Protection of New Varieties of Plants (UPOV). From the treaties administered by the WIPO, the above-mentioned Berne and the Paris Conventions stand out as well as the 'Internet treaties' adopted in 1996 in the field of copyright. These agreements, responding to the challenges of digital technologies, assign protection to new types of works, set forth new economic rights, introduce effective technological measures and protection for rights-management data, and define certain minimum standards of enforcement. Additional outstanding treaties administered by the WIPO in the field of industrial property law are the Nairobi Treaty on the Protection of the Olympic Symbol (1981), the Trade Mark Law Treaty (1994) or the Patent Law Treaty (2000). Strong Hungarian ties to intellectual property protection are demonstrated by the fact that the Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure was signed in Budapest in 1977.

Further tasks of WIPO include the provision of fee-paying services related to the agreements, including international registration procedures and alternative dispute resolution procedures regarding *domain names*. The WIPO Center for Arbitration and Mediation provides help in questions related to contractual and delictual liability in the latter case. The procedures regarding abusive registration of *domain names* (*cybersquatting*) stand out among the arbitration procedures.[10] Furthermore, the WIPO provides help to MS intellectual property protection organizations in operating databases, organizing education and in connection with legislation.[11] The WIPO is the only UN specialized agency which almost completely covers (in 95 percent) its two-year budget from its own income, mainly due to these services. This budget is currently 725 Mn Swiss Francs (2019-2020).

The **major organ** of the WIPO is the **General Assembly**, primarly exercising administrative, budgetary and appointment powers. On paper, the second most important organ is the WIPO Conference, organised – at the same time and venue – together with the General Assembly, and membership is almost identical as well. (The last separate conference took place in 2005.) The WIPO Conference primarily serves as a forum of discussion, it may make recommendations in the field of the regulation of intellectual property law, and amend the WIPO Treaty. Another important organ is the WIPO Coordination Committee, which primarily performs advisory and executive tasks within WIPO. In addition to these, twenty further commissions operate within WIPO, responsible for many of the organization's special tasks as well as their preparation and consultation thereon. The Secretariat helps the functioning of the organization, with the head of the organization being the director general, supported in his work by deputies.[12]

[9] Boytha 2015, 367-379.

[10] On the alternative dispute resolution practice of the WIPO, see: Tan 2018

[11] On the tasks of the WIPO, see: Deer Birkbeck 2016, 9-31.

[12] For further information regarding the structure of the organization see: WIPO: WIPO Governance Structure WO/PBC/17/2, May 2011 http://www.wipo.int/edocs/mdocs/govbody/en/wo_pbc_17/wo_pbc_17_2_rev.pdf

The WIPO had four Directors-General so far: the Dutch *Georg Bodenhausen* (1970-1973); the American *Árpád Bogsch* (1973-1997); the Sudanese *Kamil Idris* (1997-2008) and the Australian *Francis Gurry* (since 2008 expectedly until 2020). Over time several Hungarians participated in the leadership of the WIPO. Besides *Árpád Bogsch*, of Hungarian origin, *György Boytha* was Deputy Director-General for Copyright from 1979 to 1985. *Mihály Ficsor* Sr. acted as Deputy Director-General from 1985 to 1992.

The WIPO is not the only UN **specialized agency**, which performs tasks related to the protection of intellectual property, but the UNESCO specifically stands out from these. Its functions include the protection of cultural heritage, social diversity and traditional knowledge, also education (for further details, see Chapter 7). These issues are tied to intellectual properties in many aspects, such as the protection of the manifestation of folklore (dances, songs, poems), undertaking public education and public library services, utilization of goods and samples of handicraft. There are only two international intellectual property treaties that were not adopted by BIRPI or WIPO. The adoption of one of the two agreements not adopted under the aegis of BIRPI or the WIPO, namely the Universal Copyright Convention, can be tied to UNESCO. (The other being TRIPS as part of the WTO.) The explanation to adoption of the Universal Copyright Convention in 1952 within UNESCO was exactly reasoned by efforts which aimed at UNESCO establishing connections on cultural grounds between the two super powers of that age (the USA and the USSR) as none of them were willing to join the existing Berne Convention, which already contained wide-reaching norms. The Universal Copyright Convention wanted to realize this 'harmonization' by decreasing the scope of minimally protected interests, paving the way for compromise based on the idea of the 'lowest common denominator'. Although many countries joined the Universal Convention, its current importance is evanescent since the US joined the Berne Convention in 1989 and the USSR fell apart.

Other UN specialized agencies, such that also have indirect competences in the field of intellectual property law, are: the ILO and the WHO. The ILO is relevant due to intellectual 'works for hire' in an empolyment relationship and the performers' performances. The WHO plays a role in the juxtaposition of pharmaceutical patents and social/public legal interests. (Let us just think what could have happened if the pharmaceutical companies had abused their monopolistic positions of producing medicine in the 20th century struggle against smallpox. Balance between intellectual property protection and the public order is indispensable for the success of global healthcare campaigns.)

Several legal policy interests are brought together by the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961), the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1971), and the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974). These include the principles of protection of copyright and related rights, as well as the right to access to culture and information. With regard to these, the WIPO administers the above conventions in collaboration with the ILO and the UNESCO.

The WIPO, seated in Geneva, benefits from all exemptions and immunities that UN specialized agencies receive, including especially tax-exemptions. Hungary is being represented by the delegates of the Hungarian Intellectual Property Office (HIPO) and the Ministry of Justice in the work of WIPO committees.

Although the widening of global commercial relations stem from before the 20th century, it gained central importance after WWII. It was not only due to the efforts to avoid a potential third world war (which also motivated the foundation of the EEC), and to the endeavour to strenghten the positions of Capitalism against Communism, but also to the general necessity of mass production. Besides many countries dedicated to free trade (e.g. the Netherlands), the US was one of the leading advocates of free trade. It is also true, however, that before entering WWII, the country followed such an isolation policy according to the *Monroe Doctrine*, which, beside allowing free trade, prohibited interference with other countries' internal affairs. After the 1940, however, the US became a leading power, in no small part due to its potential in intellectual property protection.

As a sign of lightening in free trade, the **General Agreement on Tariffs and Trade (GATT)** was adopted in 1947. In 1986, a series of negotiations started in Uruguay, which after many deadlocks resulted in the establishment of the **World Trade Organization**. The new GATT became part of the WTO, and so did the agreements on services (GATS) and intellectual property protection (TRIPS). (For further information, see Chapter 8.)[13]

Adopting **the TRIPS Agreement** is a condition of WTO membership (as the obligatory Annex 1C of the WTO Agreement). The document expressly sets forth – with a few exceptions – that former intellectual property treaties also form part of TRIPS, and it also contains several new substantive law regulations in the field of copyright and industrial property. In addition, it introduces strict rules of rights enforcement and an alternative dispute resolution procedure – as a first in the international history of intellectual property law. Added to the principle of National Treatment (Article 3), TRIPS also contains the MFN principle (Article 4). Based on this, the contracting parties provide every such preferences or advantages to each other, which have already been granted to other countries. Such principle can guarantee to maximize international intellectual property protection.[14]

> According to historical research, the MFN principle can be traced back to the 11th century. More importantly, this principle was first included in a treaty of friendship and commerce concluded by the United States and France on 6 February 1778, right before the United States declared its independence.[15]

Two of the above novelties of the TRIPS Agreement are the **normative rules related to rights enforcement and the dispute resolution mechanism applied in practice**. The former requires MS to provide for high-level rights enforcement both in civil and criminal cases (as indiated by TRIPS), including means prior to court procedures or out-of-court possibilities, and customs regulation. In addition, the TRIPS Agreement has introduced a completely new international framework for alternative dispute resolution. It is a historical fact that under the Berne Convention, any MS could have exercised their right to apply to the ICJ with reference to any perceived or actual violations or grievances. No such cases are known though. On the contrary, the alternative dispute resolution mechanism under TRIPS is rather successful, as it is flexible and strict at the same time.

The essence of **flexibility** is that the applicant MS claiming a violation of their rights are first obliged to consult with the MS causing the alleged harm, and only turn to the WTO to set up a dispute resolution panel, if consultation was unsuccessful. (Surprisingly, a significant number of the cases are

[13] For a further brief summary regarding the establishment of WTO, see: Frankel–Gervais 2016, 9-10.
[14] Frankel–Gervais 2016, 54-56.
[15] Magyarics 2014, 22.

settled in this consultation phase.) **Strictness** is ensured by the enforceable report (never a judgment or decision) of the panel. Although it is possible to appeal against the report of the panel to the second instance, however, if the culpable party is unwilling to modify its relevant rules, it shall face trade restrictions and, ultimately, trade sanctions. It is important that within the framework of the dispute resolution procedure the principle of *stare decisis* is not known, therefore it is not obligatory to follow previous reports in any new procedures. (Nonetheless, the panels are trying to pay attention to each other's opinions.)

> Member States have initiated 561 consultations in front of the WTO between 1 January 1995 and 31 July 2018. Most of the consultations were closed in this phase, but in 313 disputes 261 dispute resolution panels were established during the above period. Among these, 195 reports were published in 245 disputes. The appellate body published 114 reports.[16]

The WTO, including TRIPS, and the WIPO's international treaties envisage a high level of protection of intellectual property. However, this high level of protection seemed to be achievable only by the developed countries, and otherwise it fundamentally served their interests. The developing and the least developed countries amended their national regulations in the hope of economic advantages provided by joining the WTO, but in general they reacted to the intellectual property claims of the 'colonising West' in three ways.

One possibility was to enforce flexible exceptions from under the international agreements ('*flexibilities*'). Many countries were, e.g. exempted from the execution of the TRIPS Agreement. Most recently, the least developed countries have been allowed to postpone the implementation of the TRIPS Agreement until up to 2033. Another excellent example is the Doha Declaration, which provides flexibility to the developing countries regarding manufacturing vital medicine based on compulsory licenses, or regarding the ever stronger African/Asian needs for (some kind of) copyright-protection over traditional knowledge.[17]

The other possibility is to lighten national practices of rights enforcement. (In other words, in several cases national authorities turn a blind eye and overlook unlawful activities.) One form of the response to the absence of any consequent reaction against unlawful conduct may evoke the Section 301 Report of the United States Trade Representative (USTR). In this report, the USTR lists those states that are not in compliance with their international obligations, thus negatively affecting American economic interests. The strength of this document mostly lies in that it may recommend economic/political countermeasures against the states involved.

The third option is the intentional appropriation of intellectual goods on a massive scale (with the assistance or upon the approval of or by turning a blind eye by the state). China carries out these kind of activities on the widest possible scale to develop its economy, including its intellectual property sectors to reach the level of developed Western countries.[18]

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[16] For the data, see: https://www.wto.org/english/tratop_e/dispu_e/numbers_of_disputes_by_stage_e.xlsx For scientific analysis of the data, see in particular: Leitner–Lester 2017, 171-182.

[17] Frankel–Gervais 2016, 32-34.

[18] Yu 2007, 173-220.

Although many consider the above departures from the mainstream adverse, it is best to keep in mind, that countries currently considered developed (mainly of North America and Europe), have followed the logic of 'grab the money and run' instead of the principle of national treatment for a long time. Until giving up the Monroe Doctrine, the United States was one of the biggest 'pirate nations'. As soon as these pirate nations reached a certain level of development, however, namely, when they exported more intellectual property than they imported, they became economically interested in intellectual property protection. To put it this way, it is not surprising if some countries (currently mostly the BRICS countries) try to strengthen their intellectual property protection systems while they continue to engage in significant 'piracy'. The only difference is that the United States and the European Union are now very cautious of their practices.

14.4. Regional Intellectual Property Protection Systems of the EU and Europe

The selection of the title of this subchapter is not a coincidence. The European continent in the broad sense and the European Union, which unites only a part of European countries, have several completely independent organizations and relevant bodies of law that are directly or indirectly affiliated with intellectual property law.

In general, the **Council of Europe** is the most significant in Europe, which, among others, is responsible for securing the protection of human rights in its current 47 MS. The **ECHR** and its court, the **ECtHR**, which applies the Convention on the merits are also parts of this system (see Chapter 9 for more details). Article 10, declaring freedom of expression is one of the most outstanding provisions of the ECHR. This right not only encompasses freedom of expression, but also an interest in getting to know others' opinions, and – finally – it incorporates the right of access to information. Moreover, the right to respect for private life (Article 8), the right to a fair trial (Article 6), the right to an effective remedy (Article 13), the prohibition of discrimination (Article 14), the right to life (Article 2), the freedom of assembly and association (Article 11), and the protection of property (Protocol I, Article 1) might also connect to intellectual property law. The ECtHR has already delivered judgments in several cases along these rights.[19]

The **European Patent Organization**, brought to life in 1973, works also independently from the European Union. The essence of the **European Patent Convention** adopted within this framework is that it facilitates the uniform management by the rights holders of several separate patent applications in a single standard 'European patent'. The organization is headquartered in Munich, Germany, however, European patent applications can be submitted in the patent offices of every MS.

The **European Union** (earlier EEC) is such an economic and political cooperation, of 28 MS and indirectly some further European countries, which endeavours to secure the functioning of the internal market along the lines of the traditional "four freedoms" (free movement of goods, services, capital and persons, and nowadays as a fifth freedom: the free flow of knowledge and innovation). As a part of the economic and political integration, the EU/EEC may also regulate cultural and other socially significant issues (for more details on this, see Chapter 10). Article 36 TFEU **allows for the limitation of the scope of the four freedoms along** "**industrial and trade property**" (which, according to a widely accepted view, also covers copyright). Nonetheless, the functioning of the internal market might be endangered by the different MS regulations, and by the territorial character of copyright. Therefore,

[19] Helfer 2008, 1-52.

sequential harmonisation is a generally accepted solution in the EU to find common denominators and to guarantee the most effective functioning of the internal market.

Eventually, the preparation of **harmonization through directives** started through the 1988 Green Paper. Following the transformation of EEC into the European Union, the legal grounds for copyright legislation are provided by Article 114 TFEU. Although, over time, its arguments for copyright legislation policy have changed considerably. While in 1991 the European Commission had emphasized how technology affects the common market, in 1996 the high level of protection and the fair balance between the rights and obligations of rights holders were articulated. In 2009, the above was complemented by endeavouring to spread the knowledge in the common market as widely as possible, and in 2011, by the need for a "digital single market". The copyright-related legislation and law enforcement is also determined by the **Charter of Fundamental Rights of the European Union**, by specifying the protection of intellectual property [Article 17 (2)]. Furthermore, the respect for private and family life (Article 7), the freedom of expression (Article 11), the right to education (Article 14), the freedom to conduct a business (Article 16), cultural, religious and linguistic diversity (Article 22), and the integration of persons with disabilities are such fundamental rights that are relevant to the field of copyright law and to content consumption as well.

Until 31 August 2018, the EU/EEC has accepted **2 regulations** and **11 directives** altogether, in areas touching upon copyright law (as well). (This number is higher if we consider amending directives and the E-Commerce Directive.) Most of these legal norms are so-called vertical norms – mirroring an Anglo-Saxon legislative practice – i.e. covering one (maybe two) topics or subject matters. On the contrary, there are horizontal norms as well, which affect multiple areas, such as the most important copyright directive, reacting to the challenges of the information society (the so-called InfoSoc Directive) or the newest copyright reform concept of the European Union.

The European Union can also be considered active in the field of industrial property protection. The **uniform EU trademark protection** was introduced by a regulation in 1994, which is supplemented by other norms as well (with the last directive being adopted in 2015). As part of this, the rightholders might register their trademarks in front of their national agencies or directly at the European Union Intellectual Property Office (EUIPO, headquartered in Alicante), and receive an EU-wide protection based on trademark rules that have been harmonized in many aspects. Another regulation from 2002 provides the same type of protection for **utility models**. Since 2016, **trade secret**s are also protected in the EU, although the effectiveness of the relevant regulation has been brought into question EU-wide. No unified **protection for geographical indications** exists yet in the European Union.

It is even more important that though the MS have agreed to introduce a **unitary EU patent system** in 2012, this norm is not yet effective. Setting up a Unified Patent Court is also in the making. The legitimacy of this court has been questioned in several cases and countries. The agreement on establishing the Unified Patent Court was signed by 25 MS, among them by Hungary, but for it to come into force, the agreement needs to be ratified by at least 13 signatories. Furthermore, Germany, France and the United Kingdom shall also ratify the agreement (among the 13), since they had the most EU patents in force in 2012, the year before the agreement was signed. Hungarian ratification, however, is apparently not expected. The Constitutional Court in its fresh decision of 29 August 2018, declared that "*an international treaty that was created within the framework of such an enhanced cooperation*, *which transferred jurisdiction*, *regarding the assessment of a particular group of private law disputes based on Article 25* (*2*) *a*) of the *Fundamental Law of Hungary*, *to an international institution not included in the founding treaties of the European Union – thereby fully negating the power of the Hungarian state jurisdiction to adjudicate such disputes*, *and to have the court decisions in these cases be subjected to*

constitutional review based on Article 24 (2) c)-d) of the Fundamental Law of Hungary – cannot be promulgated based on the effective provisions of the Fundamental Law of Hungary."[20]

Finally, it is very important that the European Commission is the guardian of fair competition (as well). As a part of this activity, it aspires enforce compliance with **competition law regulations**. The Commission has brought damning decisions in several cases, when one of the companies or groups of companies (for example *Microsoft* or *Google*), with strong ties to intellectual property protection, abused their market dominance. Prevalence of fair competition is also ensured by the prohibition of monopolies. Copyright collective rights management organisations with centuries of experience, however seem to often contravene this expectation. Namely, effective rights management would presuppose the possibility of licence agreements being obtained from one single place. Accordingly, competition law and intellectual property law exist in a delicate balance.

14.5. Future Prospects

The pace of legislation is significant on a global and regional level, regarding all forms of intellectual property protection, and it is to be expected for the future as well. However, there is a development these days, which makes it hard to predict the future of commercial development of intellectual property law.

At present, the United States and China seem to enter into a **trade war** – also engulfing other countries – by introducing protective customs duties on each others' products. What sparked the debate, among others was that according the USTR report in the case of the Chinese establishment of joint ventures, foreign parties are obliged to transfer technologies to the Chinese joint venture. Such forced technology transfers may violate several interests of national economy and not only in the US, but also for European companies.

The current American leadership (especially President *Donald Trump*) holds the foregoing order of the free trade responsible for these and similar global economic problems, as he also claims WTO is dysfunctional. The strenghtening of such arguments (irrespective of globalizing populist politics) represents an event fitting the decending branch of a 'sine wave'.

Up to 1940, the United States paired its traditionally open and free economic policy with strict, closed state and foreign policies. Prior to it, the US aimed at concluding as much economically beneficial agreements as possible. Where it was not possible (or they were reluctant), the United States traded without taking international interests into account. Meanwhile, it protected its own economic interests with ironclad rigor or even through use of military force, if necessary.

> *Edward Preble* (1761-1807), who played a leading role as a commodore of the American navy in the war of the United States against Tripolitania (Libya) between 1801-1805, negotiated with the Moroccan sultan as follows:
> "*Then the sultan listened as Preble „endeavored to impress on his mind the advantages of a free commercial intercourse … and that the revenues of the Emperor arising from that source, would be much greater than any thing they could expect if at war with us. It was an American argument, a case made for free trade*."[21]

[20] HCC Dec. 9/2018 (VII. 9) AB határozat, delivered on 9 July 2018.
[21] Kilmeade–Yaeger 2017, 135-136.

In the field of intellectual property protection, this actually meant that the United States signed as few international treaties as possible, did not protect other nationals' interests on US soil, however, it did not enforce American intellectual property interests abroad either.

After opening up to enter WWII, the United States have grown into a net exporter due to many of the technological innovations of the 20th century, which brought illustrious development in the fields of motion picture and music industry. Its economic interests have now necessitated the protection of its own intellectual goods overseas as well. For this reason, the United States gave up its isolation policy in the field of intellectual property law and joined several international treaties (especially the Berne Convention in 1988) as part of this process. On the other hand, it also pushed intellecual property protection into a free trade context. As a result, the WTO and TRIPS were born in 1995.

In the past barely twenty years, intellectual property protection (including both the creative industry and rights enforcement) has become so strong in many developed and developing countries that the United States now considers it as a threat to the idea of free trade promoting equality. That is why the current change in direction, wherein the American government takes a protectionist lead in its international economic policy once again, is neither a coincidence nor it is surprising. It is hard to predict the outcome of such developments.

QUESTIONS FOR SELF-CHECK

1. What hidden difficulties could have been implied in the application of the principle of reciprocity? What burden was put on the courts in determining the scope of protection?
2. What is the biggest advantage of the principle of national treatment for the national courts when analyzing the existence or determining the infringement of copyright or/and patents?
3. What are the benefits of the settlement of international intellectual property disputes by the means of alternative dispute resulotion?
4. According to Article 10 ECHR:
   „*1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
   2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."
   Which of these expressions/rules might be directly connected to intellectual property law, especially copyright?
5. What might be the biggest advantage of unitary (global or European) patent and trademark applications?
6. What might be the biggest peril of the unified registration of trademarks in the EU?
   For your consideration: in case No. T-232/10 the General Court of the CJEU discussed whether the Seal of the Soviet Union with the Red Star and the hammer and sickle can be registered as a trade mark. In another case (T-266/13) the General Court had to decide if it is possible to register the word "Curve" as a name of a medicament, which was confusable with the Romanian expression "curvă" (which is also well understood in Hungarian).
7. Try to argue, which aspect of intellectual property protection is more convincing: the cultural or the economic one?

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