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Course: *Introduction to the EU (European Union) Law*

[1] Origins, Development and Nature of the EC/ EU

Origins

Textbooks mention elder projects of European integration.

There is long lasting dream of writers, scientists, artists or clergymen of united peaceful Europe .

Several of projects of political union were prepared and proposed by monarchs and politicians. However no project has been not realised until the second World War. Only partial aliances were built. Unification based on coercion was successful for short period of time (Napoleon).

Little was thought about economic and social integration.

European Integration since 1945 has been based on the idea, that integration of nations (not only states) would preclude war among European states.

The first impulse for after-war integration were atrocities of the last war.

However, until today there are no *United States of Europe* (as proposed by W. Churchill in 1946 for continental Europe). The US model cannot be simply transferred to Europe.

Legal instrument for integration is international law.

Several international organisations, established by international conventions agreed and ratified by founding states are visible expression of European Integration.

Plurality of international organisations allows differentiated membership (European states can choose their level of participation).

Other European international organisations

The most important pan-European international organisations beside the EC and the EU are:

* **NATO** (1949). Defense covenant and international organisation of many European countries and USA+Canada (26 members, not all EU members are members.). Basic instrument is obligation of members for joint defense if any member attacked in NA area.

The Council of Europe (1949). International Organisation (46 member states including all EU members) for administrative, social and cultural cooperation and enforcement of basic human rights (200 treaties are agreed in CoE). The European Court for Human Rights is attached to CoE.

* **The Organisation for Security and Cooperation in Europe** (1991, since 1975 the Conference). International organisation expected by UN Charter for

regional peace and security (55 member states of northern part of northern hemisphere including all EU members).

There are or were other European international organisations too: EFTA, WEU, OEEC/OECD...

For information or reminder! There was significant integration of socialist countries including Czechoslovakia behind iron curtain: *the Council of Mutual Economic Assistance* (more than 10 member states) and *Warsaw Pact* (7 member states)

the European Communities / the European Union

Development and construction of the EC and the EU

European Community of Coal and Steel (1951). Six original member states: France, Germany (west), Italy, the Netherlands, Belgium, Luxembourg.

Projects of parallel communities for defence and foreign policies failed quickly. „Founding fathers“ decided to focus on economic integration. Two additional communities founded several years later (1957) by same member states.

the European Community for Atomic Energy (2nd sectoral community)

and

the European Economic Community (since 1993 **the European Community**) for general economic integration with exception of sectors covered by both specialised European communities

Joint membership in all three/two communities (ECCS existed until 2002) is compulsory for all member states.

Enlargements of all European Communities (and since 1993 simultaneously ones of the European Union):

Northern (70ties): the United Kingdom, Ireland and Denmark.

Southern (80ties): Greece, Spain and Portugal

„Residual“ (90ties): Austria, Sweden and Finland.

Big Eastern“ (2005): Estonia, Latvia, Lithuania, Poland, Czechia, Slovakia, Hungary, Slovenia, Malta and Cyprus.

Additional Eastern enlargement (planned 2007): Romania, Bulgaria.

Negotiations opened or to be opened soon: Croatia, Turkey

Membership wished: several other Balkan and Eastern European states, Morocco.

Membership possible and welcomed by the members, but rejected or not-applied for: Norway, Switzerland, Iceland

The European Union

The EU was found 1992-3: Treaty of Maastricht) is an international structure (without nature of international organisation) which includes two (earlier three) European Communities and other agenda (so called 2nd and 3rd pillar: common foreign and security policy and cooperation in matters of criminal justice).

Proposed: merger of EC and EU (Constitutional Treaty)

EC/EU: nature

(1) Formalistic approach

European Communities and European Union are international organisations/structures (international state/government organisations/structures are to be clearly distinguished from NGOs).

However, there are special attributes which are not to be found in other international organisations.

There are several descriptions of this situation. It is difficult because there is no comparable structure in contemporary world:

The best is a **supranational organisation/structure** (taking into account formal status of the EU)

Main legal difference: EC and EU are based on international convention, not constitution. The constitutional treaty will not change it

(2) Factual approach

EC/EU are more than typical international organisation or structure, but less than any typical federation

Remember several international organisations or structures: UN, WTO, NATO, OSCE, CoE, OAS, ASEAN, FAO, UPO +

Remember several federations: USA, Germany, India, Brasil, , Russia, Nigeria, Malaysia, Australia, Canada, Switzerland etc.

Quasi-federal legal order: EC law

However, it lasted 40 years to achieve it, until today there are disputes on nature and position of this law in legal order of member states. Supremacy is sometime contested, priority and direct effect used as description).

EU law (2nd. and 3rd pillar) does not enjoy this position.

* Institutions and power: supreme institutions (European Parliament, the Commission, the Court of Justice) are comparable to federal government . However, there are almost no executive departments and agencies and judiciary for day-to-day application of EC/EU law.

All legal enforcement is ensured by member states.

No European army and no European police!

* Tasks and competences: some competences of typical federations have been transferred to EC/EU. Several other competences, however, are missing (single foreign policy, defense).

Lack of base for pan-European state: there is no European nation and no Europe-wide politics.

Nevertheless, tendencies towards further federalisation can be observed.

Could „European Constitution“ be decisive step towards European federal state?

Can EU/EC become a European federal state in foreseeable future?

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Homework: Look in EURLex (<http://europa.eu.int/eur-lex/lex/en/index.htm>), find EC Treaty, save it for Your future studies and read carefully art. 1, 2, 3 and 249.