

European Union Law

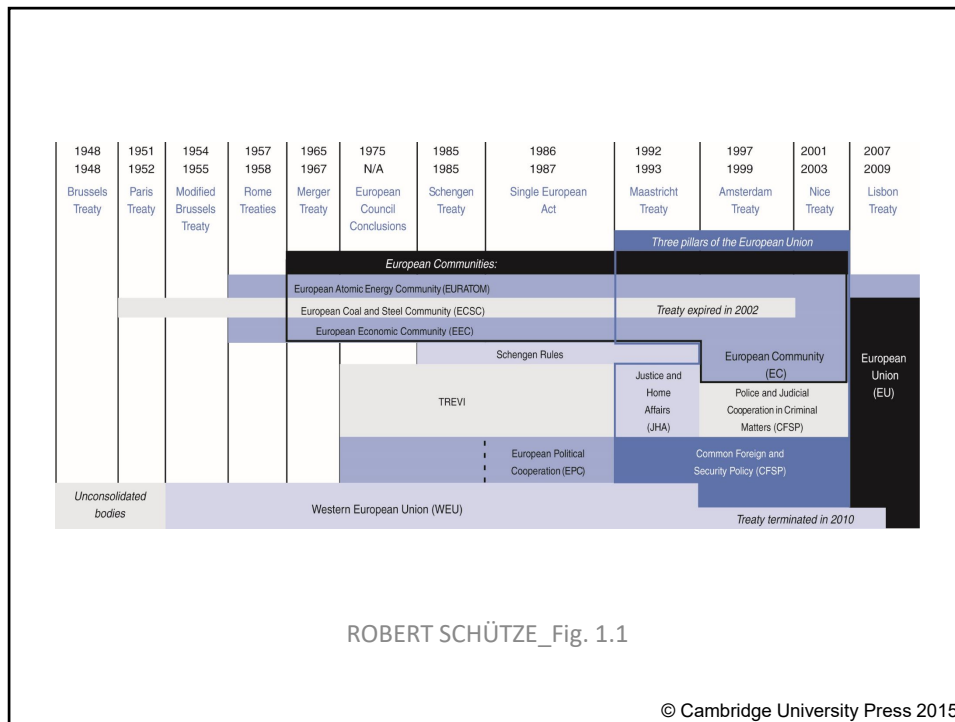
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The “deepening” of the European integration: a) the European Communities

Lesson No 2



The beginning of the European integration process: the birth of the European Communities

Chronology

- 7-8 May 1945 – WW2 ends in Europe with the total and unconditional surrender of Germany
- 9 May 1950 – the 'Schuman Plan' (after an American suggestion)
- 18 April 1951 – Treaty of Paris: ECSC
- 27 May 1952 – Treaty of Paris: EDC (failed)
- 25 March 1957 – Treaty of Rome: ECC, Euratom
- 1985 – Treaty of Schengen
- 1986 – Single European Act

From Paris to Rome

THE EUROPEAN COAL AND STEEL COMMUNITY (ECSC)

Introductory remarks

- A fundamental transformation in the substance and structure of international law: a transition from an int'l law of coexistence to an int'l law of cooperation → the rise of international organisations
- At European level (notably, in the west) various efforts at (institutional) cooperation (outside EC/EU integration)
 - 1948: Organisation for European Economic Cooperation (OEEC, then OECD) – administration of the European Recovery Program (the 'Marshall Plan')
 - 1948: Western European Union (WEU), a security alliance
 - 1949: Council of Europe → European Convention on Human Rights
- European Communities – a new model of cooperation, aimed at *integration*: Supranationalism

Europe in 1945: Aftermath of the World War II



The 'Iron Curtain'



European Coal and Steel Community

- The initiative came from France and was primarily addressed to Germany, which had been excluded from other forms of cooperation (Council of Europe, NATO, WEU) until then
- Sectorial market integration (coal and steel only) but...→
 - a major sector both economically and politically
 - conceived as a first step in the federation of Europe
- A new model of int'l cooperation: supranationalism (Community method) as opposed to intergovernmentalism

The institutional structure of the ECSC

- **High Authority (Commission)**
 - a very supranational (and bureaucratic) body
 - duty to ensure that the ECSC objectives would be attained
 - **Decision-making power to adopt decisions, directly applicable in the MSs and binding in their entirety**
- Assembly (Parliament)
 - purely advisory functions
- Council
 - charged to harmonise the action of the Commission and that of the national Governments
- Court

European Defence Community (EDC)

- The idea came from France ('Pléven Plan'):
 - the security of the MSs was to be ensured by a European army (the "European Defence Forces") under the command of a supranational institution
→ a European minister of defence, nominated by the national governments and responsible to them and to a European parliament
 - MSs were prevented from recruiting or maintaining national armed forces
- 1952 Paris Treaty failed because French parliament voted against ratification

EDC → *political* integration: a too long jump?

- EDC postponed the problem of defining the exact nature of the supranational political institution commanding the European army
- Draft Treaty establishing the **European Political Community**
 - a Community of a supranational character, founded upon a union of peoples and States
 - Its central institution: a bicameral 'Parliament', consisting of two Houses – the House of the Peoples and the Senate → the principal law-maker; a democratic and responsible political authority behind the European army

From Rome to Maastricht

EUROPEAN (ECONOMIC) COMMUNITY (EEC)
EUROPEAN ATOMIC ENERGY COMMUNITY

Return to the idea of *economic* integration

- The failure of the EDC discredited the idea of political integration for decades
- 1957 EEC and Euratom – why two treaties? → a compromise solution between
 - a) French proposal for further sectoral integration: nuclear energy (economic sector adjacent to coal)
 - b) Member States favouring the creation of a common market for all economic sectors

Which model for European economic integration?

- Customs union (as opposed to a free trade area)
- Common market of goods
- Abolition, as between MSs, of obstacles to free movement of persons, services and capital
- Common transport policy
- A system ensuring that competition in the common market is not distorted – EU competition law → model of **market economy**, at odds with the model of centrally planned economy

Which model for the cooperation/integration between European States?

**SUPRANATIONAL VS
INTERGOVERNAMENTAL IN THE HISTORY
OF EUROPEAN INTEGRATION**

Two ideal models

- a) **Intergovernmentalism** – Traditional model of international organizations → States still play a crucial role – they enjoy both a decisional and normative veto power
- b) **Supranationalism** – the “Community method” → the entity created by the member States is actually independent of their will

The second model was born with (and characterises) the EC/EU integration. But elements of both models have coexisted in the European history indeed

‘Decisional’ Supranationalism (the governmental structure of the EC/EU)

- It relates to the questions:
 - who has the decision-making power in the European Communities/Union?
 - How the decisions are taken?
- It is a matter ‘internal’ to the Community/Union legal order

ECSC →

Commission is the central decision-maker – the organ endowed with supranational powers was itself 'supranational' = independent of the will of the MSs

EEC →

same institutional structure than ECSC but different institutional balance – **Council** is the central decision-maker – its independence from the MSs will depends on the voting mechanism (majority vs unanimity)

Further steps until the current EU →

supranationalism –

- ✓ Council deciding on qualified majority voting
- ✓ Legislative powers on European Parliament, directly elected by European citizens
- ✓ 'judicial' activism (*Cassis de Dijon* case)

intergovernmentalism –

- ✓ Stall of qualified majority voting in the Council
- ✓ The birth and the rise of European Council

‘Normative’ Supranationalism
(the characteristics of the EC/EU law)

- It relates to the questions:
 - can the European Communities/Union norms be directly applied in the MSs legal orders?
 - Do they prevail or not over contrasting domestic rules?
- It is a matter concerning the interplay between Union and national legal orders

supranationalism –

- ✓ Direct effect of Union norms
- ✓ Supremacy of Union norms

intergovernmentalism –

- ✓ traditional int’l law → whether int’l norms may be directly be enforced within the domestic legal order solely depends on this latter