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European Union and European Germany**

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Abstract: *We analyze the correlation between the European integration and incorporating Germany into the process of European cooperation. We point out that the European integration after WWII was determined by the creation of the European Coal and Steel Community in the year 1951. This Community made it possible to control the steel industry of the Member States (among them Germany) within the framework of the common market. It was aimed at stable and harmonized development, as well as at preventing an uncontrolled growth of military-industrial complex, increasing the production for the army and decreasing the probability of the outbreak of the next war. Then - after the deepening of cooperation (taking her new areas) – the European Communities (EC) were created. They are still institutional foundations of the EU. One of the main reasons of the EC creation was the willingness to ensure lasting peace in Europe and to create „security community” through a.o. incorporation of Germany into the group of cooperating states. In this paper, we analyze the security system components created (e.g.) by the EC/EU, as well as the origin and changes of their characteristics. We compare the process of*

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German unification (and more general: of defining the German unity, and broader: unity of the German speaking territory) after WWI and WWII. The analysis of similarities and differences leads us to the present stage of the European integration, when the unification of two German states was accomplished for the price of German acceptance of deepening of the integration and the creation of the European monetary union. We analyze various consequences of unification of Germany and the creation of the euro zone. In our opinion, they go far beyond the economic or political ones, and are connected with the EU Eastern enlargement.

Introduction

The aim of this study is to analyse the relation between European integration and Germany's position in the Europe of today. To achieve this goal, we begin by presenting the genesis of regional cooperation, perceived as a derivative of the international cooperation underlying the world order after World War II. Then, we analyse the integration processes in Europe, especially Germany's central position in them.

Research Methods

We use historical analysis for both economic integration processes in the world, as well as in Europe. We have also analysed the genesis of the German state from its shape under Bismarck to the present day. We present a synthetic description of the European integration, emphasizing those elements that form the basis of our deliberations and conclusions. We use a variety of methods of legal analysis, including a case study.

Global and Local Cooperation

In the academic reflection on the dependencies between international economic cooperation and global challenges, there are not many generally accepted truths. One of them, though, is the recognition of the negative impact of poverty, as well as economic crises, on international security. Poor people have little to lose and tend to act unpredictably¹. More often

¹ That dependence was brutally expressed by J. M. Keynes during the Versailles Peace Conference. He pointed at the fact that the gigantic war reparations imposed on Germany after the World War I would bring on hyperinflation, ruin the German economy and eventually lead to another conflict (see: Keynes, <http://www.gutenberg.org/files/15776/15776-8.txt>). This statement by Keynes was part of the controversy over the influence of transfers

than not, the poverty-stricken have no experience with economic cooperation and have little grasp of its advantages, which may also be a cause of underdevelopment (for more, see Eyoh & Sandbrook, 2003, pp. 227-257). Adopting this thesis, while keeping in mind the genesis of both world wars, the Allies, even before World War II was over, had begun to shape the new international order to create one supposedly based on the recognition of interdependence between universal development and peace.

The war experience (including both world wars) indicates at the same time that the most substantial challenge for the winners was maintaining the persistence of their success in the international arena, rather than simply the military domination over an enemy. The point was to perpetuate the *status quo* of the victor and deprive the defeated of the possibility to change the outcome of the international military conflict. The defeated should not be perceived as a rival bent on revenge, but instead should be treated according to the rule of “the never come back”. What was necessary then was a correction of the pre-conflict situation, and reconstruction, or rather construction, within the internal space of the defeated (aggressor) of stable, democratic institutions in a state based upon the rule of law. After World War II, the misstep that came at the end of the second decade of the 20th century was not repeated and the German economy was not crushed by unseemly high reparations, despite the existence of some concepts for the final destruction of the power of the German state, such as the idea of reducing Germany to an agrarian economy (the “Morgenthau Plan”, the name of which was derived from the name of the American treasury secretary who proposed it) or by occupation (Lilje, 1978, p. 30). Efforts were undertaken to involve the western part of Germany by unifying the American, British and French parts of the Federal Republic, which then entered into cooperation with other Western European countries and with North America (the U.S. and Canada).

The goal of the institutional and legal actions undertaken directly after the war, such as the acceptance of the United Nations Charter, concluding the agreement on and institutionalization of GATT and the Bretton Woods system was to support international economic cooperation. The grounds for this cooperation was interdiction of discriminatory actions. Such was the basis of the multilateral commercial system under GATT, expressed as *Most Favoured Nation* (MFN) norms as well as NTs (*National Treatments*). According to MFN norms, entities are not allowed to discriminate against their commercial partners. Consequently, conferring favour to one contracting party automatically extends it to all of the parties. Similarly, the

on the welfare of the donors and the receivers. For more on that topic, see, for instance: Caves *et al.* (1998, pp. 94-98).

NT clause states that merchandise, services, trademarks, author rights and patents, whether domestic or foreign, should be treated equally in the market of every country².

Initially, free trade agreements were concluded mainly by neighbouring countries linked by close cooperation. This state of facts became institutionalized under the MFN regime. With time, however, the close cooperation of countries (especially those situated close to one another, thus creating a common region from a geographic standpoint)³ became the object of preferential trading agreements, institutionalized legally by GATT (followed by WTO), which are the most substantial deviation from MFN. Within such agreements, the conditions of the economic cooperation between members vary from the rules of cooperation with third parties. Non-adherence to the general rules of GATT/WTO consists of conveying preferences (one-sided or bilateral) to the chosen economic partners. At the same time, observance of the rules concerning the preferences was supposed to make these agreements, advantageous from the development of the international cooperation standpoint, by not infringing on either the aims or cohesion of the rules of multilateral agreements (Świerkocki, 2007, p. 157). The basis to convey preferences in world trade can be found in Art. XXIV of GATT, *Understanding on the Interpretation of Article XXIV of GATT* 1994, and the *Enabling Clause*, which concerns trade agreements enabling more favourable treatment given to developing countries. Trade in services is regulated by Art. V of GATS.

Regional Trading Agreements (RTAs) form the foundation of economic integration in its institutionalized form. RTAs also cover regional groups,

² The NT clause encompasses products, services or objects of intellectual property on the domestic market. This is why the application of import duties and other trade constraints emerging from protection measures don't infringe the clause.

³ The main advantages of geographic criteria in the division of the world (i.e., continents) are territorial stability and objective character. While the disadvantage is little correlation between geography and the social-economic system that is decisive in establishing similarities and differences between particular countries and groups of countries. Nevertheless, the features of the political and institutional surroundings have a strong impact on the character of societies and economies. In economic and other research, we ought to incorporate factors of the social system on the values in states. The presence or absence of certain elements in the values system translates into political (and consequently, economic) proximity or distance between countries, and it may decide the institutionalization of mutual relations, both in the cooperative model and in the subordination model. The political, social and cultural, but also economic distance from Warsaw to Minsk is undeniably greater than from Warsaw to Lisbon or Washington. This signifies that we can apply the term "region" not only to geographical entities but also (as we elaborate in the present study as well) to geopolitical ones. By adopting the institutionalized relations between states as a criterion for classification, one needs to remember that a division made on that basis is not permanent.

even though they embrace more than trade and go beyond the field of regulations under GATT/WTO. Despite the globalization of the creation of RTAs – as these agreements have been signed on all continents – this process is still described as regionalism.

Signing an RTA nowadays is often the result of global cooperation and multilateral negotiations within WTO, as numerous countries pursue alternative forms of international cooperation. In the aftermath, we can observe deepened and extended regional cooperation that offers advantages without the cost of multiculturalism (social, political or economic) that marks global cooperation. Simultaneously, the potential benefits, i.e., in the European Union in its present geographic reach, is far from being exhausted, which discourages “Golden Fleece hunts”. What goes against the global opening is the unification of collective international entities in economic relations, such as the EU or NAFTA, which offer lower transaction costs, presents a far more tempting alternative than riskier and pricier transactions with an outside subject (for example, the high costs of transaction insurance when it comes to subjects with foreign value systems⁴).

Post-war Integration Processes in Europe

The first preferential trade agreements after World War II were concluded in Europe. That is hardly surprising, if we keep in mind the extended partnership systems created by European countries since the 18th century⁵, with the pinnacle of preferences conveyed to countries of geopolitical regions (within the *French League of Nations* and the *Commonwealth*⁶ – see, e.g., Czarny, 2013, pp. 22-24).

⁴ For example, the necessity to protect investors from expropriation without compensation or limitation of profit transfers. In order to do so, bilateral contracts are applied (*Bilateral Investment Treaty*, BIT). BITs are concluded when there is a lack of universal regulations. The number of BITs is systematically growing: by the end of 2013, some 2,857 such treaties had been concluded (World Investment Report, 2013, p. ix).

⁵ Today’s stage of institutionalization of cooperation among European countries originated some 200 years ago for very pragmatic reasons. The utilitarian cooperation often had a regional dimension (geographical proximity was reasonable). Acceptance of the decisive significance of specific material resources as the basis for norms of cooperation does not defy the idea of European unity (for more, see: Nussbaum, 1954, pp. 39-45; Łastawski, 2005) and various forms of its implementation. For more about the history of institutionalization of European cooperation, see, e.g.: Czarny *et al.* (2010, p. 33).

⁶ During the process of shaping the new world trade order, the ideas of the British, supporters of a system of preferences like a Commonwealth, clashed with American ideas of universal and multilateral liberalization (Bhagwati, 2008, p. 321).

The very first post-war integrationist group was constituted in 1948 as a result of a treaty from 1944. It was the customs union of Belgium, Netherlands and Luxembourg called Benelux. In 1949, the *Council for Mutual Economic Assistance* (Comecon) was established, the aspiration of which was to be considered a “regional integrationist group”. Comecon comprised members of the Eastern Bloc and combined domestic planning with international cooperation among member states in their actions. The foundations for its economic decisions, though, were political motives rather than economic ones.

Nevertheless, the shape of the post-war wave of economic integration was defined only by initiatives leading to the creation of the *European Coal and Steel Community* (ECSC). ECSC allowed the steel industry in its member states, including France and Germany, to play by the rules of a common market. The goal was to impede an uncontrolled military-industrial complex and an increase in military-oriented production, and, as a result, to decrease the risk of another war. That was the origin of the integration process that today encompasses almost the whole Europe.

Also *de facto* adhering to ECSC was the *European Economic Community* (EEC), founded in 1958, and *Euratom*. In time, those three groupings had begun to be described jointly as the “European Communities” and they formed the institutional foundation for the present-day European Union. The Community was created by six founding members: Belgium, France, Netherlands, Luxembourg, Germany and Italy. One of the main goals was to ensure sustained peace in Europe, that is, to spawn a “security community”. Its first objective was to incorporate Germany into the group of countries allied through various ties, be they social, political or economic. Secondly, France, which had experienced two wars on its own territory, aspired to develop economic contacts as a way to increase its security⁷.

The foundation of ECSC, EEC and Euratom was a breakthrough in the history of integration. The founding treaties (Paris and Rome) were accepted by GATT even though they didn’t comply with the norms established by Art. XXIV GATT: excluding agriculture from the discriminatory liberalisation of trade contravened the idea of the liberalisation of “practically all trade”. The legal discipline of GATT was broken mainly by the pressure

⁷ At first, France was seeking the possibility to intensify cooperation (especially in trade) with its ally from wartime, the United Kingdom. Two scenarios for tightening the partnership were taken into account: first, the foreseen union, while the second envisaged accession of France to the Community of Nations. After Britain retreated from Suez, Union negotiations ceased. The diplomatic fiasco with the UK pushed France toward cooperation with its eternal enemy, Germany, in building the European Community of Coal and Steel. The dissonance between France and Great Britain only rang louder by the 1956 war.

from the U.S., which was interested in a strong, cooperative and peace-oriented Western Europe as an ally in its confrontation with the socialist countries of the eastern part of the continent, but also by political actions of community member states.

Less interest was raised by another initiative to form a regional group, the Nordic Council, founded in 1952 by Denmark, Iceland, Norway and Sweden. In 1955, Finland acceded to the group. The Council is a consultative forum and passes nonbinding recommendations for member state governments in all matters except foreign policy, security and defence. Since July 1971, the Nordic Council of Ministers, an intergovernmental organ that makes binding decisions by unanimous consent, has functioned within the organisation. The outcome of these actions is advanced integration leading to removal of barriers to the movement of people, creation of a common job market and establishment of reciprocity in social payments (see: <http://www.norden.org/start/start.asp>, date of entry: 16.10.2012).

The progress of integration within the communities fomented concerns of economic, and eventually political marginalisation on behalf of outside countries. In response, another European integration grouping was created in 1960 – EFTA (*European Free Trade Area*). EFTA was supposed to counterbalance the European Communities and protect its member states from negative consequences of trade restrictions resulting from RTAs. The founders were Austria, Denmark, Norway, Portugal, Switzerland, Sweden and Great Britain. EFTA, however, wasn't as successful as its rival. All of the founding countries, except for Norway and Switzerland, successively became members of the European Communities, while the relations between the EU and Norway within the European Economic Area (EEA) as well as ties with Switzerland, are quite tight. The United Kingdom, an initiator of EFTA, is the most spectacular case: over time, the market situation and political and economic position of the Communities encouraged Britain to participate in the opponent group, and even to adopt the role of first amongst equals (imposing its own project, within which it would be an autonomous leader).

Economic integration within the communities deepened. In 1967, the EEC established a common customs tariff. In 1973, the United Kingdom, Ireland and Denmark joined the group (extending the “Six” to the “Nine”). It expanded again in 1981 with the accession of Greece. In 1986, the European Communities took in Spain and Portugal. They also presented a plan, elaborated in 1992, for a common market for goods, services, capital and work (created in the *Single European Act*). The end of the Cold War and the fall and disintegration of the Soviet Union increased the freedom for it to choose partners for cooperation. In 1992, Central and Eastern European

countries (Poland, Czechoslovakia and Hungary), which aspired to membership in the European Union, created the Central European Free Trade Agreement (CEFTA; for more, see: Czarny & Śledziwska, 2009, p. 180). In December 1991, Poland, the Czech Republic, Slovakia and Hungary signed agreements with the Union that entered into force on 1 February 1994, while trade provisions had been implemented earlier (as early as March 1992). At the end of the 20th century, a monetary union was formed, and in the first decade of the 21st century, the EU enlarged twice, agreeing to the accession of 12 states, mostly from the former Eastern Bloc (Bulgaria, Cyprus, Czech Republic, Estonia, Lithuania, Latvia, Malta, Poland, Romania, Slovakia, Slovenia, and Hungary). In July 2013, Croatia acceded to the Union as its 28th member.

European Union as the Groundwork for Integration Processes on the European Continent

The European Union (EU) today may be analysed from various perspectives. The point of the current study is to analyse the EU as an institution and the stage of unification of Europe.

The EU order, with its setup of relations between states, is the result of a long process of implementation of the integration concept (for a review of the concepts, see: Moussis, 2011) combined with the formation of nation-states. We may state that in Europe, grounded in a common system of values, community-building is in process. It is evident that during that process, its members have endeavoured, and still struggle with attacks on Europe's unity⁸.

In the EU system, the category of "sovereignty" acquires a new meaning (see: Kranz, 1996, p. 3 and following). The sovereignty of the EU members implies the voluntary acceptance of limitations on their right to exercise their sovereignty, the common exercising of some sovereign rights within the framework of international law (see: Mik (ed.), 1999, p. 89 and the following). At the same time, the EU is still not the "United States of Europe", as proposed by Habermas (2001), which would require, among other things, a post-national identity.

The EU is not only a geopolitical region, but also a pillar of the Atlantic bridge. Here, states created a pluralistic community of security based on

⁸ The goals and vision of European unity were changing. For example, in the interwar period, European unity was perceived as a barricade to the insanity of the war (Coudenhove-Kalergi, 1926), while during World War II, it was a cure for nationalism (Spinelli, 1972, pp. 43-68).

sovereignty, the (legal) independence of states, reciprocal complementing of fundamental liberal and democratic values⁹ (interdependency on common institutions), a mutual keenness to work together, identity and loyalty. This community is so deep that the states share interconnected expectations as far as peaceful changes are concerned. Communication strengthens this community politically¹⁰. The ties between states that are not based on territory are the results of a “transactional web” and transform, in a peaceful manner, international relationships (see: Deutsch, 1966 and 1968). This kind of community of security goes beyond singular spheres of action (i.e., only economic or defence, even though cooperation in each of these fields is highly important) or cooperation between governments (“politics by high-ranking politicians”, see: Aron, 1996, pp.89-91) to encompass nations. In creating community security, states are not forced into the dilemma of state or community. The reason for this is that the international system bolsters its particular members (Deutsch, 1957, p. 36). Simultaneously, institutions are important tools of cooperation as they prevent unpredictability (in the form of a game of alliances, balance of power, or subordination; for more, see: Senghaas, 1992, p. 28).

Nevertheless, the Union is not monolithic, and its construction has not been a straight path. The shape of the EU is the result of many factors, both internal and external, and their explicit identification and classification, as well as their directions and impact, are problematic. In the face of global and European divergence in the values system, it is not to be underestimated. It is time to ponder again the current stage of building a unified Europe based on common values in response to the fundamental challenge that Germany has remained since the 20th century.

Germany in an Integrating Europe

There are numerous factors that make Germany a natural subject of the current study. The main reason for choosing this perspective is the role and rank of Germany in international relationships (both, European and global) since the second half of the 19th century until today.

A substantial element of the image of Germany is its 19th century lineage of the German state and German nation-state. The German state came forth from the unification of social and territorial structures, diverse from

⁹ The expression of which is found in the reference to the “community of values” built on the basis of the Vienna Congress (1815).

¹⁰ See: Deutsch *et al.* (1957, pp. 5-8). Deutsch’s opinions are the origin of the “communicative theory of political integration”.

a cultural, social and economic standpoint. State-building came from promoting the benefits of unification. It was a development conducted in stages and across many levels, from a customs union to an economic and monetary union with a common currency, and from cooperation on security policy to common defence in foreign policy. The creation in 1833 of the German Customs Union (*Zollverein*) reinvigorated economic growth in the centre of the European continent at that time. The Customs Union was founded as a Prussian initiative and its main participants were Bavaria and Baden-Württemberg. The founding of the German Customs Union initiated the process of building a geographically defined German state (with the exception of Austria). Within the egalitarian customs union, however, Prussia held a preferential position. A visible proof of that is found in the fact that Prussia held exclusive right to negotiate trade agreements with third countries.

The next stages of construction of the German state were: the Currency Union, established in 1838; legal, international-level regulation of military cooperation in bilateral agreements between Prussia and other members of the Customs Union; and, the transfer of cooperation among the member states based on international law to the level of internal regulations through the creation of the North-German Union (1867)¹¹. This process culminated on the 18th of January 1871 in Versailles¹², where the German Empire was proclaimed as a triumph (and a failure¹³) of Bismarck's *Realpolitik*¹⁴. The constitution of the German nation-state was also a steered process. Even though an artificial constitution for a nation in Europe at the end of the 19th century was not a unique phenomenon, what distinguished the German case from other countries' paths (i.e., Czechoslovakia) was the lack of a national myth (an idealized vision of the nation) in the process, instead there was

¹¹ The formally independent southern German states (Bavaria and Baden-Württemberg) ceded to Prussia, pursuant to an international agreement, authority over their armies in case of a conflict with a third country.

¹² The choice of place had the symbolic value of confirming the French defeat in the war against Prussia.

¹³ Bismarck was building Prussia's position by usage of non-military instruments (behind which, however, stood military power, so the instruments did not proceed out of necessity but out of choice). His successors (we cannot define them as continuers) referred to military power as a first-choice instrument, but their application – after initial successes – led in war to the defeat of Germany. Bismarck demonstrated on many occasions, however, that he was aware of the impossibility of building an empire (an imperial position) of any country in Europe on the account of military force.

¹⁴ Bismarck's *Realpolitik* was founded on the conviction that relationships between states are determined by (ruthless) power and on the deterministic faith in the prevalence of the strongest (alone). The authors and advocates of this view later were Bismarck's antagonists, including Napoleon III. The latter, as author of the doctrine, later became its victim.

a repetition of the French model, which promoted the nation as a social emanation of the state, and one constructed upon state pride and identity (see: Sand, 2009, pp.23-64 and 95-107).

The European Character of Germany in the EU Structure

The problem of Germany's unity, and more generally, the problem of the unity of nation-states with the German language, may be regarded both in a narrow or larger perspective. It is possible to refer only to Germany as a state created in the 19th century with its borders established as the empire's borders in 1937, or, alternatively, its Potsdam borders. It is also possible to see the larger and more ominous process of bringing closer the central European countries in its aspiring imperial role – and the destruction of the European (and continental) stability of forces, leading to the creation of the “central powers” with the participation of Germany and Austria-Hungary. The decisions made at the peace of World War I concerning German-speaking countries were forceful and severe, but also inconsistent. On the one hand, extraordinarily high war reparations were imposed on the defeated – high, obviously not from the standpoint of an evaluation of human health, life or the material destruction caused by the war, but from an estimate of realistic achievability of payment by the conquered parties, and the influence of those contributions to their social and economic situation. The severity put upon the aggressor's society was accompanied by curious clemency in the punishment of wartime criminals. The Leipzig trials persist in the collective memory as a symbol of parody of the judicature and impunity of the criminals¹⁵. On the other hand, the peacetime order formed after World War I was built mainly on faith in the equilibrium of forces. There was an attempt to prevent a unipolar order. The goal was only achieved in legal formulas in the peace treaties with Germany and Austria, which forbade the unification of the states. The norm of Article 80 of the Versailles Treaty states: “Germany acknowledges and will respect strictly the independence of Austria, within the frontiers which may be fixed in a Treaty between that State and the Principal Allied and Associated Powers; she agrees that this independence shall be inalienable, except with the consent of the Council of the League of Nations.”

¹⁵ According to Arts. 227-230 of the Hague Conventions (1899 and 1907) on violations of the customs of war, the initial Entente's list comprised 901 people against whom a charge was formulated (for more, see: Cyprian, Sawicki, 1948, pp. 6 and following). It is impossible to escape the idea that the impunity of First World War criminals made those guilty of Second World War crimes expect lenient treatment.

Analogical was the disposition of Article 88 of the St. Germain Treaty, acknowledging the inalienable character of Austrian independence and establishing the Council of the League of Nations (LN) as guard over its sovereignty¹⁶. The independence of Austria was not only guaranteed legally, but also was sustained by deliveries comprising economic assistance¹⁷. During the interwar period, the preoccupation to maintain the Austrian *status quo* (as an independent state) was an important factor in the actions of the states, both as part of *Realpolitik*, as well as in the forum and with the instrument of the institution of political idealism (League of Nations). Consequently, as a reaction to the conclusion of the customs union between Austria and Germany on the 19th of March 1931, the *Permanent Court of International Justice* (World Court) was addressed. According to an advisory opinion of the Court, the regime of economic cooperation resulting from the Austrian-German agreement from 1931 was declared impermissible, as it contradicted the international obligations of these countries as far as Austrian independence was concerned¹⁸.

¹⁶ “The independence of Austria is inalienable otherwise than with the consent of the Council of the League of Nations. Consequently, Austria undertakes in the absence of the consent of the said Council to abstain from any act which might directly or indirectly or by any means whatever compromise her independence, particularly, and until her admission to membership of the League of Nations, by participation in the affairs of another Power.” Treaty of Peace between the Allied and Associated Powers and Austria; Protocol, Declaration and Special Declaration (St. Germain-en-Laye, 10 September 1919) <http://www.fransamaltngvongeusau.com/documents/dl1/h1/1.1.16.pdf>.

¹⁷ By the Protocol of the 4th of October 1922 (Geneva), Great Britain, France, Italy, Czechoslovakia, and Austria declared the following: “... At the moment of undertaking to assist Austria in her work of economic and financial reconstruction, ... That they will respect the political independence, the territorial integrity and the sovereignty of Austria; That they will not seek to obtain any special or exclusive economic or financial advantage calculated directly or indirectly to compromise that independence; That they will abstain from any act which might be contrary to the spirit of the conventions which will be drawn up in common with a view to effecting the economic and financial reconstruction of Austria, or which might prejudicially affect the guarantees demanded by the Powers for the protection of the interests of the creditors and of the guarantor States; ... (Austria – author’s comment) Undertakes, ..., not to alienate its independence ; it will abstain from any negotiations or from any economic or financial engagement calculated directly or indirectly to compromise this independence. This undertaking shall not prevent Austria from maintaining, ..., her freedom in the matter of customs tariffs and commercial or financial agreements, and, in general, in all matters relating to her economic regime or her commercial relations, provided always that she shall not violate her economic independence by granting to any State a special regime or exclusive advantages calculated to threaten this independence.”

¹⁸ “Finally, if the regime projected by the Austro-German Protocol of Vienna in 1931 be considered as a whole from the economic standpoint adopted by the Geneva Protocol of 1922, it is difficult to maintain that this regime is not calculated to threaten the economic independence of Austria and that it is, consequently, in accord with the undertakings specifically given by Austria in that Protocol with regard to her economic independence. For these

The connection between *anschluss* and World War II seems indisputable. As a result, and despite the U.S. initially declaring the *de jure anschluss* of Austria (executed as a violation of the law¹⁹), on the 1st of November 1943, the Allies acknowledged the invalidity of the annexation of Austria²⁰. Austria itself recognized in court statements that the temporary loss of independence and sovereignty was the result of German occupation. The country was freed of that occupation, but its deliverance didn't imply a new state²¹, rather only the ending of the wartime occupation²².

It is then not surprising that the victorious Allies of World War II decided to prove that they "had not forgotten anything, but learnt everything". As a result, the decision was made to put on trial the war criminals and those charged with crimes against peace, with simultaneous continence (or indeed vagueness) about the size and character of the war reparations. The detailed legal and penal punishments in regard to the war criminals and general repression of potential warmongers was judged as inevitable, as was the need to enable the construction of a new state not impeded by high reparations.

After World War II, the new German state was supposed to be denazified, de-militarized, de-centralized, de-cartelized and democratized. Direct-

reasons, The Court, ... is of the opinion that: A regime established between Germany and Austria, on the basis and within the limits of the principles laid down by the Protocol of March 19th, 1931, would not be compatible with Protocol No. I signed at Geneva on October 4th, 1922." Permanent Court of International Justice. Series A. ib. Judgments, Orders and Advisory opinions Fascicule no. 41 22nd session September 5th, 1931. Customs regime between Germany and Austria (Protocol of March 19th, 1931).

¹⁹ "The Government of the United States recognizes that Austria has ceased to exist as an independent sovereign state and has been incorporated into the German Reich, and that Germany exercises *de jure* sovereignty over the territory of the former Republic of Austria." Letter from Secretary of State Cordell Hull to the Attorney General of the United States, May 27, 1939 (see: Baad, 1964, p. 504).

²⁰ "they regard the annexation imposed upon Austria by Germany on March 15th, 1938, as null and void", A Decade of American Foreign Policy. Basic Documents, 1941-1949. 1950, p. 11.

²¹ "In March 1938, the Republic of Austria lost its independence and sovereignty as the result of its occupation by the German Reich. On April 27, 1945, it was liberated from the National Socialist rule of force. That liberation did not create a new State. The Austrian Republic recovered its sovereign rights and was declared to be again an independent State. From March 13, 1938, to April 27, 1945, the sovereign prerogatives in the territory of the Austrian Republic were exercised by the Government of the German Reich. On April 27, 1945, the Austrian Republic did not take over power from the German Reich. It recovered, after the collapse of the National Socialist regime, that authority which it was prevented from exercising between March 13, 1938 and April 27, 1945"; Austrian Court on the case "Jordan v. Austrian Republic"; Ann. Dig. 1947.

²² This idea was regularly sustained, enforcing the conviction that *anschluss* was occupation; more: Cohn, 1962.

ly after the war, the former Reich did not acquire the status of an independent state. The defined territory, excluding border areas inhabited before the war by a multinational population, was divided into four occupation zones, or sectors: American, British, French and Soviet. Each sector was governed by an occupational commission that conducted policy according to the corresponding state. Their attempt to prevent any source of threat of German expansionism was reflected in the attitude towards the German economy. Reparations mainly took the form of dismantling of industrial objects (along with installed equipment), but also, for instance, taking possession of patents. Foreign estates of German citizens and its economic subjects were sequestered. In order to prevent military production, the manufacture of certain products was banned, while the fabrication of others was administratively controlled²³.

The Allies did not determine the date or conditions under which they would neither terminate the occupation nor divide Germany. Thus, the state, by definition temporary, was maintained for over 50 years from the unconditional capitulation of Germany until the incorporation of the German Democratic Republic (GDR, East Germany) into the Federal Republic of Germany (FRG, West Germany) under the “unification clause” of the FRG’s constitution. The difference between the way Germany and Austria were treated was important and quantifiable. A fundamental and undoubted element of the post-war order was the independence of Austria, fulfilled through a special status defined in a state treaty of the 15th of May 1955 on the reconstruction of an autonomous democratic Austria, while Germany plainly was divided.

The division of Germany (the existence of two German states, two states of one nation²⁴), contested by German society and without an axiological basis in the system of values of the United Nations (the right of nations to self-determination and to statehood), met with varied opinions amongst Germany’s neighbours. Two victorious wars were not enough to dissipate the European fear of German power or what it would make of it. Undoubtedly, the Polish, French, Italian, and Czech memory of Nazi German crimes

²³ In the Western zones, the dismantling of 1,740 objects was planned (Heininger, 1959, 102). The industrial production of Germany was supposed to be limited to 50-55% of the state from 1938 (equals 65% as of 1936). The fabrication of planes, boats, petrol, magnesium and radioactive materials was forbidden. Steel production was limited to 39% of the production of 1936 (see: Rudolph, 1982, pp. 61 and following, and Heininger, 1959). The U.S. and British authorities, however, waived these limitations by 1947, after combining the administrations of their occupied zones into the so-called Bizone. The increase in production was then allowed up to the level of 1936 (Heininger, 1959, 176).

²⁴ It is worth noting that since the 1980s, in the GDR a concept of an East German nation-state appeared, as the continuation of certain features of Prussian traditions.

was accompanied by a sense of satisfaction that a divided Germany was too weak to again threaten its recent victims. At the same time, there was an awareness that a temporary state could not last permanently, but in the circumstances of the Cold War, a unified Germany would obviously modify the antagonistic levers and would be unacceptable to any side of the conflict. Various proposals were then advanced. And so, within the Soviet unification option, successive leaders of the USSR tempted West Germany to grant consent to unification in exchange for Finlandisation of the combined country. If it had adopted this solution, the USSR would have become the guarantor of the frontiers of Germany's neighbours. The social-democratic, East German vision of unification also encompassed unification for the price of neutralisation (in the form of Finlandisation). In the Western vision of the future of Germany as well as the European and universal order, acknowledging the Potsdam frontiers was a *sine qua non* condition to accept Germany into the institutionalised European and Transatlantic structures, before acquiring a rank within them and aspiring to unification. Recognition of the frontiers by Germany was expected for two reasons: first, as a sign of German understanding of their responsibility for the war and Nazi crimes, and secondly, as a foundation of the new order without revanchism²⁵. The success in accomplishing these goals would be equivalent to victory in the long confrontation with the USSR. Eventually, the unification of Germany happened in a peaceful manner in a regime where one Germany respected the Potsdam frontiers of its neighbours (the Soviet guarantees for the territorial *status quo* turned out to be superfluous for these countries)²⁶.

The fall of the Berlin Wall and the end of the Cold War reopened the chapter of German unification. It could have been a "small" unification, understood as integration of East and West Germany, or a "large" unification of Germany and Austria. It was, however, evident that those processes could not be permanently prevented. The challenge was then to find the right formula to the unification and unity of Germany.

The impulse to the process of the unification of Germany came from the fall of the communist regime in Poland and its pro-Western aspirations, which the Soviet Union couldn't contain in 1989. The Eastern Bloc had no

²⁵ For a vast presentation of the West German position, see: Jacobsen (1979, pp. 44 and following). For the other West European approach, see: Wiskemann (1956).

²⁶ The idea of that necessity ("Soviet Union, guarantor of frontiers") was largely the basis for the legitimization of the communist regimes in Eastern and Central Europe. The external security argument justified and legitimized the lack of the legality of the authority and governors. Those are the revisionist instruments that Russian President Putin invokes in his claims of restitution of the Potsdam order and return to those frontiers, and the division of Germany.

capacity to maintain Brezhnev's doctrine. The USSR lost *de facto* its status of superpower as a result of its inefficiency, or rather, its economic collapse and loss of soft power brought on by the disgrace that their ideology fell into since the publication of "Khrushchev's secret speech" and by the series of military failures (even with the status of a nuclear superpower), of which the worst was its withdrawal from Afghanistan. This defeat was to the USSR what the loss in the war against Japan was to Russia – both denuded the weakness of the world power.

Poland's quitting the Eastern Bloc changed the status of the GDR, breaking the continuity of the Soviet sphere. On the territory of the GDR, a group of Soviet military quartered. GDR then became an exclave, impossible to maintain militarily, politically, and last but not the least, economically. Correspondingly, the status of Austria became unsustainable. It became unfeasible to leave Austria outside of the Western economic, political and social structures, even despite the animosity of the Austrian society and its political class to participate in the collective self-defence structure of the North Atlantic Treaty Organization (NATO). At the same time, the Austrian aspiration to institutionalised European integration was understandable. From the very beginning of the existence of the European communities, Austria, without being an official member, had participated in the decision-making process (as a peculiar surrogate of the decision-making process, reserved for members). Only external circumstances prevented Austria from fulfilling its aspiration of formal accession to membership and from acquiring the corresponding prerogatives. The accession of Austria to the EU meant a fundamental change in German-Austrian relations, namely, doing away with borders dividing the economic spheres of the two German-speaking countries.

In these circumstances, the USSR decided on a manoeuvre that one could describe in military terms as shortening the front: On the one hand, the recognition that a "small" USSR (without its satellite states) may recover the economic position of a superpower, and on the other, a conviction that a strong, unified Germany would attempt to leave the Western hemisphere to create its own centre in a multipolar world. The countries of the Western hemisphere, accepted the challenge. A policy of unity became the option, against a policy of revenge. The righteousness of this choice proved itself both in the actions taken by Germany and Austria after the fall of the Berlin Wall and in the reaction among countries of the transatlantic sphere to the breakup of the Socialist Federation of the Yugoslavian Republic²⁷.

²⁷ Evidently, Western passivity in the face of the uncontrolled disintegration was as harmful as its hyperactivity in the FRG, as was its foreign minister, Genscher, who prematurely acknowledged "Croatia". See: S. L. Burg, *The War in Bosnia-Herzegovina: Ethnic*

The war in Yugoslavia demonstrated the negative effects of passivity (in particular, the paradigm: if one does not want to die for Gdansk, one has to die for Normandy). The *modus operandi* applied in the 1940s during the unification of the Western occupation zones and the formation of West Germany was repeated. Thus, the unification of Germany went on, the barriers on the Austrian borders were eliminated and the new territorial structures were included in an enlarged and deepened European Union, specifically, in its institutions. The process required both attention and prudent action. The social sensibility of the participants and outside countries must have been taken into account and the conditions must have been met in the real (external) surrounding.

It would be difficult to analyse each of these conditions within one study, but we are able to highlight the importance of certain factors. The major fear of Germany's neighbours was related to the effects of the unification of Germany and its position as an economic superpower that would ruin (even the appearance of) the balance of economic forces in Europe. Another concern involved the doubt that a German economic superpower sooner or later would intend to gain corresponding political rank. Only deeper European integration could prevent this unwelcome scenario by including a national German economic superpower into the united Europe. Europe would be a beneficiary of German unification by associating it with European integration. The indispensable instrument to achieve that goal was an economic and monetary union with a common currency. Extending the German mark was not, however, the plan of action. It was Germany that had to quit the currency that used to be the foundation of the German national and state identity²⁸.

There are various outlooks on the decision to create the Eurozone. One of them is to view it as a political decision complying with economical rationality as the Eurozone means a reduction, at least, of the costs of transactions between economic entities. Another, more extreme, perspective would be to consider the Eurozone the ultimate formula protecting Europe from pushing the lack of balance in favour of Germany. For Europe but also for a Germany founded on its attachment to the *Deutsche Mark*, Germany's presence in the Eurozone signifies the Europeanisation of Germa-

Conflict and International Intervention (New York 2000, pp. 79-104, Nagengast, 2000, p. 151 and following).

²⁸ The reconstruction of German statehood after World War II required a new founding myth as it was difficult to find a neutral past for a state that had originated in the Prussian-French War, a past neutral from the point of view of the victims of the Kaiser's militarism and the Nazis' crimes. Post-war Germany was then built on its economy and society united around and was proud of its national currency, but rather selective in its collective memory of the past.

ny. According to yet another view, the Eurozone would be a political instrument to influence economic processes. Even though during the recent economic crisis Greece has been deprived of the right of self-determination that would have allowed it to devalue its currency, thanks to an exchange rate of one to one of “Greek” euros to “German” euros, permanent transfers have been made to sustain the Greek economy. It appears that every view on the Eurozone is correct, as there was not a uniquely decisive factor in the creation of the common currency. Europe could enter into a transaction on the unification of Germany and incorporation of Austria to the integrated group to buy Europe the status of a power. Germany could buy unity for the price of a modification of their national statehood. Both sides turned out to be not only capable of entering into that transaction but also of earnestly fulfilling their obligations for 25 years. Enlargement of the EU to the east and south, relegation of the USSR/Russia from the old Union-community, not only changed the economic *status quo* but also the conditions of security in Europe.

Poland perceived (a democratic) Germany as an ally and promoter on its way to European and Transatlantic integration. On the other hand, the unification of Germany raised some concerns about plausible German demands to review its frontiers. In this context, Poland rightfully – as further events confirmed—not only restrained from expressing reservations as to German unification, but, on the contrary, acknowledged the right to unity as a nation’s inherent right. Simultaneously, Poland strived to be an active participant in the creation of a legal foundation to the European order after the unification and confirmation of the borders by the legal treaty. These tactics and strategic goals of Polish policy were successfully achieved. Adopting the formula “4+2” by the Unification Conference had a double effect. First, it confirmed the subjectiveness of Poland; the negotiations didn’t take place outside or beyond Poland (Barcz, 1994). Secondly, it demonstrated clearly and had as a long-term consequence that a democratic and sovereign Poland is not a counter-system state; not only does it not threaten the international order, but it can fortify it with its legitimate aspirations to participate in the (Western) community of security.

Conclusions

The unification of Germany was the result of a synergy of multiple internal and external factors that decided the intention and opportunity of unification. The fact that unification was accomplished in a legal formula and by the law, constitutes a particular and sustained experience. It certainly would

not have been possible without the leadership of the United States (see: U.S. leadership – Zelikow & Rice, 1995). The U.S. and the member states of the European Community managed to carry out the unification process, not against the will and amid the fears of Germany's neighbours, but with their collaboration. The unification was accompanied by stronger assimilation (compared to the earlier state) of Germany to the frameworks of an integrating Europe.

We can recognize that the development of the period from before the economic crisis in 2008, was also a derivative of the peace dividend. The transaction of German unification in exchange for intensification of European integration, turned out to be a positive-sum game for all of its players.

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