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GLOBALISATION AS THE CAUSE OF CREATION AND DISSOLUTION OF THE EUROPEAN UNION

Abstract: In the article the term globalisation is presented as the inevitable historical pattern stripped of any interpretation that would consign to it either positive or negative values. In the frame of that definition, the authors give their view of the purpose, original context and the perspective of the further development and eventual disparition of the European Union. The authors suggest that the EU was given birth in the historical moment when the scientific, technical and technological development of society reached a certain level which could maintain its functioning. EU is not, therefore, an entity essentially based on the political arrangement, but rather a historical pattern of society. Its idea had already been exposed before, but in those circumstances, the level of scientific, technical and technological development was not sufficient to uphold it. Again, thanks to the continued development of this material basis, the EU will in future become an obsolete category of itself, since its political structure and market will become inadequate to the new and wider range of social relations in this field. Eventually, the EU will probably submerge into even more universal organisations of kind, which would be able to follow this development more closely. EU Law, partially constitutionalised, remains a permanent particular regime of supranational law which leads to ever larger fragmentation of international law, which in turn, demands the need for the constitutionalisation of the universal international legal order as a whole.

Key words: globalisation, EU, fragmentation, constitutionalisation, international law.

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Globalisation and law – deconstitutionalisation of the national law and constitutionalisation and fragmentation of international law

The process of the upgrade of social functions on the international, and even more to the global level, leads to the change in positions, role and mutual relation between national legal systems, primarily constitutional ones, and international law. Antonio Segura-Serrano writes on this topic in his article "The Transformation of International Law", and states that this process on the legal level became especially intensive after the Cold War, through the upward transfer of jurisdictions:

"It is said that the globalization phenomenon carries, together with the decay or modification of the nation-state role, an evolution of the international system. This evolution would mean that the cooperation proposed as an alternative to mere peaceful co-existence, has achieved such levels and is developed under such parameters that the traditional international structure has been overcome, and the international community has been reinforced as the end-result.

After the fall of the Berlin wall, there has been an apparent transformation in the exercise of the state constitutional competences, which are now exercised to a large extent within a higher or external level. Indeed, competences such as those related to security policy, the protection of human rights, equality and solidarity policies, among others, are managed at the international or global level, through the decisions of international organizations or the conclusion of international treaties."[3]

Bearing in mind this situation, he poses a question: "If States are no longer in a position to exercise their state constitutional functions as was the case before, the question is whether that de-constitutionalization might be balanced through a process of constitutionalization of international law."[4] Stating that "some authors have recently crafted a conceptual apparatus supporting a constitutional international order" by "starting from the process of legal and *de facto* denationalization provoked by globalization, which has led to the 'internationalization' of constitutional law and the 'constitutionalization' of international law",[5] he shows several conceptual approaches to the constitutionalisation of the international law, and states that for the present moment, as the era of globalisation, it is characteristically the development of two parallel processes in the legal field: "State function in international law has been disaggregated. Besides, as a consequence of the same process, international law has been 'decentralized' or disaggregated too, in the sense that several international

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[3] Antonio Segura-Serrano, "The Transformation of International Law", *Jean Monnet Working Paper* 12/09, pp. 4–5.

[4] Ibid, p. 6.

[5] Ibid.

legal regimes of a specialized character have been created".[6] Although some authors try to embed the idea of the constituonalisation of the international law, as the process that develops related to the deconstituonalisation on national levels, in the real state of affairs through the elaboration of the conception of gradual constitutionalisation, which should realise in the form of multi-level hierarchical construction with divided sovereignty between different levels of management, Segura-Serrano states that the existing fragmentation of the international law enables only the partial, fragmented constitutionalisation: "Even though there is some appeal in the idea of unification derived from the constitution as a response to polarization, it is highly difficult taking into account the current conditions in the international society that there will be a re-constitutionalization in international law. Together with globalization, as a process of vertical disempowerment, fragmentation, as the result of the existent different regimes or horizontal decentralization, cannot lead but to a partial constitutionalization, a constitutionalization limited to each of those regimes."[7]

It seems exactly that the major degree of the constituonalisation of the international law is realised on the regional, rather than the universal level. That is a logical consequence of the fact that the major part of social functions, by overcoming national frameworks, that is by effectuating on the transnational level, reached the regional one, while still are minor functions which reached the universal, that is the global level, although their number is growing constantly. Besides, the same functions that with a certain degree of intensity effectuate on the global level, effectuate much more intensively on the regional. Legal order of the EU is an example of such legal order which is enough integrated so the tendency of its constitutionalisation is ever more discussed,[8] but again enough particular so it can be talked about its autonomy to the general international law, that is to take it as an example and indicator of the fragmentation of the international law. The jurisprudence of the European Court of Justice has tended over time to acknowledge and affirm both cited features of the community's legal order. Although the constitutionalisation of the community's law and its autonomy from general international law two separate notions and tendencies, their simultaneous existence and development leads some authors to note their mutual conditioning, which, it seems to us, is not quite true. Thus Diane le Cottier, analysing the jurisprudence of the ECJ, writes: "Although the Community does not have a constitution in formal sense (as a written document ratified by the member states), the Court still recognizes

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[6] Antonio Segura-Serrano, op. cit., p. 6.

[7] Ibid, p. 8.

[8] On the constituonalisation of the EU law see: Branko M. Rakić, „Fragmentacija međunarodnog prava i evropsko pravo – na Zapadu nešto novo", "Fragmentation of the international law and European law – something new in the West", *Anali Pravnog fakulteta u Beogradu*, n. 1/2009, pp. 122–147.

the existence of the constitutional structure which binds member states. In the basis of this structure lies the principle of autonomy of the Community legal order, separated from the international law".[9] Surely one legal order can be autonomous only if it is constructed and rounded enough (no matter if we call this rounded construction constitutionalisation or not) but it is not necessary that one legal order is autonomous (if under the autonomy we purport to its disincorporation in the wider legal order and the lack of hierarchical subordination of its norms to the higher norms from the same order) in order to be constitutionalised. The best example of this is the fact that national laws today are hierarchically subordinated to the international law, including there (and in the first place) general international law, that ever more national constitutions (which are the essence of the constitutionalisation of these national laws) explicitly foresee this.[10] That subordination of the national laws to the international testifies to the notion of the deconstitutionalisation of national laws, but this notion as such, if it stays on the moderate measure of the translation of sovereignty from the national to the international level, should not be equated with deconstitutionalisation. It is all but a question of measure.

As for the fragmentation of the international law, it follows as an appearance the formation of the international organisations, which generate their own legal systems.[11] On this notion wrote Louis le Fur, still in the period between two world wars, when the number of the international organisations was much lower, expressing his understanding, but at the same time noting the need for the existence of single legal principles which would make general international law, hierarchically supreme to the specific legal rules from the fragmented sub-systems.[12] In the meantime, with the spread of international organisations and legal systems which form in their frameworks, also with the development of general international law, the question of the unity of international law, that is the question of the relation between the general international law and separate, fragmented international legal systems, has become quite acute, and the subject of discussions and analyses in the most eminent legal circles. Therefore, the presidents of the International Court of Justice have stressed in several of their yearly speeches to the General Assembly of

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[9] Diane le Cottier, "L'exception communautaire en matière de protection des droits fondamentaux: quelle hiérarchie entre le droit international et le droit communautaire? Commentaire de l'arrêt Kadi", *http://m2bde.u-paris10.fr/content/l%E2%80%99exception-communautaire-en-mati%C3%A8re-de-protection-des-droits-fondamentaux-quelle-hi%C3%A9rarchie,* 1.4.2014.

[10] Such as in articles 16(2) and 167(1(1)) of the Constitution of the Republic of Serbia of 2006.

[11] On the fragmentation of the international law see also Branko M. Rakić, „Fragmentacija međunarodnog prava i evropsko pravo – na Zapadu nešto novo", "Fragmentation of the international law and European law – something new in the West", op. cit., pp. 122–147.

[12] Lois le Fur, *Međunarodno javno pravo*, *Public international Law,* Beograd, Izdavačka knjižarnica Gece Kona, 1934, pp. 362–365.

the UN one segment of this fragmentation, the proliferation of the international adjudicatory bodies and the ensuing problems.[13] And the Commission for the International Law of the UN has formed a study group led by the Finnish expert Martti Koskenniemi, which made a Report of the Study Group, titled "Fragmentation du droit international: difficultés découlant de la diversification et de l'expansion du droit international",[14] which is followed by an appendix that contains the Draft of the conclusions of the work of the Study group.[15] Both documents were adopted by the Commission in 2006, and passed to the General Assembly. However, pure fact that the appearance of the fragmentation of the international law is so old that it was written about more than a half a century ago, bearing in mind that the contemporary international law is a relatively new branch of law, points that it is not only the division of the already formed unified international legal system to segments, that is subsystems, but that international law, which is even today, despite its great diversification, still not nearly enough a solid and finished construction, at its conception, in large measure developed as a batch of separate regimes, with the limited number of common principles (general international law) which tie, although not solidly and clearly enough, these subsystems in the unified entity. Therefore, it is not a matter of the decay of the single legal order in several entities, but of more or less simultaneous conception and development of general international law and specific subsystems which are created (primarily but not exclusively) by international organisations, so that the expression "fragmentation" is not the most adequate, since it leads to the wrong conclusion of the decay of once unique entity. International law appeared actually by following the development of the social functions which were becoming trans-frontier and therefore demanded the creation of trans-frontier, that is international institutions which would manage them, as well as trans-frontier, that is international legal regulation. As some functions reached the world level, specialised organisations of universal character appeared which managed these functions and separate batches of legal rules (created mainly in the frameworks of those organisations) which regulated these functions. Some of the trans-frontier functions reached the regional level, so for them were created regional international organisations and regional

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[13] That was done by presidents Stephen Myron Schwebel in 1999 and Gilbert Guillaume in 2000 and 2001, respectively.

[14] Commission du droit international, *Fragmentation du droit international: difficultés découlant de la diversification et de l'expansion du droit international*, Rapport du Groupe d'étude de la Commission du droit international, Établi sous sa forme définitive par Martti Koskenniemi, A/CN.4/L.682, du 13 avril 2006.

[15] Commission du droit international, *Fragmentation du droit international: difficultés découlant de la diversification et de l'expansion du droit international*, Projet de conclusions des travaux du Groupe d'étude de la Commission du droit international, Établi sous sa forme définitive par Martti Koskenniemi, A/CN.4/L.682/Add.1, du 2 mai 2006.

legal subsystems in the framework of the international law. And sometimes the functions from the same sector reached in some measure the world, and in some measure wider regional level, which led to the parallelism, in the regional and universal level, as in the field of international organising, so in the field of the construction of the international law. Thus, the development of the international law had in view of its contents and spatial reach mostly the similar and related dynamics with the development of the international organising. And even that dynamics is finally conditioned by the dynamics of the scientific, technological and technical progress. That is why in the future, with further spread of spatial and material trans-frontier functions and their higher rise to the global level, that is with the acceleration of the process of globalisation, one should expect ever larger integration of the international law and its transformation into a solid and stabile order. The general international law will grow stronger compared to the particular ones and will spread on their account, and the international law in general (both in the regional and the universal and both in the materially specialised and materially general level) will grow stronger compared to the national laws and will spread on their account. And that process, which we can observe even now, but which will intensify nonetheless, will perhaps be called the constitutionalisation of the international law. Actual discussions about the fragmentation of the international law and the attempts for it to be overcome for the benefit of general international law are not the consequence of the fact that the international law is now more fragmented than before (relatively observed, of course, since on all levels it is today much copious than in previous decades, not to mention centuries), but of the ever more present tendency to get it ever more integrated and solidified on the universal level.

The need for the idea of the constitutionalisation of the international law and the discussion about it at this particular moment, Segura-Serrano explains in the following way:

"And there is the question of why the debate about the constitutionalization of international law has emerged exactly now.181 To a large extent, the current situation of international relations and international law, where globalization is pushing back the ability of the State to accomplish its functions, and when the recent and rampant unilateralism from the US has fatally undermine international cooperation, may explain this wanted trend towards constitutio-nalization. 182 In fact, in the seemingly desperate effort displayed by the European discourse in order to find out (or to put in motion) a constitutionalization process within the international law domain there may be a more straightforward explanation: effectiveness. In other words, behind this attempt there may very well be just an anxiety to construe an international law with 'real teeth'."[16]

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[16] Antonio Segura-Serrano, "The Transformation of International Law", op. cit., p. 36.

"Natura daedala rerum" – bracing of the influence of cultural and economic factors

History has shown, in the process of the creation of the nation-states, that the economy, whose development and the spread of territorial reach were a consequence of the scientific, technical and technological process, was a key cohesive factor which created essential relations, mutual interests and solidarity between the citizens of the rising states, and that the linguistic, religious and other cultural-civilisational differences were an obstacle to the establishment of the unity which was to be removed, or at least mitigated, through various mechanisms, including coercion. Exactly at the time when Henri Grégoire reported to the National Convention his work,[17] in Königsberg Immanuel Kant wrote his work titled "Zumewigen Frieden. Einphilosophicher Entwurf",[18] which was published in 1795.[19] ("Report" was passed to the National Convention in 1794), and in which a proposition was given which in the literature was described as a "… plan … based on the … idea (of) a great confederation of European states (which) became a classic of international government".[20] In that time, Kant's nation, Germans, still had not formed its national state, which will be done almost eighty years after, similar situation was with some other European nations, such as Italian, and the already formed nation-states, such as France, worked on the internal linguistic and generally cultural and civilisational homogenisation. But Kant did already, considering means to secure permanent peace among nations, among which the state of war was in his opinion natural state, suggest the connection and unification of states and nation in wider whole. From the three possible models of connection which he considered (*civitas gentium, foedus pacificum* and *pactum pacis*), Kant deems the best that which would purport the states to „give up, as individuals did, its wild (anarchic) freedom, to adapt to the public coercion of the law and therefore form the ever freely growing state of the nations (*civitas gentium*), which would finally spread to all the nations in the world", however

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[17] Henri Grégoire, "Rapport sur la nécessité et les moyens d'anéantir les patois et d'universaliser l'usage de la langue française", Convention nationale, 1794, *http://fr.wikisource.org/wiki/Rapport _Grégoire,* 10.1.2013, pp. 3–4.

[18] This Kant's work was published under the title „Večni mir, Filozofski nacrt", in the book: Imanuel Kant, *Um i sloboda, Spisi iz filozofije istorije, prava i države (Mind and Freedom, writings from the philosophy of history, law and state)*, Beograd, izdanje časopisa *Ideje* – Velika edicija ideja, Beograd, 1974, pp. 135–169. It was later published again as: Imanuel Kant, *Večni mir, Filozofski nacrt*, Beograd, Gutenbergova galaksija, 1995.

[19] On this Kant's project see more detailed in: Branko M. Rakić, *La présence, les intéractions et l'évolution des éléments politiques, économiques et juridiques dans les idées d'intégration européenne jusqu'à la création des Communautés européenne* - à la lumière des approches modernes à la réalisation de la paix et du processus moderne d'intégration européenne -, Villeneuve d'Ascq, Presses Universitaires de Septentrion, 2003.

[20] Sylvester John Hemleben, *Plans for World Peace through Six Centuries*, Chicago, The University of Chicago Press, 1943, p. 88.

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in his opinion, state do not want that model, and "with the lack of any positive idea on the world republic, we are left only (if we do not want to lose everything) negative substitute (surrogate) in the view of the permanent alliance, which would constantly spread, which could protect from war and restrain the flood of unfriendly emotions towards law". This solution is in Kant's words some kind of "peace alliance (*foedus pacificum*) ... which would differ from the peace agreement (*pactum pacis*) in that it would have for aim to finally stop all wars, while the latter stops only one." And the difference between the suitable but impossible state of the nations (*civitas gentium*) and the possible and realisable peace alliance (*foedus pacificum*) is that in the first case the common state of the nations would create its own law such as internal law and the nations that would form it would be subordinated to the legislator, while in the second states would keep their freedom, and their relations would be regulated by the international law, which Kant call "cosmopolitan law", or "the law of the world's citizens" (*Weltbürgerrecht*). The establishment of the "cosmopolitan law", is by Kant, conditioned and enabled by the degree of connection among various nations, and its historical reality and necessity he explains in the following way: "Since the relations (more or less close) among the nations in the world have spread so much that the breach of law in the one place can be felt everywhere, the idea of cosmopolitan law cannot be any longer deemed fantastical or eccentric legal conception". That "cosmopolitan law", by Kant "has to be limited to the conditions of the universal hospitality", and that "hospitality is the law which belongs to every stranger, so not to be treated as the enemy in the country in which he arrives", under the condition that that country "does not endanger its existence in any way by this" and that that person, behaves in peaceful way." Such description of the cosmopolitan law which Kant promoted, led one writer to conclude that such law should "constitue l' amorce de la reconaissance internationale des droits de l' homme".[21] Pleading for voluntary and gradual establishment of the federal liaison among countries,[22] but deeming as unacceptable the creation of the "universal monarchy" in the way that some of the states would become more powerful than all others and subject them through merging, Kant notes that the nature, which he earlier calls "great artist nature", that is "nature, the creator of all things" (*naturadaedalarerum*), would establish ways and mechanisms to prevent the enslavement of mankind, "through cunning or force", by some states and therefore the disappearance of nations (which will stay

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[21] Marcel Merle, *Pacifisme et internationalisme, XVIIe - XXe siècles*, Paris, Armand Colin, 1966, p. 137.

[22] Kant says: „The possibility of the realisation (the matter at hand is objective reality) of the federational idea, which should gradually spread to all countries, and therefore lead them to perpetual peace, can be imagined. Since if it would happen, somehow, that one powerful and enlightened nation organises itself into a republic (which naturally inclines toward perpetual peace), there would exist a center of federative alliance to whom other states could join, so to secure their freedom, in accordance with the idea of the international law, and to, step by step, spread that alliance on the other associations of kind".

permanently separated and independent entities), but also to overcome the conflicts which naturally exist among these independent coexisting nations and to secure mutual connection and permanent peace. Kant describes the former of these two cunnings of nature, which prevents the enslavement and elimination of nations: "There are two ways in which it prevents the mixing of nations to separate them one from another. These are various languages and religions. In that diversity is hidden, however, the affinity for mutual hatred and excuse for war, but it nevertheless leads, through the development of culture and gradual approximation of the people, to greater consent in principles and agreement in peace, which would not be realised and secured as the despotism, on the graveyard of freedom, by weakening of all forces, but by their balance in the liveliest game." On the other hand, nature cared to find the mean of connection among nations which should lead to the securement of perpetual peace among them: „The same as it wisely separates nations, which every state, even calling upon international law, would like to unify by cunning or force, nature also, on the other hand, unifies nations, which would not be protected from violence and war by the notion of the rights of the citizens of world, using their mutual self-interest there at. That is the commercial spirit which cannot exist parallel with war, and which sooner or later, gets to rule over every nation. And since from all the means available to a state, money is certainly the most reliable force, it is (and not, of course the moral reason) it that pushes all states to help the noble peace and to mediate for the prevention of war everywhere in the world, where the danger of it breaking out would exist, exactly as they were in permanent anti-war."

Thus, Immanuel Kant, who at the time of the creation and homogenisation of the nation-states, that is decades before the creation of the first international organisations and century and a half before the start of the European integration process, insisted on the federal connection of the nations with the aim of the realisation of perpetual peace, and he foresaw that the process, in which the nations should coexist and voluntary tie into a permanent peaceful alliance, develop through the simultaneous dividing effect of language and religion, that is culture, and the connecting effect of economy. Those are exactly the factors which in the similar way worked in favour of the creation of the nation-states, whereas economy proved to be more efficient. However, it should be noted that cultural (primarily linguistic and religious) differences which existed with some groups of citizens which joined particular nation-states were lesser than the differences in the same fields in on wider levels, regional, or even world ones. However, it seems that functions which are established on the transnational level in various spheres of human activity, manage to deal, in large measure, with this limiting factor. Specific and specialised jargons which are used with the trans frontier exertion of these functions, mostly based on the terminology built in English language, which has a tendency of becoming *lingua franca* on the global level, are an example of dealing with such limits: probably the most characteristic and widely known example is the terminology used in computer

technology and communication, but universal jargons exist in other domains, as air-transport, sports, fashion, popular music and similar. In some fields, as medicine, for some time there is a practice of communication, mostly in written form, on Latin, since the vocational terminology in various countries was built upon this language, and in addition there is a practice of building vocational terminology and communication in English.

Science, technique, and technology, and by them conditioned ever larger possibilities of communication and ever wider reach of mostly economical, but also other social processes, are obviously able to overcome even the most subtle and persistent obstacles, such as linguistic and other cultural barriers. Of course, that does not mean that the development of these factors and ever larger trans frontier nature of the social functions, which stem to the global level, should lead to the diminution of the cultural and civilizational diversification, that is to the cultural impoverishment of the mankind and the suppression of the cultural identity of various national or other groups. That impoverishment of mankind can be prevented by organised action, as in national, so on the international level, regional or world. What is more, ever larger and wider possibilities of trans-frontier communication open ever larger and wider possibilities of presentation and evaluation, on the wide international plane, of cultural heritage and values from various parts of the world, as of the useful and enriching civilisational and cultural suffusion among nations.

European Union in the process of globalisation

What is the position and the future of the European integration process and foremost European Union in the process of globalisation?

When we observe the development of the idea of peaceful integration of the European nations, which appears in the works of certain good nature, enlightened and foresighted thinkers since the start of XIV century (usually as the first project of this kind is cited the "*De Recuperatione Terrae Sanctae*" of French jurist and advisor to Filip IV the Beautiful, Pierre Dubois, from 1306),[23] we can see that, although the

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[23] After Dubois, projects of European integration (which are at the same time the precursors of international organising, since Europe for centuries was the only relevant political space, that defined the political fate of the most part of other known parts of the world) were made by other enlightened thinkers: in XV century Bohemian king Jiri z Poděbrad, in XVII century French priest and mathematics professor Emeric Crucé, then the former „ministre principal" of Anry the IV, duke Maximilien de Sully and English Quaker William Penn, founding father of the Pennsylvania state, in XVIII century the most important projects of this kind were formed by l'Abbé de Saint-Pierre, then one of the founders of the utilitarism Jeremy Bentham, as well as Immanuel Kant, in XIX century, socialist oriented thinkers as Comte Henri de Saint-Simon-Sandricourt and Pierre-Joseph Proudhon, and between I and II world war Austrian count Richard Coudenhove-Kalergi,

preservation of peace was the key preoccupation in virtually all projects until the Schuman Declaration of 9th May 1950, the document which initiated the European integration process which has reached today the level of 28 members of the EU, it is still characteristic that since somewhere at the beginning of XIX century it comes to the change in order of priorities that are given to different domains of human activity in which the integration process should start to realise. Until that period, the proposition was that the connection, organisation and integration of the European nations should start primarily on the political level, and that the political connection will lead the connection in economy and other non-political domains. That connection would be an expression of will of the ruler, similar to the creation of antique and feudal empires, but in this case motivated by a wish to secure peace among European nations (and often also to secure other aims, as the successful fight against infidels, liberation from the Papal or Holy Roman Emperor's tutorship and similar), and not as a result of by scientific, technical and technological progress established objective circumstances which would create the basis and the need for connection of social functions and their realisation on wider, European space. It is not a coincidence that with the idea of connection and integration of European nations, which as we have mentioned, in great measure coincides with the idea of general international organising, since the beginning of XIX century comes the prioritising of economical and other non-political domains. It is the same time in which the first international organisations appear, and they, as we have seen, appear in non-political domains. Scientific, technical and technological progress has established functions, non-political of nature, which reach overcame the frameworks of then existing nation-states (whose creation was not finished) and for whose realisation the organising on the international level was needed. Practice has answered to that need with the creation of the international organisations where it

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founder of the Paneuropean movement, then the famous Danish doctor Christian Frederick Heerfordt and French politicians Edouard Herriot and Aristide Briand. Also an array of famous artists declared themselves for European integration, even if not presenting concrete projects, but only advocating the idea of European unity. These are Dante Alighieri, Johann Christoph Friedrich von Schiller, Johann Wolfgang von Gœthe, Friedrich von Hardenberg-Novalis, Heinrich Heine, Victor Hugo, Paul Valéry and others. About these projects more detailed information can be found in Sylvester John Hemleben, *Plans for World Peace through Six Centuries*, Chicago, The University of Chicago Press, 1943; Denis de Rougemont, *28 siecles d'Europe*, Paris, Christian de Bartillat, 1990;Bernard Voyenne, *Histoire de l'idée européenne*, Petite Bibliothéque Payot, Paris, 1964; Jean-Pierre Faye, *L' Europe une, Les philosophes et l' Europe,* Paris, Gallimard, 1992; Gérard Soulier, *L'Europe, Histoire, civilisation, institutions*, Paris, Armand Colin, 1994; Charles Zorgbibe, *Histoire de la construction européenne*, Paris 1997, *Presses Universitaires de France*; Elisabeth du Réau, *L'idée d'Europe au XXe siècle*, Bruxelles 1996, *Editions Complexes*; Branko M. Rakić, *La présence, les intéractions et l'évolution des éléments politiques, économiques et juridiques dans les idées d'intégration européenne jusqu'à la création des Communautés européenne – à la lumière des approches modernes à la réalisation de la paix et du processus moderne d'intégration européenne -*, Villeneuve d'Ascq, Presses Universitaires de Septentrion, 2003, as in many other works as well.

was necessary, and human thought went a step further on the ideal level and discussed and proposed the connection which would start from these non-political domains of traditional character and range, but which would in its final outcome reach the solid and all-encompassing form of some sort of European federation. Therefore, key variable and determining factor in the development of mankind, the scientific, technical and technological progress, defined the nature and contents of the European integration idea.

In Shuman Declaration in the following sentence is contained the formula for implementation, as the time showed, of the successful integration process, which should have, with the final aim of the realisation of peace in Europe, led to the creation of the European federation: "L'Europe ne se fera pas d'un coup, ni dans une construction d'ensemble: elle se fera par des réalisations concrètes créant d'abord une solidarité de fait."[24] In the Declaration it was proposed that one of the first "concrete realisations", should be the integration of black metallurgies (production of coal and steel) of France and Germany, and other states that would join them („all the states willing to participate") which would establish "L'établissement de cette unité … jettera les fondements réels de leur unification économique."[25].In the further text of the Declaration, a following statement can be found: "Ainsi sera réalisée simplement et rapidement la fusion d'intérêts indispensable à l'établissement d'une communauté économique qui introduit le ferment d'une communauté plus large et plus profonde entre des pays longtemps opposés par des divisions sanglantes."[26] So was concisely expressed the functionalist approach to the integration, based on the ideas of French economist Jean Monnet, who influenced the minister of foreign affairs of France Schuman. Monnet's functionalise, with federalist finality (final aim the creation of European integration) is an elaboration of an older functionalist concept.

And functionalist theoretical concept, whose founder is British author David Mitrany, who gave his views on the subject in the book "A working peace system: An argument for the functional development of international organization" from 1943,[27] is exactly based on the division of human activities on political and non-political.[28]

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[24] Text available at http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_fr.htm, 14.1.2014.

[25] Ibid.

[26] Ibid.

[27] David Mitrany, *A working peace system: An argument for the functional development of international organization*, London, Oxford University Press, 1943.

[28] On functionalist and non-functionalist theoretical concept see further in: *Ostvarivanje mira preko međunarodnog organizovanja i integrisanja država* – (priručnik, Beograd, Pravni fakultet u Beogradu, 2009, p. 7.

And while some authors, such as Hans Kelsen, which wrote at the same time as Mitrani, thought that the politics defines economy and other non-political domains, functionalists had the opposite attitude: by them, non-political sphere, primarily its technological segment, but by it conditioned economic, social and other non-political domains, determine political functions, that is the whole of human activity and human society. That functionalist attitude is stated in one work as following: "L' histoire du monde est dominée par l' évolution des techniques. La poussée de la technique a pour conséquence de tisser entre les peuples des liens de plus en plus nombreux, de plus en plus complexes. Elle débouche sur la planétarisation et la solidarité de fait des hommes et des pays."[29] Thus, not only the technical development was the determining factor of human history, but it, in the opinion of these authors, still at the time when they published the cited text, back in 1968, created solidarity on the planetary, that is global level.

By functionalists, as cites Charles Pentland, political activities (diplomacy, defence, internal security, internal struggle for power etc.) are *inherently controversial*, meaning that they bring with them a seed of conflict, while non-political activities (economy, health care, culture, science, education etc.) are *noncontroversial or technical*, that is far more suitable for cooperation and positive interactions.[30] Due to such nature of these two spheres of human activity, by the same author: "... there is a continuous tension between technological progress and political structure, the former representing man at his rational, adaptable and fraternal best, the latter showing him at his particularistic, conservative and obscurantist worst."[31]

By functionalists, one of the key characteristics of the technological, economic, social and other domains from the non-political sphere is the transbordeness, as of need so of ways of their fulfilment, and during historical development that characteristic became ever more expressed. Mitrany says: "The functional approach emphasises the common index of need. There are many such needs that cut across national boundaries, and an effective beginning could be made by providing joint government of them."[32] And that establishment of the common management means the foundation of matching international organisations, specialised for management in certain fields and themes from non-political sphere, which crosses the gap that appeared between the non-political domains themselves, and primarily technology and by its development determined economy, which are dynamic and changeable, and static and non-flexible structures of power, that are emanated

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[29] Louis Armand, Michel Drancourt, *Le Pari Européen*, Paris, Fayard, 1968, p. 161.

[30] Charles Pentland, *International Theory and European Integration*, New York, The Free Press, A Division of Macmillan Publishing Co., Inc., 1973, p. 74.

[31] Ibid, p. 66.

[32] David Mitrany, *"The functional approach to World organisation"*, in Cosgrove, C.A. and Twitchett, K.J. (eds.), *The new international actors: the UN and the EEC*, Macmillan, London, p. 72.

primarily in the nation-state. Charles Pentland says the following about this attitude: "All these writers stress the dangerous gap between man's technical capacities and his social structures, between the universalism of the former and the particularism of the latter."[33] While Armand and Drancourt note: "Les effets inéluctablesde la technique sont généraux, mondiaux; les structures de gouvernement et d' organisation de la sociétédemeurent incertaines, limitées, nationales."[34]

In Mitrany's words, functionalism is based on "binding together those interests which are common, where they are common, and to the extent to which they are common",[35] and in that way it comes to gradual overcome of national sovereignties: "Sovereignty cannot in fact be transferred effectively through a formula, only through a function. By entrusting an authority with a certain task, carrying with it command over the requisite powers and means, a slice of sovereignty is transferred from the old authority to the new; and the accumulation of such partial transfers in time brings about a translation of the true seat of authority."[36] Mitrany underlines that only through such gradation can the political divisions be overcome, noting that functionalism is such approach, that is such method, "which would ... overlay political divisions with a spreading web of international activities and agencies, in which and through which the interests and life of all the nations would be gradually integrated".[37]

From the point of view of functionalists, this gradual overcome of nation-states is necessary since the role and place of modern nation-states in the modern world is out-dated. Mitrany says that they are "too weak to secure us equality and too strong to allow us liberty",[38] while Charles Pentland in following terms describes the relationship between functionalists and nation-states: "As a structural fossil from an era of limited economic and social problems and rudimentary technology, the nation-state is seen by these theorists as the chief barrier to rational organization for human welfare. ... Nations remain the focus of men's irrational, dysfunctional and often destructive emotions. ... As such they cannot be attacked directly, but can be rendered harmless gradually if welfare needs are organized and frontiers made meaningless 'through the continuous development of common activities and interests across

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[33] Charles Pentland, op. cit., p. 69.

[34] L. Armand, M. Drancourt, op. cit., p. 176.

[35] David Mitrany, *"A Working Peace System"*, op. cit., p. 69.

[36] Ibid., p. 31.

[37] Ibid., op. cit, p. 38.

[38] David Mitrany, *"The Progress of International Government"*, op. cit., p. 141; *"A Working Peace System"*, op. cit., p. 62.

them'. The integration of mankind will thus come about not through, above or beyond, but despite, the nation-state."[39]

Staying out of further elaboration of the functionalist theoretical concept, we can note that the European integration process, emanated in former European Communities, and today the European Union, formed and developed exactly in accordance with it, primarily in economic sphere, where the social functions were already at the start of this process in great measure trans-border, due to scientific, technical and technological process.

When the historical circumstances (the start of Korean war and greater need for ever larger engagement of Europeans themselves in the field of their defence), and the federalist impatience of the leaders of the European integration process led to the fact, that while the establishment of the Community for coal and steel was still in motion, the integration shifted from functionalist to federalist waters and overall to the political field (no less than its most sensitive part- defence) through the signing of the Treaty for the creation of the European Defense Community on the 27th of May 1952. in Paris (and then the creation of the Draft of the Treaty which contained the Statute of the European Community in March 1953, which should have shifted the integration on the field of foreign policy), that attempt fails because of the denial of National Assembly of France to ratify the Defense Community Treaty on the 30th of August 1954, which in turn leads to the great crisis of the whole integrationist project.[40] The crisis was overcome with the return to functionalist waters, that is, with the return to economical field in integration, by adoption in Rome of the Treaty for the establishment of the European Community for Atomic Energy on the 25th March 1957. The conditions for the integration on economic level were obviously ripe, but not the same was true for political one, where political will alone was not enough.

When all mentioned is taken into view, is it coincidental that the successful integration process was started exactly during the fifties of XX century, and is it the result of simple determination of political decision makers in six original members, primarily France and Germany, to overcome the rivalry and enmity which had led them to three bloody wars in past eighty years. We have seen that the integration idea had existed even earlier, over the centuries, and started to be visible and stronger in the times of war atrocities. However, at that time the integration did not come to life. The attempt of integration on the political level in the fifties neither. At the same time, integration on the economic level succeeds and from there rises the contemporary EU.

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[39] Charles Pentland, op. cit., p. 81. This citation is cited by Mitrany, (David Mitrany, *"A Working Peace System"*, op. cit., p. 62.).

[40] See more about this failure in Branko M. Rakić, *Za Evropu je potrebno vreme – O preuranjenom pokušaju uspostavljanja evropske odbrambene i političke integracije –*, Beograd, Pravni fakultet u Beogradu, 2009.

European communities appeared as one large economical, primarily market organisation which comprised six strong European economies. The essence of EC-s was the common market, in such measure as that expression came to be the synonym for them. This is mostly the case even in today's 28 members Union.

Six states that founded EC-s were six highly economically developed countries, which during the fifties managed to recover economically from the war. In comparison with the USA, then leading world economy, which arose from the war even economically stronger than it had been, those six states were in terms of territory and population relatively limited, even France FR Germany and Italy, not the mention Benelux countries. By scientific, technical and technological progress determined degree of their economic development needed wider raw materials base and market. Objective conditions of non-political nature were key for the integration attempt, after the centuries-long battle in the field of ideas, to be successfully realised.

After six decades of successful development of European integration process, we live in a time when the social processes and relations move quickly to global, world level. Scientific, technical and technological progress created a world communication network, and economy, primarily multinational capital whose origin and seat is as a rule in most developed western countries, has the need to spread globally.

That the European frames, even when interpreted as the whole of the Continent, become too confined for needs and reaches of contemporary economy, proves an example of textile trade between Serbia and EC/EU, a commercial domain of the special importance for these relations, which was regulated by special sectorial agreements both before and after the Yugoslav crisis.[41] Although it is hard to reach clear conclusions of the influence that various events and factors had on this segment of trade before and after Yugoslav crisis (since Yugoslav state broke up and therefore its economic potential weakened due to the fragmentation, economy dropped due to war, economic sanctions and later "transition" abuses), one thing is clear: Serbia (and any other European country) cannot be nearly enough of a strong and important partner to the EU in the field of production of textiles and their export to the EU as it was a case a quarter of a century ago, from one reason which is obvious at first glance and widely known – today the majority of textile products used in West are produced in Far East and other Asian countries, partly in Africa too. This is not a consequence only of economic "opening" of China, although it should not be neglected (however it should be stressed that it needs to

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[41] On this matter see more in: Duško Lopandić, *La Communauté économique européene et la Yougoslavie*, Paris, Editions Yougofranc, 1985, or Branko M. Rakić, *Les aspects juridiques des relations entre la Yougoslavie d'une part et la Communauté européenne et le Conseil de l'Europe de l'autre*, mémoire de DEA, Centre européen universitaire de Nancy, Université de Nancy II, Octobre 1991. For newer information see Vladimir Međak, Branko Budimir, *Vodič kroz pristupanje Srbije Evropskoj uniji*, Beograd, Fond, Centar za međunarodne i bezbednosne poslove, 2013, http://www.isac-fund.org/download/EU_VODIC.pdf, 3.1.2014.

be viewed in the light of objective circumstances which enabled it and made it inevitable). The key reason is again the scientific, technical and technological progress, which enabled such a level of communication development and such beneficial prices of transportation of products on great distances, which in combination with cheap labour, makes the goods from Far East and other mentioned regions cheaper and more competitive than the goods from Serbia or other European countries, where the labour is more costly. And in many other economical areas situation is similar. It is therefore the globalisation of economic relations and processes, and their upgrade to the world level, whereas not only the frameworks of nation-states, but also of regional integrationist organisations such as EU, become too narrow and out-dated for most of these relations and processes.

Conclusion

As before the Middle Age feud, due to scientific, technical and technological progress, became out-dated, too narrow a framework for economic relations and processes, which demanded wider raw materials base and market, as for other basic social processes and relations as well, and instead came nation-state as the central unit of the territorial division of the society, and as the nation-state already at the end of XIX century was becoming too narrow a framework of primarily non-political relations and processes, so the international organisation started to appear, including from the second half of XX century integrationist organisations as the EC-s, so in today's world, with ever larger obsolescence of nation-states, which become too narrow a framework for great number of social processes and relations that rise to the global level, the regional integrationist organisations as the EU, start to be in various aspects, too narrow and out-dated. Economical and other social relations and processes simply rise to the global level, and it only can be adequate level for the majority of them.

Over six decades of its development, European integration process partially adapted to this spread of reach of social relations by accepting new members and therefore spreading its own framework, at the cost of deepening of the existing integration. However, since EU is a European organisation, the possibility of this spread is limited by European borders.

Today, especially at the times of economic crisis which enveloped the world, even the EU, many authors state pessimistic foresights in relation to the future of the organisation. It is spoken of the collapse, decay, implosion of the EU, its economic or political unsustainability. Especially is noted the rise of negative political will towards EU among the citizens or political elites in the part of the members, including original or early members. In Great Britain, a referendum on whether it should quit the EU is announced. The disaffection with the EU in countries especially hit by crisis, as Greece, is very large.

However, EC and EU passed through crises in the past as well, but the process of integration survived and its essence was preserved, although sometimes slowed down or somewhat modified. "Factual solidarity", which resulted from several "concrete achievements", as spoken by Robert Schuman, played its positive and constructive role.

But the European process of integration must be observed in the light of wider social patterns which are over and beyond of the political will of nations and elites that necessarily determine the fate of humankind. One of the patterns is the globalisation. By scientific, technical and technological progress, caused and determined spread of the reach of economical and other relations and processes cannot bypass the EU. As the nation-states become too narrow and obsolete, so the regional integration arrangements become narrow and obsolete too. Social processes and relations need wider, world level.

As it appeared as the reaction to the out-dated and too narrow frames of its member states, EU represents in fact a phase in the process of globalising social processes and relations. It stands in front of the choice: whether it will attempt to protect itself from globalisation by closing on itself, to become and exclusive club of rich countries (even the least developed countries of the EU are relatively rich in comparison with the majority of countries in the world), or it will meet the globalisation headlong and find its place and role in it. First option would be certain failure, since it is impossible to stand against a social pattern. As for the second, it would mean the acceptation of the relativisation of political and institutional frames and structures of the EU, that is their melting in the process of globalisation. But European values, the *acquis communautaire*, should impose itself on the world level through its quality, superiority. Sixty years of integration practice brought about the piled experience of states and nations that could be used on the global level. European integration could serve as some kind of a model of the integration of mankind in the process of globalisation.

As in our opinion, the institutional and political frames and structures of the EU are condemned to melting in the process of globalisation; Serbia should in its European path less to tend to join them, but more to tend to accept the *acquis communautaire*, s the essential element of the process of integration, which holds more certain future. Its acceptance is an essential element of the proper regulation and structure of our own society, necessary for its succesful functioning in the internal affairs, but also for the successful international cooperation with not only EU and its members, but the other states in the world as well. Finally, this essential Europeanisation through the implementation of European standards, that is *acquis communautaire*, is not only the only important matter in the long term, but it does not in any way lead us to the situation to be exposed to political extortions and pressures, as is the case when we insist on formal membership in the EU.