REGIONAL TRADE ORGANIZATIONS MODELING EUROPEAN UNION DEVELOPMENT

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ABSTRACT

The advent of the sovereign state brought the ability to separate both domestic and foreign engagement. In terms of trade this also established rule of law allowing for states to decide how they want to engage with the outside world. Initially states engaged in trade through informal means, however, with the progression of time, trade agreements have grown to include unilateral, bilateral, multilateral, trade blocs, common markets, and single markets. Due to the increased pressure of globalization trade blocs, common markets, and single markets have begun to see growth in Member States. Trade blocs, common markets, and single markets begin to absorb each other as global trade continues to link the developed and developing world; with the final step being a global common market. The result is the movement of regionalism toward commonality.

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ACRONYMS AND ABBREVIATIONS

ASEAN	Association of Southeast Asian Nations
CFSP	Common Foreign and Security Policy
EAEC	European Atomic Energy Community
EAEU	Eurasian Economic Union
EEC	European Economic Community
EC	European Commission
ECOWAS	Economic Community of West African States
ECSC	European Coal and Steel Community
EIB	European Investment Bank
EMU	Economic and Monetary Union
EP	European Parliament
EPC	European Political Cooperation
EU	European Union
FDI	Foreign Direct Investment
CER	Closer Economic Relations
GCC	Gulf Cooperation Council
IGC	Intergovernmental Conference
MERCOSUR	Mercado Común del Sur
QMV	Qualified Majority Voting
RCEP	Regional Comprehensive Economic Partnership
SADC	South African Development Community
SEA	Single European Act
TEU	Treaty on European Union
UK	United Kingdom
US	United States

INTRODUCTION

One effect of globalization has been increased competition in the global marketplace among states. Competition has led to the realization that states need to flex more economic might in order to provide goods, services, and resources that the world economy requires. Staying competitive is a game of state power via collective action in the form of trade agreements, blocs, and common markets. These tools of international law allow sovereign states to use the power of the collective over the power of the individual state.

No organization has been more successful in creating a successful single market than the European Union (EU). Even with its political issues, it continues to demonstrate the success of an entity that began as an international organization with the European Coal and Steel Community.[1] Furthermore, as a legal entity, the European Union can demonstrate how current organizations such as the Association of Southeast Asian Nations (ASEAN), the Eurasian Economic Union (EAEU), and the Economic Community of West African States (ECOWAS) can develop from their current stages toward a single market.

II. GLOBALIZING AWAY SOVEREIGNTY

International law is a tool that allows global markets to converge or diverge. First, the divergence of markets is supported through the tool of state sovereignty.[2] Second, the convergence of markets is supported through the tool of trade agreements.[3] Sovereignty is a pliable concept that appears in a variety of forms. However, as the twentieth century came to a close and the twenty-first century was put into motion, states saw the benefits

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1. *Schuman Declaration May 1950,* EUROPEAN UNION, https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en (last visited Feb. 23, 2022).

2. Klaus Meyer & Daniel Rottig, *International Trade and Investment Agreements: Sovereignty at Bay in the 21st Century?*, 16 AIB INSIGHTS 3, 3 (2016) (stating that each country using sovereignty creates barriers to international trade).

3. *What is the World Trade Organization?: Understanding the WTO Basics*, WTO, https://www.wto.org/english/thewtoe/whatise/tife/fact1e.htm (last visited Feb. 23, 2022).

of shedding some notions of sovereignty.[4] Specifically, trade liberalization allowed for benefits to states in the form of higher output and thus greater economic success.[5] The cost of trade liberalization would be some notions of sovereignty especially over the economic levers of a state.[6]

Trade liberalization allows states to take advantage of the gains associated with moving away from the go-it-alone approach. Through liberalization, a multitude of benefits is conferred onto a state such as greater economies of scale and scope, including export industries, reduction in market power in protected markets, facilitation of knowledge and technology spillovers, greater variety and quality of imported goods available to domestic producers and consumers, and promotion of export-platform foreign direct investment (FDI) inflows.[7] Additionally, states gain an improvement in institutional and governance quality, including lower corruption, rent-seeking, and smuggling.[8]

Sovereignty conflicts with trade liberalization because it revolves around market access to a respective state. By a state allowing market access, trade liberalization is achieved.[9] However, the degree of trade liberalization is left up to the domestic level via means and terms of regulation of the market.[10] The dynamic of trade liberalization and domestic rule-making is the push-and-pull effect of the exercise of state sovereignty.

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4. Meyer & Rottig, *supra* note 2, at 3.

5. *Global Trade Liberalization and the Developing Countries*, INT'L MONETARY FUND, https://www.imf.org/external/np/exr/ib/2001/110801.htm#P73_13083 (last visited Jan. 29, 2022) (stating that countries have achieved economic success and competitive advantages in manufacturing products by opening up their economies to the global economy).

6. Elizabeth A. Oji & M.V.C Ozioko, *Effect of Globalization on Sovereignty of States*, 2 NNAMDI AZIKIWE UNIV. J. OF INT'L L. AND JURIS. 256, 268 (2011).

7. Sena Kimm Gnangnon, *Trade Policy Space, Economic Growth, and Transitional Convergence in terms of Economic Development*, 34 J. OF ECON. INTEGRATION 1, 4 (2019).

8. *Id.*

9. Thomas Cottier, *International Economic Law in Transition from Trade Liberalization to Trade Regulation*, 17 J. OF INT'L ECON. L. 671, 673 (2014) (stating that market access allows trade liberalization).

10. *Id.* at 672.

While there is domestic input regardless of the degree of trade liberalization, to what effect that has priority over economic success is debated. The reason is due to trade liberalization coupled with globalization that assaults pervasive state sovereignty.[11] International trade via trade liberalization, and capital markets via globalization, hinders the ability of the state to control their domestic economies.[12] These forces have driven states toward seeking collective security through trade agreements, which allow states to establish controls in their domestic economies.

Through trade organizations, such as the Gulf Cooperation Council (GCC) and the South African Development Community (SADC), states use regional organizations to delegate authority.[13] The same can be seen at the international level.[14] Through the World Trade Organization (WTO), states seek third-party aid in the smooth flow of trade with foreign states.[15] Sovereignty runs into an issue with regional and international trade organizations for two reasons. First, states willingly become members of trade organizations, thus demonstrating their sovereign right to benefit from the voluntarily ceded sovereign powers of the collective organization.[16] Second, once a member among a group of collective states, the individual state is no longer autonomous.[17]

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11. Agreement Lathi Jotia, *Globalization and the Nation-State: Sovereignty and State Welfare in Jeopardy*, US-CHINA EDUC. REV. 243, 246 (2011) (stating that liberalization and globalization have taken away the national government's powers overtime).

12. Julian Ku & John Yoo, *Globalization and Sovereignty*, 31 BERKLEY J. OF INT'L L. 210, 210 (2013).

13. Judith Kelley, *The Role of Membership Rules in Regional Organizations*, ADB Working Paper Series on REG'L ECON. INTEGRATION, 9 (2010) (stating that states have to delegate some authority to regional organizations in order to have effective regional integration).

14. Ku & Yoo, *supra* note 12, at 210.

15. *What is the World Trade Organization?: Understanding the WTO Basics*, WTO, https://www.wto.org/english/thewtoe/whatise/tife/fact1e.htm (last visited Feb. 23, 2022) (stating that the goal of the WTO is to help producers of goods and services, exporters, and importers, conduct their business through trade with other nations).

16. Oona A. Hathaway, *International Delegation and State Sovereignty*, 71 Law and Contemporary Problems, 115, 122–23 (2008).

17. Craig VanGrasstek, *The History and Future of the World Trade Organization*, WORLD TRADE ORGANIZATION 24 (2013) (explaining that in order for states to create

The individual state is part of the collective and not acting as an independent sovereign state.

III. COAL & STEEL: COLLECTIVITY & SOVEREIGNTY

The Treaty of Paris established the European Coal and Steel Community (ECSC), the first supranational treaty organization in history.[18] The ECSC was in force from 1952 until its expiration in 2002, during which time additional institutions developed.[19] The common market created by the treaty opened on February 10, 1953 for coal, iron ore, and scrap.[20] On May 1, 1953 the common market for steel opened.[21] The Treaty took governance away from the individual states of France, the West German Federal Republic, Italy, Belgium, The Netherlands, and Luxemburg; transferring it to the European level to promote collective decision making.[22] Transferring the traditional state sovereign power of regulating steel and coal markets to an institution of collective economic power shed a decision-making function enjoyed by autonomous states.

In order to oversee the common market, the treaty set up a central body called the High Authority which would have ultimate authority that led to the success of the ECSC.[23] It would have administrative control to oversee the market, monitor compliance with competition rules, and ensure price transparency.[24] Creating the ECSC allowed the formulation of state sovereignty to be transferred to the collective benefit of the members. By organizing the free movement of coal and steel, and

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arrangements that will last into the future, a leading state "must limit its own autonomy and ability to exercise power arbitrarily").

18. The European Union Office of Publications, *Treaty establishing the European Coal and Steel Community ECSC Treaty*, EUR-LEX 1, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0022 (last visited Jan. 23, 2022).

19. *Id.* (explaining that once the treaty expired, rules governing coal and steel were integrated into the treaties establishing the European community, through the Treaty of Rome).

20. *Id.*

21. *Id.*

22. Gerhard Bebr, *The European Coal and Steel community: A Political and Legal Innovation*, 63 YALE L. J. 1, 20 (1953).

23. The European Union Office of Publications, *supra* note 18, at 2.

24. *Id.*

freeing up access to resources, the ECSC allowed for a more streamlined process of production.[25] In the aftermath of World War II, the ECSC was a representation toward European integration.

The ECSC had additional objectives to move toward European integration. Article Two is a key provision that provides a goal to contribute to economic expansion, employment, and better living standards.[26] This focus on economic growth to move Europe closer would prove successful as it laid the groundwork for additional institutions to piggyback off the success of coal and steel.[27] The Article Two institutions had to provide an orderly supply of coal and steel to the common market by ensuring equal access to the sources of production, the establishment of the lowest prices and improved working conditions.[28] These objectives had to be accompanied by growth in international trade and modernization of production which would provide for economic prosperity to demonstrate the European Project's success.[29]

Outside of production and access, the ECSC also enacted a variety of additional measures to foster further integration. One such instance was the free movement of products without customs, duties or taxes, thus eliminating burdens on consumers and producers.[30] Another instance was the prohibition of discriminatory measures, subsidies, state aids, or special charges imposed by states and restrictive practices.[31] Through eliminating barriers to trade, the common market was able to operate more efficiently at the expense of profits otherwise reaped by the state from trade tools such as tariffs.[32]

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25. *Id.*

26. *Id.*

27. Ian Black, *Europe's Coal Engine of Integration Retires*, THE GUARDIAN (July 2002) https://www.theguardian.com/world/2002/jul/19/worlddispatch.eu (explaining that ECSC proved an economic success because "between 1952 and 1960 iron and steel production rose by 75% in the Member States and industrial production by 50%").

28. The European Union Office of Publications, *supra* note 18, at 1.

29. *Id.*; *see also* Ian Black, *supra* note 27.

30. The European Union Office of Publications, *supra* note 18, at 1.

31. *Id.*

32. Matthew Gabel, *Creation of the European Economic Community*, BRITANNICAONLINEENCYCLOPEDIA(28Oct.2021),https://www.britannica.com/topic/European-Union.

The ECSC developed an institutional structure that was divided into four parts: (1) the European Coal and Steel Community; (2) the institutions of the Community; (3) economic and social rules; and (4) general rules.[33] The aforementioned protocols and rules were developed order to ensure division but also order. Protocol was outlined for the Court of Justice as well as the ECSC's relations with the Council of Europe that were designed to prevent an overreach of power.[34] Additionally, there was a provision on a future convention whose goal would be to deal with the implementation of the treaty, relations with non-ECSC countries, and general safeguards while also being key to handing outside actors along with any unplanned circumstances during the transition process.[35]

The ECSC was overseen by the High Authority, the forerunner of today's European Commission.[36] The High Authority would have centralized control over the entire coal and steel production of the Member States.[37] The High Authority would have representation of Member States consisting of independent representatives designated by national governments.[38] Representation consisted of a nine member party and be appointed for six years, of which no more than two could be of the same nationality.[39] The High Authority was given ultimate control and a broad mandate of achieving the objectives laid down by the treaty along with acting in the general interest of the ECSC.[40]

As a supranational body of the ECSC, the High Authority supervised many different aspects of the market. Modernization and improvement of production would allow the High Authority

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33. The European Union Office of Publications, *supra* note 18, at 2.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* (explaining that the High Authority was comprised of nine members, of whom no more than two could be the same nationality, and that the High Authority acted in the ECSC's general interest).

38. Elisabeth Zoller, *The Treaty Establishing a Constitution for Europe and the Democratic Legitimacy of the European Union,* 12 INDIANA JOURNAL OF GLOBAL LEGAL STUDIES 396, 396–97 (2005).

39. The European Union Office of Publications, *supra* note 18.

40. *Id.*

to have influence over keeping the ECSC competitive in the global market.[41] The supply of products under identical conditions could cause market saturation or lower the price of goods produced under the ECSC.[42] Through the High Authority having power to oversee the supply of products, markets could be better controlled and benefit all members.[43] A common export policy would allow all members to cooperate under the guise of the High Authority.[44] This would prove beneficial to regulate exports and coordinate simplified policies through one governing body instead of each state acting independently.[45] Finally, The High Authority would focus on improving the working conditions in the coal and steel communities resulting from a.[46] Without such uniform policy under the ECSC, labor would move to alternative member states causing disunity and undermine the goal of the community.[47]

Underneath the High Authority is the Assembly, the Council, and the Court of Justice.[48] Given the High Authority would be made up of member states' representatives, the exercise of finality over all other institutions allows for accountability for the collective.[49] The hierarchy and institutions under the ECSC laid the groundwork for the future development of the European

41. The European Union Office of Publications, *supra* note 18 (indicating that the High Authority supervises the modernization and improvement of production); *see also* Bebr, *supra* note 22, at 6 (discussing how higher production of steel and capital goods gave the ECSC Member States' a competitive position in the world market).

42. The European Union Office of Publications, *supra* note 18 (indicating that High Authority supervised the supply of product under identical conditions); *see also* Bebr, *supra* note 22, at 5 (explaining how a common market would result in the movement of essential raw material and result in a lower price of goods).

43. The European Union Office of Publications, *supra* note 18 (indicating that the High Authority supervised the supply of product under identical conditions.); *see also* Bebr, *supra* note 22, at 5 (explaining how a common market would result in the movement of essential raw material and result in a lower price of goods).

44. The European Union Office of Publications, *supra* note 18.

45. *See* Bebr, *supra* note 22, at 12 (explaining that to maintain a common and competitive market, the higher overarching power [The High Authority] must replace the Member States' sovereign powers over those industries).

46. The European Union Office of Publications, *supra* note 18.

47. *Id.*

48. *Id.*(discussing the assisting roles the Assembly, Council, and Court of Justice plays to the High Authority).

49. *See* Bebr, *supra* note 22, at 20 (discussing the separation of powers exercised by the High Authority).

Union (EU).[50] The Assembly would be the forerunner to the European Parliament, the Council would be the forerunner to the Council of the European Union, and the Court of Justice would be the forerunner to the Court of Justice of the European Union.[51]

A. *ECSC: Starting Point for Cooperation*

The framers of the ECSC could not have foreseen the success that would transpire into the European Union. As a template for other organizations at different stages of development, the ECSC demonstrates states can come together on issues such as coal and steel regulation that can eventually matriculate into more substantive institutional development. The existence of ASEAN, EAEU, ECOWAS, Mercado Común del Sur (MERCOSUR), the GCC, or the SADC can be compared to the development of the ECSC into the EU. All the aforementioned are relatively "new" when compared to the EU as a whole, but all have the ability to move beyond their current objectives toward further integration.[52] Each have their own region that they cater to, thus allowing them to focus on growth and integration like that of the EU. ASEAN is focused on Southeast Asian Member states.[53] EAEU is primarily over the Eurasian Member States.[54] ECOWAS is affixed on West African Member States.[55] MERCOSUR is

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50. The European Union Office of Publications, *supra* note 18.

51. *Id.*

52. *See* Petar Kurecic, *Small States and Regional Economic Integrations in the Multi-Polar World: Regional Difference in the Level of Integration and Patterns of Small States' Vulnerability*, 8 PLUTO JOURNALS 317, 326–26 (2017).

53. Lindsay Maizland & Eleanor Albert, *What is ASEAN?*, Council on Foreign Relations (last updated Nov. 24, 2020), https://www.cfr.org/backgrounder/what-asean. (explaining that the ASEAN is an "intergovernmental organization of ten Southeast Asian counties").

54. Karena Avedissian, *Fact Sheet: What is the Eurasian Economic Union?*, EVN Report (Nov. 3, 2019), https://evnreport.com/understanding-the-region/fact-sheet-what-is-the-eurasian-economic-union/ (explaining how the EAEU is an economic union in the post-Soviet Space [Eurasian Member States] like Russia, Belarus and Kazakhstan, however, countries outside that region, such as Iran and Mongolia are also being groomed to join).

55. *Economic Community of Was African States (ECOWAS)*, THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, https://ustr.gov/countries-regions/africa/regional-economic-communities-rec/economic-community-west-african-states (last visited on Jan. 23, 2022) (listing the 15 West African Countries that are members of ECOWAS).

attentive on South American Member States.[56] GCC is dedicated to the Arabian Peninsula States.[57] Lastly, SADC is engaged on South African Member States.[58]

All of these organizations share two common traits of the ECSC. First, each has a clear objective, whether that be economic development or intergovernmental cooperation.[59] Second, each lends themselves to a particular group of Member States within a specific geographic region.[60] These organizations cover a large swath of states across the globe and demonstrate the desire for states to come together to promote collective power.[61] Additionally, it demonstrates that globalization has driven these states to cooperate in a variety of different situations.

The ECSC sought to heal the wounds of World War II, but also cooperate through economic means to produce goods efficiently through a "high tide lifts all boats" mentality.[62] It is with that in mind that there is such diversity among current regional trade and governmental bodies. However, instead of coming together due to armed conflict, states are uniting regionally to compete economically on the global stage.[63]

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56. *Mercosur in brief*, MERCOSUR, https://www.mercosur.int/en/about-mercosur/mercosur-in-brief/ (last visited on Jan. 23, 2022) (listing the South American countries that are members of MERCOSUR).

57. *Gulf Cooperation Council international organization*, ENCYCLOPEDIA BRITANNICA (Jan. 12, 2021) https://www.britannica.com/topic/Gulf-Cooperation-Council (explaining that the Gulf Cooperation Council (GCC) is a political and economic alliance of six Middle Eastern Countries that are located on the Arabian Peninsula).

58. *About SADC*, SOTHERN AFRICAN DEVELOPMENT COMMUNITY TOWARDS A COMMON FUTURE https://www.sadc.int/about-sadc/overview/ (last visited on Jan. 23, 2022) (listing the 16 Southern African Countries that are members of the SADC).

59. *See generally* Petar Kurecic, *Small States and Regional Economic Integrations in the Multi-Polar World: Regional Differences in the Levels of Integration and Patterns of Small States' Vulnerability*, 8 WORLD REV. POL. ECON., Fall 2017, at 317, 327 (identifying ASEAN, EAEU, ECOWAS, MERCOSUR, the GCC, and SADC as regional organizations explicitly formed for regional economic integration).

60. *See id.* at 319 (discussing regionalism as a dominant trend among international organizations focused on integration, such as those identified *supra* note 63).

61. *Id.* at 322 (identifying that regional integration is often a remedy to small states inability to project power absent a collective strategy).

62. *See* Bebr, supra note 22 at 4–5.

63. *See* Kurecic, *supra* note 59, at 322 (recognizing collective regional organizations as an option to compete against neighboring superpowers).

States do not shed sovereignty for the sake of it, they act as a collective in order to preserve the state itself.[64] These regional organizations are voluntary agreements for the state to prosper at the expense of loosening some control on trade or legislating function.[65] The ECSC struggled with this as the first transnational organization.[66] Even with this struggle, the ECSC was able to provide a case study for how other regional organizations could meet success through collective action.

IV. ATOMIC ENERGY AND COMMUNITY

In 1957 two treaties were signed: the Treaty Establishing the European Economic Community (EEC) (Treaty of Rome or EEC Treaty) and the Treaty Establishing the European Atomic Energy Community (Euratom) (Euratom Treaty).[67] Both treaties came out of the Messina Conference in June 1955 as an effort to relaunch the European process via additional institution-building.[68] In 1956, following the Messina Conference, a preparatory committee was established that proposed the creation of a generalized common market and the creation of an atomic energy community.[69] Both proposals were in the spirit of uniting beyond coal and steel, but also bringing together resources for atomic energy which no single state could provide.[70]

64. *See id.* at 331 (acknowledging the vulnerability of small states who are benefitted the most by international partnerships).

65. *See id.* at 323 (arguing that "Small states choose to participate in multilateral organizations..." because through the voluntary sacrifice of some sovereignty inherent in regional integration "...small states have better chances of gaining influence and protecting their interests. . .").

66. *See generally The ECSC in Difficulties*, CVCE (July 8, 2016), http://www.cvce.eu/obj/the_ecsc_in_difficulties-en-12754576-836f-4e15-a340-af843b40ee0c.html (describing the difficulties in agreeing to levels of ECSC High Authority governance during market crises of the 1950s and Member States ultimately assenting to adopt the High Authority's recommendations).

67. *Treaty Establishing the European Atomic Energy Community (EURATOM)*, EURLEX(Oct.19,2007),https://eurlex.europa.eu/legacontent/EN/TXT/?uri=LEGISSUM:xy 0024.

68. *Id.*

69. *Id.*

70. *Id.*

A. *EEC*

The EEC Treaty created a Commission which the drafters modeled after the High Authority under the ECSC.[71] Due to differences in function a decision was made to not give the Commission the same status as the High Authority.[72] The most notable difference centered on legislative power.[73] The High Commission did not have legislative power because all the rules that applied to coal and steel were contained in the Treaty of Paris, thus negating the need for a legislative function.[74] Given this, the High Commission oversaw applying the rules of the Treaty of Paris to individual situations.[75] Where the commonality occurred between the High Authority and the Commission was the level of independence each shared.[76] The drafters of the Treaty of Rome saw the need for an independent body to have finality, but also buy-in from individual states when it came to decision making.[77]

However, the EEC would need a Commission that had increased rulemaking authority as well as an adjudicatory function given the broadness of its mandate.[78] The result would be an institutional structure, the Commission, that governed the EU as an autonomous independent agency.[79] The Commission would be independent from the Member States, the governments,

71. Zoller, *supra* note 38, at 397.

72. *Id.*

73. *Id.*

74. *Id.* ("...legislative power, which the High Authority did not have under the 1950 Treaty because all the rules to be applied to the coal and steel market were contained in the Treaty. The High Authority was an adjudicatory body; it was in charge of applying the rules of the Treaty...").

75. *Id.*

76. *Id.* ("...they gave the Commission, which would parallel the High Authority in the Common Market, the same status of independence.).

77. Treaty Establishing the European Economic Community Art. 163, Mar. 25, 1957, 298 U.N.T.S. 11, 73 (outlining how conclusions and meetings are only valid if a particular number of members are present).

78. *See* Zoller, *supra* note 38, at 397 (mentioning how the Commission's broader rulemaking power contrasted the High Authority's lack of legislative power in its Treaty which already encompassed all the rules to be applied).

79. *Id.* at 396-97.

and the people in an attempt to preserve its ability to function outside influence throughout the decision-making process.[80]

The ECC Treaty laid the groundwork that is apparent within the institutions of the EU today. Specifically, three key focuses were built into the EEC Treaty: (a) the common market; (b) a customs union; and (c) joint policies among members.

1. Common Market

The common market that the ECC Treaty created contained four basic priorities in its construction. To allow a common market to function properly there had to be a basis for the free movement of: (a) goods; (b) people; (c) services; (d) capital.[81] The aim of the EEC and the common market was to transform the conditions of trade and production on the territory of its six members (Belgium, Germany, France, Italy, Luxembourg and the Netherlands).[82] Additionally, it helped serve as a step towards the political unification of Europe by tackling economic success first and following up with further political unity in the future.[83]

Within the common market there were several goals and functions in order to ensure collective success without an individual state having a varying policy. First, there was a stipulation to align economic policies to determine where states would prioritize domestic investment and production.[84] Second, there was the need to have a single area with free competition between companies to promote free markets without government intervention in private corporate enterprise.[85] Third, there was a prohibition on restrictive agreements and government subsidies which could affect trade between the signatories.[86] This provision was to ensure the common market would be preserved and to

80. *Id.*

81. The European Union Office of Publications, *supra* note 18.

82. *Id.*

83. *Id.*

84. *Id.*

85. *See* Treaty Establishing the European Economic Community, *supra* note 77, at art. 3 (emphasizing the purpose of the agreement to eliminate fees on imports and exports and protect competition in the common market).

86. *Id.* (prohibiting "restrictive agreements and government subsidies which can affect trade between the 6 countries").

avoid any additional barriers to trade.[87] Fourth, the six signatory countries and territories were included in the arrangements and customs union which sought to promote their economic and social development.[88] By allowing territories other than the signatories, further homogeneity could be achieved as well as discontent avoided.[89]

2. Customs Union

The EEC Treaty established a customs union in order to support the efforts of the common market and integration.[90] The customs union was multifaceted in order to ensure common policies that would bind the Member States in terms of trade.[91] First, there was the abolishment of quotas, both ceilings and imports, and customs duties between the six signatories.[92] This would remove barriers internally to avoid conflict in trade. Second, the treaty established a common external tariff on imports from outside the ECC.[93] This would replace the tariffs administered by different states prior to the EEC Treaty in order to validate the customs union.[94] Finally, there would be a common trade policy established.[95] The trade policy would be managed at the EEC level, removing it from control at the national level, like in the past.[96] Taken together, this would formalize the EEC status of a custom union instead of a free-trade association.[97]

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87. *See* Treaty Establishing the European Economic Community, *supra* note 77, at art. 3 (as in effect 1958) (now TFEU art. 26, 32, 34-35) (emphasizing the purpose of the agreement to eliminate restrictions for imports and exports, abolish obstacles to the free movement of goods, and establish a system protecting competition in the common market).

88. *Id.*

89. *Id.* (now TFEU art. 198) (aiming to associate overseas countries and territories for the purpose of "pursuing jointly their effort towards economic and social development").

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

3. Joint Policies

The EEC Treaty established joint policies in order to provide for further cooperation in a variety of fields. First, there were joint policies on agriculture, trade, and transport.[98] Taken together these were meant to protect against over or under production as well as removing barriers that may have impacted trade.[99] Second, there were joint actions in the fields of environmental, regional, social, and industrial policy.[100] These were key to ensuring that no state had a distinct advantage over others in order to prevent a disproportional benefit or a migration of labor across states who were the members of the union.[101] Third, there was the creation of a European Social Fund in order to improve job opportunities and raise living standards across all states for workers.[102] The purpose was to promote commonality and equity among states and unify labor markets to the benefit of the collective.[103] Finally, there was the creation of the European Investment Bank (EIB) which would focus on investment funding that would provide the base to the EEC's economic expansion.[104]

The EEC Treaty established an institutional framework and decision-making mechanisms. Taken together they allowed for accountability as well as the ability to express national interests of Member States along with a joint vision embraced by all members.[105] Similar to the ECSC, the EEC consisted of a Council of Ministers, the Commission, the Parliamentary Assembly (later became the European Parliament), and the Court of Justice.[106]

98. *Id.*
99. *Id.*
100. *Id.*
101. *Id.*
102. *Treaty of Rome (EEC).*
103. 1987 O.J. (L 169) 4.
104. *Treaty of Rome (EEC), supra* note 102.
105. *Id.*
106. *Id.*

B. *EURATOM*

Euratom was the result of "conventional" energy on the European continent during the 1950s.[107] Nuclear was seen as a way to achieve energy independence, but the costs were too high for any one state to bear.[108] As such, Euratom was a way for multiple states to pool resources in order to meet the desire for nuclear energy.[109] The Euratom Treaty lays out four specific tasks: (1) to promote research and ensure the dissemination of technical information; (2) to establish uniform safety standards to protect the health of workers and the general public and ensure they are applied; (3) to facilitate investment and ensure the establishment of the basic installations necessary for the development of nuclear energy in the EU and; (4) to ensure that all users in the EU receive a regular and equitable supply of ores and nuclear fuels.[110]

Institutionally the structure of the Euratom Treaty would be similar to the EEC Treaty.[111] There would be the Council, Commission, and European Parliament; however there would also be the Court of Justice and the Court of Auditors.[112] The Community institutions were responsible for implementing the Treaty along with two Euratom bodies: the Supply Agency and the Safeguards Office.[113] The Euratom Treaty remains in force and has not merged with the European Union, but still shares the same institutions.[114]

C. *The ECC Blueprint*

The ECC was the next key step toward further integration that states could mimic in an effort to build a regional organization. Euratom is not as applicable for states, due to the nature of nuclear energy and the fact that many states choose not

107. The European Union Office of Publications, *supra* note 18.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.*

to use it as a means of energy production.[115] Through pursuing a common market and customs union, with common rules for Member States, regional organizations could have an easier free flow of goods and services.[116]

The move from the ECSC to the ECC was an "easy" steppingstone for states to follow because the ECC simply took into account the ECSC.[117] Furthermore, by starting off with specific products, such as coal and steel, Member States have less to lose should the cooperative agreement not come to fruition.[118] The ECSC allowed for small steps to be considered in the movement toward further integration on the European continent.[119] The ECC was able to pick up the baton in order to further unite a multitude of goods and services across the borders of Member States.

Organizations such as GCC and ASEAN started off in a similar fashion as the ECC.[120] They set goals to have a near homogenous set of standards to administer trade among Member States, but also determine how Member States would engage with foreign states outside of the organization.[121] The idea of the common market allows for further integration to take place whether that is the intention or not. The reasoning is due to the nature of trade, which can further bind those both in the consumption and production of products.[122] Furthermore,

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115. *See* Utz P. Toepke, *The European Economic Community—A Profile*, 3 NW. J. INT'L L. & BUS. 640, 643 (1981) (noting that the EEC is the most important of the European entities because it is not restricted to a single sector, unlike nuclear energy which has not been adopted by all EEC members).

116. *Id.* at 643.

117. *Id.* at 644 (acknowledging that the ECC modelled its institutions after the institutions created under the European Coal and Steel Community).

118. *Id.* at 641(noting that the ECSC was confined to "selected sectors" of the economy thus reducing the risk).

119. *Id.* (noting that the ECSC set in motion European integration efforts).

120. Fraser Cameron, *The European Union as a Model for Regional Integration*, COUNCIL ON FOREIGN RELATIONS, 2 (2010) (noting that there have been several attempts to achieve regional integration outside of Europe).

121. Toepke, *supra* note 115, at 643. (acknowledging the ECC created a single homogenous trading block that controls the internal and external trade relations of the member nations).

122. *Id.* at 642 (noting that in creating the "common market" European nations created reciprocal obligations to each other closely linking their economies).

common markets allow for inefficiencies that come with trade regulation to be bypassed.[123]

Tariffs, quotas, border checks, and paperwork are all examples of time and money spent by the public and private sector to administer a regulated market.[124] Through a common market many of these hassles of cross-border trade are skirted in order to maximize speed and efficiency of trade.[125] Even if some of the aforementioned barriers exist at the inception of the common market and customs union, with trade progressing these would most likely be removed at the behest of the consumer who recognizes the price and efficiency to which goods and services may be delivered in a common market with little to no barriers of trade.[126] It is through all of the aforementioned facets that the ECC provides the template for greater efficiency for other organizations seeking to benefit from collective trade over the individual state.

V. FROM COAL TO COMMUNITY

Since the first European transnational treaty, the ECSC, two additional European Communities had emerged: The Commissions of the European Economic Community (EEC) and the Euratom.[127] The linchpin toward a completely united Europe

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123. *Id.* at 643 (establishing that by creating a common market European nations were able to promote the free movement of goods, people, services, and capital without quotas, tariffs, and other barriers to trade).

124. *Id.* (stating that quotas, tariffs, and other trade barriers inhibited the movement of goods between countries).

125. *Id.*; *see also What Joining The Common Market Meant*, CVCE, http://www.cvce.eu/obj/what_joining_the_common_market_meant-en-4eff8691-8f25-4783-a5dd-19ef4035883a.html (Aug. 7, 2016) ("[R]emoving obstacles to free competition and the promise of new sales outlets would enable production to be increased.").

126. *See* Gordon L. Weil, A Handbook on the European Economic Community 217–19 (Frederick A. Praeger, Inc. 1965) (describing three years after the ECC went into force, the common market resulted in consumers purchasing products of community countries' due to the lower prices, and the continuing disbarment of trade barriers would encourage this trend).

127. *See Founding Agreements*, European Union, https://european-union.europa.eu/principles-countries-history/principles-and-values/founding-agreements_en (last visited Jan. 24, 2022) (outlining that after the ECSC was established in 1951, the Treaties of Rome established the EEC and Euratom in 1957).

was the Merger Treaty of 1965.[128] The Merger Treaty took the ECSC, EEC, and Euratom, which had three separate governing bodies, and created, "a Single Council and Single Commission of the European Communities."[129] With a singular body, administrative efficiencies could be maximized under the umbrella of further integration.[130] Integration allowed for all matters to be discussed in one forum whether that be nuclear, agricultural, or coal.

A. *Administrative Efficiences*

The Merger Treaty is key to regional organizations that have developed various institutions to avoid corruption. Based on the EU experiment, the ECC, EEC, and Euratom were separate institutions that operated independently to address specific needs among the Member States.[131] The reason can be seen as an effort to ensure that the more mechanisms in place, the less room there was for an individual(s) to take control.[132] Additionally, there was a need for each of these organizations to operate independently of one another considering they did dramatically different things.[133] However, the drawbacks of fragmentation took their toll in the form of a lack of efficiency in the field of communication and increased cost to upkeep multiple bureaucratic functions.[134]

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128. *See* Gordon L. Weil, *The Merger of the Institutions of the European Communities*, 61 Am. J. Int'l L. 57, 57 (1967) ("[T]he Merger treaty will contribute to 'progress towards European unity, since it will lead to the unification of the three Communities.'").

129. *Id.*

130. *See id.* (stating the merger would result in improved administrative efficiency).

131. Toepke, *supra* note 115, at 642.

132. *See The European Communities*, CVCE, (Aug. 7, 2016) http://www.cvce.eu/obj/the_european_communities-en-3940ef1d-7c10-4d0f-97fc-0cf1e86a32d4.html ("In accordance with the principle of the allocation of powers, however, the Communities and their institutions act within the limits of the powers conferred on them and the objectives assigned to them by the treaties establishing them.").

133. *See* Weil, *supra* note 128, at 64 (explaining the scope of the ESCS, EEC, and Euratom).

134. *See The European Communities*, *supra* note 132 (describing difficulties from the existence of three distinct communities created resource and duplication problems).

The Merger Treaty maximized administrative efficiencies through streamlining the decision-making process as well as eliminating redundant bureaucratic institutions.[135] The Treaty merged the overlapping institutions of the three regional organizations in order to lower costs and to streamline communication.[136] MERCOSUR, for example, has followed this framework of having the Common Market Council as the chief authority of all policy for the organization, thus allowing for unanimity among all decision making.[137]

Unnecessary redundancies once an organization matures must be removed in order to promote success.[138] The issue is that there is no numerical post mark in which organizations, which have multiple institutions, should move under one umbrella, however it is evident it must be done in order to not slow down the organization itself.[139] An additional caveat is that some organizations, based on the EU, have been able to avoid redundancies when building their regional organization.[140] This can be helpful, but it also has to be reiterated that with too much streamlining, power can be concentrated into the hands of the few in an organization. With that in mind, those who are attempting

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135. *See* Weil, *supra* note 128, at 57 (emphasizing the purpose of the merger was to improve administrative efficiency); *see also Treaty of Brussels (Merger Treaty)*, EURLEX(Mar.21,2018),https://eurlex.europa.eu/legalcontent/EN/ALL/?uri=LEGISSUM:4 301863 (summarizing that the Merger Treaty created a single administration and combined overlapping institutions into a single council and a single commission).

136. *See The European Communities*, *supra* note 132 ("[B]ecause of the need to save on resources and the desire to avoid duplication of effort, the three Communities' institutions were merged.").

137. *See* Rafael A. Porrata-Doria, *MERCOSUR: The Common Market of the Twenty-First Century?*, 32 Ga. J. Int'l & Comp. L. 14–15 (2004) (explaining the structure of the MERCOSUR institutions, with the Common Market Council being the most important and powerful institution).

138. Gordon L. Weil, *supra* note 128, at 63–64.

139. *Id.* at 64 (using three energy treaties, one for coal, another for nuclear power, and the last one for petroleum and natural gas, as an example for how organizations with multiple institutions should unify under one approach in order not to slow down the organization).

140. *Regional Organizations,* WORLD HEALTH ORG. (last visited Feb, 6, 2022) https://www.euro.who.int/en/about-us/partners/regional-organizations (discussing how regional country grouping in an organization, in this case the World Health Organization, works to increase collaboration in the European region, in part, by avoiding redundancies between Member States).

to build an organization have to consider that institutions are key to allowing for positive growth that creates an organization.

VI. CLOSER COMMUNITY

The Single European Act (SEA) was signed on February of 1986 by the twelve Member States of the Community building upon the theme of further integration since the ECSC.[141] The goal set out in the first Article was, "The European Communities and European Political Co-operation shall. . . contribute together to making concrete progress towards European unity."[142] The SEA focused on the unifying aspects of what was a twelve-member governing body. The term "European Parliament" was made the official name of the governing body.[143] The issue of this Act was debated in the European theater and played a larger concern among Member States themselves that hinged on the changes in voting.[144] The SEA introduced a qualified majority instead of unanimity on various matters which are not, however, "fundamental."[145] The qualified majority versus the unanimity voting raised concerns regarding the expense of sovereignty charged against the need to pass legislation.[146] It is an issue for sovereignty because on future matters, after the SEA, states who object to certain legislation, are still bound based on qualified

141. Hans-Joachim Glaesner, *The Single European Act: Attempt At An Appraisal,* 10 FORDHAM INT'L L. J. 446 (1986).

142. 1987 O.J. (L 169) 4.

143. RALPH H. FOLSOM, MICHAEL WALLACE GORDON, JOHN A. SPANOGLE, JR., PETER L. FITZGERALD & MICHAEL P. VAN ALSTINE, INTERNATIONAL BUSINESS TRANSACTIONS (11th ed. 2012).

144. A. Campbell, *The Single European Act and the Implications*, 35 INT'L AND COMPAR. L. Q. 932, 932–34 (1986) (showcasing how the Single European Act was debated in Europe with Member States, specifically the UK, were concerned about how the change in voting would impact their individual countries); Andrew Moravesik, *Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community,* 45 INT'L ORG 19, 20, 28 (1991)(discussing how European countries were debating the Single European Act, especially Germany, France, and Britain who disagreed about voting changes).

145. Campbell, *supra* note 144, at 934.

146. *Id.* at 932–34 (discussing how the Single European Act streamlined passing legislation and how a change in voting from unanimity to qualified majority voting resulted in the weaking of countries' sovereignty, specifically the UK).

majority voting.[147] The change in voting was also a concern because the qualified majority voting rule would impact "traditional" domestic sovereignty issues such as the alteration or suspension of duties, the movement of capital, sea and air transport, research and technological development, the health and safety of workers, and certain decisions on the environment.[148] All of the aforementioned matters create implications for a member state's sovereign power, especially since these matters fall within the jurisdiction of a given state. Furthermore, these issues may be against a given state's wishes under the qualified majority standpoint.[149] Regardless, this change in voting matters changed the progression of the European project toward a path that allowed for decisions to be reached at the behest unanimity.[150]

This move from unanimity to qualified majority could also be seen as an answer to aid in the future growth of the number of Member States who joined the European Union.[151] Moving from unanimity to qualified majority creates a situation that allowed for an easier flow of decisions as more states were brought on the transnational organization.[152] It follows naturally that the more

147. *Id.* at 934 (using the United Kingdom as an example of how countries' sovereignty will be impacted after the SEA because the United Kingdom, and other countries, can be bound by legislation it does not agree with and vetoes).

148. *Id.*

149. *Id.* at 936 (discussing how the change to qualified majority voting will force countries to accept certain decisions, even if the decisions are against their wishes, because countries will have a harder time blocking decisions).

150. *Id.* at 934 (explaining how the change from unanimity to qualified majority voting resulted in decisions being reached without the need for unanimity because countries can disagree with decisions, but not have the power to block the decision, therefore allowing decisions to be made without unanimity).

151. *Id.* at 934, 938–39 (explaining how the shift from unanimity to qualified majority aided countries that joined, specifically countries comprising the Mediterranean block, in gaining more power and influence).

152. Campbell, *supra* note 144, at 938 (explaining how shifting from unanimity to qualified majority as more countries joined the Community resulted in a free flow of decisions due to the democratically elected European Parliament's greater involvement in legislation and decreasing power of the Luxembourg "veto"); Andrew Moravesik, *Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community*, 45 INT'L ORG 19, 20 (1991) (explaining how the adoption of qualified majority no longer allowed France to simply veto proposals, but rather allow other countries to voice their opinions on the proposals).

members who are added to the organization, the more difficult it would be to gain consensus from a unanimous vote. Naturally, there is always dissent between people and thus states when it comes to the democratic process. So, while this could be seen as an afront to sovereignty, these voting changes did allow the European Project to move forward.

Drawing a larger implication on this vote change as well as the formalization of a "European" Parliament being recognized allows for future groupings of states to map the progress of the European Union.[153] The forward-looking approach that the SEA had was to acknowledge and adjust, even in the face of backlash from its Member States such as the UK.[154] Knowing that the European Project was successful, via the desires of more Member States to join, stakeholders had the ability to make the necessary adjustments prior to a point at which they would lead to the demise of the organization.[155] The need for a formalized governing body was paramount in order to ensure that legislation could pass regardless of an individual state.[156] The SEA demonstrates that there is no quantifiable time frame on when an organization should make voting changes. However, the voting changes themselves signal that unanimity cannot ensure the success of an organization.

While European integration was being pursued, it raised concerns about how individual state functions would rank in hierarchy. Within the United Kingdom (UK), a select committee of the House of Lords announced that, "the powers of the United Kingdom Parliament will be weakened" demonstrating the

153. Campbell, *supra* note 144, at 934, 938 (discussing how the voting change will impact future groupings of countries in the European Union, specifically the "Big Four" and the "Mediterranean Block," and the influence these countries have politically).

154. *Id.* at 937–38 (showing how the SEA acknowledged UK's misuse of a veto and adjusted how states could use a veto even with the backlash from the UK).

155. *See* Andrew Moravcsik, *Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community*, 45 INT'L ORG. 19, 20 (1991) (stating the European leader committed to addressing issues never successfully tacked in a multinational forum).

156. *See* Kathryn Good, *Institutional Reform Under the Single European Act*, 3 AM. U.J. INT'L L. & POL'Y 299, 300–01 (1988) (stating the drafters of the Single Act had to increase the powers of the European parliament in the legislation process so that the Council could rapid and effective decisions through qualified majority voting).

constitutional implications for states.[157] In order to "complete" European integration, the SEA sought to set the goal of the internal market by December 31, 1992.[158]

The UK parliament had additional reservations concerning the power of the European Parliament (EP). SEA would allow the EP's legislative powers to be increased through the control of introducing the cooperation and assent procedures.[159] This power was worrying to certain members of UK parliament because the SEA and the aforementioned delegation of powers to the Commission would, "be a further encroachment on British sovereignty."[160] The SEA articulated the objectives for the EEC, "in cooperation in economic and monetary policy; harmonization and improvement of the health and safety of workers. . . the strengthening of economic and social cohesion. . . the strengthening of the scientific and technological basis of European industry; and. . . the preservation, protection and improvement of the quality of the environment, the prudent and rational use of natural resources, and the protection of human health."[161] Additionally, the SEA established formal meetings of the EC Heads of Government, in the European Council which grants the Council of Ministers the power to establish an additional European court (s) and cooperation in the sphere of foreign policy.[162]

All of the aforementioned are issues the collective body would decide legislation from which there would be domestic ramifications. However, these issues provided more legitimacy to the EUS through collective action as a singular body. In the event of a lack of unanimity, but a qualified majority, all legislation covered in the SEA would create an issue for those who promoted

157. Campbell, *supra* note 144, at 932 (quoting 12th Report of the Select Committee of the House of Lords on the European Communities, H.L. 149, 1985–86); *see also* Good, *supra* note 156 (stating that this bill has been described as being of major constitutional significance).

158. Campbell, *supra* note 144, at 933.

159. The European Union Office of Publications, *supra* note 18.

160. Campbell, *supra* note 144, at 932.

161. *Id.* at 933.

162. *Id.*

state sovereignty over EU sovereignty.[163] The drawback of collective power, like the EU, is that certain aspects of state sovereignty must be shed. While at the national level voters see this as a diminutive of their individual state, this is actually a benefit thanks to the positive gains collective integration provides to economic growth.[164]

A. *Voting Measures and Institutional Safeguards*

The SEA addresses the growing pains that any regional organization will encounter. First, SEA addressed the concerns surrounding the voting provisions among member states.[165] Second, these voting provision changes caused some Member States to evaluate their sovereignty with respect to being a part of a transnational organization.[166]

Voting measures and how they are weighed will always be a concern within an organization. The reason always comes down to who holds the power. The SEA had to change their voting measures to prevent a single state from having de facto veto power with unanimity voting in place.[167] Through a qualified majority voting scheme, individual states such as the UK, saw an infringement on their sovereignty, since even in the case of disagreement they were still bound by the legislation that was

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163. *See* Stephen Sieberson, *Inching Toward EU Supranationalism? Qualified Majority Voting and Unanimity Under the Treaty of Lisbon*, 50 VA. J. INT'L L 919, 922 (2010) ("[M]ajority decisions threaten the Member State sovereignty that unanimous voting would protect.").

164. George A. Berman, *The Single European Act: A Constitution for the Community?*, 27 COLUM. J. TRANSNAT'L L. 529, 555 (stating that the Single European Act eliminates the gross disparities in economic development in creating a unified community-wide market).

165. *Id.* at 542.

166. *See* Leonard Schuette, *Should the EU Make Foreign Policy Decisions by Majority Voting?*, CENTRE FOR EUROPEAN REFORM (May 15, 2019), https://www.cer.eu/publications/archive/policy-brief/2019/should-eu-make-foreign-policy-decisions-majority-voting (stating qualified majority voting provisions encounter the most amount of resistance from Member States governed by Eurosceptic parties).

167. *See* Moravcsik, *supra* note 155, at 25 (stating larger states could exercise a de facto veto over fundamental changes); *see also* George Tsebelis, *Bridging Qualified Majority and Unanimity Decision-Making in the EU*, 20 J. EUR. POL'Y 1083, 1089 (stating a country disagreeing with a potential decision led the EU to select qualified majority voting).

passed.[168] This is not an isolated event and should bring some concern to any developing regional organization.

Qualified majority voting is the most ideal and is practiced by all regional organizations for the purpose of allowing the organization to move forward.[169] Consensus is often difficult to achieve and when the stakes of trade are so high for these regional organizations; the reservation of the one cannot behold the many.[170] It is with that reality in mind that the SEA was put into force and that subsequent regional organizations have not practiced the unanimity voting rule.

VII. FROM ACT TO UNION

The Maastricht Treaty, known as the Treaty on European Union (TEU), is a key feature of the European Union and is very much a following act to the SEA.[171] Signed on February 7th, 1992, by Belgium, Denmark, France, Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the UK; the Treaty on European Union (Maastricht Treaty) set into motion the EU as we see it today.[172] What started as the European Coal and Steel Community, with the lofty goal of uniting Europe, snowballed into what the Maastricht Treaty provided: complete unity. The Maastricht Treaty established mechanisms for EC countries to improve policy coordination in areas such as social affairs, high technology, border controls, immigration, and anti-crime efforts. These were all efforts to provide further integration.[173] It also committed the EC members to work toward the establishment of a common foreign and security policy as well as a path and timetable for qualified EC

168. *See* Berman, *supra* note 164, at 546 (stating that Member States have an incentive to vote because they will be bound by decisions).

169. *See* Tsebelis, *supra* note 167, at 1089 (stating the EU has selected majority decision-making in many jurisdictions with the number increasing).

170. *Id.* (stating changes by unanimity are very difficult to make).

171. Joseph M. Grieco, *The Maastricht Treaty, Economic and Monetary Union and the Neo-Realist Research Programme*, REV. OF INT'L STUD. 21 (1995) (Gr. Brit.).

172. Treaty on European Union, Feb. 7, 1992, OJEC NO C 191 (1993).

173. Grieco, *supra* note 171.

members to achieve Economic and Monetary Union (EMU) by the end of the 1990s.[174]

Making up the Maastricht Treaty were three segments: (1) an Economic and Monetary Union; (2) a political union; and (3) reforms of the existing structure of the Community.[175] The Maastricht Treaty took the three aforementioned segments and consolidated the treaties that began with the ECSC. It brought together in a single text all the existing Treaty provisions, plus two major new sections covering foreign policy coordination and cooperation in the fields of justice and home affairs.[176] These are the three 'pillars' on which the Union is built, each with its own rules and procedures, but coming under a single "roof." The Treaty of Amsterdam would retain the same overall architecture.

The Maastricht Treaty was notable in the foreign policy sphere because it established a Common Foreign and Security Policy (CFSP) that would be shared by all members.[177] Through addressing the CFSP, aspects of political cooperation were reinforced and expanded.[178] The Maastricht Treaty was the first successful policy to create a CFSP which was one of the few fields that had not yet been addressed.[179] 1970 was when foreign policy was attempted to be dealt with at the European level through the European Political Cooperation (EPC), however it was not until the Maastricht Treaty when foreign policy was put from pen to paper.[180] The EPC foreign policy framework was based on traditional diplomatic mechanisms operating outside the Community institutions which were formally confirmed under the SEA.[181]

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174. *Id.*

175. *Id.* at 21.

176. Andrew Moravcsik and Kalypso Nicolaïdis, *Keynote Article: Federal Ideals and Constitutional Realities in the Treaty of Amsterdam*, VOL. 36 J. OF COMMON MKT. STUD. 13 (1998).

177. Franklin Dehousse, *After Amsterdam: A Report on the Common Foreign and Security Policy of the European Union*, 9 EUR. J. OF INT'L LAW 525, 527 (1998).

178. *Id.*

179. *Id.* (arguing that despite the efforts of the Single European Act of 1986, there was still little improvement and recognition of foreign political cooperation before the Maastricht Treaty's establishment of CFSP in 1992).

180. *Id.*

181. *Id.*

A. *Beyond Trade*

The Maastricht Treaty is significant to those regional organizations who seek to follow the EU beyond trade. First, the Treaty addressed the common policy initiatives that would be pursued by the EU in a variety of fields that impacted trade as well as domestic government functions.[182] Second, the Treaty also took on the field of foreign policy by joining the EU under the CFSP.[183] This is notable because this is traditionally a function of each sovereign state.[184] However, this move demonstrates that the EU is further integrated well beyond trade.

What started off as coal and steel has now developed into common policies in the domestic and foreign fields. Furthermore, there is the notion of just how deep integration can go on the European continent. As regional organizations pursue common economic policies, the EU demonstrates that regional organizations can go far beyond trade.

VIII. AMSTERDAM AGREEMENT

Like Maastricht, the Treaty of Amsterdam amends the EU's founding treaties.[185] The Amsterdam Treaty improves upon the mechanisms available to the EU in order to act effectively on the CFSP.[186] Through the Treaty of Amsterdam, an established "closer cooperation" was achieved as a means to allow members with common interests to enter into agreements that promoted

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182. Grieco, *supra* note 171 (discussing the domestic government goals of the Maastricht Treaty, including diverse areas like social affairs, border controls, anti-crime efforts, and immigration).

183. *Id.*

184. Dehousse, *supra* note 177, at 526 (stating that it would seem logical for Member States to cooperate in the field of foreign policy; however, historically, foreign policy has been an area of great symbolic value for Member States, causing nations to desire sovereignty).

185. Giorgio Maganza, *The Treaty of Amsterdam's Changes to the Common Foreign and Security Policy Chapter and an Overview of the Opening Enlargement Process,* 22 FORDHAM INT'L LAW J. 174, 176 (1998) (stating that the Treaty of Amsterdam enhances the European Council and sets guidelines for founding treaties like the CFSP).

186. *Id.*

those interests without binding the EU as a whole.[187] The Treaty of Amsterdam was produced by the Intergovernmental Conference (IGC) to further European development since the initial convention that produced the ECSC.[188]

Improvement of mechanisms took on a tone of streamlining decision making through enhancing the role of the EC.[189] Under the Amsterdam Treaty the EC had the power to define the principles and guidelines for the CFSP as well as "decide on common strategies to be implemented by the Union in the areas where the Member States have important interests in common."[190] It is through this distribution of power that the EC is granted the ability to shape a collective foreign policy as a union at the expense of Member States.

The EC is granted this power, but how that is made into legislation took on voting implications.[191] The EC would act by a qualified majority of members where it made decisions based on common strategy.[192] Under this arrangement, established by the Amsterdam Treaty, voting for implementing decisions required a qualified majority while voting for main policy decisions required a unanimous vote.[193] Additionally, qualified majority voting in the EC would be required for any decision implementing a joint action or a common position.[194] The reason for these changes was political accountability.[195] Political accountability would be applicable in common strategy by the European Council, joint action, or common position unanimously adopted by the

187. Peter Katz, *The Treaty of Nice and European Union Enlargement: The Political, Economic, and Social Consequences of Ratifying the Treaty of Nice*, 24 U. PA. J. INT'L ECON. L. 253 (2014).

188. Moravcsik & Nicolaïdis *supra* note 176.

189. *Id.* at 18.

190. Maganza *supra* note 185.

191. Moravcsik & Nicolaïdis *supra* note 176, at 25 (stating that the government is permitted to veto a decision made by qualified majority of members by declaring its opposition to the decision).

192. *Id.* (discussing the introduction of qualified majority of members and implementation of common strategies).

193. *Id.*

194. *Id.*

195. *Id.* at 17.

Council.[196] The Amsterdam Treaty also put an additional safety net around political accountability.[197] The treaty allowed a Council member to oppose the adoption of a decision for, "important and stated reasons of national policy."[198]

The unanimity of the voting rule for all main CFSP decisions was combined with the possibility of constructive abstention, allowing a member state to let a decision be taken while not being obliged to apply it; in order to uphold some notion of sovereignty.[199] This combination was intended to reduce the risk of deadlock, but also to allow states to exercise some independence without holding up the work of the organization as a whole.[200] Unanimity would remain the rule for decisions having military or defense implications given the gravity of committing the organization to the geopolitical pressures.[201]

The Amsterdam Treaty and its foreign policy focus was the result of two factors: the retreat of Soviet power and the need to strengthen the EU narrative.[202] Taken together, both provide a further blueprint for states and organizations who seek to move toward a closer grouping of state power. The retreat of Soviet power demonstrated the ability of an organization of states to combat an enemy that seeks to chip away or pose a threat to its function.[203] While the EU was not engaged in direct military conflict with the Soviet Union, the Soviet Union's dissolution allowed for the European Project to move beyond the focus of an enemy on the Western front of expansion.[204] Additionally, with the Soviet Union no longer a concern, the interest of the United States (US) was shifted away from European Security.[205] Without

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196. Maganza *supra* note 185, at 177.

197. Moravcsik & Nicolaïdis *supra* note 176, at 29.

198. *Id.* at 25.

199. *Id.*

200. *Id.* at 25–26 (discussing the freedom the procedure allows dissenting states without causing a blockage in the overall process).

201. *Id.* at 26 (suggesting that while non-military actions may be funded out of joint funds, regardless of missing votes, that is not the case for military actions).

202. Dehousse, *supra* note 177, at 526.

203. *Id.* (noting the Soviet withdraw benefitted Europe).

204. *Id.* (noting the reduced threat when the Soviets withdrew shifted the focus away from conflicts).

205. *Id.*

the United States exerting such a heavy degree of power on the European continent, the EU saw the need and opportunity to seek further policy and institutional reforms in the realm of foreign policy via the Amsterdam Treaty.[206]

Given the foreign policy and security implications, the Amsterdam Treaty was a way for Member States of the European Union to strengthen their cooperation in the field of foreign policy.[207] Outside of foreign policy, the Amsterdam Treaty provided additional provisions to address areas such as labor and human rights.[208] The goal set out was, "a new stage in the process of creating an ever-closer union among the peoples of Europe."[209] This goal took on three objectives. The first was the transfer of legislative powers to the Community in areas of visas, asylum, immigration and other policies relating to the free movement of persons.[210] The second concerned the strengthening of the European Parliament regarding the nomination of the president of the Commission and the extension of the co-decision procedure to most areas of legislation.[211] The third was the human rights and democracy mechanism which imposed on the EU and its Member States an as-yet unknown constitutional discipline.[212]

The Treaty of Amsterdam allowed the goal of the European Community to be met, which was a common or single market. This was set into motion thanks to the SEA which stated, "transform relations as a whole among their State into a European Union."[213]

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206. *Id.* (noting how Europe became more focused on the goals leading to the Amsterdam Treaty after the US withdrew).

207. *Id.* (noting how strengthening Member States' cooperation in foreign policy was one factor that led to the Amsterdam Treaty).

208. Ingolf Pernice, *Multilevel Constitutionalism and the Treaty of Amsterdam: European Constitution-Making Revisited*, 36 COMMON MKT. L. REV. 704, 729–30 (1999).

209. *Id.* at 703–04.

210. *Id.*

211. *Id.*

212. *Id.*

213. *Id.* at 705.

A. *Power and Protection*

Further integration was accomplished through the Treaty of Amsterdam, but it was most notable for those regional organizations following the EU blueprint in the realm of foreign policy and how voting power was apportioned.[214] The Treaty of Amsterdam put an added focus on foreign policy after the Treaty of Maastricht.[215] This resulted from the Soviet threat receding, and the United States retreating back to its own concerns.[216] This situation is part of a geopolitical game, but other regional organizations may find themselves in a similar situation. What the EU did was to strengthen resolve among members to promote a collective voice for foreign policy. Other regional organizations who move beyond trade and into traditional roles of individual states might not consider engaging in a collective foreign policy, but for the EU it has proven to be successful in the sense of sending a message.

IX. NEGOTIATION AND NICE

Since the Treaty of Maastricht, the European Union was on a course of unity charted by guidelines set out by each subsequent legal instrument, the Treaty of Amsterdam and Nice.[217] The Treaty of Nice was the third iteration of a treaty toward the goal of further uniting the EU.[218] The Treaty of Maastricht went into force in 1993, formally establishing the European Union as we know it today.[219] While the Treaty of Amsterdam went into force in 1999, it added to and amended the TEU to update the terms.[220] Both the Treaties of Maastricht and Amsterdam were to adopt a structure that enables current EU members to interact and

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214. Maganza, *supra* note 185, at 174–76 (noting the Amsterdam Treaty especially improved voting procedures and integration in foreign policy matters for Member States).

215. *Id.*

216. *Id.*

217. Peter Katz, *The Treaty of Nice and European Union Enlargement: The Political, Economic, and Social Consequences of Ratifying the Treaty of Nice*, 24 U. PA. J. INT'L ECON. L. 225, 225 (2014) (noting how the European Union has worked together to become unified in the purposes of the Treaty of Amsterdam and the Treat of Maastricht).

218. *Id.*

219. *Id.*

220. *Id.*

function cohesively, while leaving some specific means of achieving the goals of the EU to the members states; and to ease the transition for countries that hope to gain EU membership in order to promote growth.[221]

Nice was instrumental because it addressed the adoption of amendments to the TEU that would ease the "enlargement" process for twelve non-member countries seeking membership into the EU as early as 2004.[222] There was a need for the Treaty of Nice since the Treaty of Amsterdam did not provide a clear solution for the enlargement process.[223] The Treaty of Nice was a political agreement reached among member countries' representatives which was eventually ratified by all fifteen member countries.[224] Enlargement had been one of the chief goals of the EU, which insisted the enlargement schedule had to be maintained.[225] Through enlargement the EU believed political and economic goals can be fulfilled.[226]

The Treaty of Nice also adopted various declarations that were appended to it and adopted by the IGC earlier on in the process.[227] Declaration 23 is notable because it further elaborates on the broad future goals to bring about even more integration.[228] In Declaration 23 the IGC called for a "deeper and wider debate about the future of the Union."[229] Five points that the IGC believed needed to be addressed for future deeper integration were, " how to establish and monitor a more precise delimitation of powers between the European Union and the Member States; reflecting the principle subsidiary; the status of the Charter of Fundamental Rights of the European Union, proclaimed in Nice, in accordance with the conclusions of the European Council in Cologne; a simplification of the Treaties with a view to making

221. *Id.*

222. *Id.* at 226.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.*

227. Peter Oliver, *The Convention on the Future of Europe: the Issues and Prospects*, *in* pt.1, THE TREATY OF NICE AND BEYOND ENLARGEMENT AND CONSTITUTIONAL REFORM 3, 6 (Mads Andenas & John A. Usher eds., Hart Publishing, 2003).

228. *Id.*

229. *Id.*

them clearer and better understood without changing their meaning; the role of national parliaments in the European architecture."[230] The aforementioned points are expressed ways to recognize the need to, "improve and monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States."[231] Declaration 23 was to set out goals toward further integration which was not to constitute any form of obstacle or pre-condition to the further enlargement of the Union thus promoting growth.[232]

The Treaty of Nice attempted to enhance democracy in the EU by amending the treaties to address the composition and voting power of the Council, the Commission, and Parliament to ensure more equitable decision making.[233] In order to achieve a more democratic framework, the Treaty of Nice made some institutional reforms since it is reacting to enlargement.[234] Specifically, as more Member States are brought into the EU a change in the makeup and voting would impact the governing bodies.[235] Enlargement is a beneficial process that brings new Member States who provide fresh ideas, however without the voting changes in the Treaty of Nice, enlargement would have stagnated due to the inability to come to an agreement.[236] The fix the Treaty of Nice provided was Qualified Majority Voting (QMV) in certain areas, rather than unanimous as well as redefining the parameters of enhanced cooperation.[237] This fix came from the experience of unanimous voting hindering the EU's institutions decision-making, thus giving any member de facto veto power.[238]

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230. *Id.*

231. *Id.*

232. *Id.*

233. Katz, *supra* note 217, at 246.

234. *Id.* at 253.

235. *Id.* at 252 (clarifying that the Treaty of Nice made institutional changes specifically because the governing bodies were impacted by changes in the makeup and voting as more states were added as members to the EU).

236. *Id.*

237. *Id.*

238. *Id.*

A. *Voting Revisited*

With the EU seeking further expansion, voting had to be reapportioned and that is what the Treaty of Nice sought to address.[239] What made this Treaty notable was that it took on the voting measures of the Council, Commission, and Parliament.[240] This was a necessary move due to the enlargement the EU was undergoing and to ensure legitimacy in the voting measures.[241] For regional organizations mapping out the EU enlargement, this is an example of ever-changing voting measures in order to provide equity among members. The EU continues to have states who wish to join due to measures such as the Treaty of Nice which ensures an even playing field within the regional organization.[242]

X. CONCLUSION

Sovereign states are the ultimate decision-makers as to whether it would be beneficial to join a regional trade organization. The ultimate risk is the loss of sovereignty, but with the appropriate constructs sovereignty will not be endangered given the success of the organization. The European Union provides the ideal case study for any developing regional organization since it is the oldest and first transnational organization on the globe.[243] Through examining the development of the EU, institutional development can be studied to determine the best approach for any regional organization that may move toward further integration.

The first finding is made through evaluating the ECSC. The ECSC demonstrated that regional organizations can align independent states who seek to focus on specific means of

239. *Id.* at 246.

240. *Id.*

241. *Id.*

242. *See id.* at 246–53 (explaining that because the Treaty of Nice reformed the EU's institutional system and reconstructed how members votes resulted in increased democracy, which caused countries to want to join the EU).

243. *See, e.g.*, Katz, *supra* note 217, at 225 (explaining that the Treaty of Maastricht established the EU, and that one of the main purposes of the EU is to adopt a structure that permits members to act transnationally through its treaties); *see also* Greico, *supra* note 171 (explaining the policy that the EU would peruse in a variety of fields that impacted trade as well as domestic government functions).

production, such as coal and steel, in order to promote collective growth. Additionally, the ECSC is an example of post-conflict states coming together to focus on economic growth under a collective umbrella. Finally, the ECSC portrays thestarting point that an organization needs in order to move toward further integration.

The second finding is focused on evaluating the EEC Treaty and Euratom Treaty. Both validate the possibility of independent states pooling resources in order to provide for the common benefit. The EEC validates that common makers and unions can operate to the benefit of all members and that institutional structures can be developed r to ensure equity. Additionally, common rules and regulations must be put into place over all members regardless of economic output or political persuasion. Finally, there must be a need and desire for states to engage, of which economic growth is the ultimate carrot.

The third finding revolves around the Merger Treaty and the notion that at some point institutions must streamline. What the Merger Treaty taught is that up to a certain point in development, regional organizations may develop multiple layers of institutions due to development itself or as part of a power-sharing role. However, at some point consolidation must occur in order to promote bureaucratic and legislative efficiency. Without consolidation, gridlock and hierarchy can become lost at the expense of the organization being successful.

The fourth finding is that the Maastricht Treaty allowed regional organizations to see that while trade or economic goals may be the short-term goal, in the long term an organization may grow outside of its original intent.

The fifth finding is that the Amsterdam Treaty further elaborated on foreign policy decisions and voting procedures. Furthermore, the focus was on sovereignty and creating a governing structure that could co-exist in an organization that required decision making among many different members.

The sixth finding is that the Treaty of Nice was needed to further address voting structure. With the realization that expansion was continuing, voting measures had to be reapportioned to promote equity within the organization. The focus on the equity of voting among members of the EU continues to provide additional motivation for states to desire membership.

The European Union has a proven track record of success that ultimately benefits its members. As globalization continues to fuel growth in regional organizations, the EU is a case study on how further integration can be achieved. While there is a balancing act for a state to consider the price of sovereignty when joining a trade organization, ultimately no lone state will be able to compete on the global stage in the near future without being part of the many regional organizations that have appeared and continue to grow globally.

What sets the EU apart is that it is far older, has stronger institutions, and continues to expand its membership in an effort to promote unity. Based on history the EU will only continue to integrate, providing a blueprint for all regional organizations seeking to have institutional integrity and economic success for all its Member States.