ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW

6

REGIONAL COOPERATION, ORGANIZATIONS AND PROBLEMS

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6

REGIONAL COOPERATION, ORGANIZATIONS AND PROBLEMS

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INTRODUCTORY NOTE

The 92 articles in the sixth instalment of the Encyclopedia of Public International Law are devoted to regional organizations, regional cooperation and regional problems. A number of articles which relate to several subject areas are included elsewhere in the most appropriate instalment. Thus, decisions of international tribunals on regional disputes (e.g. the Arbitral Award of 1906 Case (Honduras v. Nicaragua)) are dealt with in Instalment 2, historical regional questions (see the History of the Law of Nations: Regional Developments articles) in Instalment 7 and geographical issues (e.g. Aaland Islands) in Instalment 12.

To facilitate the use of the Encyclopedia, two kinds of cross-references are used. Arrow-marked cross-references in the articles themselves refer to other entries, and are generally inserted at the first relevant point in an article (e.g. The case was submitted to the → International Court of Justice). For other topics for which a separate entry might be expected but which are discussed elsewhere or under a heading which does not immediately suggest itself, the title of the topic appears in the alphabetical sequence of articles with a cross-reference to the article where it is discussed (e.g. **INQUIRY** *see* Fact-Finding and Inquiry).

At the end of each instalment there is an updated list of articles for the entire Encyclopedia. Articles which have already appeared have a number in brackets identifying the instalment in which they may be found.

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LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
AFDI	Annuaire Français de Droit International
AJCL	American Journal of Comparative Law
AJIL	American Journal of International Law
AnnIDI	Annuaire de l'Institut de Droit International
Annual Digest	Annual Digest and Reports of International Public Law Cases
Australian YIL	Australian Yearbook of International Law
AVR	Archiv des Völkerrechts
BILC	British International Law Cases (C. Parry, ed.)
BYIL	British Year Book of International Law
CahDroitEur	Cahiers de Droit Européen
CanYIL	Canadian Yearbook of International Law
CJEC	Court of Justice of the European Communities
Clunet	Journal du Droit International
CMLR	Common Market Law Reports
CMLRev	Common Market Law Review
ColJTransL	Columbia Journal of Transnational Law
Comecon	Council for Mutual Economic Aid
CTS	Consolidated Treaty Series (C. Parry, ed.)
DeptStateBull	Department of State Bulletin
DirInt	Diritto Internazionale
EC	European Community *or* European Communities
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council of the United Nations
ECR	Reports of the Court of Justice of the European Communities (European Court Reports)
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFTA	European Free Trade Association
ESA	European Space Agency
ETS	European Treaty Series
EuR	Europa-Recht
Euratom	European Atomic Energy Community
Eurocontrol	European Organization for the Safety of Air Navigation
FAO	Food and Agriculture Organization of the United Nations
Fontes	Fontes Iuris Gentium
GAOR	General Assembly Official Records
GATT	General Agreement on Tariffs and Trade
GYIL	German Yearbook of International Law
Harvard ILJ	Harvard International Law Journal
IAEA	International Atomic Energy Agency
IATA	International Air Transport Association
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross

ICSID	International Centre for Settlement of Investment Disputes
IDA	International Development Association
IDI	Institut de Droit International
IFC	International Finance Corporation
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILO	International Labour Organisation
ILR	International Law Reports
IMCO	Inter-Governmental Maritime Consultative Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
Indian JIL	Indian Journal of International Law
IntLawyer	International Lawyer
IntRel	International Relations
ItalYIL	Italian Yearbook of International Law
JIR	Jahrbuch für Internationales Recht
LNTS	League of Nations Treaty Series
LoN	League of Nations
Martens R	Martens Recueil de Traités
Martens R2	Martens Recueil de Traités, 2me éd.
Martens NR	Martens Nouveau Recueil de Traités
Martens NS	Martens Nouveau Supplément au Recueil de Traités
Martens NRG	Martens Nouveau Recueil Général de Traités
Martens NRG2	Martens Nouveau Recueil Général de Traités, 2me Série
Martens NRG3	Martens Nouveau Recueil Général de Traités, 3me Série
NATO	North Atlantic Treaty Organization
NedTIR	Nederlands Tijdschrift voor Internationaal Recht
NILR	Netherlands International Law Review
NordTIR	Nordisk Tidsskrift for International Ret
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
PCIJ	Permanent Court of International Justice
PolishYIL	Polish Yearbook of International Law
ProcASIL	Proceedings of the American Society of International Law
RdC	Académie de Droit International, Recueil des Cours
Res.	Resolution
RevBelge	Revue Belge de Droit International
RevEgypt	Revue Egyptienne de Droit International
RevHellén	Revue Hellénique de Droit International
RGDIP	Revue Générale de Droit International Public
RIAA	Reports of International Arbitral Awards
RivDirInt	Rivista di Diritto Internazionale
SAYIL	South African Yearbook of International Law
SchweizJIR	Schweizerisches Jahrbuch für internationales Recht
SCOR	Security Council Official Records
SEATO	South-East Asia Treaty Organization
Strupp-Schlochauer, Wörterbuch	Strupp-Schlochauer, Wörterbuch des Völkerrechts (2nd ed., 1960/62)

Supp.	Supplement
Texas ILJ	Texas International Law Journal
UN	United Nations
UN Doc.	United Nations Document
UN GA	United Nations General Assembly
UNCTAD	United Nations Conference on Trade and Development
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
UNITAR	United Nations Institute for Training and Research
UNTS	United Nations Treaty Series
UPU	Universal Postal Union
UST	United States Treaties and Other International Agreements
WEU	Western European Union
WHO	World Health Organization
WMO	World Meteorological Organization
YILC	Yearbook of the International Law Commission
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

ACP STATES *see* Lomé Conventions

AFRICAN DEVELOPMENT BANK *see* Regional Development Banks

AMAZONIAN TREATY *see* Treaty for Amazonian Cooperation

AMERICAN-CANADIAN BOUNDARY DISPUTES AND COOPERATION

The United States-Canadian boundary, which extends over 8000 kilometres (5500 miles), is not only one of the longest in the world but also one of the most remarkable. It is open, undefended, and the disputes to which it has given rise over the last two centuries have invariably been settled peacefully (→ Boundaries; → Peaceful Settlement of Disputes). The history behind the gradual emergence of the present day boundary and the resolution of subsequent conflicts over it both testify impressively to the high degree of transfrontier cooperation between the two countries. In many ways, therefore, the procedures so successfully employed for the prevention and settlement of United States-Canadian boundary disputes would recommend themselves as a model for the management of international boundary relations elsewhere.

The transcontinental boundary between the United States and Canada was shaped fundamentally in three stages: by the Paris Peace Treaty of September 3, 1783 (CTS, Vol. 48, p. 487) which laid down the basic boundary line from the Bay of Fundy to the Lake of the Woods; the Convention of October 20, 1818 (CTS, Vol. 69, p. 293) which carried the line further westward along the 49th parallel to the summit of the Rocky Mountains; and the Treaty of Oregon of June 15, 1846 (CTS, Vol. 100, p. 39) in which Great Britain and the United States agreed to a continuation of the boundary along the 49th parallel all the way to the western edge of the continent. While the 1818 and 1846 instruments with one exception have not given rise to any significant boundary disputes owing to the very nature of the demarcation line adopted, the Peace Treaty of 1783 left a legacy of multiple boundary issues, some of which still await resolution. This was principally the consequence of the fact that the treaty negotiators had laid down boundary lines through a country which, if at all, had been surveyed and mapped only inadequately.

The first such dispute to arise concerned the exact location of the St. Croix River in today's New Brunswick/Maine border area. The river was a crucial element in the boundary line stipulated by the treaty in that it both formed part of the eastern United States boundary and served as a basis for the determination of that country's northern frontier. In 1794, as the two sides failed to reach agreement on which river was meant by "St. Croix", Britain and the United States undertook to submit the dispute to a → mixed commission, which pronounced upon the issue in 1798. The 1794 → Jay Treaty thus marks the revival in modern times of international → arbitration and the beginning of a pattern of amicable settlements of boundary disputes between the United States and its northern neighbour.

Closely related to the initial uncertainty as to the location of the St. Croix River was the controversy over which country had title to the islands in Passaquamoddy Bay and the Bay of Fundy. Under the terms of the Treaty of Ghent of December 24, 1814 (CTS, Vol. 63, p. 421) which terminated the War of 1812, resolution of this issue was entrusted to another mixed commission, this time a two-member board of arbitration. The Treaty, which reconfirmed the 1783 boundary in language identical to that of the 1783 Paris Peace Treaty, provided for two additional commissions charged respectively with tracing the boundary from the St. Croix to the St. Lawrence Rivers, and from there through the Great Lakes to the Lake of the Woods.

In 1817 the first commission rendered its decision and awarded Moore, Dudley and Frederick Islands to the United States, while all other islands in Passaquamoddy Bay and the island of Grand Manan in the Bay of Fundy were adjudged to be British. However, no determination of the water boundary was made, as the arbitrators held this question to be outside their terms of reference. Instead, the boundary in the Bay of Fundy was eventually determined by agreement in 1910 and 1925.

The second commission was less successful. It failed to reach agreement as to what constituted the "watershed" straight to the north of the

source of the St. Croix River to which the Paris Peace Treaty had referred. It thereby also failed to identify a key → demarcation line. Consequently, the issue was submitted to arbitration by the King of the Netherlands in 1827. The arbitrator found the applicable treaty provisions irrelevant in that they reflected faulty assumptions about the geography of the area concerned. Accordingly, in 1831 he decided *ex proprio motu* in favour of a "line of convenience", which the United States rejected upon grounds of *excès de pouvoir* (→ Judicial and Arbitral Decisions: Validity and Nullity). The northeastern boundary question was therefore not settled until August 9, 1842 when in the Webster-Ashburn Treaty (CTS, Vol. 93, p. 415) the United States accepted as a compromise a boundary line less favourable than the one to which she would have been entitled under the 1831 award.

Most of the boundary the third commission was mandated to trace was to run over water, "in the middle of the lakes" as well as their connecting waters and communications. While use of the equidistance principle for determining the boundary in the lakes was uncontroversial, its extension to rivers and channels was challenged upon the ground that it tended to locate many navigable channels in Canadian territory. The Commission therefore adopted the American-proposed thalweg method for establishing river boundaries. The only points of disagreement involved the question of sovereignty over St. George's Island – located between Lakes Huron and Superior – and the course of the boundary between Lake Superior and the Lake of the Woods. Both issues were settled in the Webster-Ashburn Treaty which awarded the island to the United States.

While all significant disputes over the northeastern boundary were thus resolved, a major controversy was soon to arise over the exact configuration of the boundary in the far west. The 49th parallel, which under the Treaty of Oregon of 1846 had become the boundary in the west, was not extended across Vancouver Island so as to avoid splitting the island in two. Instead, the boundary was to circle the island southward in "the middle of the channel which separates the continent from Vancouver Island". As there were two possible channels - Haro and Rosario – with a number of islands in between and no understanding could be reached as to which was to be designated the boundary, the matter was submitted in 1871 to arbitration by the German Emperor. In his award of 1872 the arbitrator relied strongly upon the parties' intention to make special allowance for the location of Vancouver Island and consequently chose Haro Strait – the more westerly channel – representing the least deviation from the basic 49th parallel boundary line.

The last major dispute involving a land boundary arose over the boundary of the Alaskan panhandle. In yet another instance of laying down a "paper boundary", the 1825 Russo-British Treaty sought to define the boundary between the British and the Russian North American possessions. The somewhat ambiguous language of its boundary provisions was incorporated into the 1867 Treaty between the United States and Russia by which the latter ceded all its North American territories and dominions to the former. With the discovery of gold in Alaska, the difficulty in applying the treaties' boundary criteria to an exceedingly complex coast line became acute. The question was whether under the 1825 and 1867 Treaties the United States had acquired an unbroken strip of coast north of latitude 54°40′ or whether the strip was broken by Canadian territory at the head of certain coastal indentations. A joint United States-British survey of the boundary line succeeded merely in establishing a temporary → *modus vivendi*. Finally, in 1903 the Governments agreed to submit the question of the meaning and application of the relevant treaty provisions to arbitration by a mixed commission. The award of October 20, 1903 (RIAA, Vol. 15, p. 491) supported the basic United States position but did not completely vindicate all her territorial claims.

The 1903 → *compromis* wisely provided for the immediate appointment of experts to lay down the exact boundary line in accordance with the arbitral decision. The panel's recommendations were accepted by the Governments in 1905. A year later, a similar commission was set up to survey the 141st degree meridian boundary line; it presented its final report in 1918.

The positive experience with the dispute settlement strategies employed in the Alaska Boun-

dary Dispute obviously inspired the conclusion of the 1908 Treaty concerning the United States-Canadian Boundary (CTS, Vol. 206, p. 377). Under the Treaty, a commission of expert geographers and surveyors was set up to complete the task of mapping the international boundary between the two countries. In case of disagreement the commissioners were authorized to make separate reports to their respective governments. On February 24, 1925, the two sides agreed to reconstitute the commission as a permanent body, the International Boundary Commission, and to entrust to it the maintenance at all times of an effective boundary (LNTS, Vol. 43, p. 239). The two countries thereby took a significant step beyond facilitating the amicable settlement of boundary disputes: they erected a régime aimed at the very prevention of the emergence of such disputes. In a similar vein, the 1909 Boundary Waters Treaty of January 11, 1909 (CTS, Vol. 208, p. 213) brought into existence the International Joint Commission, a permanent body, a major function of which is to anticipate and adjust any transboundary conflict of interests regarding not just the use of → boundary waters but the management of natural resources in general that are shared across the boundary.

Impressive and exemplary in many ways as the history of joint United States-Canadian efforts at preventing and resolving boundary problems may be, a number of troublesome disputes persist today. All of them involve maritime boundaries, which fact eloquently bespeaks the emergence of offshore natural resources as a matter of critical importance to the two countries. Closest to resolution would seem to be the dispute over the maritime boundary in the Gulf of Maine. The 1910 and 1925 boundary treaties had merely provided for a three-mile maritime boundary line through the Grand Manan channel (→ Maritime Boundaries, Delimitation). With the establishment by both countries of 200-mile fisheries jurisdiction zones in the late 1970s, United States and Canadian jurisdictional claims came to overlap significantly, particularly with regard to Georges Bank, a key area in terms of fisheries and oil and gas potential (→ Fishery Zones and Limits). The United States has claimed the Northeast Channel as the appropriate boundary line, thereby including all of Georges Bank within United States jurisdiction. Apparently, the essence of the United States argument is that the concavity of the New England coastline and the convexity of that of Nova Scotia constitute special circumstances justifying the channel line on equitable grounds. Canada, on the other hand, seems to rely principally upon the applicability of the equidistance principle. Despite intense negotiating efforts, no resolution of the conflict has proved feasible. In view of this, the two sides finally, by way of a special agreement annexed to the Maritime Boundary Settlement Treaty of March 29, 1979, as amended (ILM, Vol. 20 (1981) p. 1377), submitted the issue to a chamber of the → International Court of Justice. In this respect, the United States and Canada again have broken new ground internationally in their efforts at settling their outstanding boundary problems.

Another and longer-standing dispute concerns sovereignty over the uninhabited Machias Seal Island located in the Bay of Fundy. While the terms of the 1783 Peace Treaty seem implicitly to award the island to the United States, Canada's continuous and peaceful display of state functions with respect to the island and apparent United States → acquiescence therein are apt to raise serious doubts about United States → sovereignty over it. Moreover, Canadians seem willing to invoke the principle of contiguity – the island being close to and possibly geologically related to Grand Manan – as an alternative basis for Canada's claim. A 1973 offer by the United States to submit the issue to the ICJ was not accepted by Canada. Given the island's importance for the mapping of the international boundary in the Bay and the clarification of economically valuable fishing and drilling rights in the area, a definitive resolution of this dispute might have to come sooner rather than later.

In the West, the United States and Canada face undefined or disputed maritime boundaries in three areas off their coasts. The first involves the area off the Strait of Juan de Fuca, as the Oregon Treaty of 1846 provided only for the boundary to run through the middle of the strait to the Pacific. A second controversy involves the legal significance of the so-called A-B line connecting Cap Muzon, Alaska and the entrance to Portland Channel, which separates Alaska from British Columbia. The issue is whether under the 1825

Russo-British Treaty and the 1903 award in the Alaska Boundary Dispute this demarcation line separated only land areas under the sovereignty of the United States and Canada or whether it also constitutes a maritime boundary between the two countries. Adopting the latter view, Canada has consistently argued the territorial nature of the waters to the south of the line, that is, of the Dixon Entrance and the Hecate Strait. In part, the Canadian claim is based upon a perception that United States conduct, in particular her seizure of Canadian vessels in analogous circumstances in the Gulf of Georgia, would preclude the United States from contesting the validity of the Canadian position (→ Estoppel). By contrast, the United States maintains that these waters outside the three-mile limit are part of the → high seas, a position which at least in the past was shared by the British Government. The issue has been the subject of negotiations for some time.

Finally, the United States and Canada disagree over the → continental shelf boundary in the Beaufort Sea. The bone of contention is whether the seaward projection of the Yukon-Alaskan land boundary which runs along the 141st meridian should be considered the lateral boundary between the United States and Canada continental shelves. The 1825 and 1867 Alaskan Treaties refer to a boundary along the meridian line and "its prolongation as far as the Frozen Ocean". Upon this basis, Canada has maintained that the boundary was meant to extend northward to the Pole and that the treaties reflected the sector division of the → Arctic. The United States, on the other hand, as in her position in the dispute over the Dixon Entrance and the Hectate Strait, has strongly opposed this use of treaty-stipulated land boundaries for tracing maritime boundaries in the adjacent seas. The United States argues instead that since there are no special circumstances in the area, recourse to the equidistance principle would result in an equitable shelf boundary. Such outcome, she claims, is the very objective underlying the equidistance/special circumstances rule of the 1958 Geneva Convention on the Continental Shelf and principles of → customary international law.

It goes without saying that reliance on the equidistance principle would result in the allocation to the United States of a significant portion of the shelf area now claimed by Canada. In view of the economic importance of the contested region and the lack of progress toward a negotiated settlement of the boundary issue, the Beaufort Sea claims might well be the next dispute to be submitted to third-party adjudication.

J. MOORE, International Adjudications, Modern Series, Vol. 1 (1929), Vol. 2 (1930), Vol. 6 (1933).

J. MOORE, History and Digest of the International Arbitrations to which the United States has been a Party, Vol. 1 (1898).

Proceedings of the Alaskan Boundary Tribunal, 21 vols. (1903–1904).

Canada, Department of External Affairs, Documents on Canadian External Relations, Vol. I, 1909–1918 (1967) 361–448.

M. WHITEMAN, Digest of International Law, Vol. 3 (1964) 722–871.

P. CORBETT, The Settlement of Canadian-American Disputes (1957).

A.F.N. POOLE, The Boundaries of Canada, Canadian Bar Review, Vol. 42 (1964) 100–139.

H. CLASSEN, Thrust and Counter Thrust: The Genesis of the Canada-United States Boundary (1965).

D. PHARAND, The Law of the Sea of the Arctic With Special Reference to Canada (1973).

C.B. BOURNE and D.M. MCRAE, Maritime Jurisdiction in the Dixon Entrance: The Alaska Boundary Re-Examined, CanYIL, Vol. 14 (1976) 175–223.

C.C. EMANUELLI, Boundary and Resource Issues: Modes de règlement des différends entre le Canada et les Etats-Unis en matière de frontières et de ressources maritimes, Canada-United States Law Journal, Vol. 1 (1978) 36–66.

M. FREDERICK, La délimitation du plateau continental entre le Canada et les Etats-Unis dans la mer de Beaufort, CanYIL, Vol. 17 (1979) 30–98.

M. COHEN, Le traité canada-américain des eaux limitrophes et la Commission mixte internationale, Etudes internationales, Vol. 11 (1980) 375–392.

K.L. LAUZON, Delimiting Continental Shelf Boundaries in the Arctic: The United States-Canada Beaufort Sea Boundary, Virginia Journal of International Law, Vol. 22 (1981) 221–246.

S.M. RHEE, Equitable Solutions to the Maritime Boundary Dispute between the United States and Canada in the Gulf of Maine, AJIL, Vol. 75 (1981) 590–628.

E.B. WANG, Canada-United States Fisheries and Maritime Boundary Negotiations; Diplomacy in Deep Water, Behind the Headlines, Vol. 38(6)/39(1) (1981).

GÜNTHER HANDL

AMERICAN INTERNATIONAL LAW *see* International Law, American

AMERICAN-MEXICAN BOUNDARY DISPUTES AND COOPERATION

1. Early History

The boundary established between Spain and the United States by the Adams–de Onis ("Amity") Treaty of February 22, 1819 (effective 1821) became the original boundary between the United States and Mexico by virtue of → State succession upon Mexican independence in September 1821. After some futile efforts on the part of the United States to purchase all or part of Texas, the "Amity" Treaty boundary was confirmed by the United States-Mexico Boundary Treaty of January 12, 1828 (effective 1832). The main lines of that boundary were the Sabine and Red Rivers, the 100th degree of longitude, and the 42nd degree of latitude. Some of the present states of the United States (Texas, New Mexico, Arizona, California, Nevada, Utah, and Colorado) were thus part of Mexico; they were organized into two Mexican federal territories (Alta California and Nuevo México) or formed parts of several Mexican states (Tamaulipas; Coahuila y Texas; Chihuahua and Sonora).

(*a*) *Secession of Texas*

In 1835, Coahuila y Texas rebelled against central Mexican authority (→ Civil War), and on March 2, 1836, the Republic of Texas declared its independence. It gained → recognition by the United States in 1837, and subsequently by the United Kingdom, France, the Netherlands, and Bremen. Mexico, however, continued to regard Texas as national territory in a state of rebellion, and made repeated but ultimately unsuccessful attempts to re-establish its authority militarily. It protested the violation of United States → neutrality laws by the open recruitment of volunteers for the Texas revolution, the occupation of Nacogdoches in east Texas by United States armed forces in early 1836, and premature recognition of Texas by the United States in 1837. The United States position was that despite diligent efforts, neutrality laws were unenforceable; that United States military action was designed to contain "savage" Indians; and that Texas fulfilled the requirements of American statehood when recognized.

The boundaries of Texas with the United States were, again by State succession, those of the "Amity" Treaty of 1819; this was confirmed by a boundary convention of April 25, 1838 between the United States and Texas. The boundaries between Texas and Mexico were defined unilaterally by an Act promulgated by the Republic of Texas dated December 19, 1836, as following the Rio Grande River to its source and thence due North to the "Amity" boundary. This would have encompassed about half of New Mexico as well as parts of Colorado and even Wyoming. These were, however, paper claims: Mexico did not recognize them because it refused to recognize the secession of Texas, and the United States continued to recognize Mexico as the lawful sovereign (→ Territorial Sovereignty) of Nuevo Mexico. Attempts by the Republic of Texas to establish its authority militarily in New Mexico were unsuccessful.

(*b*) *Accession of Texas*

In 1845/1846, the Republic of Texas was incorporated into the United States (→ Territory, Acquisition) by the then unprecedented device of an offer of accession expressed in a Joint Resolution of the United States Congress, which was accepted by a resolution of a Constitutional Convention convoked by the Republic of Texas for that purpose. This caused the rupture of diplomatic relations between the United States and Mexico, which continued to refuse to recognize the secession of Texas (→ Diplomatic Relations, Establishment and Severance). When United States armed forces moved into Texas, military confrontation quickly produced an incident (on April 25, 1846) which led to → war with Mexico. That incident had the makings of a boundary dispute, as it occurred in the "Nueces Strip" north of the Rio Grande. That area had been part of the Spanish Colony of Nuevo Santandér and, later, of the Mexican state of Tamaulipas. United States claims to it were based, through State succession, on the Boundary Act of December 1836, which had extended the boun-

daries of the Republic of Texas to the Rio Grande. The Republic had, however, failed in its efforts to secure all but a small part of the Nueces Strip militarily, and the incident occurred in an area not previously under Texan control.

(*c*) *Treaty of Guadelupe Hidalgo*

In the early stage of hostilities, the United States established control over the Mexican federal territories of Alta California and Nuevo México. The war was concluded, after the occupation of Mexico City, by the Treaty of Guadelupe Hidalgo of February 2, 1848 (CTS, Vol. 102, p. 29). That Treaty resolved the Texas question and the Nueces Strip controversy by extending the boundaries of the United States to the Rio Grande and turned the Texan claim to half of New Mexico into a matter of → domestic jurisdiction. It further established the borders between the two countries as running, east to west, along the central channel of the Rio Grande to El Paso, then along the southern boundary of Nuevo México as indicated on Disturnell's → map, which was expressly incorporated into the Treaty, then northward to the Gila River, down the main channel of the Gila to its confluence with the (western) Colorado River, and, finally, due west to San Diego (Art. V). The United States undertook to pay 15 million US dollars for this cession (Art. XII), which reduced the territory of Mexico by about one-third. Additionally, the United States undertook to prevent the incursion of "savage" Indians into Mexico (Art. XI).

(*d*) *Gadsden Treaty*

The demarcation of the new boundary as provided for in Art. V, para. 3 of the Treaty was obstructed by the United States when it was realized that the line agreed on would not be optimal for the construction of a railroad to the Pacific on United States territory. After prolonged → negotiations, a boundary treaty (the Gadsden Treaty of December 30, 1853; CTS, Vol. 111, p. 235) redrew the controversial southern boundary of New Mexico 20 miles to the south of the Gila, along lines presently prevailing (Art. 1). The United States paid ten million US dollars for this additional cession (Art. 3), but also extracted the right to "extend its protection" to a railroad then in the process of construction across the Gulf of Tehuantepec (Art. 8) (this humiliating concession for Mexico was brought to an end by a boundary treaty of April 13, 1937). Mexico also released the United States from obligations relating to Indian incursions (Art. 3, abrogating Art. XI of the Treaty of Guadelupe Hidalgo). The implementation of the Gadsden Treaty with the transfer of → sovereignty (1856) marked the end of major boundary adjustments between Mexico and the United States. The permanence of the solution then achieved is illustrated by the boundary treaty of November 23, 1970, which confirms the Guadelupe Hidalgo line.

(*e*) *Problems under Guadelupe Hidalgo Treaty*

There were, however, three major boundary-related controversies engendered by the Guadelupe Hidalgo Treaty. The first relates to a protocol signed by the United States negotiators on May 26, 1848, but not communicated to the United States Senate for its approval (Protocol of Querétaro of May 26, 1848; text: H. Miller (ed.), Treaties and Other International Acts of the United States, Vol. 5 (1937) p. 380). That protocol guarantees, *inter alia*, the recognition of pre-1836 Mexican land titles in Texas (Art. 2, para. 2). While disputing, on April 11, 1849, the status of the protocol as part of the Treaty, the United States did not disavow the undertakings contained therein. The protocol was officially published by Mexico while courts in the United States have divided on its "validity" (→ Treaties, Validity). Its → effectiveness at least within the "Nueces Strip" now seems established.

The second controversy engendered by the Treaty of Guadelupe Hidalgo relates to the starting point of the boundary line to be drawn "westwardly, along the whole southern boundary of New Mexico (which runs north of the town called Paso)" to its western termination, the southern and western boundaries of New Mexico being, for the Treaty's purposes, those of Disturnell's map (Art. V, paras. 1 and 2). That map was, however, inaccurate in two respects. The Treaty also provided for the demarcation of the boundary by two commisioners and two surveyors, appointed by the contracting parties, specifying that "the result, agreed upon by them ... shall have the same force as if it were inserted" in the Treaty itself (Art. V, para. 3).

The two commissioners agreed on a compromise signed by them, the Mexican surveyor and the acting United States surveyor. It was later signed by the United States surveyor as well, but with the reservation that his signature merely certified that of the commissioner. The issues involved lost their practical significance through the purchase of the contested area by the United States in the Gadsden Treaty of 1853.

The third dispute centred on Art. XI of the Treaty of Guadelupe Hidalgo, which obligated the United States to restrain and to punish incursions of "savage tribes" from the newly-acquired territories into Mexico "in the same way, and with equal diligence and energy" as if committed in the United States against its citizens. The occurrence of massive and repeated incursions of Indians into Mexico was not in dispute, but the United States claimed having exercised *diligentia quam in suis*. This question remained unresolved because, as held by the Claims Commission (→ Mixed Claims Commissions) established under the Convention of July 4, 1868, the suppression of Art. XI of the Treaty of Guadelupe Hidalgo by the Gadsden Treaty had released the United States from liability for all 366 claims relating to these incursions.

The threat posed by secessionist military expeditions into Northern Mexico was equally serious, and gave rise to repeated Mexican → protests. The most flagrant of these undertakings were J.M.J. Carbejal's efforts in 1851 to separate the northeastern states of Tamaulipas, Nuevo Leon, and Coahuila from Mexico, and "General" Walker's attempt to "liberate" Baja California and Sonora (1853–1854). While the United States sought to enforce its neutrality laws so as to prevent the departure of military expeditions when actually assembled, no attempt was made to suppress recruitment. Mexican consular and diplomatic officials were understandably outraged by official tolerance of, and public support for, movements openly planning armed secessionist incursions into their country. There appears to have been, nevertheless, no conclusive State practice relating to the compatibility of United States tolerance for such groups ("filibusters") with standards of international law then prevailing. It seems to have been agreed, on the other hand, that the filibusters enjoyed no → diplomatic protection and could be executed if captured.

(f) Evaluation

The *jus ad bellum* was part of mid-19th century international law (→ War, Laws of, History), and → conquest conferred valid title to territory. As directly reflected by the development of the Mexican-United States boundary from 1821 to 1853, the United States persistently sought territorial expansion at the expense of Mexico. Additionally, the expansionist faction in control of United States foreign policy until 1861 sought to expand → slavery by territorial acquisitions to the South. Mexico was saved by the → American Civil War (1861–1865), which concentrated United States energies elsewhere and destroyed the political base of the pro-slavery, expansionist faction. Post-1865 relations are therefore quite different from those of the *ante bellum* period, since they are based on the continued existence of Mexico as a sovereign nation. The pre-1865 territorial expansion and slavery policy officially pursued by the United States would be plainly unlawful today.

2. Post-Civil-War Disputes

The boundary remained insecure after the American Civil War because of the activities of Indian tribes, bandits, and Mexican revolutionaries, as dramatically illustrated by Pancho Villa's raid into New Mexico in 1916. A recurring subject of dispute between the two countries, until the United States' entry in 1917 into World War I, was border security and especially the right of trans-boundary military pursuit. Another area of conflict related to the effect of the meanderings of the major boundary river, the Rio Grande, on the boundary line established in 1848.

(a) Trans-boundary violence and hot pursuit

Trans-boundary disturbances after 1865 were caused chiefly by Indian tribes, cattle thieves, and political activists. Their incidence reflects, in the main, three interdependent factors: political instability in Mexico, inadequate military patrolling of the border, and the lack of east-west communication by railroad. Jurisprudence under the 1868 Claims Convention established two ground rules of State responsibility in this connection (→ Responsibility of States: General Principles).

First, both States had a duty of furnishing "reasonable protection" against prospective raids into the other country. Secondly, both States were liable for the wanton destruction of property across the border if they facilitated the raid or the retreat, or failed to bring the perpetrators to justice. The Piedras Negras claim, which established the latter proposition against the United States, left open the crucial question of the permissibility of the trans-boundary pursuit of marauders by the armed forces of the victim State (J.B. Moore, International Arbitrations, Vol. 3 (1898) p. 3035).

Under the "Ord Order" of 1877, United States commanders were authorized to cross the boundary when in sight of marauders or upon a fresh trail. Mexico protested against this order as being in violation of international law, and regularly refused permission for entry of United States armed forces into Mexican territory. These refusals were based on the additional ground that under Mexican constitutional law, such permission could only be granted by Congress (after 1874, by the Senate). Mexican armed forces had orders to resist incursions, but there were few incidents until 1882, when the matter was largely resolved by the Romero-Frelinghuysen Convention (July 29, 1862). That Convention permitted, on a reciprocal basis, trans-boundary "close pursuit" of "savage" Indians in unpopulated or desert parts of the boundary, as defined in the Convention. Withdrawal was to take place if the trail was lost; the pursuing force was expressly forbidden to establish itself or to remain longer than necessary for the pursuit of the trail. This agreement was extended from time to time until the need for it disappeared due to government stability and the availability of railroad communications.

The border became unsafe again during the Mexican Revolution which started in 1911. The most serious border incidents of that time were Pancho Villa's "Columbus Raid" in New Mexico in March, 1916, and General Pershing's "punitive expedition" into Mexico in search of Villa (1916–1917). Recent analysis of diplomatic correspondence and of the El Paso Conference of May 1916 lead to the conclusion that the then → *de facto* government of Mexico acquiesced in (→ Acquiescence), and perhaps even welcomed, the pursuit of General Villa, whom it regarded as a rebel if not a bandit. Nevertheless, no express permission for entry into Mexico was given, and the Mexican armed forces were ordered to resist military movements not connected with the operations against Villa. (Mexican forces were permitted, upon request, to move across United States territory in the Northwestern campaign against Villa.)

It appears to be the better opinion that the practice just summarized does not suffice to establish a local custom of → hot pursuit on land in the absence of agreement or consent (see → Intervention).

(*b*) *The Rio Grande boundary*

There is authority to the effect that the Rio Grande caused boundary trouble in 89 localities over 65 years (C.C. Hyde, International Law, Vol. 2 (2nd ed. 1947) p. 433). This was due, in the main, to two factors: the uneven and at times torrential course of the river, and the frequency of change in the boundary régime. Art. V of the Guadelupe Hidalgo Treaty established the boundary "up the middle" of the river, "following the deepest channel". It also provided for the joint surveying of the boundary, the agreed "result" of the survey having the same force as the Treaty itself. While the former of these rules appeared to accept the thalweg doctrine and the concept of a movable river boundary, the latter seemed to signify that once the middle of the river had been marked by agreement of the commissioners (1852), the line then agreed upon became a fixed boundary. That conclusion was, however, undercut somewhat by the Gadsden Treaty (1853) referring to the "middle" of the river, which had by then shifted somewhat from the lines marked in 1852.

In an advisory opinion dated 1856 (Opinions of Attorney Generals, Vol. 8 (1856) 175–180), the Attorney General of the United States, Caleb Cushing, expressed the view that when the change of the course of the river was alluvial (i.e. with slow and gradual erosion and accretion), the Rio Grande boundary followed the lateral move of the river bed. Where, however, there was an avulsive (sudden and forceful) change of course, the boundary remained in the abandoned river bed. Mexico did not officially accept or reject the

opinion, but unofficial comment tended towards acceptance.

A boundary treaty of November 12, 1884 put the modified thalweg concept into operation. It provided that the boundary was to follow changes in the course of the river channel due to "gradual" erosion and alluvion (Art. I), but that in the case of any other change brought about by the force of the current, e.g. by cutting a new bed, the original line fixed by the 1852 survey was to remain the international boundary, even though the original bed should become wholly dry (Art. II). Not surprisingly, the latter provision led to the creation of a multitude of exclaves (*bancos*) on both sides of the river, produced the very antithesis of an "arcifinous" boundary (i.e. one forming a natural defense), and created an eldorado for smuggling and other lawless activities. The Banco Elimination Convention of March 20, 1905 put an end to this undesirable state of affairs by transferring dominion and jurisdiction of the 58 *bancos* then surveyed to the respective riparian sovereigns (Art. I), and by providing that the same principle was to govern the disposal of *bancos* in the future (Art. II). This task was to be accomplished by the International Boundary Commission, a bilateral international agency which had been put on a permanent basis by a treaty of March 1, 1889. Between 1905 and 1970, some 239 *bancos* were adjudicated by the Commission to one side or the other. In time, the *banco* problem was resolved through the regulation of the river by a system of dams built pursuant to agreement between the two riparians. The most recent boundary convention between the two countries, dated November 23, 1970 (UNTS, Vol. 830, p. 55), solved the *banco* matters then outstanding. *Pro futuro*, it adopted the "middle of the channel occupied by the normal flow" as the determinant. Thus the boundary now follows the river where the change is alluvial; otherwise, the river will be made to follow the boundary.

The interplay of the rules just described, and of general international law, is best illustrated by the Chamizal arbitration (1911; RIAA, Vol. 11, p. 309). The Chamizal tract was formed on the United States side of the river between what are now Juarez and El Paso, between 1853 and 1868. Its origins are due to an alluvial shift of the river bed, but the major part of the tract was ultimately found to consist of earth violently gouged out of the Mexican bank and deposited on the United States bank during the 1864–1868 flood period. Since the bed of the river did not change, there was no avulsive change as defined in the Treaty of 1884. Nevertheless, pursuant to Corpus Juris Civilis, Inst. 2, 1, § 21, which had been previously accepted by the United States as authoritative, title to tracts thus torn off and transferred to the opposite bank remains with the original owner.

The two national members of the International Boundary Commission being unable to agree as to the disposition of the Chamizal tract, the matter was submitted to → arbitration by an *ad hoc* convention in 1910 (→ Arbitration and Conciliation Treaties), which provided that the International Boundary Commission, augmented by a Canadian jurist, was to decide "solely and exclusively as to whether international title to the Chamizal tract is in the United States of America or in Mexico". The decision, whether unanimous or by majority vote, was to be "final and conclusive upon both Governments, and without appeal".

In its award dated June 15, 1911, the Commission decided, first, that the Guadelupe Hidalgo-Gadsden Treaty boundary was not fixed but "arcifinous" (formed a natural defence), and that the 1884 boundary treaty was intended to apply retroactively. (Mexico would have prevailed under a fixed-boundary theory.) Pursuant to Art. I of the boundary treaty, the initial portion of the Chamizal tract was adjudicated to the United States. The portion added by the violent floods of 1864–1868, however, was adjudicated to Mexico, since it had not been formed by slow and gradual erosion as required by Art. I of the boundary treaty. That holding was hardly unexpected, since the president of the Tribunal had stated, and United States counsel had agreed, that resort was to be had to general principle where there was no treaty provision in point (→ General Principles of Law). Prescriptive claims by the United States to the whole of the tract were rejected (→ Prescription). The Mexican Commissioner dissented from the movable-boundary holding, and the United States Commissioner from the adjudication of the post-1864 portion of the tract to Mexico. It was perhaps unfortunate that the majority had not

expressly cited Inst. 2, 1, § 21 for this part of its decision, but these provisions had been pleaded by Mexico (Memoria documentada del juicio de arbitraje del Chamizal, Vol. 2 (1911)).

Additionally, the United States Commissioner contended that the tribunal had acted *ultra vires* since it was only empowered to award the entire tract to one of the parties, and that the award was void for vagueness, as it would be impossible now to trace the lines between the two masses of the tract (→ Judicial and Arbitral Decisions: Validity and Nullity). The United States adopted the views of its dissenting Commissioner, and refused to accept the award. Its confidence in the strength of that legal position became apparent in 1925, when a formal offer by Mexico to submit the question of the validity of the Chamizal award to the "Hague Tribunal" was rejected by the United States. In 1963, the United States modified her position, and the two countries concluded a convention "to give effect to the 1911 award in today's circumstances" (Convention for the Solution of the Chamizal Problem, August 29, 1963, UNTS, Vol. 505, p. 185). This Convention transferred to Mexico the acreage awarded in 1911, including most of the Chamizal tract. A major portion thereof (by now part of downtown El Paso) was, however, omitted and replaced by equivalent lands – a monument to the real reason for the position of the United States towards this dispute between 1911 and 1963, which has been termed "a violation of its treaty obligation and a blot on the American record as a supporter of settlement by international adjudication" (Jessup, p. 434). In any event, the dispute over the Chamizal tract disrupted neither the work of the International Boundary Commission under the Banco Exchange Treaty of 1905 nor the negotiations leading up to agreements on the division and ultimate regulation of the boundary waters.

3. *Water Management and Distribution*

In the 20th century, boundary disputes between the two countries have all but disappeared, only to be replaced by water controversies. This is readily explained by the growth of irrigation agriculture, first in the United States and more recently in Mexico, and by the increased water needs of expanding municipalities. Chief among the latter is the Juarez-El Paso conurbation, which continues to figure prominently in water disputes, foreign and domestic. As regards the water supply, the two main rivers, the Rio Grande and the (western) Colorado, rise in the United States and flow for considerable distances within that country before reaching the international line. The lower Rio Grande, on the other hand, is dependent upon Mexican tributaries. New techniques in groundwater pumping also tend to equalize the contest. Above all, water is the lifeblood of the American Southwest and of the Mexican North. The need for water is increasing while the inadequate supply is finite and even declining (due to pumping of aquifers in excess of natural replacement; → Water, International Regulation of the Use of).

(*a*) *River waters*

The initial contest was over the waters of the Rio Grande, which had traditionally served the needs of riparian municipalities in Mexico as well as in the United States. Plans to dam the river in New Mexico for irrigation purposes led to Mexican protests, based on navigation rights under the Guadelupe Hidalgo Treaty (Art. VII) as well as prescriptive (historical) water rights of the city of Juarez and of Mexican irrigation farmers. In the treaty of May 21, 1906 on the distribution of the waters of the Rio Grande, the United States undertook to supply to Mexico, at the Acequia Madre above Juarez, 60 000 acre-feet of water per year (except for extraordinary drought or serious accident, when national treatment was to be assured). Mexico, in turn, renounced all claims to the waters of the Rio Grande between Juarez and Fort Quitman, some 150 miles below. On February 1, 1933, the two countries concluded another agreement for the rectification of the Rio Grande.

The 1906 agreement failed to meet the needs of the lower Rio Grande area, and did not cover the (western) Colorado. After protracted negotiations, these matters were regulated by the Utilization of Waters Treaty of February 3, 1944. Pursuant to that Treaty, the United States undertook to supply to Mexico a guaranteed annual quantity of 1.5 million acre-feet of water of the Colorado, "from any and all sources" (Art. 10). Elaborate provision was made for the division of the waters of the lower Rio Grande, with the

riparians receiving preferential shares of their tributaries and the remainder being divided equally (Art. 4). Additionally, the parties undertook to construct several storage dams along the Rio Grande (Art. 5). This system was completed when the Amistad dam became operative in 1969; and since that time, the Rio Grande has become a fully controlled waterway. Both Mexico and the United States have come to regard any discharge of the waters of either the Colorado or of the Rio Grande into the ocean as "waste", to be prevented by the optimal use and consumption of their flows. In the case of the Colorado, this objective has already been attained.

(*b*) *Water quality; ground water pumping*

Around 1960, it became apparent that the total use of the flow of a river in a semi-arid or an arid environment, and mainly for irrigation purposes, leads to a deterioration of water quality downstream due to leaching and (where not inhibited) discharge of brine (cf. → Environment, International Protection; → Transfrontier Pollution; → River and Lake Pollution). Mexican agricultural enterprises in the Mexicali Valley, in particular, suffered damage through lack of water fit for irrigation. While the United States initially took the position that the Utilization of Waters Treaty guaranteed only the quantity but not the quality of waters to be delivered to Mexico, this position now appears to have been abandoned, at least *sub silentio.* In an agreement with Mexico concluded on March 22, 1965, the United States undertook, for an interim period, to build a bypass canal keeping the return flow of brine away from the Mexican diversion point on the Colorado, and to replace the quantity of water thus lost. This was followed by an agreement (August 30, 1973) guaranteeing the quality of water to be supplied to Mexico, and extending no-recourse financial assistance (a euphemism for → reparations) for the rehabilitation of the Mexicali Valley. The 1973 agreement also imposes a ceiling of 160000 acre-feet per annum on ground water pumping on either side of a ten-mile strip bisected by the Arizona-Sonora boundary. This prohibition is to be in effect pending the conclusion of a "comprehensive agreement on ground water in the border areas" (Section 5).

(*c*) *International Boundary and Water Commission*

The positive developments described above (sections 3(b), 4(a) and 4(b)) are due in good measure to the International Boundary Commission, which was put on a permanent basis by treaty in 1889 and received its present name in the Utilization of Waters Treaty of 1944, which extended the jurisdiction of the Commission to the matters covered therein. Headquartered in Juarez and in El Paso, the Commission is composed of a Commissioner and a Consulting Engineer from each country, and such additional staff as added by either government to "its" Commission (1889 Treaty, Art. II). If both Commissioners agree to a decision, "their judgment shall be considered binding upon both Governments" unless disapproved by either of them within one month (Art. VIII). Several of the agreements mentioned above are, or incorporate, Minutes (*Acta*) of the Commission decisions. In the past, the Commission has experienced considerable difficulty in obtaining recognition and enforcement of its decisions in the internal law of the members States, especially the United States (Texas). With the waning of the *banco* problem, this matter appears to be no longer of importance.

(*d*) *Maritime boundary disputes*

Three maritime boundary situations exist between Mexico and the United States. Two are in the Gulf of Mexico: one in the Western Gulf off the adjacent coast of northeastern Mexico and Texas, and the other in the Eastern Gulf between the coastline of Louisiana and Mexican islands off the Yucatan Peninsula. The other is off the adjacent coastlines of California and Baja California in the Pacific. Partially in response to Mexico's declaration of a 200-nautical-mile → exclusive economic zone beyond the limits of the territorial sea (Diario oficial, February 6, 1976), the United States concluded an agreement with Mexico on November 24, 1976 by an exchange of → notes. The boundary line agreed upon was based on extension of the twelve-nautical-mile maritime boundary in the 1970 Boundary Treaty, using the principle of equidistance and giving full effect to → islands (→ Maritime Boundaries, Delimitation). A treaty encompassing the coordinates

contained in the 1976 notes was signed on May 4, 1978 (U.S. Senate Executive Doc. F, 96th Congress, 1st Session (1979)), but at this writing has not been ratified. (For details of the Treaty provisions, see M. Feldman and D. Colson, The Maritime Boundaries of the United States, AJIL, Vol. 75 (1981) 729–763, esp. pp. 734, 740, 743–744.) Ratification has been held up in part due to United States-Mexico fisheries disputes (see generally J. Vargas, México y la zona de pesca de los Estados Unidos (1978); → Fishery Zones and Limits) and because of questions raised concerning the hydrocarbon potential of the → continental shelf off the coast of Mexico.

4. *Miscellanea and Conclusion*

The above survey omits some legal and demographic factors, and a number of controversies not necessarily typical for the American-Mexican boundary. The former include, above all, the prohibition of land ownership by aliens (→ Aliens, Property) within 100 kilometres of the boundary by Art. 27 of the Mexican Constitution (codifying prior legislation to the same effect), a customs-favoured zone on the Mexican side of the boundary (→ Customs Law, International), and – primarily encouraged by these two factors – a population on both sides of the border that is largely of Spanish-Mexican origin and Spanish-speaking. Given prevailing differences in per capita income, this situation has not only led to transfrontier cooperation (→ Transfrontier Cooperation between Local or Regional Authorities) and the development of "twin" cities such as Brownsville-Matamoros, Laredo and Nuevo Laredo, and especially El Paso and Juarez, but it has also facilitated the illegal movement of persons (cf. → Immigration; → Migrant Workers) and drugs (cf. → Drug Control, International) into the United States and of high-excise-tax goods and firearms into Mexico.

In conclusion, most modern observers on both sides of the boundary would probably agree, as regards the 19th century, with the second part of the famous statement of President Porfirio Díaz, lamenting his country's distance from the Almighty and closeness to the United States. They would, however, disagree emphatically with the 19th century judgment of another Mexican statesman that between strength and weakness, there must be a desert. Water has made that desert fertile; Mexicans and Americans (and Mexican-Americans) are making it bloom.

W.E. BINKLEY, The Expansionist Movement in Texas (1925).

R.D. GREGG, The Influence of Border Troubles on Relations between the United States and Mexico 1876–1910 (1937).

G. IRELAND, Boundaries, Possessions and Conflicts in Central and North America and the Caribbean (1941).

C. TIMM, The International Boundary Commission, United States and Mexico (1941).

W. GOETZMANN, The United States – Mexican Boundary Survey, 1848–1853, Southwestern Historical Quarterly, Vol. 52 (1958) 164–190.

A. GOMEZ ROBLEDO, México y el arbitraje internacional (1965).

S.B. LISS, A Century of Disagreement, The Chamizal Conflict 1864–1964 (1966).

C. MEYERS and R. NOBLE, The Colorado River: The Treaty with Mexico, Stanford Law Review, Vol. 19 (1966–1967) 367–419.

P.C. JESSUP, El Chamizal, AJIL, Vol. 67 (1973) 423–445.

International Symposium on the Salinity of the Colorado River, Natural Resources Journal, Vol. 15 (1975) 1–239.

J.E. MUELLER, Restless River, International Law and the Behavior of the Rio Grande (1975).

S. SAYLES, The Romer-Frelinghuysen Convention: A Milestone in Border Relations, New Mexico Historical Review, Vol. 51 (1976) 295–311.

C. SEPÚLVEDA, La frontera norte de México (1976).

International Symposium on the Salinity of the Colorado River, Part I, Natural Resources Journal, Vol. 17 (1977) 543–671; Part II, ibid., Vol. 18 (1978) 1–212.

J. HARPER, The El Paso-Juarez Conference of 1916, Arizona and the West, Vol. 20 (1978) 231–244.

C. BROWN, Agents of Manifest Destiny, The Lives and Times of the Filibusters (1980).

S.P. MUMME, The U.S.-Mexican Conflict over Transboundary Groundwaters: Some Institutional and Political Considerations, Case Western Journal of International Law, Vol. 12 (1980) 505–524.

L.C. WILSON, Settlement of Boundary Disputes: Mexico, the United States and the International Boundary, ICLQ, Vol. 29 (1980) 38–53.

K. SCHMITT, The Problem of Maritime Boundaries in U.S.-Mexican Relations, Natural Resources Journal, Vol. 22 (1982) 155–159.

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ANDEAN COMMON MARKET

1. Background and Establishment

The different attempts toward the integration of Latin America must be seen historically in the light of the projects of the Liberators to create a Latin American nation (see → History of the Law of Nations: Ancient Times to World War I: Latin America; → Organization of American States; → Regional Cooperation and Organization: American States), once the emancipation from colonial ties had been achieved (→ Colonies; → Decolonization). Moreover, these efforts should be analyzed within the context of the immediate background, that is, on the one hand, the successful Western European experience in the field of economic integration (→ European Communities; → European Economic Community) and on the other hand, the critical situation of Latin American national economies, characterized by the tightness of national markets and the lack of available financing.

Among the milestones of integration in Latin America (→ Latin American Economic Cooperation) were the proposal made in 1950 to create a → customs union among the countries of the → La Plata Basin, the plans for an economic union among the countries which at one time belonged to Gran Colombia (the Quito Charter, 1948), the projects for the integration of Central American countries (→ Central American Common Market), and finally the establishment of the Latin American Free Trade Association (LAFTA), created by the Montevideo Treaty of February 18, 1960 (→ Free Trade Areas), which was recently replaced by the agreement to create the → Latin American Integration Association (LAIA) through the Montevideo Treaty of August 12, 1980.

There have also been other attempts at integration in Latin America (e.g. → Treaty for Amazonian Cooperation) and in the Caribbean (→ Caribbean Cooperation). One of them is the Agreement on [Andean] Sub-Regional Integration potentially foreseen within LAFTA. In Resolution 202 (1967) of LAFTA, the future establishment of sub-regional agreements was envisaged and the principles under which the norms of such agreements would operate were established. Resolution 222 (1967), in turn, established the rules to which regional agreements would be subject, and which were to be defined as agreements "by means of which the countries of LAFTA subscribing thereto shall be able to promote the process of economic integration in a balanced and more accelerated fashion than that derived from the commitments undertaken within the framework of the Montevideo Treaty" (Res. 222, First Rule).

The 1969 Agreement on Sub-Regional Integration, called the Cartagena Agreement, and whose organizational structure is generally referred to as the Andean Pact, is the outcome of a whole series of prior steps aimed at obtaining sub-regional integration. Among those steps, one can point first to the Declaration of Bogotá of August 16, 1966, by means of which Colombia, Chile, Venezuela, Ecuador and Peru announced their decision to:

> "further a joint action aimed at obtaining, within the Latin American Free Trade Association, the approval of concrete measures to achieve the purposes formulated in the present Declaration, and in particular, the adoption of practical formulae to provide treatment adequate to the conditions prevailing in our countries, the characteristics of which are those with relatively less developed economies, or of an insufficient market; and all of the above as an indispensable means of obtaining a balanced and harmonious development of the region, in keeping with the spirit of the Montevideo Treaty."

Further steps were the Declaration of the Presidents of the Americas of April 14, 1967, which envisaged an action programme of "furthering the conclusion of sub-regional agreements, transitory in nature, with internal systems of tariff reduction and the harmonization of the treatment of third parties in a more accelerated fashion than that provided in the general agreements, and which shall be compatible with the purpose of regional integration" (Declaration of Presidents, Chapter I(2)(d)), the proceedings of the sessions of the Mixed Commission (1967) envisaged in the Declaration of Bogotá, and the establishment of the Andean

Development Corporation (1968), which was to "further the process of sub-regional integration" (Art. 3 of the Agreement establishing the Corporation).

2. Members, Structure, Objectives and Organs

The Cartagena Agreement was signed on May 26, 1969 by Bolivia, Colombia, Chile, Ecuador and Peru. Venezuela adhered through an additional instrument signed on February 13, 1973 (Lima Consensus), Chile denounced the Agreement on October 30, 1976.

The Cartagena Agreement has among its objectives: promoting the balanced and harmonious development of its member countries, accelerating growth through economic integration, facilitating participation in the process of integration provided for in the Montevideo Treaty, and establishing favourable conditions for the conversion of LAFTA (now LAIA) into a common market (→ Economic Communities and Groups). The final purpose stated was to seek attainment of continuing improvement in the standard of living of the inhabitants of the sub-region through a balanced distribution of the benefits derived from the integration of its member nations, the gradual achievement of which was to be evaluated periodically (Agreement, Arts. 1 and 2).

Other agreements of integration adopted after 1969 aim at contributing to the improvement of the standard of living of the inhabitants of the region. These are the 1970 Andrés Bello Convention (educational-cultural integration), the Hipólito Unanime Convention of 1971 (improvement of human health of the countries of the area by means of coordinated action) and the Simón Rodríguez Convention of 1973 (social-labour integration).

The main means and mechanisms envisaged in the Agreement to achieve the said objectives are: the harmonization of economic and social policies, intensified sub-regional industrialization, the implementation of sectorial programmes for industrial development, a programme to promote a more rapid liberation of exchange than that adopted within the framework of LAFTA, a common customs tariff, the accelerated development of the agricultural and livestock sector, the financing of the investments needed (through e.g. → Regional Development Banks) and physical integration (Art. 3).

The original principal organs of the Andean Pact are the Commission and the "Junta". In 1979 a third principal organ, the → Andean Common Market Court of Justice, was provided for.

The Commission, made up of a plenipotentiary representative of each one of the governments of the member countries, ordinarily meets three times a year and adopts its decisions, with very few exceptions, by the affirmative vote of two-thirds of the member countries. Its main functions are: the formulation of the general policy of the Andean Pact and the adoption of measures necessary for the achievement of its aims; the approval of the norms required for the co-ordination of the development plans and harmonization of the economic policies of its member countries; the appointment of the Junta and supervision of its activities including the approval of its budget and the establishment of the contribution to be made by each one of the member countries. It is furthermore the function of the Commission (as well as of the Junta) to maintain close contact with the Andean Development Corporation. The settlement of disputes, initially attributed to the Commission, should be analyzed *vis-à-vis* the jurisdiction of the Court of Justice (not yet in force).

The Junta, the permanent technical body of the Andean Pact, is made up of three members who may be nationals of any Latin American country and also are to hold this position for a period of three years; they may be re-elected. The members of the Junta are to implement their action in terms of the sub-region as a whole. Their statements are based on unanimous consent, even when alternative proposals are placed before the Commission for its consideration, and the members are responsible to the Commission for their acts. The Junta is responsible for supervising the application of the Agreement and the implementation of the Decisions of the Commission, and for fulfilling the latter's mandates. Among the technical functions of the Junta, the formulation of proposals aimed at facilitating or expediting compliance with the Agreement should be mentioned, as well as that of annually evaluating the results of its application and of acting as the

Permanent Secretariat of the Andean Pact (cf. → International Secretariat).

The Consultative Committee and the Economic and Social Advisory Committee are the auxiliary bodies of the Andean Pact.

3. Evaluation

The Declaration of the Presidents of the Andean Countries (1978) renewed the integrationist intent of the countries party to the Agreement. In the Mandate of Cartagena (1979), the Presidents of Bolivia, Colombia, Ecuador, Peru and Venezuela, having assessed the experience under the Agreement, stated that the work done had been fully justified. Nevertheless, the specific goals of the integrated development envisaged in the Cartagena Agreement (Arts. 25 to 108), although partially reached, do not correspond to an optimum implementation of the purposes originally foreseen.

This panorama evolves with the parallel development of the regulatory instruments of the Andean Pact (among others Decision 24 (1970), aimed at regulating → foreign investment and → industrial property, Decision 46 (1971), which fixes the general guidelines for the establishment of multinational enterprises (→ Transnational Enterprises) and Decision 169 (1982), which governs Andean multinational enterprises). In addition, there has been a gradual relieving of legal tensions which arose from the need to incorporate the legal order created by the Agreement into the law of the Andean countries. The above-mentioned contrast between the declared political intent and the implemented integrationist steps of the member countries of the Agreement is surprising in view of the foreign policy role that the Agreement has been assuming, even though in an on-and-off manner, over the last few years. The failure in sufficiently fulfilling, among others, the sectorial programme of industrial development and advancing the agricultural development, the results, at times unsatisfactory, regarding the elimination of tariffs and restrictions on the import of products originating in the territory of any member country, and the delay in physical integration are, taken together, indicative of this disparity caused by both external as well as internal factors.

Pacto Andino, Textos fundamentales (1979).

Inter-American Institute of Legal Studies, Instruments of Economic Integration in Latin America and the Caribbean, Vol. 1 (1975) 149–362.

Junta del Acuerdo de Cartagena, Evaluación del proceso de integración 1969–1979 (1979).

J.-E. GREÑO VELASCO, El régimen común de tratamiento a los capitales extranjeros en el Pacto Andino, Revista Jurídica de Cataluña, Vol. 73 (1974) 175–193.

D. MORAWETZ, The Andean Group, A Case Study in Economic Integration among Developing Countries (1974).

R. CALDERA, Posibilidad de un nacionalismo latinoamericano, in: América Latina, Conciencia y Nación (1977) 228–255.

F.V. GARCÍA AMADOR, El ordenamiento jurídico andino (1977); English translation: The Andean Legal Order (1978).

K.J. MIDDLEBROOK, Regional Organizations and Andean Economic Integration, Journal of Common Market Studies, Vol. 17 (1978) 62–82.

R. VARGAS-HIDALGO, An Evaluation of the Andean Pact, Lawyer of the Americas, Vol. 10 (1978) 401–423.

E.G. FERRIS, National Political Support for Regional Integration, The Andean Pact, International Organization, Vol. 33 (1979) 83–104.

L.J. GARAY and D. PIZANO. El Grupo Andino, Objetivos, estrategia, mecanismo y avances (1979) 17–131.

F.V. GARCÍA AMADOR, Some Legal Aspects of the Andean Economic Integration, in: Jus et societas, Essays in Tribute to Wolfgang Friedmann (1979) 96–115.

M. CARRAUD, L'intégration des pays andins (1981).

F.L. CASERO and P. WALDMANN, Nationaler Entwicklungsstand und regionale Integration, Der Andenpakt aus der Perspektive der Mitgliedsstaaten, in: M. Mols (ed.), Integration und Kooperation in Lateinamerika (1981) 175–248.

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ANDEAN COMMON MARKET, COURT OF JUSTICE

1. Background and Establishment

A common characteristic of → Latin American economic cooperation has been a tendency to avoid the creation, initially, of a community system which is obligatory and permanent, directed at assuring the uniform application and interpretation of community rights as well as resolving the controversies these occasion. Examples of this

limited approach have been the → Latin American Integration Association (until 1980 the Latin American Free Trade Association (LAFTA)), the → Central American Common Market and the → Andean Common Market. Such hesitation is probably due to a very pronounced concept of national → sovereignty on the part of the member States, which hinders the acceptance of the existence of bodies or procedures that express a community supremacy (→ Supranational Organizations; → Economic Communities and Groups).

Art. 23 of the Cartagena Agreement, by which the Andean Common Market was created, envisaged a system for the settlement of disputes which consisted of the progressive phases of → negotiation, → good offices, → conciliation and mediation, and, finally, → arbitration. Basically, it drew upon the analogous mechanism of LAFTA and reproduced the latter's limitations and inconveniences within the framework of a more complex economic and juridical system. It soon became apparent that this system was inappropriate.

In its Sixth Period of Extraordinary Sessions (December 18/19, 1972), the Commission of the Cartagena Agreement requested that the Junta (see the article on the Andean Common Market) prepare the necessary studies for the creation of a Cartagena Agreement Court. The first report of the Junta regarding this matter was presented on December 12, 1972. The matter was studied at length by the Commission and by experts. On August 8, 1978 in Bogotá, the Presidents of the Andean Countries declared their support for the creation of the Court of Justice of the Cartagena Agreement and established as an objective the signing of the Treaty in 1979. The Junta submitted its final report (COM/XXV/di 23/6-10-78) to the governments, along with the final draft of its proposal (JUN/Proposal 43/Rev. 27/2-19-78), in order to submit the matter for juridical-political negotiations. The result of this final procedure of negotiations was the signing of the Treaty which created the Court of Justice of the Cartagena Agreement in Cartagena, Colombia on May 28, 1979 (ILM, Vol. 18 (1979) p. 1203).

It was agreed that the Treaty would enter into force when all the signatory member States had deposited their respective instruments of ratification, and also that there could be no recourse to reservations (Arts. 37 and 36; → Treaties, Conclusion and Entry into Force; → Treaties, Reservations). These last requirements delayed the entry into force of the Treaty beyond 1982, for there remained pending the observations of Venezuela regarding the compatibility of various provisions of the Treaty with her domestic law. These difficulties gave rise to a controversy in that State regarding the constitutionality of the Treaty, although in the end in late 1982 it was approved by the Venezuelan Congress with two "interpretative declarations". From the moment the Government of Venezuela deposits its instrument of ratification, the Treaty enters into force and the Court can be established.

The signed Treaty does not merely create the Andean Court of Justice; it also introduces innovations and modification within the general system of the Cartagena Agreement, becoming completely and inseparably part of the Andean Common Market. Thus, it has been agreed that the member States shall not submit any controversy that may arise with respect to the application of the law of the Cartagena Agreement to any other judicial or arbitral procedure – a provision different from the one laid down in the Treaty. The inseparability of the Treaty and the Cartagena Agreement is strengthened by the provision that States which accede to the Cartagena Agreement must also accede to the Treaty (Art. 36), which cannot be denounced separately; thus the Treaty will remain in effect so long as the Cartagena Agreement is in force (Art. 38).

These are two further noteworthy provisions that constitute true modifications of the general system of the Cartagena Agreement. The first refers to the direct and generally binding character attributed to decisions of the Commission; they bind the member States as of the date of their approval (Art. 2) and are directly applicable from the date of their publication without the need of an expressed act of incorporation into the domestic law, unless the decision itself provides for a later date (Art. 3; → International Law and Municipal Law).

The second is the provision of Art. 38 which states that the Treaty and the Cartagena Agreement shall both remain in effect in-

dependently of the continuation in effect of the Treaty of Montevideo, the basis upon which the Andean Common Market was conceived.

Finally, it should be emphasized that according to the nature and purpose of the Court, its decisions are directly applicable within the member States of the Cartagena Agreement without the need of further transformation or exequatur (Art. 32) (→ International Law in Municipal Law: Law and Decisions of International Organizations and Courts).

2. *Composition and Organization of the Court*

The Court of Justice of the Cartagena Agreement ("*Tribunal de Justicia del Acuerdo de Cartagena*") is intended to be one of its principal institutions; its seat is to be the city of Quito, Ecuador (Art. 6). The Court is to be composed of five judges, who must be nationals of the member States, of high moral reputation, and able to meet the standards required for appointment to the highest judicial offices in their respective countries or they must be juriconsults of recognized competence. Each judge is to have two alternates who must possess the same qualifications as the principals, and who are to be elected on the same date and in the same manner and for a term equal to that of the judges (Arts. 7 and 10).

The judges are to be appointed unanimously by plenipotentiaries from the member States, especially designated for this purpose. They are to be chosen from a list of candidates presented by each member State (Art. 8).

The judges are to be appointed for a term of six years and are partially replaced every three years. They can be removed only upon the complaint of a member State and only when, in the exercise of their functions, they have committed a grievous fault as stipulated in the Statute of the Court (Arts. 9 and 11).

The Treaty guarantees the judges full independence in the exercise of their functions (Art. 7) and grants them the corresponding immunities and privileges (Art. 13). Nevertheless, the budget of the Court must be submitted for the approval of the Commission (Art. 16), although in accordance with its jurisdiction the Court may nullify decisions of the Commission which violate the juridical structure of the Treaty of Cartagena.

The Treaty reserves to the Court the power of appointment of the Secretary and the personnel necessary for the fulfillment of its functions. It also grants the Court competence to regulate its internal affairs (Arts. 14 and 15). Nevertheless, a large part of the matters relating to the performance of the Court, such as its procedure, are to be regulated in the Statute that the Commission must approve, on the proposal of the Junta, within three months after the Treaty enters into force. Modifications to the Statute are also subject to Commission approval, but must be proposed by the Court.

Also to be regulated in the Statute are: the possibilities of modifying the number of judges or creating the office of Advocate General, so long as there is a unanimous proposal from the Court (Art. 7), the establishment of the impediments or challenges that might affect the judges in the discharge of their offices (Art. 10) and matters related to the procedure whereby a judge may be removed upon complaint by the government of a member State (Art. 10).

3. *Competence; Law to be Applied*

The → Preamble to the Treaty conceives the Court as "a juridical entity at the highest level, independent of the governments of the member countries and from the other bodies of the Cartagena Agreement, with the authority to define communitarian law, resolve the controversies that arise under it, and interpret it uniformly". The exercise of the competences of the Court is closely connected to the interpretation and application of communitarian law. Art. 1 specifies the juridical structure of the Cartagena Agreement. It comprises: the Cartagena Agreement, its protocols and additional instruments; the Treaty itself, which creates the Court; decisions of the Commission; and resolutions of the Junta. Thus, the enumeration of sources was in fact more restrictive than that proposed in the *travaux préparatoires* (see JUN/Proposición 43/Rev. 27/2-10-78).

This being the applicable law, the Court exercises its jurisdiction by actions of nullification, actions of non-compliance and interpretation through preliminary advisory opinions.

(*a*) *Actions for nullification*

This action seeks the nullification of decisions

of the Commission or resolutions of the Junta which violate the norms that constitute the juridical order of the Cartagena Agreement, be that an objective violation of the law or an abuse of power, that is, an exercise of competences with an end different from that for which the organ was granted a given competence (cf. → Abuse of Rights).

Only decisions and resolutions are subject to judicial nullification. Other juridical acts such as directives, notwithstanding their importance within the structure of the Cartagena Agreement (see Arts. 27, 28, 29 and 30 of that treaty), are not justiciable. Resort to an action for nullification or another analogous action has not been established for cases where an organ of the community refrains from acting, even if performance by the organ is mandatory.

In any case, the commencement of an action does not affect the applicability of the act impugned (Art. 21). The possibility that the Court could order, in exceptional circumstances, the prior suspension of the effects of a norm was considered in the project proposed by the Junta and also by the experts, but was eliminated from the definitive text.

The action can be brought: (i) by anyone of the member countries, except against decisions that have been approved with its affirmative vote (Art. 18; → Estoppel); (ii) by the Commission, which can obviously only object to a resolution of the Junta; (iii) by the Junta, with regard to decisions of the Commission; and (iv) by any person, natural or juridical, with regard to those decisions or resolutions which, when applicable to them, cause them damage. The direct access of individuals to the Court is therefore possible, under conditions whose precise extent remains to be defined by jurisprudence, but which appears more ample than that foreseen by Art. 173 of the Treaty establishing the → European Economic Community.

Actions for nullification must be undertaken within one year following the date of entry into force of the act impugned (Art. 20). The ruling can declare the total or partial nullification of the decision or resolution, but even in a case where partial nullification is declared, the ruling will not necessarily produce *ex tunc* effects, as it falls to the Court itself to indicate the eff cts of its ruling over such period of time as may be deemed appropriate under the circumstances (Art. 22). In successful actions, the execution of the ruling shall be the duty of the body whose decision has been annulled, and which shall adopt the measures required to ensure its fulfilment (Art. 22).

(*b*) *Actions of non-compliance*

The purpose of this action is for the Court to determine whether or not one of the member countries has complied with the obligations which the juridical structure of the Cartagena Agreement imposes upon them. Although the Treaty does not specifically indicate it, non-compliance should be understood on an ample basis, that is it should be imputable to the State in accordance with the principles of international responsibility. The exercise of the action is restricted to the Junta and the member countries and is subject to a prior administrative procedure which varies according to who has initiated the action.

If the Junta officially considers that one of the member countries has not complied, it will prepare its observations in writing, and the member country must reply within a term of no more than two months, after which the Junta shall issue its considered opinion. If it decides that there has been non-compliance and the member country persists in the action which was the object of the Junta's observations, the latter may present the matter to the Court for its decision. But if it is a member country which considers that another country has not complied, it should present its complaint to the Junta, which shall issue its opinion after completing the procedure outlined above. In cases of non-compliance where the accused country persists in its action, the Junta must present the matter to the Court.

In a last hypothesis the complainant country may turn directly to the Court in any of three situations: (i) if the Junta's opinion of non-compliance is not accepted by the accused country and the Junta has brought no action within two months following that opinion; (ii) if the Junta does not issue its opinion within the three months following the presentation of the complaint; and (iii) if the finding of the Junta is that there has been no non-compliance (Art. 24).

In these cases, the competence of an individual

to bring causes of action in the Court has not been established. Nevertheless, a provision of the Treaty (Art. 27) – which has been criticized for being unnecessary – establishes that natural or juridical persons shall have the right to bring causes of action in the competent national courts, in accordance with the provisions of domestic law, in cases where the member countries do not adopt the measures necessary to assure the fulfilment of the norms which comprise the juridical structure of the Cartagena Agreement. Actually, this provision should be interpreted as an obligation assumed by the member countries guaranteeing individuals in its domestic law the existence of this kind of appeal, so that its non-existence would be considered as non-compliance with the Treaty.

The exercise of the action is in this case not subject to any terms of prescription or caducity.

The ruling of the Court, if one of non-compliance, will not directly result in the nullification of the act of the member country; that is reserved to national jurisdiction, although frequently the ruling should clearly demonstrate the State's lack of competence to act with regard to certain issues which have been surrendered by member countries in return for the advantages of the communitarian organization.

The principal effect of the ruling will be the obligation on the part of the member country whose action is the object of the complaint to adopt the measures necessary for complying with the decision. If the member country does not adopt those measures, the Court, summarily and after hearing the opinions of the Junta, is to determine the limits within which the complainant country, or any other member country, may restrict or suspend, totally or partially, the advantages deriving from the Cartagena Agreement which benefit the non-complying member country.

The Treaty also establishes that rulings issued in actions of non-compliance may be reviewed by the Court, provided: (i) that the petition for review is based upon a fact that could have decisively influenced the ruling; (ii) that the petitioner was at the date of the ruling unaware of the existence of said fact; and (iii) that the petition be presented within two months from the date when the facts were discovered and in all cases within one year following the date of the ruling (Art. 26).

(c) Advisory opinions

Advisory jurisdiction of the Court is aimed at ensuring, through complementary action with the national courts, the uniform interpretation of communitarian law. It is then a mechanism destined to be used by the national judges in a way similar to that contemplated by the EEC Treaty. Two situations are foreseen. The first is that of a pending trial in which the juridical structure of the Cartagena Agreement should be applied and from which there is appeal according to domestic law. In this case, the national judge may seek the interpretation of the corresponding norms by the Court, but even if he does so such request does not suspend the proceedings; and if the national court must deliver its ruling before the interpretation of the Court has been received, the national judge must proceed to decide the case. However, where the ruling is not subject to appeal within the national juridical system, the petition for interpretation is obligatory and the proceedings should be suspended until the interpretation of the Court has been received.

In either case, the interpretation of the Court is binding on the national judge. Nevertheless, it should be restricted to defining the content and scope of the communitarian law and shall neither consider the content and scope of domestic law nor judge the substantive facts of the case.

The Treaty does not specify any sanctions for cases where a national judge sets aside the interpretation of the Court.

Andean Group: Treaty Creating the Court of Justice of the Cartagena Agreement, Cartagena, May 28, 1979, ILM, Vol. 18 (1979) 1203–1210.

F. VILLAGRAN KRAMER, Sistematización de la estructura jurídica del Acuerdo de Cartagena, Revista de derecho de la integración, No. 12 (1973) 11–34.

F. ORREGO VICUÑA, La creación de un Tribunal de Justicia en el Grupo Andino, Revista de derecho de la integración, No. 15 (1974) 31–45.

M. CASANOVA, Una integración equitativa, Rol del derecho en el Acuerdo de Cartagena (1975) 104–109.

R. MACLEAN, A Note on the Creation of the Andean Tribunal, Houston Journal of International Law, Vol. 1 (1979) 143–145.

S.C. DE ZALDUENDO, El Tribunal Andino de Justicia, Integración Latinoamericana, Vol. 4 (1979) 32–37.

E.P. LOCHRIDGE, The Role of the Andean Court in

Consolidating Regional Integration Efforts, Georgia Journal of International Law and Comparative Law, Vol. 10 (1980) 351–383.
I. MORALES PAUL, Derecho internacional económico (1980) 202–224.

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ARAB GULF STATES, CO-OPERATION COUNCIL *see* Co-operation Council of the Arab Gulf States

ARAB PETROLEUM EXPORTING COUNTRIES *see* Organization of Arab Petroleum Exporting Countries

ARAB STATES, LEAGUE OF

1. Establishment; Objectives and Principles

The period between the two World Wars witnessed a number of → liberation movements within the Arab world, seeking to achieve independence for the Arab countries which lay at the time under either British, French or Italian influence (→ Decolonization; → Mandates). At the same time authoritative writings began to appear which called for some sort of federation amongst these Arab countries after they had gained independence. On February 24, 1943 the United Kingdom declared her sympathy with any movement which aimed at strengthening Arab ties, while expressing the belief, however, that the first step in such a direction should originate with the Arabs themselves. At the invitation of the Egyptian Government a preparatory committee met in Alexandria from September 25 to October 7, 1944 and issued what has since become known as the "Protocol of Alexandria" which included the principles on which the League of Arab States was to be established. On March 22, 1945 the representatives of six Arab States (Egypt, Iraq, Jordan, Lebanon, Saudi Arabia and Syria) signed the League's Charter (UNTS, Vol. 70, p. 237); Yemen signed on May 5, 1945. The Charter came into force on May 11, 1945.

The Charter consists of a → preamble, 20 articles and three annexes which deal with → Palestine, cooperation between the League and non-member Arab States and the appointment of the first Secretary General of the League.

The League of Arab States is a regional organization in accordance with Chapter VIII of the → United Nations Charter (Art. 52(1); → Regional Arrangements and the UN Charter). It possesses independent international legal personality (→ International Organizations, General Aspects; → Subjects of International Law) and it enjoys by virtue of a special agreement signed on May 10, 1953 the privileges and immunities of international organizations (→ International Organizations, Privileges and Immunities).

The objectives of the League may be summarized as follows: safeguarding the independence and → sovereignty of its member States; the → peaceful settlement of disputes; strengthening the political ties between member States; increasing the cooperation between member States in the economic, social and cultural fields; and general concern with the interests and affairs of Arab countries.

The League's Charter is based on a set of principles similar to those of the → United Nations and various regional organizations. These principles include: equal status for members (→ States, Sovereign Equality); prohibition of the → use of force to resolve disputes; joint defence amongst members when one of them becomes the victim of → aggression (→ Collective Security); and non-interference by the League in the internal affairs of its members (→ Non-Intervention, Principle of).

2. Membership

(a) Acquisition of membership

Aside from the original members (i.e. the independent Arab States which signed and ratified the Charter in 1945), it is possible for any independent Arab State to join the League by applying to its Secretariat General for membership, provided such application obtains the approval of the League's Council (→ International Organizations, Membership). Although the Charter is silent with regard to the number of votes required for the Council's approval–which prompted the proposition that unanimous approval is required for the admission of any new member on the ground that such is the general rule for voting in the League (→ Voting Rules in International Conferences and Organizations)–the practice has been to admit new members by

majority vote. This practice is based on an explanatory resolution of the Council which confined the cases for which unanimous decisions are required to those which affect member States' sovereignty.

Besides the 7 founding members, 15 other States have now joined the League, bringing the present membership to 22. They are: Libya (1953), Sudan (1956), Morocco and Tunisia (1958), Kuwait (1961), Algeria (1962), Democratic Republic of Yemen (1967), Bahrain and the United Arab Emirates (1971), Mauritania (1973), Somalia (1974), Palestine (1976) and Djibouti (1977).

(b) Loss of membership

The Charter gives the members the right to withdraw from the League (Art. 18). However, a member must inform the Council of its intention to do so one year prior to withdrawal. Despite the fact that there have been many instances of disagreement amongst the members of the League, since its inception none have withdrawn – although various States have boycotted many Council sessions. In the event of amendment to the Charter by two-thirds majority vote, a dissenting member State has the right to withdraw without advance notice (Art. 19).

The League's Council may expel any State which does not fulfil its obligations under the Charter. The expulsion decision requires the approval of all member States except the one to be expelled. Although some States have sought to apply this sanction in certain situations, all such attempts have been unsuccessful.

It is worth mentioning here that the League's Charter does not provide for the suspension of voting rights as a → sanction, as is the case in the UN Charter and the constitutive documents of some regional organizations. However, a conference of Arab ministers for foreign affairs and the economy held in Baghdad from March 27 to 31, 1979 resolved to suspend Egypt's membership in the League and to deprive her of all rights emanating from membership as a sanction for signing a peace agreement with Israel (→ Israel and the Arab States). The validity of this and other resolutions which came out of this conference is regarded by some as very doubtful from the legal viewpoint. The meeting in which these resolutions were adopted was neither an ordinary nor extraordinary session of the League's Council but merely an Arab conference outside the forum of the Arab League and therefore incompetent to deal with situations which are within the domain of the League Charter – let alone adopt resolutions which contradict the Charter or require its amendment. Moreover, the Charter does not provide for "suspension of membership", and the only sanction which could have been applied to Egypt in accordance with the Charter is expulsion.

3. Functions

The League has a number of functions which are in keeping with its role as a regional organization in accordance with Chapter VIII of the UN Charter.

In the area of the peaceful settlement of disputes, the Charter provides disputant States with two ways to settle their differences: mediation (→ Conciliation and Mediation) and → arbitration (Art. 5). The Council may mediate any dispute which threatens to lead to → war between two member States or between a member State and a third State, with a view to bringing about reconciliation; decisions of the Council in such cases are to be taken by majority vote but may not be considered as binding. The Council may also act as a court of arbitration, should two or more members of the League so request and provided that the dispute does not concern a State's independence, sovereignty or territorial integrity (→ Vital Interests).

It is worth mentioning that unlike the UN Charter, the League Charter did not establish a judicial body. However, the creation of an Arab Court of Justice was to be a priority matter in case of amendment of the Charter. Following certain preliminary studies, detailed drafts of an "Arab Court of Justice", which was to be modelled along the lines of the → International Court of Justice and entrusted with the power to adjudicate disputes between Arab States and issue legal opinions, were submitted in 1951 for the League's consideration. No decision has yet been taken regarding the creation of such a court. However, the matter was discussed again during the recent Arab Summit Conference meetings held in 1981 and 1982 to study the proposals of the Secretariat General of the Arab League

regarding amendment of the League's Charter itself and the financial and administrative regulations attached to it.

The Charter provides that in the event of aggression or threat of aggression by a State against a member State, the latter may demand the immediate convocation of the Council, which shall determine the necessary measures to be taken (Art. 6). It must be noted that the Council cannot act on its own in case of aggression: The State victim of the aggression must resort first to the Council, otherwise the latter cannot intervene to assist the State or to apply sanctions against the aggressor.

It should be mentioned that the Arab League has played a certain role in the Lebanon conflict since 1975.

Regarding cooperation with international bodies, Art. 3 of the Charter provides that it shall be the task of the Council to "decide upon the means by which the League is to cooperate with the international bodies to be created in the future in order to guarantee security and peace and regulate economic and social relations"; the provision does not expressly mention the UN Charter owing to the simple fact that the League's Charter was adopted prior to the UN Charter. In fulfilment of this provision, the League cooperates with the UN, which in March 1950 formally recognized the League as a regional organization in accordance with Chapter VIII of the UN Charter. The League also cooperates with a number of specialized international organizations, some governmental and some non-governmental.

The League plays a further role in the coordination of the policies of the member States in the political, economic, social and cultural fields.

4. *Organs*

The League has the following main organs: the Council, the Permanent Committees and the Secretariat General. Other organs were established under the Treaty of Joint Defence and Economic Cooperation, approved by the Council on April 13, 1950, and further bodies were created for the benefit of the League by various Council resolutions.

(*a*) *The Council*

The Council, which consists of the representatives of the member States, is the supreme organ of the League. Its sessions are held usually at the ministerial level (i.e. ministers of foreign affairs), although they have been held several times at the ambassadorial level. Since 1964 sessions have been held twice annually, once at the ministerial level and once at the level of heads of State – the latter having become known as the "Arab Summit Conference". (The draft amendment to the League's Charter, which is currently under study, proposes that representation in the Council be at the ministerial level and that a second higher council for the heads of State be created.) Each member of the Council has one vote. The Council has a general function which entitles it to take all measures, make all recommendations and decide on all questions which are related to the objectives of the League in general. In particular, the Council appoints the Secretary-General, approves the League's budget and decides each member's share of the expenses. The Council holds two ordinary sessions in March and September of each year. It may, if necessary, hold extraordinary sessions at the request of two member States or a State which has been the subject of aggression.

The Council usually holds its sessions in Cairo, which is the permanent seat of the League (Charter, Art. 10). The Council may, however, assemble at any other place it may designate. At the Baghdad Conference held in March 1979 it was decided to make Tunisia the temporary headquarters of the League following the suspension of Egypt's membership; the validity of this decision is doubtful (see section 2(b) *supra*).

With regard to voting, the general rule, in accordance with Art. 7 of the Charter, is that decisions of the Council must be approved unanimously for them to be binding upon all member States. Majority decisions are binding only on those States which have accepted them. However, the Council has interpreted this article to mean that unanimity is required only with regard to matters related to the member States' sovereignty. In certain cases (e.g. appointment of the Secretary-General or amendment of the Charter) the Charter prescribes a two-thirds majority, while in others (e.g. mediation and arbitration decisions, approval of the budget and the internal regulations of the Council and its Committees) only a simple majority is required.

(b) Permanent Committees

These are specialized committees which prepare the bases of cooperation between member States and present the outcome of studies in the form of draft resolutions, recommendations or international agreements to be discussed and approved by the League's Council. The Permanent Committees attached to the Council are the Political Committee, the Economic Committee, the Social and Cultural Affairs Committee, the Communication Committee, the Information Committee, the Oil Experts Committee, the Committee for Meteorology, the Health Committee, the Administrative and Financial Affairs Committee, the Human Rights Committee and the Conference of Liaison Officers of the Regional Offices for the Boycott of Israel. The main activities of the Arab League revolve around these permanent Committees, which have prepared many of the draft agreements subsequently adopted by the Council and concluded by member States.

(c) The Secretariat General

The Secretariat consists of the Secretary-General, Assistant Secretaries and functionaries. The Secretary-General is appointed by the Council for a five year renewable term. There are internal regulations which govern the work of the Secretariat General and its departments and branch offices. There are also a number of permanent offices belonging to the League situated in various American, European and Asian countries.

(d) The organs of the 1950 Treaty

In 1950, five years after the League had come into existence, the Council called on the member States to conclude a Treaty of Joint Defence and Economic Cooperation to complement the League Charter. The Treaty was adopted by the Council on April 13, 1950 and approved by the member States on June 17, 1950. Five institutions were established under the Treaty. The Joint Defence Council, composed of foreign and defence ministers of member States or their representatives, is entrusted with taking the necessary measures to repulse any aggression directed at a member State. It harmonizes the plans for the defence of member States and coordinates those aspects of the Treaty concerned with common defence. It is supervised by the League's Council and its decisions, which are taken by a two-thirds majority, are binding on all member States. The Military Advisory Organization, composed of the chiefs of staff of the armies of the member States, supervises the work of the Permanent Military Commission and reviews its reports before submission to the Joint Defence Council. The Permanent Military Commission is a permanent specialized body which draws up plans for joint defence between the League's member States. The Arab Unified Command is a general command for the joint forces to be formed in the event of military operations. It is chaired by the State which contributes the greatest amount in terms of personnel and *matériel* to any joint operation. The Economic Council, composed of ministers of economic affairs, is entrusted with the task of coordinating the economic policies of the member States and concluding the necessary agreements in this field. The Economic Council has a number of subsidiary specialized committees in the areas of agriculture, industry, commerce, financial matters, transportation and tourism.

(e) Other secondary organs

There further exist various secondary organs established by resolutions adopted by the League's Council. The Jordan River Authority was established for planning, financing and supervising the execution of the Arab projects related to the exploitation of the water of the Jordan River and its tributaries (→ International Rivers). However, owing to Israel's occupation in 1967 of the project's sites in Syria and Jordan the authority has undergone *de facto* dissolution. The Arab Centre for Industrial Development is entrusted with the advancement of industry in the Arab States. It has a consultative committee chosen by the League's Council. The Centre's headquarters was situated in Cairo and was later transferred to Baghdad in implementation of the decision of the Baghdad Conference in 1979 to boycott Egypt. The Arab Institute of Forestry aids in the training of Arab specialists in forestry and related agricultural and animal husbandry matters. The institute is located at Latakia in Syria. Finally, the Administrative Tribunal of the Arab League composed of five judges selected by the Council for three renewable years, adjudicates disputes between the League and its employees related to their work contracts (→ Administrative

Tribunals, Boards and Commissions in International Organizations). It was situated in Cairo and then transferred to Tunisia in 1979.

(f) Arab Specialized Agencies

The Arab League is a regional organization with numerous general objectives. To carry out the technical functions delegated to it, the League was required to establish Arab Specialized Agencies – similar to those of the United Nations (→ United Nations, Specialized Agencies) – bv separate international agreements to function within the framework of the Arab League, but enjoying independent legal personalities. It is worth noting that the great majority of these agencies are similar in their objectives, functions and work systems to the UN agencies. The Arab Specialized Agencies include: the Arab Postal Union (1946), the Arab Telecommunications Union (1953), the Arab States Broadcasting Union (1955), the Council of Arab Economic Unity (1957), the Arab Organization for Social Defence against Crime (1960), the Arab Organization for Administrative Sciences (1961), the Arab League Educational, Cultural and Scientific Organization (1964), the Arab Labour Organization (1965), the Civil Aviation Council of Arab States (1965), the Joint Arab Council for Use of Atomic Energy (1965), the Arab Organization for Standardization and Metrology (1966), the Arab Fund for Social and Economic Development (1968), the → Organization of Arab Petroleum Exporting Countries (1968), the Arab Centre for the Study of Dry Regions and Arid Territories (1968), the Joint Arab Movie Authority (1968), the Arab Health Organization (1970), the Arab Organization for Agricultural Development (1970), and the Arab Bank for Economic Development in Africa (1973).

5. Evaluation

The Arab League has carried out its functions for a period of almost 40 years during which it was the symbol of Arab solidarity. Its activities have been fairly successful in the economic, social and cultural fields. At the political level, however, it has achieved only limited success. This has resulted from the continuous disputes amongst the member States and their inability to prevent Israeli invasion of territories of the Arab States. Since its creation the League's activities have revolved around the Palestinian problem. Disagreement amongst the member States on how best to deal with this situation has been one of the main factors weakening the League's political role, especially since the Arab States decided to boycott Egypt politically, to suspend its membership in the League and to transfer the League and its specialized agencies from Cairo to other Arab cities following the Egyptian peace agreement with Israel.

Pact of the League of Arab States, March 22, 1945, UNTS, Vol. 70 (1950) 237–263.

M. KHALIL (ed.), The Arab States and the Arab League, A Documentary Record, 2 vols. (1962).

B. BOUTROS-GHALI, Loss of Membership in the Arab League, RevEgypt, Vol. 11 (1955) 123–134 [in Arabic].

E. FODA, The Projected Arab Court of Justice (1957).

R.W. MACDONALD, The League of Arab States, A Study in the Dynamics of Regional Organization (1965).

M.H. GHANEM, The League of Arab States (1966) [in Arabic].

B. BOUTROS-GHALI, La Ligue des Etats arabes, RdC, Vol. 137 (1972 III) 1–82.

M.T. EL GHONEMI, The League of Arab States, A Legal and Political Study (1974) [in Arabic].

H.A. HASSOUNA, The League of Arab States and Regional Disputes (1975).

S.J. AL KADHAM, The Role of the League of Arab States in Settling Inter-Arab Disputes, RevEgypt, Vol. 32 (1976) 1–31.

M.E. NASHASHIBI, Die Panarabische Bewegung, 1945–1970 (1977).

M. SHIHAB, The League of Arab States, Study of the Charter and Achievements (1978) [in Arabic].

S. CHAABANE, La réforme du Pacte de la Ligue des Etats arabes, RGDIP, Vol. 86 (1982) 508–542.

P. GÖPFRICH, Völkerrechtliche Aspekte des Libanonkonflikts unter besonderer Berücksichtigung der Rolle der Liga der Arabischen Staaten, 1975–1979 (1982).

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ASIAN DEVELOPMENT BANK *see* Regional Development Banks

ASSOCIATION AGREEMENTS OF THE EEC *see* European Economic Community, Association Agreements

ASSOCIATION OF SOUTH-EAST ASIAN NATIONS

1. Historical Background

The Association of South-East Asian Nations (ASEAN) was formed in August 1967 between Indonesia, Malaysia, Thailand, the Philippines and Singapore. It was not the first attempt at regional cooperation in the South-East Asian area, but it has proved to be the most effective and enduring. Besides being a natural grouping of contiguous States, ASEAN also built upon an affinity of economic structures, and of social, political and cultural patterns. These factors distinguished it from the larger organizations operating in the area in which many of the ASEAN countries participated, such as the → Colombo Plan, and the Asia and Pacific Council (ASPAC), established in 1966 (→ Regional Cooperation and Organization: Asian States; → Regional Cooperation and Organization: Pacific Region). ASEAN is open for participation by other nations in the South-East Asian region, but so far none has joined the original parties.

ASEAN was established at a time of tension and instability in South-East Asia. The period of "confrontation" between Malaysia and Indonesia had not long passed, the Philippines had laid territorial claims against Sabah, and the war in → Vietnam was escalating. The Philippines and Thailand were members of → the South-East Asia Treaty Organization (SEATO), but Indonesia, Malaysia and Singapore were not. An earlier attempt at regional cooperation by Malaysia, the Philippines and Thailand in the Association of South Asia (ASA), founded in 1961, became unviable because of its exclusion of Indonesia.

Faced with such problems, both internal and external to the grouping, the formation of ASEAN was a considerable triumph of diplomatic skill (→ Diplomacy). It was not surprising, however, that for the first four years of its life ASEAN moved cautiously, and that not very much was achieved. During this period, nevertheless, there were significant → consultations between the partners on such political matters as relations with the People's Republic of → China, and on the Malaysian proposal for a zone of peace, freedom and neutrality (→ Neutrality, Concept and General Rules) in South-East Asia (November 26/27, 1971). Steps were also taken to act as a group in economic matters; in 1972, ASEAN established committees to explore ways of increasing trade and industrial cooperation with the → European Economic Community (EEC) and in 1974 group relations were established with Australia and Japan.

ASEAN became a more active organization after February 1976 when the first summit meeting of ASEAN leaders took place in Bali, Indonesia. The Vietnam War had ended, the partners had a common cause for concern about the international economic situation following the sharp increase in oil prices in 1973–1974, and the political tensions between the partners themselves had subsided. Three agreements were signed at Bali on February 24, 1976: the Agreement of Establishment of the Permanent Secretariat of ASEAN, the Declaration of ASEAN Concord, and the Treaty of Amity and Cooperation in South-East Asia.

2. Structure and Organization

The constitutive instruments of ASEAN consist of the ASEAN Declaration of 1967 and the Agreement, Declaration and Treaty signed in 1976.

(a) ASEAN Declaration

The ASEAN Declaration, made at Bangkok on August 8, 1967, followed the inaugural meeting of the member States. Its → preamble expresses the desire to establish a firm foundation for common action to promote regional cooperation, to strengthen economic and social stability, and to ensure security from external interference (→ Collective Security; compare → ANZUS Pact (1951)). The aims and purposes of ASEAN are stated to include the acceleration of economic growth, social progress and cultural development in the region; promotion of regional peace and stability; promotion of active collaboration and mutual assistance in the economic, social, cultural, technical, scientific and administrative fields; provision of assistance in training and research in the educational, professional, technical and ad-

ministrative spheres; collaboration in agriculture, industry, trade (including the study of international commodity trade), transportation, communications, and living standards; promotion of South-East Asian studies; and promotion of cooperation with other international and regional organizations with similar aims and purposes.

The Declaration also establishes machinery to carry its aims into effect. It provides for an annual meeting of foreign ministers, known as the ASEAN Ministerial Meeting; a standing committee, under the chairmanship of the foreign minister of the host country of the meeting, and having as its members the accredited ambassadors of the other member countries, to carry on the work of ASEAN between the annual Ministerial Meetings; *ad hoc* committees and permanent committees of specialists and officials on specific subjects; a national secretariat in each member country to carry out the work of ASEAN on behalf of that country and to service such annual or special meetings of ASEAN as may be held in that country.

(*b*) *Treaty of Amity and Cooperation*

The Treaty of Amity and Cooperation in South-East Asia, signed at Bali on February 24, 1976, reaffirms in classical terms the parties' aspirations to peace, friendship and cooperation. Chapter IV of the Treaty deals with the → peaceful settlement of disputes. A High Council is established, consisting of ministerial representatives of each ASEAN member State to take cognizance of disputes between the parties and to recommend appropriate means of settlement. The High Council itself is authorized to provide → good offices, mediation, inquiry or conciliation (→ Conciliation and Mediation; → Fact-Finding and Inquiry), if the parties to the dispute consent. These provisions do not preclude recourse to modes of peaceful settlement under Art. 33(1) of the → United Nations Charter.

(*c*) *Declaration of ASEAN Concord*

The Declaration of ASEAN Concord, made at Bali on February 24, 1976, set out a more detailed set of objectives in amplification of the ASEAN Declaration of 1967, and adopted a programme of action as a framework for ASEAN cooperation. The stated political objectives included the harmonization of views among members and the taking, where possible and desirable, of common action. A study of judicial cooperation was also proposed, including the possibility of an ASEAN → extradition treaty. The economic objectives embraced cooperation in the fields of commodities (→ Commodities, International Regulation of Production and Trade), especially food and energy, and in ASEAN industrial projects, as well as joint efforts towards achieving preferential trading arrangements (→ World Trade, Principles) and towards improving access to markets outside ASEAN. The Declaration also asserted the need for a joint approach to international commodity problems and other world economic issues (see also → United Nations Conference on Trade and Development (UNCTAD)). In the social sphere, joint action was proposed to accelerate the development of low-income groups and rural populations, and to deal with the traffic in narcotics (→ Drug Control, International). In the field of regional security, the Declaration approved the continuation of cooperation on a non-ASEAN basis between the member States in accordance with their mutual needs and interests.

(*d*) *Agreement of Establishment of the Permanent Secretariat*

The Agreement of Establishment of the Permanent Secretariat of ASEAN, signed at Bali on February 24, 1976, provides for the appointment of a full-time Secretary-General of ASEAN to coordinate (but without replacing) the functions of the five national secretaries-general (established under the ASEAN Declaration, 1967) who are now to be styled Directors-General of the ASEAN National Coordinating Agencies. The Agreement also provides for three bureaux within the permanent secretariat, covering the fields of economics, science and technology, and social and cultural matters.

Subsequent to the signing of the Bali agreements, a Secretary-General was appointed in June 1976 and a Secretariat established in Jakarta.

A fund for ASEAN was established by an Agreement signed on December 17, 1969. The fund consists of an agreed amount which each member State holds in its own national fund for the purpose of approved ASEAN projects. There is no central fund.

3. Activities

(a) Economic cooperation

Following the Bali summit meeting, the ASEAN Economic Ministers met in Kuala Lumpur in March 1976. Three major areas of agreement resulted. The first was the establishment of an Expert Group to review economic cooperation between the members and to decide upon a number of moderate-size ASEAN industrial projects. These projects were to be financed primarily by the country concerned, but the collective endorsement by ASEAN was designed to encourage additional financing on favourable terms by friendly developed countries (→ Economic and Technical Aid) and by international agencies (e.g. the → United Nations Industrial Development Organization). The second decision related to trade arrangements within the ASEAN group. It was recommended that preferential trading arrangements be instituted and that priority be given to other ASEAN partners in the case of shortages or gluts of major commodities, such as crude oil and rice. The third matter was the decision to adopt a common diplomatic approach in international economic questions arising at the → United Nations, the United Nations Conference on Trade and Development, the → International Monetary Fund (IMF), and the Economic Commission for Asia and the Pacific (ESCAP) (→ Regional Economic Commissions of the United Nations). These questions would include such matters as commodities, transfer of resources (→ Natural Resources, Sovereignty over; → Technology Transfer), the new → international economic order, and the reform of the international monetary system (→ Monetary Law, International).

(b) Political matters

In 1976, ASEAN reaffirmed the Kuala Lumpur Declaration of 1971 calling for the eventual establishment of a Zone of Peace, Freedom and Neutrality (ZOPFAN) in South-East Asia. In the same year, it made clear its willingness to cooperate with the new governments in Indo-China, but these overtures have so far not been accepted by Kampuchea, Laos or Vietnam. ASEAN has adopted collective policies on such questions as the Soviet Union's presence in Afghanistan, participation in the 1980 Moscow Olympic Games, and the recognition of the Vietnamese-supported government of Kampuchea. As a result of increasing consultation between the partners in political matters, ASEAN has tended to act with a common voice on a wide range of international issues and negotiations.

(c) Regional cooperation

Agreements have been signed by ASEAN member States on a number of matters. These include agreements on the promotion of cooperation in mass media and cultural activities (1969), commercial rights of non-scheduled air services (1971), the ASEAN Tours and Travel Association (1971), search and rescue in aircraft accidents (1972), search and rescue in ship accidents (1975), mutual assistance in natural disasters (1976), combatting the abuse of narcotics (1976), and ASEAN preferential trading arrangements (1977).

(d) The "dialogue partners"

The so-called "dialogue partners" are Australia, Canada, the EEC, Japan, New Zealand and the United States, with whom the ASEAN countries have established special political and economic links. ASEAN began a pattern of collectively approaching each of the dialogue partners in 1972, when it secured preferential tariff treatment from the EEC for ASEAN products. An approach to Japan in 1974 secured agreement on the limitation of Japan's production of synthetic rubber to the detriment of exports of natural rubber from ASEAN countries. Since that time ASEAN Committees, consisting of the heads of ASEAN diplomatic missions, have been set up in Canberra, Ottawa, Brussels, Tokyo, Wellington and Washington, to deal directly with the respective dialogue partner in matters of ASEAN concern.

4. Evaluation

ASEAN represents a new approach in regional cooperation and organization. Its common policies in external affairs, especially in economic matters, invite comparison with the EEC. By contrast with the EEC, however, intra-ASEAN integration is much less advanced. ASEAN lacks both a body of internal regulations and supranational decision-making organs (→ Supranational Organizations).

ASEAN Treaties, Declarations and Other Instruments, Malaya Law Review, Vol. 19 (1977) 407–416, and successive volumes (continuing series).

T.W. ALLEN, The ASEAN Report, 2 vols. (1979).
R. GARNAUT (ed.), ASEAN in a Changing Pacific and World Economy (1980).
A. BROINOWSKI (ed.), Understanding ASEAN (1982).

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BALKAN PACT (1953/1954)

The Balkan Pact of 1953/1954 denotes the legal relationship established by four successive treaties between the Balkan States of Greece, Turkey and Yugoslavia: the Treaty of Friendship and Collaboration, signed at Ankara on February 28, 1953, in force on May 29, 1953 (UNTS, Vol. 167, p. 21); an Additional Agreement to this Treaty, signed at Belgrade on November 7, 1953, in force on May 5, 1954 (AVR, Vol. 4 (1953/1954) p. 478); the Treaty of Alliance, Political Co-Operation and Mutual Assistance, signed at Bled on August 9, 1954, in force on May 21, 1955 (UNTS, Vol. 211, p. 237); and the Agreement Concerning the Constitution of the Balkan Consultative Assembly, signed in Ankara on March 2, 1955 (UNTS, Vol. 225, p. 233), in force on September 30, 1955.

1. Historical Background

Plans and efforts towards regional cooperation and federation in the Balkans are as old as the independence of the Balkan States which they gained in the 19th century and in the first quarter of the 20th century in the course of the disintegration of the Ottoman and the Austro-Hungarian Empires. During the period between the two world wars these efforts materialized in the establishment of the Little Entente (1920/1921 between Romania, Czechoslovakia and Yugoslavia) and the Balkan Alliance (or Balkan Entente of 1934 between Greece, Romania, Turkey and Yugoslavia). After World War II new plans to establish a Balkan federation re-emerged, this time on the initiative of the Yugoslav Communist Party and Marshal Tito. Stalin perceived the Balkan federation plans as posing a potential threat to Soviet influence and control in the region, and in January 1948 a rift emerged in Soviet-Yugoslav relations during which the Yugoslav Communist Party was expelled from the Communist Information Bureau (the now extinct non-governmental organization of ruling communist parties), and the bilateral → alliances between Yugoslavia and both the Soviet Union and the "People's Democracies" were denounced. Yugoslavia was further confronted with economic → boycott, border provocations and temporary troop concentrations along her borders with neighbouring States (see Clissold). Thus Yugoslavia, although ruled by a communist party, felt herself threatened by Stalin's Soviet Union, as did her non-communist neighbours Greece and Turkey. Whereas the latter two States became members of the → North Atlantic Treaty Organization in February 1952, Yugoslavia did not. Instead of NATO-membership Yugoslavia sought a separate defence partnership with the non-communist States in the Balkan region.

2. Content of the Balkan Pact

The Treaty of Ankara of February 28, 1953 was intended to be a first step towards an alliance. Pursuant to Art. 51 of the → United Nations Charter, the contracting parties undertook to pursue their mutual efforts for the safeguarding of peace and security in their region and to examine their security problems, including concerted measures of defence in case of unprovoked → aggression against them (Art. II). Collaboration of general staffs in order to submit recommendations concerning questions of defence was agreed upon (Art. III). A regular conference once a year – if necessary more often – of the ministers of foreign affairs was also instituted (Art. I). The contracting parties further undertook to hold consultations concerning all problems of mutual interest, to develop collaboration in the economic, technical and cultural spheres, to settle their disputes by peaceful means and to refrain from interfering in the internal affairs of the other parties and from concluding any alliance directed against another contracting State (→ Non-Intervention, Principle of). The Treaty expressly provided that it was not to affect the rights and obligations of Greece and Turkey deriving from their membership in NATO (Art. VIII). It also contained an accession clause in favour of States

whose collaboration might be deemed useful by all the contracting parties; the clause was aimed especially at Italy, whose participation was not at the time possible owing to the dispute between her and Yugoslavia over → Trieste. Five years after the coming into force of the Treaty each contracting party was empowered to denounce it by → notification to the other parties.

By the Belgrade Additional Agreement of November 7, 1953 the tripartite collaboration agreed upon in the Ankara Treaty was first given an organizational structure. In order to realize the aims of the Treaty of Ankara more efficiently, a Permanent Secretariat was constituted, whose tasks would be to prepare the conferences of the ministers of foreign affairs, to study all questions of collaboration between the contracting States, to examine and to recommend the conclusion of treaties and to propose the convening of conferences and the setting up of bodies of cooperation in the fields foreseen in the Treaty of Ankara.

The Treaty of Bled of August 9, 1954 established "a system of collective security" (preamble); the contracting parties now undertook, in case of armed aggression against one or more of them, to render assistance "by common agreement" in exercising the right of self-defence recognized by Art. 51 of the UN Charter (Art. II). This customary linkage of a defence treaty with the UN Charter is further stressed by repeating the obligations under Art. 51 of the Charter (i.e. the duty to inform the → United Nations Security Council of the measures taken in self-defence, the duty to discontinue these measures when the Security Council has "effectively" applied the measures referred to in Art. 51); further the Treaty of Bled incorporates the obligation embodied in Resolution 378(V)A of the → United Nations General Assembly of November 17, 1950, under which, following the outbreak of hostilities, a public statement is to be issued in which a State will proclaim its readiness – provided that the State with which it is in conflict does the same – to discontinue all military operations and withdraw all its military forces (Art. VII). Evidently because of Greek and Turkish membership in NATO, the contracting parties agreed on a special consultation clause under which they undertook to consult one another on the appropriate measures to be taken in the region in the event of armed aggression against a non-contracting State to which one or more of the contracting parties owes or owe an obligation to render mutual assistance (Art. VI). The Treaty of Bled further developed the organizational structure of the tripartite collaboration by constituting a Permanent Council composed of the ministers of foreign affairs, which replaced the conference agreed upon in the Treaty of Ankara; the Permanent Council was to meet regularly twice yearly, and when not in session was to exercise its functions through the Permanent Secretariat established under the Additional Agreement to the Treaty of Ankara (Art. IV). For the rest, the Treaty of Bled more or less repeated the content of the Treaty of Ankara, which nevertheless was not terminated but remained in force insofar as it was not modified by the provisions of the former. The Treaty of Bled was concluded for a period of twenty years; one year before expiry the Treaty could be denounced, but without such denunciation the Treaty was to undergo automatic renewal for the ensuing year and so on thereafter until denunciation by one of the contracting parties (Art. XIII); this termination clause of the Treaty applied to the period of validity of the Treaty of Ankara.

In order to develop still further the cooperation established by the Treaties of Ankara and Bled, the fourth Treaty, signed at Ankara on March 2, 1955, established the Balkan Consultative Assembly as a "common organ" of the contracting parties, to be composed of members appointed by each of the national parliaments from among their respective membership, to a total of twenty from each. The Assembly was charged with the examination of all the means capable of developing collaboration among the signatory States in every sphere of their mutual relations, the submission of recommendations and proposals for cooperation through the channel of the Permanent Council to the governments of the contracting parties, and the publication of opinions and suggestions on questions of general character. Accession to the Treaties of Ankara and Bled would *ipso facto* entail membership in the Balkan Consultative Assembly; the duration of the Assembly was made dependent upon the duration of the Treaties of Ankara and Bled.

3. Subsequent Developments

The Balkan Pact never developed into a vital organization. It is true that after the signature of the Ankara Treaty cooperation between the contracting States began in the fields of economics, air traffic and telecommunications; conferences of the ministers of foreign affairs took place twice (July 1953 in Athens, September 1954 in Bled); the Permanent Secretariat took its seat according to the agreed rotation principle in 1954 in Belgrade, 1955 in Ankara, 1956 in Athens, and 1957 in Belgrade again, but its work had no substantive results; the Permanent Council had only one session (February/March 1955); and the Balkan Consultative Assembly was never convened. The desultory activity of the Pact soon came to a complete halt. This was a result of influences from both without and within the alliance. After the death of Stalin in March, 1953 and the resumption of diplomatic relations between the Soviet Union and Yugoslavia in June, 1955, the latter perceived Soviet pressure on her as easing. As a result, Yugoslavia changed the emphasis in her foreign policy and adopted the policy of non-alignment (→ Non-Aligned States). Internally, relations between Greece and Turkey began to deteriorate in 1955 owing to the → Cyprus question. On February 20, 1959 a speaker of the Yugoslav government declared that the military cooperation among the Balkan Pact States had practically ceased to exist; similar declarations were issued by Greek and Turkish government speakers (Hartl, p. 64). Since then, Yugoslavia has sought cooperation with the contracting parties only in the non-military fields circumscribed by the Treaty of Ankara. Subsequent international developments such as the temporary resolution of the Cyprus question in 1959 and renewed threats to Yugoslavia after the → intervention of → Warsaw Treaty Organization States in Czechoslovakia in 1968, did not lead to a revival of the Balkan Pact; on the contrary, new Greek-Turkish conflicts, including the Turkish intervention in Cyprus in 1974 and controversies over the → continental shelf in the → Aegean Sea (→ Aegean Sea Continental Shelf Case), have hastened its demise. Nevertheless, none of the contracting parties has officially denounced the Treaties and although a Yugoslav Government spokesman declared the readiness of his Government to take part in a conference on the dissolution of the Pact as early as in November 1961, the offer was not taken up. The assumption must therefore be that the Balkan Pact is still legally valid, but its operation is suspended.

B. CIALDEA, L'alleanza balcanica e il compromesso per il Territorio Libero de Trieste, Comunità internazionale, Vol. 9 (1954) 533–557.
M. PANDEFF, The Balkan Entente Treaties, AJIL, Vol. 48 (1954) 635–640.
L. RADOVANOVITCH, L'Assemblée consultative balcanique, Questions actuelles du socialisme, No. 29 (1955) 31–40.
L. DULLIN, Est-ce la fin d'un système de défense?, Revue de défense nationale, Vol. 13 (1957) 572–583.
J.O. IATRIDES, Balkan Triangle (1968).
S. CLISSOLD, Yugoslavia and the Soviet Union, 1939–1973 (1975).
H. HARTL, Der "einige" und "unabhängige" Balkan (1977).

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BELGIUM-LUXEMBOURG ECONOMIC UNION

1. History

The Convention establishing an economic union between Belgium and Luxembourg was signed in Brussels on July 25, 1921 and came into force upon ratification on March 6, 1922 (LNTS, Vol. 9, p. 223). It was to remain in force for a period of 50 years and to be extended thereafter automatically for successive periods of ten years unless denounced with one year's advance notice. At the time of signature, Luxembourg, as a very small country, had a vital interest in integrating itself into a larger economic unit; at the end of World War I, she severed her ties with Germany to which she had been economically attached since her accession to the → Zollverein (German Customs Union) in 1842. Belgium for her part had mainly a political interest in strengthening her links with her neighbour. The clauses of the 1921 Convention in many respects resemble the Zollverein agreements which Luxembourg knew well from long historical experience.

The original Convention was amended and supplemented by a number of protocols, mostly of

a technical nature, from which two must be singled out for their political importance. By an additional Convention of May 23, 1935, a common régime was introduced for the regulation of imports, exports and transit to fill a gap which was apparent in the original Convention. A general revision of the 1921 Convention was effected by a protocol signed at Brussels on January 29, 1963 which codified the whole matter and to which a "Consolidated Convention" was annexed (UNTS, Vol. 547, p. 39).

It is to be noted that the operation of the Union was interrupted by the German occupation in 1940. The Union was re-established immediately after the end of military operations in Western Europe on May 1, 1945. New problems arose when Belgium and Luxembourg took part in the creation of the → Benelux Economic Union and, later on, in the setting up of the → European Economic Community (EEC). The priority of the Belgium-Luxembourg Union has been recognized in the respective treaties (Arts. 94 of the Benelux Treaty and 233 of the EEC Treaty). Thus, Belgium and Luxembourg have maintained and even developed their special economic relationship in the new European framework. In the meantime the Convention was extended for the second term of ten years. (The analysis of the Belgium-Luxembourg Union will be conducted hereafter on the basis of the 1963 version of the Convention, the articles quoted being those of the consolidated text.)

2. *Analysis*

(*a*) *Principles and structure*

The Convention provides that an economic union based on a → customs union is to be instituted between the two parties (→ Economic Communities and Groups). Accordingly, the territories of the parties are to be considered as forming one single territory as far as customs, common excise duties and common measures for the regulation of external economic transactions are concerned; the customs boundaries between the two countries are to be abolished. Commerce between the countries of the union has to be entirely free and unrestricted and subject to no import, transit or export limitations or prohibitions and to no duties and charges of any kind (Arts. 1 to 3).

From the point of view of its structure, the 1921 Convention was based throughout on the economic leadership of Belgium. A Mixed Administrative Council composed of two Belgian nationals and one Luxembourg national was set up with the task of administering the customs union. Moreover, the Convention provided for the creation of an advisory body to be called the Superior Council of the Union. The latter organ, however, never played a significant role. The 1935 Protocol set up a Mixed Administrative Commission with the task of advising the two Governments on matters of external trade and of managing the common system of import and export controls. This commission became rapidly the focus of the Union's administration.

The institutional framework was revised and completed by the 1963 Protocol which provides for a threefold structure (Arts. 4 and 36 to 38). Henceforth, the Union comprises three organs.

A Committee of Ministers, composed of members of both Governments, is empowered to take by mutual agreement such decisions as are necessary for the sound functioning of the Union. An Administrative Commission composed of delegates of both Governments is entrusted with the task of ensuring on a permanent basis the application of the Convention and a regular liaison between the two Governments. The Secretariat of the Commission is established in Brussels. The Commission takes decisions by mutual agreement between the two delegations. In the event of disagreement, the matter is referred to the Committee of Ministers. A Board of Customs is composed of three members: the Belgian Director-General of Customs, who is the Chairman of the Board, the Luxembourg Director of Customs and one high ranking customs official appointed by the Belgian Government. Decisions of the Board of Customs can, however, be taken only by mutual agreement, any divergence being referred to the Committee of Ministers.

Both in the 1921 Convention and in the consolidated text of 1963 provisions have been made for → arbitration (Art. 40). It must be noted, however, that so far resort has never been had to this means of solving disputes. Instead, preference has been given over the years to a method of continuous → negotiation with a view to solving problems by mutual consent as they arise, either

inside the institutions of the Union or at governmental level.

Before going into the details of the substantive provisions, it is worth mentioning that the Convention does not contain any escape or safeguard clause. Thus, neither party may take measures of its own within the Union or try to isolate its national territory economically from the territory of the other party.

(b) Customs, excise and taxes

The basis of the Convention is a customs union (Arts. 1 and 5 to 15). Legal provisions and regulations regarding customs and excise are common within the Union. Customs duties between the two countries were abolished from the outset; there was a single customs tariff for the Union until this tariff was merged with the Benelux tariff which, in turn, was merged with the common tariff of the EEC. The parties each maintain a separate customs administration but both administrations act under the same legislation and apply the same principles, coordination being assured by the Board of Customs. Under the original Convention the proceeds of customs and excise duties had to be pooled and divided between the parties in proportion to the population of their territories (approximately 1:30). Pursuant to the decision of April 21, 1970 on the European Communities' own resources, the proceeds of customs duties have to be turned over directly to the Communities. As a consequence, only the proceeds of excise duties are henceforth pooled and divided between the parties. By a protocol of October 27, 1971 (UNTS, Vol. 871, p. 246), for the purpose of the division of these duties the ratio of the population was replaced by the ratio of the consumption in both countries, which gives a more favourable yield to Luxembourg.

Apart from customs and excise properly speaking, each of the two States maintains its own fiscal system in the fields of both direct and indirect taxation. Taking account of the differences of fiscal policy in both countries, it has never appeared possible to unify indirect taxes, and this has entailed the substitution of a "fiscal frontier" for the old → customs frontier. In this particular field, the Belgium-Luxembourg Union has been by-passed by the efforts of the EEC towards harmonization, though these in turn are far from being complete.

(c) Entry, establishment and services

The Convention guarantees for nationals of both States freedom of movement and of establishment and lays down the principle of equal treatment for the nationals of each of the parties in respect of the exercise of occupations in the fields of agriculture, trade and industry, including financial operations, transport and employment of labour. The same principles apply to companies established under the legislation of one of the parties (Arts. 16 to 22). Attention must be drawn in this context to the judgments of the Luxembourg Cour Supérieure de Justice in the Pagani Case (Journal des Tribunaux, Vol. 69 (1954) p. 694) which have become a model for further developments in the law of integration in Western Europe. In these judgments, the Luxembourg High Court recognized that a national of a third country (in this case an Italian) economically established in Belgium enjoys full rights in Luxembourg under the Convention and that the Convention has primacy over any conflicting national statute (→ European Communities: Community Law and Municipal Law).

(d) Economic policy and legislation

The Convention provides for harmonization of the two parties' policies in the economic, financial and social fields and the elimination of any disparities which might disturb competitive conditions in the markets of the two countries. The parties have undertaken to render each other assistance with a view to ensuring the effectiveness of the economic policy measures taken in the two countries. As regards the supply of fuel, power and raw materials, the two countries are to be placed on a footing of absolute equality. In view of its situation as a land-locked country, Luxembourg has received the assurance of being given free access to maritime transport through the Belgian → ports. Export bounties for goods passing from the territory of one of the parties to the territory of the other party are expressly prohibited (Arts. 23 to 30).

(e) External trade

Treaties and agreements relating to tariffs and

trade as well as international payment agreements are common to the Union. They are concluded by Belgium in the name of the Union, after consultation with the Government of Luxembourg. The Luxembourg Government may sign such treaties and agreements jointly with Belgium, if it so wishes. It is up to the two Governments to determine the procedure to be followed in the case of multilateral treaties and agreements (→ Treaties, Multilateral). The two Governments are obliged to take all necessary measures to ensure that those treaties and agreements which are common to the Union are uniformly applied in the two States.

Commercial policy as well as legislative and administrative measures relating to the regulation of external trade, in particular by the establishment of economic restrictions such as quotas and licences, are common to the two countries. The Administrative Commission is entrusted with the administration of the quotas established for the Union. It has the power to issue import, export and transit licences and to collect the corresponding duties, charges and levies. Here again it must be remarked that since the matter of commercial policy has been taken over by the EEC, the Belgium-Luxembourg Union acts as a sub-system inside the Common Market (Arts. 31 to 35).

(*f*) *Monetary provisions*

Under the 1921 Convention, Luxembourg agreed to withdraw the bank notes then in circulation (at that time, Luxembourg francs and German marks then both of little value) and to replace them by Belgian notes put at her disposal on a long-term loan basis by the National Bank of Belgium. Luxembourg maintained the right to have her own currency, the issue of which was, however, restricted both as to the total amount and the maximum face value of the notes and coins to be put in circulation. In fact, this meant the complete integration of Luxembourg into the Belgian monetary system. Apart from a short period in the late 1930s, the Luxembourg franc was always maintained at par with the Belgian franc. Much litigation has come out of this arrangement, which, over the years, has been amended several times. A protocol defining a régime of "monetary association" was annexed to the 1963 protocol and replaced in turn by a Protocol of March 9, 1981 which has not yet been ratified. Both protocols remain based on the same principles as those of the old Convention, in so far as Belgian money is recognized as legal tender by Luxembourg. However, the right of Luxembourg to have her own currency has been recognized to a larger extent, although Luxembourg's right to issue money still remains limited to a determined proportion of the total volume of Belgian monetary circulation. By the same protocols, Luxembourg has obtained better access to the advantages and facilities of the National Bank of Belgium.

Exchange rate policy and alterations in the exchange rate have to be agreed upon by both States. Since World War II, within the framework of the monetary agreements, Belgium and Luxembourg have established a common régime in relation to foreign exchange control (→ Monetary Law, International). The administration of this régime is entrusted to a common agency, the Institut Belgo-Luxembourgeois du Change which issues regulations applicable in the whole territory of the Union.

3. *Evaluation*

Although the Belgium-Luxembourg Economic Union is but a limited experiment, it commends itself to the attention of international lawyers for various reasons. First and foremost, it has been functioning successfully for more than half a century and the two countries have expressed the wish to maintain this bilateral relationship intact in spite of the creation of the Benelux Economic Union and the EEC. The reason for this success is to be found in the spirit of fair cooperation which has prevailed throughout the years.

The Union is no doubt the best example of a full economic union encompassing the field of customs and external trade, economic policy and legislation, establishment and services, coupled with a *de facto* monetary union which allows for a completely free flow of current payments and capital. It has brought about a deep interpenetration of the economies of both countries, on the official as well as on the private level; industry, commerce and banking are largely integrated.

From a legal point of view, the Convention attained its definitive formulation in the con-

solidated text of 1963 which in its concise expression of the essential principles, surpasses other treaties bearing on the same subject. Thus, in many respects the consolidated text of 1963 provides a model of legal drafting. There remain, however, some points of friction, especially in the field of taxation. The same applies to the monetary arrangements, which entail a deep inroad being made into the financial sovereignty of Luxembourg. A third area, agriculture, which for many years had been a cause of trouble has been eliminated as a source of difficulties between the two States since agricultural policy was taken over by the EEC.

Protocols and Consolidated Convention instituting the Belgo-Luxembourg Economic Union, UNTS, Vol. 547 (1965) 39–163.

A. CALMES, Der Zollanschluß des Großherzogtums Luxemburg an Deutschland (1919).

L. HOMMEL, Une expérience d'union économique, Bilan de dix années d'union économique belgo-luxembourgeoise (1933).

J.E. MEADE, The Belgium-Luxembourg Economic Union, 1921–1939 (1956).

Y. CHAPEL, Le régime administratif de l'Union économique belgo-luxembourgeoise (1958).

E. QUARING, Union économique et dualisme monétaire, Thesis, University of Paris (1960).

P. PESCATORE, La notion du marché commun dans les traités instituant l'Union économique belgo-luxembourgeoise, le Benelux et les Communautés européennes, in: En Hommage à Victor Gothot (1962) 497–546.

P. PESCATORE, L'union économique belgo-luxembourgeoise: expériences et perspectives d'avenir, Chronique de politique étrangère, Vol. 18 (1965) 367–387; Documents, 388–464.

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BELIZE DISPUTE

The first settlers on the coast of Belize, then part of the Spanish Empire in Central America, were British wood-cutters and pirates (→ Piracy) who were completely independent of British control up to the end of the 18th century, when Great Britain and Spain signed a number of → treaties enumerating certain concessionary rights to the British (→ Concessions). After the Spanish American nations had become independent in the early 1820s, Great Britain sought to retain possession of her holdings in Belize. On April 30, 1859 Britain concluded a treaty with Guatemala concerning the territory of Belize (Wyke-Aycinena Treaty, CTS, Vol. 120, p. 371). In 1862, the settlement of Belize was converted into the colony of British Honduras (→ Colonies and Colonial Régime). In 1871 it became a Crown colony, gaining administrative independence from Jamaica in 1884. Although Belize had already obtained self-government in 1963, her independence was postponed by almost two decades and not achieved until September 21, 1981 (→ Decolonization: British Territories) due to the dispute between Britain and Guatemala on the subject of sovereignty over the territory (→ Territorial Sovereignty). On September 25, 1981 Belize became a member of the → United Nations (UN GA Res. 36/3).

The British-Guatemalan dispute over Belize stems from the Treaty of 1859, which in Art. 1 lays down the → boundaries between British Honduras and Guatemala, with Guatemala recognizing British → sovereignty over the entire territory of British Honduras. The crucial point of contention concerns Art. 7, whereby the parties agreed "conjointly to use their best efforts" towards the construction of a road, which was never built, to run from the Atlantic coast to Guatemala City. Another treaty, by which Britain's obligations under Art. 7 were reduced to the payment of £50 000, was signed on August 5, 1863 but, unlike the treaty of 1859, was never ratified (→ Treaties, Conclusion and Entry into Force). In 1867, Britain informed Guatemala that she considered her obligations under Art. 7 to be cancelled, as the costs of the construction of the road had proved to be far higher than expected. Guatemala protested (→ Protest).

The legal arguments can be summarized as follows. According to Guatemala, the Treaty of 1859 is to be construed as a treaty of cessation of territory constituting Britain's only legal title to Belize. Referring to the preliminary → negotiations, Guatemala maintains that Art. 7 of the Treaty constituted the consideration for Guatemala's cession of territory. Only on account of Britain's obligations under the Clayton-Bulwer Treaty of April 19, 1850 (CTS, Vol. 104, p. 41) – by which the United States and Great Britain had bound themselves not to colonize or assume or exercise any dominion over any part of Central

America – had the treaty of cession been disguised as a boundary treaty and the compensation put into the ambiguous wording of Art. 7. Guatemala maintains that despite the use of the phrase "conjointly to use their best efforts", there was only a unilateral obligation on the part of Great Britain for the unilateral benefit of Guatemala. Guatemala moreover declares that Art. 7 constitutes a resolutory condition for the cession of territory. As Britain had not fulfilled her obligation, Guatemala claims to have at her option the right either to insist on specific performance and indemnity or to declare the Treaty of 1859 as no longer valid (→ Treaties, Termination; → Treaties, Validity). If in fact the non-fulfilment of Art. 7 justifies the abrogation of the treaty as a whole, Guatemala argues that the → *status quo ante* has to be restored. As the successor to Spain, Guatemala has therefore claimed sovereignty over Belize under the → *uti possidetis* doctrine (→ State Succession; → Boundaries in Latin America: uti possidetis Doctrine). She maintains that Britain held only a concession of usufruct on Belize (cf. → Territory, Lease) and had always recognized Spanish sovereignty. The treaty of cession having lapsed, and Guatemala having inherited Spain's title, she avers that she should again have full sovereignty over Belize. Thus the successive constitutions of Guatemala have declared Belize as part of the national territory (see e.g. Art. 1 of the Transitory Dispositions of the Constitution of 1965). (Similarity exists between Guatemala's arguments and those put forth by Argentina in the dispute over the → Falkland Islands.)

According to the United Kingdom, however, the Treaty of 1859 is simply a boundary treaty, concluded on the basis of previous British sovereignty, which had been based on effective occupation, and long and undisturbed possession (→ Territory, Acquisition). The United Kingdom claims as well that the Treaty of 1859 had lapsed, as her obligation under Art. 7 had been cancelled on grounds of the unforeseen high costs of the road construction.

Numerous attempts to submit the dispute to international settlement (→ Peaceful Settlement of Disputes) have failed. In 1946 the United Kingdom accepted the jurisdiction of the → International Court of Justice over the matter as a question of law, whereas Guatemala insisted that any decision had to be *ex aequo et bono* (→ Equity in International Law). Guatemala's position claiming the reintegration of Belize as part of her territory became increasingly isolated during the 1960s and 1970s; resolutions of the → United Nations General Assembly continuously reaffirmed with overwhelming majorities the inalienable right of the people of Belize to → self-determination and independence (see e.g. UN GA Res. 35/20 of November 11, 1980; → Decolonization).

In order to settle their dispute, the United Kingdom and Guatemala signed 16 heads of agreement which were made public on March 16, 1981, providing the framework for negotiation of a formal treaty. Hereby, *inter alia*, Guatemala gave up her claim to Belize and to any parts of Belize's territory. Belize was not required to cede any territory, but became obligated to limit her southern ocean boundary (→ Boundary Waters) in order to give Guatemala a channel to the sea and to grant her the use and enjoyment of two islets (the Sapodilla and Ranguana cays, also claimed by Honduras). Furthermore, the agreement envisaged wide economic cooperation between Guatemala and Belize, especially in the exploitation of Belize's rich oil fields, and provided for Guatemala's entitlement to → free port facilities in Belize and to freedom of transit on roads leading to the Atlantic coast. The negotiations conducted to turn these agreements into a treaty collapsed in June 1981, mainly due to disagreement over the future status of the above-mentioned cays on which Guatemala wanted to build naval bases (cf. → Military Bases on Foreign Territory). This failure to resolve the conflict, however, did not stand in the way of Belize gaining her independence in September 1981. Subsequently, in a communiqué in June 1982, Guatemala declared that the heads of agreement were no longer valid since in her opinion the United Kingdom had failed to respect their terms. Therefore, Guatemala stated that she would no longer recognize Belize's independence.

L. ANDERSON, Estudio jurídico acerca de la controversia entre Guatemala y la Gran Bretaña relativa a la convención de 30 de abril de 1859 sobre asuntos territoriales, Revista de derecho internacional, Vol. 70 (1939) 163–231.

J.L. MENDOZA, Inglaterra y sus pactos sobre Belice (1942).

J. KUNZ, Guatemala vs. Great Britain: In re Belice, AJIL, Vol. 40 (1946) 383–390.
L.M. BLOOMFIELD, The British Honduras-Guatemala Dispute (1953).
W. CLEGERN, New Light on the Belize Dispute, AJIL, Vol. 52 (1958) 280–297.
D.A.G. WADDELL, Developments in the Belize Question, AJIL, Vol. 55 (1961) 459–469.
K.R. SIMMONDS, The Belize Mediation, ICLQ, Vol. 17 (1968) 996–1009.
J.A. SÁNCHEZ, La situación internacional de Belice, Revista de Política Internacional, No. 133 (1974) 67–89.
P.K. MENON, The Anglo-Guatemalan Territorial Dispute over Belize, Caribbean Yearbook of International Relations (1977) 115–145.

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BENELUX ECONOMIC UNION

1. Historical Background

Following earlier tentative moves towards economic cooperation (Convention of Oslo, 1930, Convention of Ouchy, 1932), a Customs Convention was signed in London on September 5, 1944 by the governments-in-exile of Belgium, Luxembourg and the Netherlands (→ Customs Union). The Convention provided for the abolition of customs duties between the Netherlands and the → Belgium-Luxembourg Economic Union and the standardization of customs tariffs for imports from other countries. It also envisaged the progressive liberalization of commercial transactions among the three countries and the development of a common policy towards the outside world (Text: European Yearbook, Vol. 2 (1956), p. 282).

On March 14, 1947 a Protocol interpreting the Customs Convention was signed. In an exchange of letters arrangements were made for setting up various institutions, including an international secretariat in Brussels. After initial difficulties due to the financial situation of the three countries, the Convention entered into force on January 1, 1948.

In the years that followed, more than 50 further agreements on economic cooperation were signed by the three countries. Finally, on February 3, 1958, representatives of these countries, noting that the provisions of the treaties establishing the → European Economic Community and the → European Atomic Energy Community did not "preclude the existence or completion" of an economic union between their countries, agreed to establish the Economic Union envisaged in the 1944 Customs Convention as defined and interpreted in the 1947 Protocol. The Treaty Establishing the Benelux Economic Union (Union Treaty; UNTS, Vol. 381, p. 165) entered into force on November 1, 1960. The Treaty is valid for 50 years; it may be renewed for further ten-year periods (Art. 99).

The Union Treaty codified the earlier arrangements and set out the measures that remained to be taken in order to complete the process of unification. A Convention on Transitional Provisions and a protocol on implementation form an integral part of the Treaty. The main purposes of the Union were stated to be the free movement of persons, goods, capital and services throughout the three countries; the coordination of economic, financial and social policies; and the pursuit of a joint policy in economic relations with third countries (Art. 1).

2. Structure

The supreme organ of the Benelux Economic Union is the Committee of Ministers (Union Treaty, Arts. 16–22). The Committee supervises the application of the Treaty and for this purpose may take decisions, make recommendations and issue directives. It also drafts treaties and conventions to be signed by the three governments. Its decisions have to be taken unanimously. It meets at least once every three months and the chairmanship rotates every six months among the three nationalities, irrespective of the place of meeting. The Committee may delegate some of its powers to ministerial working groups.

Most of the work is done by Commissions and Special Commissions staffed by civil servants and charged with specific subjects, such as industry and trade, agriculture, customs, traffic, social affairs, external relations, monetary and financial affairs (Arts. 28 and 29). The Union Treaty authorized the Committee of Ministers to create additional Commissions or Special Commissions and it empowered all the Commissions to establish their own rules of procedure. These Commissions and Special Commissions, each within their own provinces, are responsible for carrying into effect decisions of the Committee of Ministers, keeping track of their execution by national

administrations, and submitting proposals to the Committee of Ministers through the medium of the Council.

The Council of the Economic Union is presided over by a high ranking civil servant from one of the member States and is further composed of representatives of each of the Commissions. The Special Commissions are represented when items within their competences are on the agenda. The Council is responsible for carrying into effect the decisions of the Committee of Ministers and for submitting proposals to the Committee which it deems advantageous to the functioning of the Union. In addition, the Council coordinates the activities of the Commissions and Special Commissions and forwards their proposals to the Committee of Ministers accompanied, if required, with its opinion.

The Treaty provides that the Secretariat-General of the Union is established in Brussels (Art. 33) and is headed by a Secretary-General of Dutch nationality, assisted by an Assistant Secretary-General of Belgian nationality and another of Luxembourg nationality. Since 1975 the Committee of Ministers has conferred on the Secretary-General a right of initiative (Ministerial Decision M (75) 13 of October 21, 1975), i.e. he is charged with taking any initiatives which would further the application of the Treaty and the decisions of the Third Intergovernmental Conference (October 20 and 21; Textes de base, Vol. 6, pp. 1984–2024). The Secretariat-General provides services for the above-mentioned institutions. In addition, it coordinates the administrative activities of these institutions and arranges for any contacts required. It is also charged with making proposals which might be useful for the execution of the Union Treaty. It has its seat in Brussels.

There are also certain "common services" (Art. 40) which are executive services concentrating on special sectors. At present those include the Benelux Trade Marks Bureau in The Hague (established under the Trade Marks Convention of March 19, 1962 which transformed the Benelux area into one territory as far as trade-marks were concerned) and the Common Service for the Registration of Pharmaceuticals in Brussels (established by Ministerial Decision M (72) 22 of October 18, 1972 for the purpose of creating one territory for pharmaceutical registration). The former supervises the deposit and protection of trade marks while the latter is responsible for issuing permits for the marketing of pharmaceutical products. In both cases, their powers extend throughout Benelux territory. It should, however, be mentioned that the common service for pharmaceuticals has met with certain practical difficulties in the realization of its objectives.

Arts. 15 and 23–24 of the Union Treaty refer to the Consultative Interparliamentary Council (→ Parliamentary Assemblies, International), which had been established by a Convention of November 5, 1955 (UNTS, Vol. 250, p. 201), as an institution of the Union. However, the Treaty is silent about the precise constitutional position of this Council. Its Brussels secretariat is separate from that of the Union and its powers are those conferred by the earlier Convention. The governments of the three countries each year present to the Interparliamentary Council joint reports on economic union, cultural cooperation, foreign policy and unification of law. These four reports are published annually. The Interparliamentary Council may also make recommendations to the three governments.

At the request of the Committee of Ministers, the Economic and Social Advisory Council (Art. 54) gives advisory opinions concerning questions directly related to the functioning of the Union. It is also competent to offer advice, on its own initiative, to the Committee of Ministers on such questions; in such cases its interpretation is not binding.

The Benelux Court of Justice (→ Benelux Economic Union, College of Arbitrators and Court of Justice) is charged with interpreting the common legal rules, either at the request of a national court or tribunal (in which case its interpretation is binding on the national judge) or at the request of one of the three governments (in which case its interpretation is not binding). The Benelux Treaty also makes provision for a College of Arbitrators to settle any disputes that may arise between the governments.

3. *Principal Achievements*

(*a*) *Free movement of goods*

There are no quantitative restrictions in the intra-Benelux exchange of industrial or agricultural products.

The most important fiscal impediments to free trade between the Benelux countries are the excise duties and turn-over taxes which must be paid to the State where the consumption takes place. Their payment cannot be abandoned as long as the respective rates remain different.

In the field of products subject to excise duty, several conventions have been concluded in order to establish a single Benelux territory in matters of excise and to standardize excise duties in the three countries. Mainly because of the budgetary requirements of member States, the process of standardization is making only slow progress.

As for turn-over taxes, it has been agreed that the formalities at the internal frontiers will be simplified and the collection of these taxes will be transferred to the countries' internal authorities.

Finally, in the field of non–fiscal levies, the harmonization of the laws on the marketing of products marks the last stage in the total liberalization of intra-Benelux trade. Divergences in the national requirements concerning composition, packing, means of preservation, transportation or nomenclature are in effect impediments to the free movement of goods throughout the three countries, despite the elimination of quantitative restrictions and of the collection of indirect taxes at the internal frontiers. The harmonization of laws in this field which has so far been achieved has already had beneficial effects.

(b) Free movement of persons and services

Since July 1, 1960, the control of persons (i.e. the operation consisting of verifying whether they fulfil the necessary entry conditions) has been abolished at the Belgian-Dutch and Belgian-Luxembourg frontiers, both for nationals of the Benelux countries and for foreigners. At the same time, a joint control at the external frontiers has been established. This control is valid for the entire Benelux territory, and the officials who execute it do so not only for their own countries but also for the two other Benelux partners. Abroad, diplomatic and consular representatives issue visas which are valid throughout Benelux territory.

A common labour market has been created for the nationals of the three countries. Since 1960 workers of any of the three nationalites have been free to seek employment anywhere in Benelux territory. Labour exchanges offer services that extend beyond national frontiers to the other Benelux partners. Wage-earners working in one of the other partner countries enjoy the same working conditions and the same social security benefits as nationals of that country.

Freedom of establishment for the independent professions has existed since 1965. Citizens of other member States are admitted to these professions on the same conditions as nationals.

Liberalization has also been achieved in the field of road transport. Contractual carriage of goods by road from one of the partner countries to another was liberalized in 1962 after the setting up of common tariffs and controls.

The non-scheduled transport of persons by omnibus or coach has been entirely unrestricted since 1960, not only among the three countries but also for departures from any of the Benelux countries for external destinations. Moreover, regular trans-frontier omnibus services have been set up.

Finally, in the field of government procurement and tenders, all discrimination between nationals or goods of the Benelux countries is forbidden. This prohibition applies both to the allocation of contracts and to the purchase of goods by public authorities. A protocol to this effect, in force since 1958, forms an integral part of the Benelux Treaty and was extended in 1963 to subordinate public institutions.

(c) Freedom of intra-regional payments and capital transactions

The free movement of goods among the partners would not be effective were it not accompanied by a free régime of payments for intra-Benelux transactions. A régime of this nature was established shortly after World War II, at first by bilateral agreements and later by multilateral agreements, notably that which established the European Payments Union (→ European Monetary Cooperation). When the full convertibility of European currencies was achieved, the freedom of intra-regional payments also became complete.

As for the freedom of capital transactions, the Benelux countries signed in 1954 an agreement liberalizing transfers between the Belgium-

Luxembourg Economic Union and the Netherlands.

Treaty Establishing the Benelux Economic Union, UNTS, Vol. 381 (1960) 165–304.
Benelux Economische Unie/Union économique Benelux, Basisteksten/Textes de Base [looseleaf; supps. issued regularly as Bulletin Benelux/Benelux Publikatieblad].
Benelux, Driemaandelijks tijdschrift/Revue trimestrielle.

E. HYLKEMA, Benelux, Le chemin vers l'unité économique (1948).
M. WEISGLAS, Benelux (1949).
J.E. MEADE, Negotiations for Benelux (1957).
K.A. KALSHOVEN, Benelux (1960).
C.D.A. VAN LYNDEN, Benelux, European Yearbook, Vol. 8 (1960) 132–151.
J. KARELLE and F. DE KEMMETER, Le Benelux commenté (1961).
A. BLECKMANN, Die Benelux Wirtschaftsunion, ZaöRV, Vol. 22 (1962) 239–295.
F. VON BERG, Die juristische Struktur der belgisch-niederländisch-luxemburgischen Wirtschaftsunion, Thesis, University of Cologne (1965).
G.J. COLIJN, Regional Integration: Benelux and its Spillover Effects on the European Community, Thesis, Temple University (1978).
J.W. SCHNEIDER, The Netherlands and Benelux, International Law in the Netherlands, Vol. 2 (1979) 71–115.
O. HANSEN, Trente années de tentatives d'unification du droit dans les pays du Benelux, Revue de droit international et de droit comparé, Vol. 57 (1980) 60–82.
E.D.J. KRUIJTBOSCH, L'expérience acquise par plus de trente ans d'intégration économique dans le cadre du Benelux, Revue d'intégration européenne, Vol. 4 (1980) 43–58.
A.G. SAMOY, La création de l'Union économique Benelux, Studia Diplomatica, Vol. 34 (1981) 179–198.

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BENELUX ECONOMIC UNION, COLLEGE OF ARBITRATORS AND COURT OF JUSTICE

Two judicial institutions comprise the dispute-settlement mechanism of the → Benelux Economic Union. These are the College of Arbitrators, created as an integral part of the Union with the task of settling disputes between any of the three Benelux countries (Belgium, the Netherlands and Luxembourg), and the Benelux Court of Justice which is an independent institution whose function is mainly interpretative.

A. College of Arbitrators

Arts. 15 and 41 to 53 of the Treaty establishing the Benelux Economic Union provide for the establishment of a College of Arbitrators and determine its composition and functions. The essential features are to be found outlined in Part II, Chapter 7 of the Treaty, but the governments did not wish to lay down a detailed statute of the College of Arbitrators in the Treaty itself. They deemed it preferable to delegate to the Committee of Ministers the task of drafting a statute. The Statute was accordingly published as an annex to Ministerial Decision M (60) 10 of November 3, 1960.

Provision was made in the Statute for four divisions of the College, dealing respectively with economic, financial, social and agricultural matters. For each division a national and a substitute national were to be designated by each of the three countries. Each was to be appointed for three years, but this term of office could be tacitly extended. Six arbitrators were appointed in 1962 (Ministerial Decision M (62) 2 of February 5, 1962) for the only case brought up for arbitration so far, but since then no new arbitrators have been nominated.

It has been judged desirable that no dispute should be brought before the College of Arbitrators before an attempt has been made to settle it within the Committee of Ministers. The College has so far not been required to reach a decision as the Council of Ministers has always been able to resolve any difficulties that have arisen.

The registry services of the College of Arbitrators are performed by the Secretariat-General of the Union.

B. Court of Justice

1. *Establishment*

The Court of Justice of the Benelux Economic Union (Benelux Court) was established by a treaty which was signed in Brussels on March 31, 1965 and came into force on January 1, 1974. A number of protocols have subsequently amended and added to the provisions of this treaty (for

details, see section 6 *infra*). The permanent seat of the Court is in Brussels. The Court was inaugurated and its members sworn in on May 11, 1974.

The Court's hearings are normally held in Brussels. It may, however, also sit at other locations within the three countries. Thus it has on occasion also sat in The Hague.

The Court has drawn up its internal rules and its rules of procedure, both of which have been published in the official journals of the three countries.

2. *Composition*

The Court consists of nine judges and six deputy judges. It has a *Parquet* with three advocates-general and is assisted by three registrars. All of these are nominated in equal numbers by each of the three Benelux countries. The judges and deputy judges are chosen from among the members of the supreme courts of the three countries: Belgium's Cour de cassation, the Netherlands' Hoge Raad and Luxembourg's Cour supérieure de Justice or Conseil d'Etat. The advocates-general are chosen from among the members of the *Parquets* of the supreme courts. The registrars are selected from the Secretariat-General of the Benelux Economic Union. All are appointed on the basis of decisions of the Benelux Committee of Ministers. None are remunerated in their capacity as members or officials of the Court.

A President and two Vice-Presidents are elected at a general assembly of the Court; these three judges must be of different nationality. They are appointed for three-year periods, rotating among the three nationalities. The President supervises the activities of the Court; he presides over the general assemblies, Court hearings and the judges' deliberations. He receives the oaths of the judges, advocates-general and registrars, directs the judicial business of the Court and takes procedural decisions on matters referred to him.

A similar system of rotation among the three nationalities operates for the selection of the Chief of *Parquet*, who is also appointed for a three-year term. The Chief of *Parquet* directs the activities of the advocates-general and assigns individual tasks, of which the most important is to present reasoned opinions with complete impartiality and independence, and to advise the Court in all the cases of which it is seised. If the occasion arises, an advocate-general may advise the Court of the point of view of his government, but he preserves the freedom not to subscribe to such views. The President and the Chief of *Parquet* represent the Court jointly.

The registry is the only permanent central organ of the Benelux Court. The registrars and the registry staff work under the direction of the chief registrar. The registrars assist the judges and the advocates-general in the exercise of their functions.

3. *Competence*

The Court's main function is to promote uniformity in the interpretation of rules of law common to the three Benelux countries for their application by national courts. These common legal rules are embodied either in conventions or in decisions of the Committee of Ministers, the latter being subject to the advice of the Benelux Interparliamentary Council. At present the Court is competent to interpret approximately 25 Benelux treaties or conventions in force. These instruments are concerned not only with the whole spectrum of activities of the Benelux Economic Union, but also touch on certain aspects of the civil and criminal law of third countries. The Court's competence is continually being extended by the entry into force of new conventions and as a result of progress towards unification of the law of the three countries. As of August 1, 1982 the Court has acquired competence to interpret the decisions of the Union's Committee of Ministers.

The Court forms the keystone of the Benelux structure and is in fact the only supranational element (→ Supranational Organizations). As such it is not an institution of the Benelux Economic Union, which is an inter-governmental organization (see section 4 *infra*). The operating costs of the Court are, however, borne by the Secretariat-General's budget (Art. 14 of the Court's constituent treaty).

The Court has a three-fold jurisdiction which includes powers of preliminary review, advisory powers and jurisdiction in certain administrative matters. The jurisdictional powers of preliminary review operate when a question of interpretation

of a common legal rule arises before a national court or tribunal of one of the three countries. The lower courts may, and the highest courts must, refer the problem in question to the Benelux Court for a preliminary ruling. The Court's decision is binding on the national court. To date the Court has received 25 requests for preliminary rulings (a higher number than was originally envisaged). The judgments and the opinions of the advocates-general are published serially. The Benelux Bulletin also publishes the judgments in digest form.

Regarding advisory powers each of the three governments may request the Court to give an advisory opinion on the interpretation of a common legal rule. No advisory opinion has been given to date.

Regarding its administrative jurisdiction, the Court performs the function of an administrative tribunal in matters relating to the staff of the Benelux Secretariat-General (numbering about 90) and the staff of the Benelux Trademarks Bureau and the Benelux Designs Bureau (approximately 50 persons). To date, the Chamber responsible for administrative matters (not mentioned in the constituent Treaty but set up by an Additional Protocol of April 29, 1969) has heard 17 cases, all brought by officials of the Secretariat-General.

4. *Comparison with the CJEC*

The powers listed above are comparable to some of the powers of the → Court of Justice of the European Communities (CJEC) in Luxembourg. The EEC Treaty was used as a model for the preliminary proceedings. Only some minor amendments were made. Nevertheless, an essential difference between the powers of preliminary review of the CJEC and those of the Benelux Court lies in the fact that whereas the CJEC was expressly accorded competence, in the text of the European treaties, to interpret the entire body of Community law, the Benelux Court is only competent to interpret the common legal rules which have been expressly designated in a convention or by the Committee of Ministers; indeed, as regards the Economic Union, the Court (prior to the entering into force of a special Protocol on August 1, 1982 (see section 5(d) *infra*)) had jurisdiction to interpret only conventions concluded within this framework but not decisions concerning their execution. On the other hand, the jurisdiction of the Benelux Court is not limited to the Economic Union, as it extends to a large number of common legal rules in the fields of civil and criminal law which have been established outside the narrow framework of the Union; it is precisely for this reason that the Court is not integrated into the Union, while the CJEC, for its part, is an institution of the → European Communities.

The Benelux Court is not competent to hear actions brought against the governments of the three countries concerning the application of the Treaty establishing the Benelux Economic Union and the conventions relative to the objectives of that Treaty. The Treaty assigns these matters to the competence of the College of Arbitrators.

5. *Principal Agreements; Rules*

The principal agreements concerning the Court are:

(a) Treaty concerning the Establishment and the Statute of a Benelux Court of Justice, Brussels, March 31, 1965; in force January 1, 1974 (UNTS, Vol. 924, p. 2).

(b) Additional Protocol to the Treaty . . . (Use of Languages before the Court), Brussels, October 25, 1966; in force January 1, 1974 (UNTS, Vol. 924, p. 11).

(c) Protocol Concluded in Application of Article 1, paragraph 2, of the Treaty . . . (designation of certain Benelux agreements as common legal rules), The Hague, April 29, 1969; in force January 1, 1974 (UNTS, Vol. 924, p. 13).

(d) Second Protocol Concluded in Application of Article 1, paragraph 2 of the Treaty . . . (designation of decisions and recommendations as common legal rules), Brussels, May 11, 1974; in force August 1, 1982.

(e) Additional Protocol to the Treaty . . . relating to Jurisdictional Protection of Persons in the Service of the Benelux Economic Union, The Hague, April 29, 1969; in force January 1, 1974 (UNTS, Vol. 924, p. 17).

(f) Protocol to the Treaty . . . concerning the Jurisdictional Protection of Persons in the Service of the Benelux Trademarks Bureau and the Benelux Designs Bureau, Brussels, May 11, 1974; in force November 1, 1978.

(g) Protocol concerning the Publication in the

Benelux Bulletin of Certain Common Legal Rules for whose Interpretation the Benelux Court of Justice has Jurisdiction, Brussels, February 5, 1980; in force June 1, 1982.

(h) Protocol Modifying Article 1 of the Treaty concerning the Establishment and the Statute of a Benelux Court of Justice, Brussels, June 10, 1981.

In addition, the procedure of the Court is regulated by the Internal Rules of the Benelux Court of Justice, adopted by the Court on October 25, 1974 and modified on December 20, 1978, and by the Rules of Procedure of the Benelux Court of Justice, adopted by the Court on March 1, 1975, approved by the Committee of Ministers on July 19, 1976 and modified on April 26, 1982.

Treaty concerning the Creation and the Statute of the Benelux Court of Justice, 31 March 1965, European Yearbook, Vol. 13 (1965) 259–266.

Cour de Justice Benelux/Benelux-Gerechtshof, Jurisprudence/Jurisprudentie 1975–1979 (1979).

J.W. SCHNEIDER, The Benelux Court, Netherlands Yearbook of International Law, Vol. 4 (1973) 193–235.

G. DEMEZ, La Cour de Justice Benelux, Cahiers de droit européen, Vol. 12 (1976) 149–178.

L. GOFFIN, La Cour de Justice Benelux, Cahiers de droit européen, Vol. 14 (1978) 123–124.

A. DE CALUWÉ, Cour de Justice Benelux – chroniques, Cahiers de droit européen, Vol. 16 (1980) 240–296.

F. DUMON, La Cour de Justice Benelux (1980).

A. DE VREESE, Het Benelux-Gerechtshof, Sociaal-Economische Wetgeving, Vol. 30 (1982) 563–582.

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BOGOTÁ PACT (1948)

1. Historical Background

Since its early stages the inter-American system has promoted the peaceful solution of internal controversies by the States of the region (→ Regional Cooperation and Organization: American States). As early as the Congress of Panama in 1826, the new republics expressed concern over methods and procedures for the → peaceful settlement of disputes at the international level. Subsequently, this concern over the peaceful settlement of disputes developed to include not only those disputes that might arise among member countries of the proposed Confederation but also disputes involving any of those countries and one or more powers outside the Confederation. It was thought that dispute settlement could be promoted by an international entity or pursued through such an entity by the parties. A close nexus between the → collective security system and mechanisms for the peaceful settlement of disputes evolved.

The forerunner of inter-American instruments in this field was the "Plan of Arbitration" approved by the First International American Conference (Washington, 1889/1890). Art. I of the "Plan" stated:

> "The Republics of North, Central and South America adopt arbitration as a principle of American international law for the settlement of differences, disputes, or controversies that may arise between two or more of them."

The "Plan" made Arbitration mandatory save in those cases involving issues which, in the sole judgment of one of the parties, might imperil its independence (Arts. II, III and IV). Eleven of the participating States signed a formal treaty containing terms almost identical to the Conference draft.

The Second International Conference of American States (Mexico City, 1902) adopted a Treaty on Compulsory Arbitration and a Protocol of Adherence to the Hague Conventions of 1899 (→ Hague Peace Conferences of 1899 and 1907). On subsequent occasions the inter-American system approved recommendations and resolutions on the matter of peaceful settlement, and between 1923 and 1936 several multilateral treaties, conventions and protocols were adopted by the American States. At the Conference on Conciliation and Arbitration (Washington) three relevant instruments were signed on January 5, 1929:

– The General Convention of Inter-American Conciliation: This Convention was designed essentially to supplement and strengthen, through conciliation (→ Conciliation and Mediation), the procedures for investigation established in the "Gondra Treaty" on the avoidance or prevention of conflicts between American States of May 3, 1923. In accordance with Art. 1 of the Convention, the contracting States agreed to submit to the procedures of conciliation established therein all controversies "which have arisen or

may arise between them for any reason and which it may not have been possible to settle through diplomatic channels". Under Art. 2, the Commission of Inquiry established pursuant to the provisions of Art. 4 of the Gondra Treaty "shall likewise have the character of Commission of Conciliation". Art. 6 provides that the function of the Commission as an organ of conciliation is to "procure the conciliation of the differences subject to its examination by endeavouring to effect a settlement between the Parties".

– The General Treaty of Inter-American Arbitration: Under Art. 1 of this Treaty the contracting States agreed "to submit to arbitration all differences of an international character which have arisen or may arise between them . . . which are juridical in their nature", including those cases of dispute specifically listed in Art. 36 of the Statute of the → Permanent Court of International Justice. Nonetheless, the Treaty specifically excluded from its purview the following controversies: "(a) Those which are within the domestic jurisdiction of any of the Parties to the dispute and are not controlled by international law; and (b) Those which affect the interest or refer to the action of a State not a Party to this treaty" (Art. 2). The General Treaty provided for the manner of obtaining in the absence of an agreement among the parties to the controversy, consent as to the arbitrator or tribunal, a special agreement to define the particular subject matter of the controversy, and agreement over the seat of the court, etc. (Arts. 3 and 4).

– The Protocol of Progressive Arbitration: The object of this Protocol was to overcome the problems created not only by the many reservations (→ Treaties, Reservations) made to the General Treaty of Inter-American Arbitration, but also by the terms of the Treaty itself which excluded certain controversies from its domain. Accordingly, the Protocol authorized any party to the General Treaty to deposit at any time with the Department of State of the United States an instrument attesting that it "has abandoned in whole or in part the exceptions from arbitration stipulated in the said treaty or the reservation or reservations attached by it thereto" (Art. 1).

In addition, the Anti-War Treaty of Non-Aggression and Conciliation (→ Saavedra Lamas Treaty; → Non-Aggression Pacts), signed in Rio de Janeiro on October 10, 1933 and still in force for a number of Latin American and European States and the United States, condemns wars of → aggression, provides for the peaceful settlement of all disputes or controversies, and establishes an elaborate mechanism of conciliation for this purpose.

2. Bogotá Pact

On April 30, 1948, the Ninth International Conference of American States held in Bogotá adopted the American Treaty on Pacific Settlement (Pact of Bogotá). This Treaty was intended to replace or supersede all the previous inter-American peace treaties and conventions. Several American States made reservations to the Pact.

Arts. 20 to 23 of the Charter of the → Organization of American States, also approved by the 1948 Conference, establish rules for the peaceful settlement of disputes. Art. 20 states that all international disputes arising between American States should be submitted to the procedures set forth in the Charter before being referred to the → United Nations Security Council. Art. 23 provides that a special treaty is to establish adequate procedures for the pacific settlement of disputes and is to determine the appropriate means for their application, so that no dispute between American States fails to reach definitive settlement within a reasonable period. That special treaty is the Bogotá Pact.

Art. LVIII of the Bogotá Pact defines the relationship of the Pact with prior existing inter-American peace treaties and conventions. It provides that as the Pact comes into effect through the successive ratifications of the contracting parties, the following treaties, conventions and protocols will cease to be in force with respect to such parties: The Gondra Treaty of 1923; the three instruments signed at the 1929 Conference on Conciliation and Arbitration; the Additional Protocol to the General Convention of Inter-American Conciliation of December 26, 1933; the Anti-War Treaty of Non-Aggression and Conciliation of October 10, 1933; the Convention to Coordinate, Extend and Assure the Fulfillment of the Existing Treaties between the American States of December 23, 1936; the Inter-American Treaty on Good Offices and Mediation of

December 23, 1936; and the Treaty on the Prevention of Controversies of December 23, 1936.

The → preamble to the Bogotá Pact states that the governments represented at the Ninth International Conference of American States resolved to conclude the Treaty in fulfilment of Art. 23 of the OAS Charter (Art. 26 of the Charter as amended by the Protocol of Buenos Aires of 1967). In Art. I the contracting parties,

> "reaffirming their commitments made in earlier international conventions and declarations, as well as in the Charter of the United Nations, agree to refrain from the threat or the use of force, or from any other means of coercion for the settlement of their controversies, and to have at all times recourse to specific procedures".

Arts. IX to XLIX contain rules on the following peaceful procedures: → good offices and mediation, investigation and conciliation, judicial procedure, and arbitration.

On judicial procedure, Art. XXXI provides that, in conformity with Art. 36(2) of the Statute of the → International Court of Justice, the contracting parties declare that they

> "recognize, in relation to any other American state, the jurisdiction of the Court as compulsory *ipso facto*, without the necessity of any special agreement so long as the Treaty is in force, in all disputes of a juridical nature that arise among them concerning:
> (a) The interpretation of a Treaty;
> (b) Any question of international law;
> (c) The existence of any fact which, if established, would constitute the breach of an international obligation;
> (d) The nature or extent of the reparation to be made for the breach of an international obligation."

Under Art. XXXIII, if the parties fail to agree as to whether the Court has jurisdiction over a controversy, the Court itself shall first decide that question. If the Court, according to Art. XXXIV, finds it lacks jurisdiction for the reasons set forth in Arts. V, VI and VII of the Treaty, it shall declare the controversy ended. On the other hand, Art. XXXV provides that if the Court holds for any other reason that it lacks jurisdiction to hear and adjudge the controversy, the contracting parties submit to arbitration, in accordance with the provisions of the Bogotá Pact.

Art. L provides a rule concerning the compliance with the Court's decisions and arbitral awards. It states:

> "If one of the High Contracting Parties should fail to carry out the obligations imposed upon it by a decision of the International Court of Justice or by an arbitral award, the other party or parties concerned shall, before resorting to the Security Council of the United Nations, propose a Meeting of Consultation of Ministers of Foreign Affairs [of the member States of the OAS] to agree upon appropriate measures to ensure the fulfillment of the judicial decision or arbitral award."

3. Subsequent Developments

Thus far, only 13 OAS member States have ratified the Bogotá Pact. Nonetheless, Arts. 23 to 26 of the OAS Charter – as amended by the Protocol of Buenos Aires of 1967, in force since February 27, 1970, incorporate verbatim the same provisions contained in Arts. 20 to 23 of the 1948 Bogotá Charter. Furthermore, the amended OAS Charter contains in Arts. 82 to 90 new provisions on pacific settlement of controversies.

Art. 82 of the amended OAS Charter states that:

> "the Permanent Council shall keep vigilance over the maintenance of friendly relations among the Member States, and for that purpose shall effectively assist them in the peaceful settlement of their disputes, in accordance with the ... provisions [established in Articles 83 to 90 of the Charter]".

Art. 83 provides for the establishment of an Inter-American Committee on Peaceful Settlement, which, as subsidiary organ of the Permanent Council, would assist the Council in the exercise of its Art. 82 powers.

Art. 84 provides that the parties to a dispute may resort to the Permanent Council to obtain its good offices, and in such a case the Council shall have authority to assist the parties and to recommend the procedures it considers suitable for the peaceful settlement of the dispute. If the parties so wish, the Chairman of the Council shall refer the dispute to the Inter-American Committee on Peaceful Settlement. Art. 85 authorizes the Permanent Council, in exercising its Art. 84 functions, to ascertain, through the Inter-American Committee or by any other means, the facts

in the dispute, in the territory of any of the parties upon consent of the government concerned. Art. 86 provides that:

"[a]ny party to a dispute in which none of the peaceful procedures set forth in Article 24 of the Charter is being followed may appeal to the Permanent Council to take cognizance of the dispute. The Council shall immediately refer the request to the Inter-American Committee on Peaceful Settlement, which shall consider whether or not the matter is within its competence and, if it deems it appropriate, shall offer its good offices to the other party or parties."

According to Art. 87, if one of the parties should refuse the offer, the Committee shall "limit itself to informing the Permanent Council, without prejudice to its taking steps to restore relations between the parties, if they were interrupted, or to reestablish harmony between them". Art. 88, para. 2 provides that if one of the parties should refuse the good offices of the Inter-American Committee on Peaceful Settlement of the Permanent Council, the Council shall report to the OAS General Assembly.

4. *Evaluation*

Resort to the Bogotá Pact has been infrequent. In order to become a member of the OAS, however, an American State must ratify the OAS Charter. Arts. 23 to 26 of the Charter, as amended by the Protocol of Buenos Aires, binds the 31 American States which are at present members of the OAS to settle their controversies by peaceful means. On occasion, member States of the OAS have presented proposals for amending the Bogotá Pact. Although these proposals have been considered in meetings of the OAS, no amendment to the Pact has yet been adopted.

American Treaty on Pacific Settlement (Pact of Bogotá), Bogotá, April 30, 1948, UNTS, Vol. 30 (1949) 55–116; OAS, Treaty Series No. 16, in: Inter-American Peace Treaties and Conventions (1972) 60–71.

Inter-American Committee on Peaceful Settlement, Statutes, in: OAS General Assembly, 1st Special Session, Proceedings, Vol. 1 (1970) 55–62 (OAS/Ser.P/I.E-2, V.1).

J.L. KUNZ, The Pact of Bogotá, Arbitration Journal, Vol. 3 (1948) 147–157.

H. ACCIOLY, O Pacto de Bogotá, Inter-American Juridical Yearbook, 1948 (1949) 3–9.

M.E. JIMÉNEZ DE ARÉCHAGA, La coordination des systèmes de l'ONU et des OEA pour le règlement pacifique des différends et de la sécurité collective, RdC, Vol. 111 (1964 I) 419–526.

H. LEHMANN, Das Interamerikanische System zur friedlichen Beilegung von Streitigkeiten, Thesis, University of Bonn (1969).

R.M. CATTANEO, La Solución Pacífica de Controversias Internacionales en la Nueva Carta de la OEA, Revista de Derecho Internacional y Ciencias Diplomáticas, Vol. 19 (1970) 136–145.

L.C. WILSON, The Settlement of Conflicts within the Framework of Relations Between Regional Organizations and the United Nations, The Case of Cuba 1962–1964, NILR, Vol. 22 (1975) 282–318.

M. LLOYD NASH, Conciliation: OAS International Commission of Friendly Cooperation and Conciliation, Nicaragua, Digest of United States Practice in International Law, 1978 (1980) 1536–1540.

Segundas Jornadas Latinoamericanas de Derecho Internacional, Viña del Mar, 1980, La Solución Pacífica de Controversias (estudios) (1981).

W. GRABENDORFF, Interstate Conflict Behaviour and Regional Potential Conflict in Latin America, Journal of Interamerican Studies and World Affairs, Vol. 24 (1982) 267–294.

G. LEORO-FRANCO, La Reforma del Tratado Americano de Soluciones Pacíficas o Pacto de Bogotá, Anuario Jurídico Interamericano, 1981 (1982) 30–79.

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BOUNDARIES IN LATIN AMERICA: UTI POSSIDETIS DOCTRINE

1. *Background*

When the Spanish colonies of Central and South America proclaimed themselves independent in the second decade of the 19th century, it became indispensable for them to agree on a general principle for the adjustment of their common boundaries. The principle they adopted was described by them as the colonial *uti possidetis*, that is, the principle involving the preservation of the boundaries which existed under the Spanish régime at the time of independence, corresponding to each of the former colonial entities which constituted themselves as new States. Each one of them was considered to have → sovereignty inside the limits established by the Spanish sovereign for the provinces for which they were substituted (→ Territorial Sovereignty).

2. Notion in Roman Law and International Law

The term *uti possidetis* is taken from Roman law. There, it denoted an interdict of the *praetor*, the purpose of which was to forbid, pending the outcome of litigation, the disturbance of the existing state of possession of immovables, even if the possession had begun by violence, clandestinely or with permission from any person other than the adversary. Thus, there was simply a prohibition against disturbing the *status quo*, even if the question as to which of the parties was in possession and which was forbidden to interfere was left open. The substance of the decree was embraced in the words, *Uti possidetis, ita possideatis* ("As you possess, so may you continue to possess").

There are significant differences between this remedy in Roman law and its application in Spanish America. In Roman law, the one in possession continued to enjoy it until the question of title was decided. In the Latin American adaptation, the new States did not by themselves enjoy a previous possession, since the possessor had been Spain. Furthermore, the previous possession was not meant to continue merely on a provisional basis until title was determined, but constituted by itself the title for final and permanent possession.

The notion of *uti possidetis* had first entered into international law to describe one of the forms of solving the territorial changes which occurred during a → war (→ War, Laws of, History). There are two extreme possibilites in this respect. One is to return to the *status quo ante bellum*, i.e. to re-establish the territorial situation which existed before the hostilities; the other, to consolidate or confirm the situation of fact which was created as a result of the hostilities, the *status quo post bellum*. The system of consolidating the *de facto* situation created as a result of hostilities and their aftermath is what was known in the international law of war by the name of *uti possidetis* (see → Uti possidetis Doctrine); that is to say, the States will continue in possession of what they already possess. Hall, for instance, states:

> "By the principle commonly called that of *uti possidetis* it is understood that the simple conclusion of peace, if no express stipulation accompanies it, or in so far as express stipulations do not extend, vests in the two belligerents as absolute property whatever they respectively have under their actual control in the case of territory and things attached to it" (W.E. Hall, International Law (8th ed. 1924) p. 673) (cf. also L. Oppenheim, International Law, Vol. 2 (7th ed. by H. Lauterpacht, 1952) pp. 599 and 611).

3. Application by Spanish American States

It is obvious that the principle of *uti possidetis* proclaimed and agreed by the Spanish American States could not have the meaning it had in the law of war, for the simple reason that there had been no war between those States. As stated in an arbitral award, "[t]hey were not in the position of warring States terminating hostilities by accepting the status of territory on the basis of conquest" (Guatemala-Honduras Arbitral Award, RIAA, Vol. 2, p. 1307, at p. 1324).

The adoption of the principle of *uti possidetis* implied that the Spanish American States committed themselves to a reciprocal respect of their territorial status and thus abolished among themselves the legitimacy of a right of → conquest, which was then accepted in international law. The mutual acceptance of the lines of demarcation which Spain had decreed meant that the neighbouring States were not bent on the seizure or conquest of each other's territories by force (→ Use of Force). Upon being adopted, the principle at the same time prevented the territorial ambitions of any one State and the dissolution of any other. Disputes were bound to arise between them, but they grew out of questions concerning how or where the Spanish monarch had in fact drawn the line between preceding colonial entities. But these disputes could not be solved by force; they could be adjusted only through → negotiation or → arbitration.

The rule of *uti possidetis* was not only meant to exclude the right of conquest in the relations between Spanish American States, but also to forbid recognition of territorial titles which non-American States might desire to acquire on the American continent. By proclaiming this principle, the new States asserted that they fell heir to all that Spain had claimed as her own, that their title was co-extensive with hers, and that consequently no area remained without a sovereign. This corollary of the principle was well explained in the award of the Swiss Federal Council of 1922 in a dispute between Colombia and Venezuela:

"This general principle offered the advantage of establishing an absolute rule that there was not, in law, in the old Spanish America, any territory without a master; while there might exist many regions which had never been occupied by the Spaniards and many unexplored or inhabited by non-civilized aborigines, these regions were reputed to belong in law to whichever of the Republics succeeded to the Spanish Province to which these territories were attached by virtue of the old Royal Ordinances of the Spanish mother country. These territories, although not occupied in fact, were by common consent deemed as occupied in law from the first hour by the newly created States.... This principle excluded the attempts of European colonizing States on territories which they might have tried to proclaim *res nullius.*" (Translation from the French text, RIAA, Vol. 1, p. 223, at p. 228.)

Thus, the principle of *uti possidetis* as adopted by the Spanish American States constitutes "[a]n illustration of the use of consent for purposes of excluding reliance on acquisition of *territorium nullius* or titles *jure belli*" (G. Schwarzenberger, International Law as Applied by International Courts, Vol. 1 (3rd ed. 1957) p. 304). It antedated both the Latin American principle of → non-recognition of the acquisition of territory by force proclaimed in Art. 17 of the 1948 Charter of the → Organization of American States (see also → Stimson Doctrine) and the United States' → Monroe Doctrine opposing any foreign colonization of the American hemisphere.

Another practical corollary of the principle of *uti possidetis* is that once it was agreed or decided by an award that a certain territory belonged in law to one of the parties, there were no formalities for handing over territory by the occupying State to the other. The principle of transfer of sovereignty from one State to another, according to the 1922 Swiss Federal Council award,

"would not be applicable to the boundary relations between Colombia and Venezuela, because by virtue of the principle of the *uti possidetis* of 1810 proclaimed by the two High Contesting Parties and confirmed by the Spanish arbitral decision, there is neither a grantor nor a grantee; each one of the States is reputed to have had since 1810 sovereignty over the territories which the Spanish Arbitrator has recognized to it" (RIAA, Vol. 1, at p. 279).

The *uti possidetis* principle, while it had the advantages already examined, encountered serious difficulties in its practical application. This was due to:

"the lack of trustworthy information during colonial times with respect to a large part of the territory in dispute. Much of this territory was unexplored. Other parts which had occasionally been visited were but vaguely known. In consequence, not only had boundaries of jurisdiction not been fixed with precision by the Crown, but there were great areas in which there had been no effort to assert any semblance of administrative authority" (Guatemala-Honduras Arbitral Award, RIAA, Vol. 2, p. 1325).

Similarly, the Swiss Council award points out:

"The limits of the administrative circumscriptions between the Spanish Provinces of South America of the colonial epoch were at times insufficiently known; the maps were imperfect, the names of localities, of rivers, of streams and of mountains mentioned in the documents of the ancient régime were disfigured or were no longer to be found. After a period of uncertainty disputes gradually arose among most of the Spanish American States, not on the principle admitted by all of *uti possidetis iuris* but on the details of the ancient boundaries. It became necessary to negotiate to arrive at exact limits" (RIAA, Vol. 1, at p. 229).

It has been stated that frontier problems arose in Europe because too much history was remembered by the disputant parties, while in America boundary questions arose because too little geography was known in respect of the disputed areas (S.W. Boggs, International Boundaries (1940) p. 17).

Yet it would be going too far to say, as Waldock has stated, "that the doctrine of '*uti possidetis*' has proved to be so indefinite and ambiguous that it has become somewhat discredited even as a criterion for settling boundary disputes between Latin-American States" (BYIL, Vol. 25 (1948) p. 325). On the contrary, the principle generally avoided "the danger of hostilities in disputed areas, and the discussion as to its meaning and application in each case made it possible

later to solve the boundary questions in a peaceful way, by means of negotiations culminating in an agreed treaty or by arbitration" (L.A. Podestá Costa, Manual de Derecho internacional público (1943) p. 86 (translation)).

4. Altered Application to Boundaries with Brazil

The settlement of boundaries as between Brazil and her neighbours could not be made on the basis of the same principle. As Brazil was not in a relation of subordination to Spain, she naturally could not be considered as bound by the sovereign acts of the Spanish monarch. According to the principles of → State succession, the legitimate way of handling the boundary questions between Brazil and the former Spanish colonies neighbouring her would have been to follow the delimitation which had been agreed by the two colonial powers, Spain and Portugal, in the Treaty signed at San Ildefonso in 1777. However, Brazil was unwilling to accept this Treaty as binding upon her, adducing that the war of 1801 between Spain and France on the one side and Portugal on the other had revoked the pre-existing treaties (→ Treaties, Termination), that this war had extended to the American continent where there had been conquest of territories by the Portuguese, and that the treaty of peace concluded at Badajoz on June 6, 1801 did not return to the *status quo ante bellum* nor revalidate the Treaty of San Ildefonso (→ Treaties, Validity).

The legal argument concerning the extinction of the 1777 treaty is strongly contested by Spanish American writers, who assert that a war which only lasted a few weeks could not extinguish a dispositive treaty establishing a frontier which had been the object of at least partial demarcation. Furthermore, the Peace of Badajoz could not refer to territories occupied in America since the fact of this occupation was unknown in Europe when the treaty was signed. The debate is of historic interest only, since all the frontiers of Brazil have now been settled by treaty or arbitration.

In those negotiations and arbitrations, the Brazilian jurists and diplomats advanced the following argument: In such a situation of legal void, the doctrine of *uti possidetis* becomes applicable, not in the form accepted by the Spanish American writers, but rather as admitted in the traditional international law of war, that is to say, by confirming or consolidating the situation of fact *post bellum*. And the situation of fact they invoked was not only that resulting from the military occupation (→ Occupation, Belligerent) of certain areas, but also from a peaceful penetration which had taken place, and which has been described as follows:

"the limits of the Portuguese and Spanish possessions in South America, which had been strictly laid down in the Treaty of Tordesillas, were exceeded by persons from Brazil in search of gold and emeralds and . . . they achieved the *uti possidetis* for Brazil and greatly increased her territory" (Individual opinion of Judge Levi Carneiro in the → Minquiers and Ecrehos Case, ICJ Reports (1953) p. 47, at pp. 104–105).

The response of the diplomats and jurists from Spanish America was that the principle they accepted should be described as *uti possidetis juris*, which is to be distinguished from *uti possidetis facto*. The difference between the two is well explained in a quotation from earlier mediation proceedings in the Guatemala-Honduras award:

"This principle in practice has divided the opinions of publicists, inasmuch as while some maintain that in solving the boundary questions by the *uti possidetis*, they must consider only the fact of the possession without entering into the question of the title to the ownership, others think that the application of that formula would compel the study of titles of both jurisdictions and the granting to the nations, not precisely what they have possessed, but that which, according to the decrees of the sovereign, they had a right to possess" (RIAA, Vol. 2, p. 1323).

According to the *uti possidetis juris* principle as described by the Swiss Federal Council, encroachments and untimely attempts at colonization on the part of the adjacent State, as well as occupations *de facto*, became without importance and without consequence in law.

The reply of Brazilian jurists and diplomats was that they gave to the *uti possidetis* principle the only meaning that it could reasonably have according to its origin and tradition, namely, that of real and effective possession, independent of any title, while the Spanish American writers tried to inject into the Roman formula a meaning entirely alien to its origin, that is to say, the right

to possess, independent of effective occupation. The Visconde do Rio Branco, who by successful arbitrations and negotiations conquered for Brazil more territory than any other captain in history, said:

"what is called *uti possidetis juris* was a far-fetched invention of writers and diplomats of Spanish origin who, in the discussions concerning the frontiers with Brazil wanted to take as the basis of discussion the preliminary and invalid treaty of 1777" (H. Accioly, Droit international public (Goulé translation), Vol. 2, pp. 11–12).

It cannot be denied that the use of the formula of *uti possidetis* gave a great advantage to Brazil in the negotiations and arbitrations which took place with Spanish American countries. Such a formulation suggests the fact of possession as the test, which is exactly contrary to what was intended. It would have been more convenient and appropriate to use a formula which did not have such a strong connotation of the decisiveness of the fact of possession, as the *uti possidetis* principle carried both in Roman and international law. It has been suggested that it would have been more appropriate to refer to "Spanish titles at the time of independence" or "*ita juris est* 1810" (Suárez).

5. Rules Applicable to European Possessions

The delimitations between Latin American States and European possessions (→ Colonies and Colonial Régime; → Non-Self-Governing Territories), such as the Guyanas, were not governed by the same principles accepted by the Latin American States, and it was therefore necessary to agree on the applicable rules when submitting a case to arbitration. Thus in the Venezuela-United Kingdom arbitration treaty of 1897 concerning British Guyana (see → Guyana-Venezuela Boundary Dispute), the parties directed the arbitral tribunal to perform two separate and distinct tasks: firstly, that of ascertaining the boundary line "that might be lawfully claimed" by the Netherlands or Spain at the time of acquisition of the colony by Great Britain, that is to say, the *uti possidetis juris* of 1814 and, secondly, to "determine the boundary line between Guyana and Venezuela". For this second task, the tribunal was directed by a specific rule to consider that "adverse holding or prescription during a period of 50 years shall make a good title" (→ Prescription). Thus, the concept of *uti possidetis* was based on factual rather than legal developments in this case.

For details of particular boundary disputes between modern Latin American States, see → Boundary Disputes in Latin America.

J.L. SUÁREZ, El *uti possidetis* y los límites americanos (1909).
J.B. MOORE, Memorandum on uti possidetis (1913).
B. CHECA DROUET, La doctrina americana del *uti possidetis* de 1810 (1936).
J.M. URQUIDI, El *uti possidetis juris* y el *de facto* (1946).
L.M. BLOOMFIELD, The British Honduras-Guatemala Dispute (1953) 192–196.
A.O. CUKWURAH, The Settlement of Boundary Disputes in International Law (1967) 112–116, 190–199.
L.D.M. NELSON, The Arbitration of Boundary Disputes in Latin America, NedTIR, Vol. 20 (1973) 267–294.

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BOUNDARY DISPUTE, GUYANA-VENEZUELA *see* Guyana-Venezuela Boundary Dispute

BOUNDARY DISPUTES BETWEEN CANADA AND USA *see* American-Canadian Boundary Disputes and Cooperation

BOUNDARY DISPUTES BETWEEN CHINA AND USSR

1. Historical Background

(a) Tsarist Russia and Imperial China

The origins of present Sino-Soviet boundary disputes may be traced back to the 19th century treaties dealing with the Sino-Russian border. The Sino-Russian border troubles, however, are much older: they originated from and developed in correlation to the territorial expansion of both the Russian and Chinese Empires. Thus, originally remote from each other, the countries' centres of power in St. Petersburg and Moscow and in Peking came into closer contact the more they annexed the vast territories hitherto separating them.

The eastward expansion of Tsarist Russia started in the 16th century. Around 1640 Russian

expeditions reached the Pacific. From the Siberian settlement Yakutsk the Russians turned southward into the Amur River Basin in 1643. The fortified Chinese border at that time ran several hundred kilometres south of this region along the Great Wall. The Amur River Basin, however, was also inhabited by a number of tribes who were paying tribute to the Manchus and who, in addition to the Imperial Manchu forces, resisted the incoming Russians. Success on the side of the Chinese led to an agreement between the governments of Russia and China to negotiate a peace. On August 27, 1689, the "Treaty of Peace and Boundaries" (signed at Nerchinsk) for the first time in Chinese history formally established a common frontier between China and Russia, and was the first international agreement ever made by the Emperor of China with a European State on the basis of formal sovereign equality (→ States, Sovereign Equality; → History of the Law of Nations: Ancient Times to World War I: Far East; → China).

Under the Treaty of Nerchinsk the boundary between Tsarist Russia and Manchu China ran along the Argun river (one of the sources of the Amur river), along its whole length until its confluence with the Shilka river (the other source of the Amur river). The boundary then progressed along the Shilka and Gorbitza rivers and from there north-eastward along the top of the Stanovoy Mountains to the mouth of the Bay of Ud, on the Sea of Okhotsk. Thus the entire Amur-Ussuri basin was to belong to Manchu China; however, the boundary line in the Ud valley region was not defined very precisely. The Nerchinsk boundary regulation remained unchanged for almost 170 years.

The Treaty of Nerchinsk concerned only the easternmost sector of the Sino-Russian border. Almost 40 years later a subsequent border regulation, the 1727 Treaty of Kiakhta, defined another large section of the Sino-Russian border, namely the boundary west of the Argun river until the Sayan Mountains and thus recognized Outer Mongolia, including Tannu Tuva, and Inner Mongolia as part of the Chinese domain.

At the time of the Treaty of Kiakhta there was no need to define the Sino-Russian border in the region between the Sayan Mountains and Afghanistan, since at that time the territories which now form the Soviet Central Asian Republics (Tadzhikistan, Kirgizistan, Kazakhstan, Turkmenistan) were still independent territories separating the two empires. The expansion of both powers changed this situation; the northwestern expansion of China reached the valleys of Syr Darya and Amu Darya and Russia's southeastward expansion did not halt until it reached the Pamir. The regulation of the western sector of the Sino-Russian border forms a part of the Sino-Russian border troubles in the 19th century.

The 19th century treaties dealing with the Sino-Russian border may be viewed as part of the colonial policies of the European → great powers *vis-à-vis* Imperial China which culminated in the Chinese defeat in the Opium War (1840–1842) as a result of marked technical and military inadequacies. The harsh terms of the Nanking peace treaty (1842) between China and Great Britain heralded for the Western Powers, including Tsarist Russia, the numerous → unequal treaties China was subsequently forced to conclude with the "civilized nations" in the years to come (→ Peace Treaties).

When, in 1847, Nikolai Muravyev was made Governor-General of Eastern Siberia, he received special orders from Tsar Nicholas I (and later from Tsar Alexander II) and began to systematically occupy and colonialize the northern bank of the Amur river by founding Russian garrisons and settlements, notwithstanding the Russian Foreign Ministry's pointing out the illegality of this expansionist policy under international law. By the end of 1856 the Russians had already occupied the entire course of the Amur. China, preoccupied with internal disturbances (the Taiping Rebellion of 1850–1864) and under partial occupation by French and British troops, protested in vain against this breach of the Treaty of Nerchinsk and was unable to expel the Russians by force. When French and British troops threatened Peking, Muravyev exploited the situation by calling the Chinese to negotiations on the northern frontier. To the accompaniment of Russian military demonstrations, these negotiations took place at Aigun where the "Treaty of Friendship and Boundaries" was signed on May 16/28, 1858.

The Treaty of Aigun made the Amur river the border between the two Empires; only some

Chinese settlements on the left bank of the Amur at the mouth of the Zeya river south of Blagoveshchensk (the "64 villages") were to remain "under the administration of the Manchu Government". Under the Treaty, the region between the Ussuri river and the sea was to be "commonly owned by the Chinese Empire and the Russian Empire", i.e. a Russian-Chinese → condominium was to be created.

The Chinese Government refused to ratify the Treaty of Aigun on the grounds that it regarded the treaty as imposed. With Peking again in conflict with the British and French, Russia represented herself as the protector of Chinese interests; the Russian envoy, General Ignatiev, played the role of the "honest broker" between the Chinese Government and the Western powers. Using a mixture of threats and promises Ignatiev obtained China's consent to another territorial settlement, the "Peking Additional Treaty of Commerce, Navigation and Limits" of November 14, 1860, which further extended the territorial provisions of the Aigun Treaty. By "corroborating and elucidating" Art. I of the Aigun Treaty the Treaty of Peking not only confirmed the Amur border but also by constituting the Ussuri river and its tributary, the Sungacha river, as the border-line between the two Empires, brought the territories east of the Ussuri under exclusive Russian jurisdiction. The Peking Treaty combined with the Treàty of Aigun established the boundary in existence today between China's province of Manchuria and the Soviet Far East.

The Treaty of Peking also contained provisions dealing with the western sector of the border beyond the westernmost point of the boundary line established by the Treaty of Kiakhta. Art. II of the Peking Treaty in a very vague way delimited the boundary as following "the direction of the mountains, the courses of the large rivers and the presently existing line of Chinese pickets". The provision was vague not least because there was a system of permanent "Chinese pickets" which lay more to the southeast, as well as a system of movable pickets which enclosed a much larger territory to the northwest, extending approximately as far as Tashkent, Lake Balkhash and Semipalatinsk on the river Irtysh. Four years later Russia succeeded in interpreting Art. II of the Peking Treaty in her favour: The Protocol of Tarbagatai (Tchuguchak) of October 7/25, 1864, hastily concluded because of a Moslem rebellion in Sinkiang, drew the Chinese-Russian boundary in Central Asia along the line of the Chinese permanent pickets.

The next basic boundary regulation between the two Empires was the Treaty of St. Petersburg (or Ili) of February 12/24, 1881. During the Moslem rebellion in Sinkiang led by Yakub Beg, Russian troops occupied the upper Ili river valley in Sinkiang on the pretext of maintaining law and order. When the Moslem rebellion was crushed, the Chinese reclaimed title to the Ili river valley. The first negotiations on the question led to the signature of the Treaty of Livadia in September 1879 which vested most of the Ili valley in Russia. The Chinese Government refused to ratify this Treaty and sentenced the Chinese negotiator Ch'ung-hou to death. However, the Chinese were successful in subsequent negotiations which led to the Treaty of St. Petersburg returning almost all of the Ili valley to China.

Because the Treaty of St. Petersburg was found to be insufficiently detailed it was followed during the period from 1882 to 1893 by several demarcation protocols. As far as the present Sino-Soviet boundary dispute in the Pamir region is concerned, the most important of these protocols was signed at Novi-Margelan on May 22, 1884, dealing with the delimitation in the Kashgar-Province. This delimited the Russian-Chinese boundary between the Bedel Pass (in the north) and the Uzbel Pass (in the south); there, at the Uzbel Pass, according to the protocol, the mutual boundary stops, because the "boundary of Russia turns southwestwards, the boundary of China runs due south".

In 1892 Russian forces penetrated into the Pamir and occupied a region south of the Uzbel Pass and west of the Sarykol mountain chain. The Chinese Government protested against the Russian occupation of the Pamir but was unable to expel the Russian troops. The result of the Sino-Russian negotiations on the Pamir question was an exchange of notes in 1894 to the effect that Russian troops should remain "where they are at the moment". However, in her note of April 17, 1894 China declared that this did not mean "the relinquishment of China's right to the Pamir ter-

ritory presently not under the control of the Chinese forces", and that she continued to regard the protocol of May 22, 1884 as delimitating the Sino-Russian Border.

British alarm at the Russian incursion into the Pamir led to an exchange of notes between Russia and Great Britain on March 11, 1895, which delimited their respective spheres of influence by a line from Lake Zorkul to the Peak Povalo-Shveykovskogo, thus establishing the northeastern border of the Wakhan Corridor, which was designated as an Afghan buffer zone between Russian Turkestan and British India. The Chinese Government refused to recognize the boundary established by the Russian-British Pamir agreement.

According to Chinese information (Government Declaration of May 24, 1969), Russia's territorial gains from China under the treaties of the 19th century amounted to "more than 1.5 million square kilometres".

(b) *Soviet Russia and Republican China*

The condemnation of → imperialism and colonialism was one of the most explicit foreign policy principles of the Bolshevik Party. But despite Lenin's many assurances to the contrary prior to the October revolution in 1917 the new Soviet Government did not declare the colonial gain of Tsarist Russia null and void and denounced only the secret treaties, thus leaving the 19th century boundary treaties with China untouched.

Two declarations by Deputy Commissar for Foreign Affairs Lev Karakhan highlighted initial Soviet China policy. In the first Karakhan Declaration of July 25, 1919 the Soviet Government announced that it had "given up all the conquests made by the Government of the Tsars which took away from China Manchuria and other territories" and it invited the Chinese Government to enter into → negotiations with the object of cancelling only the treaties concluded after 1895. The second Karakhan Declaration of September 27, 1920 proposed a draft agreement to the Chinese Government in which the first article stipulated that the Soviet Government declared "null and void all the treaties concluded with China by the former Governments of Russia", and renounced "all seizure of Chinese territory and all Russian concessions in China" and restored to China "without any compensation and for ever all that had been predatorily seized from her by the Tsar's Government and the Russian bourgeoisie".

Protracted Sino-Soviet negotiations finally led on May 31, 1924 to the signature of the "Agreement on General Principles for the Settlement of the Questions between the Republic of China and the Union of Soviet Socialist Republics" (LNTS, Vol. 37, p. 176). In Art. IV of the Agreement the Soviet Union declared "all Treaties, Agreements, etc." concluded by Tsarist Russia and third States and "affecting the sovereign rights or interests of China" as "null and void". The parties further agreed in Art. II to hold a conference "to annul . . . all Conventions, Treaties, Agreements, Protocols, Contracts etc., concluded between the Government of China and the Tsarist Government and to replace them with new treaties, agreements etc., on the basis of equality, reciprocity and justice, as well as the spirit of the Declarations of the Soviet Government of the years of 1919 and 1920" (Art. III). Art. VII stipulated that "[t]he Governments of the two Contracting Parties agree to redemarcate their national boundaries at the Conference as provided in Article II of the present Agreement, and, pending such redemarcation, to maintain the present boundaries". The conference provided for in Art. II did take place, but broke down in April 1926 without results.

(c) *The Soviet Union and the People's Republic of China*

After the proclamation of the People's Republic of China on October 1, 1949 the Sino-Soviet boundary troubles appeared to be a matter of history. By the "Treaty of Friendship, Alliance and Mutual Assistance" of February 14, 1950 (UNTS, Vol. 226, p. 3), which was concluded for a period of 30 years, both countries agreed to develop the ties between them in conformity with the principle of "mutual respect for national sovereignty and territorial integrity". This treaty was the start of a period of cooperation between the two communist countries which lasted until the late 1950s. Even during this period, as it was later revealed, discussions on territorial questions were held between the two countries in secret. Around 1960 the Sino-Soviet conflict broke out,

based largely on ideological and foreign policy differences. As one element in this conflict, the Sino-Soviet boundary dispute once again became a live issue.

The period of cooperation ended publicly with the withdrawal of Soviet specialists from China in the summer of 1960. At the same time a number of border incidents resulted in tension in Chinese-Soviet border regions. Sino-Soviet territorial questions were brought to public notice by an editorial in Renmin Ribao of March 8, 1963 which brought up the whole subject of China's unequal treaties. In this new phase of the Sino-Soviet border dispute the two Governments first agreed in November 1963 to talks on border problems and → consultations started in February 1964. At the time of these (confidential) consultations Mao Tse-tung on July 10, 1964 gave an interview to a Japanese Socialist Party delegation in which he said: "About a hundred years ago, the area to the east of Lake Baikal became Russian territory, and since then Vladivostok, Khabarovsk, Kamchatka, and other areas have been Soviet territory. We have not yet presented our account for this list."

The consultations ceased in August 1964 without achieving any positive results. Their negative sequel was a revival of border incidents in the following years. In March 1969, these incidents culminated in armed clashes on and around Damanskij island (called Chenpao in Chinese) in the river Ussuri. Each side accused the other of having provoked these clashes; in order to justify its behaviour the Soviet Government issued a statement on March 29, 1969, the Chinese Government responding with a statement on May 24, 1969. These statements, together with additional statements made on June 13, 1969 by the Soviets and on October 7, 1969 by the Chinese are very important documents on the whole boundary dispute in that they all contain points in the dispute between the two countries.

After the Ussuri armed clashes the Soviet Government once again urged that consultations on the boundary troubles be held (Soviet note of April 19, 1969). This led to a resumption of boundary talks on October 20, 1969, which were held at irregular intervals over a period of ten years. After the Chinese Government's decision not to prolong the 1950 Treaty of Friendship beyond its original term of 30 years (Chinese Statement of April 3, 1979), the Sino-Soviet negotiations were expanded to talks on general "normalization" of Sino-Soviet relations. These talks were broken off by China in January 1980 because of the Soviet → intervention in Afghanistan.

Although these negotiations did not resolve the principal boundary dispute, some practical solutions to problems were found; in 1977 the two sides signed an agreement concerning navigation on the Amur and Ussuri boundary rivers.

The conclusion of a Soviet-Afghan border treaty on June 16, 1981 (Vedomosti Verchovnogo Soveta SSSR, 1982, No. 9, Art. 139) can be regarded as the latest legal phase of the Sino-Soviet boundary dispute. In its → preamble, the treaty refers to "documents of 1895 which determine the line of the State border between the two countries". These "documents of 1895" can only be the Russian-British exchange of notes of March 11, 1895 on the delimitation of the → spheres of influence of both powers in the Pamir region, because the Soviet-Afghan border treaty again demarcates the border between Lake Zorkul and the Peak Povalo-Shveykovskogo, i.e. the same line established by the Russian-British Pamir agreement of 1895. A statement of the Chinese Foreign Ministry of July 22, 1981 (Beijing Review, August 3, 1981, p. 7) described the Soviet-Afghan border treaty of June 16, 1981 as "illegal and invalid", since this boundary alignment involved the area in the Pamir which is a matter of dispute between China and the Soviet Union. The Chinese Statement of July 22, 1981 is a further important document setting out the Chinese position with regard to the Pamir question.

2. *Significant Legal Aspects*

(*a*) *Is there a legal dispute?*

In its statement of June 13, 1969 the Soviet Government declared that "a territorial question between the Soviet Union and China does not exist in reality"; it was only the Chinese side that was striving to create "a so-called territorial question", and that was trying "to construct a territorial problem artificially" (Soviet statement of March 29, 1969). Accordingly, the Soviet view of the Chinese-Soviet encounters is that they are only "consultations" on border problems, and not

"negotiations" on questions of territorial sovereignty; these questions were settled by the treaties of the 19th century which are still legally effective. The Chinese see a genuine "border question" in that these 19th century treaties are unequal treaties that China was forced to conclude, and in that Tsarist Russia extended her territory "at many places" beyond even the border lines established by the unequal treaties (Chinese statement of May 24, 1969). China therefore asserts having legal claims on territories which are presently lying within the factual borders of the Soviet Union. These same legal claims are contested by the Soviet Union. This kind of situation accords exactly with the definition of a legal dispute: a legal dispute may be defined as the assertion of a claim established under international law by one side being contested by the other side.

(*b*) *China's territorial claims*

China's demands of the Soviet Union are that she recognize the treaties of the 19th century establishing the present border as unequal and as having been forced upon China, and that instead a new, equal border treaty should be concluded, under which the border would be surveyed and boundary posts erected. However, China does not claim all the territory which fell under Russian jurisdiction by the treaties of the 19th century and which is estimated as comprising more than 1.5 million square kilometres; China only demands the return of those territories which were occupied by one side in violation of the treaties of the 19th century. Until the solution of the border question, China also demands that both sides withdraw their forces from the "contested territories", where the border demarcation on maps exchanged in the course of the 1964 border negotiations differ from each other (Chinese statement of October 7, 1969).

Since Outer Mongolia, formerly a constituent part of the Chinese Empire, was separated from China by a process starting in 1911 and completed by a Soviet-Chinese exchange of notes of August 14, 1945 (see Pommerening, pp. 158–171), the common Sino-Soviet border is now divided into a western sector and an eastern sector; Outer Mongolia itself no longer seems to be an object of the Sino-Soviet border dispute.

Until the present time, the Chinese have not defined the precise extent of the "contested territories". As examples only, it would seem that China claims "more than 20000 square kilometres" in the western sector (i.e. the Pamir region) and "more than 1000 square kilometres" in the eastern sector, namely "more than 600" river islands in the Amur and Ussuri (Chinese statement of May 24, 1969). According to a Soviet source (Alexandrov in Pravda, April 28, 1976) the Chinese territorial claims amount to 33000 square kilometres in total.

One reason why China does not claim the "more than 1.5 million square kilometres" *in toto* even though she insists upon the unequal and forced character of the 19th century treaties may well rest on the dubiousness of such an all inclusive claim in international law.

(*c*) *The "unequal" border treaties*

The Sino-Russian border treaties of the 19th century can easily be classified as "unequal" as the notion is understood in the Soviet theory of international law (→ Socialist Conceptions of International Law; Frenzke, p. 94). This is confirmed by a Soviet diplomatic dictionary published as late as 1961 which expressly includes the Treaty of Peking of 1860 in the list of unequal treaties forced on China (Diplomatičeskij Slovar, Vol. 2, p. 498). According to the Soviet theory the classification of the boundary treaties as unequal would entail their being regarded as null and void. However, the Soviet "unequal treaties" theory has not been generally accepted in international law. It is true that according to Arts. 51 and 52 of the → Vienna Convention on the Law of Treaties a treaty is void if its conclusion has been procured by coercion of a State or its representative; but this Convention has no retroactivity (Art. 4) and in respect to the → *clausula rebus sic stantibus* it expressly stipulates that the *clausula* is not applicable to treaties establishing a boundary (Art. 62(2)(a)). Thus the Chinese claim may not be supported by the Vienna Convention on the Law of Treaties (Strupp, pp. 395–397). This may be the legal reason why China does not insist upon a redrafting of the territorial regulations of the 19th century.

Notwithstanding the above, the Chinese demand that the 19th century border treaties be

replaced by a new border treaty is well founded legally by the Sino-Soviet Agreement of May 31, 1924 since Art. III obliged both sides to annul "all" treaties concluded between China and Tsarist Russia and to replace them with new treaties "on the basis of equality". This stipulation has to be qualified legally as a → *pactum de contrahendo* which has not yet been fulfilled, given that the Sino-Soviet conference in 1925/1926 terminated without any results in this respect.

(*d*) *Western sector*

The "more than 20000 square kilometres" in the Pamir region constitute the largest part of the "contested territories". According to the Chinese view, the Pamir region was occupied by Tsarist Russia in violation of the protocol signed at Novi-Margelan on May 22, 1884 (the Kashgar Protocol or Kashgar Boundary Treaty). The legal dispute here concentrates on the character of the Sino-Russian exchange of notes of 1894. According to the Chinese view these notes "are not documents governing the demarcation of the boundary, but are documents exchanged between aggressor and victim, in which each stated his own position" (Chinese statement of July 22, 1981). The Soviet view of the Kashgar Protocol is that it "has nothing to do" with the Pamir border (Soviet statement of June 13, 1969); and that "the border in this sector was established historically and formulated legally by the exchange of notes in 1894" (Soviet statement of August 11, 1981, Pravda, August 12, 1981).

The legal implication of these statements is that according to Soviet view, the exchange of notes in 1894 has to be regarded as a boundary treaty finally delimiting the Sino-Russian border in the area, whereas the Chinese view of the exchange of notes is that it has to be regarded as an → armistice line only. If the Chinese view is taken as a basis, the Soviet Union could not have had the capacity to conclude the border treaty with Afghanistan of June 16, 1981 since in this case the object of this treaty would not have been a sector of the Soviet-Afghan but rather of the Chinese-Afghan border. As a treaty between third States (→ Treaties, Effect on Third States) it could not impose any obligations on China.

(*e*) *Eastern sector*

With respect to the eastern sector of the border, China is also ready to accept the unequal treaties of Aigun (1858) and Peking (1860) as the "basis for the determination of the whole course of the border between the two countries" (Chinese statement of May 24, 1969). China asserts that the Soviet Union is violating the Treaties of Aigun and Peking since the border runs along the Chinese banks of the boundary rivers. The legal dispute here concentrates on the interpretation of a map attached to the Treaty of Peking drawn to a scale "smaller than 1:1000000". The Chinese interpretation of the "red line" on the map is that it only shows the rivers forming the border, but not the exact course of the border (Chinese statement of October 7, 1969). According to the Soviet interpretation, the map, together with the additional protocols of 1861, has to be regarded as a constituent part of the Treaty of Peking, the red line showing the exact course of the border (Soviet statement of June 13, 1969). China thus claims that the general rule of the thalweg applies, and that a middle line has to be drawn, whereas the Soviet Union clings to the special regulations of the Peking Treaty on the basis of the → maps attached to it. The application of the thalweg principle would entail "more than 600 river islands" coming under the jurisdiction of the Chinese.

3. *Current Status*

At present (1982), the Soviet-Chinese border dispute remains unsettled. In March 1982 the Soviet Union declared her preparedness "to continue negotiations [with China] on existing border questions in order to come to mutually acceptable solutions" (Tashkent speech by Leonid Breshnev on March 24, 1982). Talks on normalization between the Soviet Union and China were resumed in October 1982.

M. WEIERS (ed.), Die Verträge zwischen Russland und China 1689–1881 (1979).

Soviet-Chinese Relations, A Collection of Documents, 1917–1957 (1959) [in Russian].

D. FRENZKE, Der Begriff des ungleichen Vertrages im sowjetisch-chinesischen Grenzkonflikt, Osteuropa-Recht, Vol. 11 (1965) 69–105.

H. POMMERENING, Der chinesisch-sowjetische Grenzkonflikt, Das Erbe der ungleichen Verträge (1968).
O.B. BORISOV and B.T. KOLOSKOV, Soviet-Chinese Relations 1945–1970 (1972) [in Russian].
T.S. AN, The Sino-Soviet Territorial Dispute (1973).
T.H. LIU, Die völkerrechtliche Argumentation der Volksrepublik China im chinesisch-sowjetischen Grenzkonflikt, Thesis, University of Berlin (1973).
U.G. FABRITZEK, Der sino-sowjetische Konflikt seit dem Sturz Chruschtschows (1964–1972), Internationales Recht und Diplomatie (1973/1974) 15–32; Dokumente, Berichte, Materialien, ibid., 35–350.
A.D. BARNETT, China and the Major Powers in East Asia (1977).
G. GINSBURGS and C.F. PINKELE, The Sino-Soviet Territorial Dispute, 1949–64 (1978).
V. OLGIN, On the Soviet-Chinese Border, The Soviet Viewpoint (1978).
M. STRUPP, Chinas Grenzen mit Birma und mit der Sowjetunion (1978).
D. HEINZIG, Der sowjetisch-chinesische Grenzkonflikt (1979).
Territorial Claims of Peking (1979) [in Russian].
L.T. CHANG, Legal Analysis of the Sino-Soviet Frontier Disputes, Hastings International and Comparative Law Review, Vol. 3 (1980) 231–264.
O. WEGGEL, Die sino-sowjetische Grenze, China aktuell, Vol. 10 (1981) 582–590.
L.T. CHANG, China's Boundary Treaties and Frontier Disputes (1982).
A.J. DAY (ed.), Border and Territorial Disputes (1982) 259–269.

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BOUNDARY DISPUTES BETWEEN MEXICO AND USA *see* American-Mexican Boundary Disputes and Cooperation

BOUNDARY DISPUTES IN AFRICA

1. General Significance

Mainland Africa includes 47 States, together with the territory of → Namibia. In the era of → decolonization, nation-building has taken place within the parcels of territory which were established within the colonial period. In a general way, the map of Africa remains as it was in 1914. Former British Somaliland (→ Decolonization: British Territories) and former Italian Somaliland have been formed into one unit, and Ethiopia has absorbed → Eritrea. The Belgian Congo became independent as a single unit, whilst, in contrast, the large territories of former French West Africa and French Equatorial Africa were decolonized as fourteen separate units (→ Decolonization: French Territories; see also → Berlin West Africa Conference (1884–1885)).

In the period 1958 to 1964 African leaders debated the principles of regional organization in the period of independence; in 1963 the → Organization of African Unity (OAU) was set up. The outcome of the political debate was the adoption of a general programme of African unity, but in practical terms this was to be based upon a unity of action between independent → States. The emphasis was upon the → sovereignty and territorial integrity of States of the OAU (→ Territorial Integrity and Political Independence).

As an important aspect of the policy-making of this period, the members of the OAU, meeting at Cairo in 1964, adopted a resolution in which the Assembly of Heads of State and Government solemnly declared "that all Member States pledge themselves to respect the borders existing on their achievement of national independence"

The precise implications of this instrument are a matter of controversy, and in any case Morocco and Somalia opposed the resolution. The general effect was to proclaim what is in fact an existing principle of international law: that a change of sovereignty does not as such affect international → boundaries. The resolution and the principle do not "freeze" frontiers, and thus pre-existing disputes, lack of demarcation, and so forth, remain on the agenda. The basic position remains that independence does not create additional uncertainties. In essence, the policy adopted by the OAU is the same as that adopted in the 19th century by the Latin American States (→ Boundaries in Latin America: uti possidetis Doctrine) and more recently in the practice of Asian States.

A major question raised by the 1964 resolution of the OAU concerns the principle of → self-determination. The relationship between the resolution and the principle is the cause of controversy. On its face, the resolution is opposed to territorial adjustments on the basis of self-determination. However, if a unit of self-determination is involved (and certain conditions are thus fulfilled), then in general international law the application of the principle of self-determination

is called for (cf. → Western Sahara (Advisory Opinion)).

The precise provenance of African boundaries varies a great deal, and it is important to understand the variety of ways in which a boundary may be proved to exist as a matter of international law. It is sometimes thought that to be "valid", a boundary must be based upon a treaty (→ Treaties), but this is not so. Thus the boundaries of several of the francophone States of West Africa derive in part from the intra-colonial divisions of former French West Africa or French Equatorial Africa. In these cases, the evidence consists principally of French administrative acts and official → maps, together with post-independence acceptance (by conduct) of the alignment. Many forms of evidence may be relevant to the determination of a boundary, including descriptions in national legislation (→ International Law, References to Municipal Law), unilateral → declarations by ministers, expert evidence of geographers, and cartographical productions of third States. A boundary, such as the Kenya-Tanzania alignment, may be well-established in spite of the absence of a bilateral agreement relating to the boundary either before or after independence.

2. *The Types of Dispute*

In spite of the colonial background, the general character of boundary questions in Africa is the same as that in other regions. There is no special African taxonomy of boundary disputes. Two features are prominent in the African context. In the first place, the disputes have varied from major issues of principle to very local problems involving the location and identification of boundary pillars emplaced long ago. Secondly, the majority of issues are within a very small compass, at least in geographical terms. It should also be noted that most African alignments are well established.

In the literature on African boundaries, terms such as "dispute" and "conflict" are often used without care or discrimination. In both political and legal terms, a dispute may exist without a concomitant political crisis or "conflict". A dispute in the legal sense simply involves a disagreement between two States on a point of law or fact. It is also necessary to avoid confusing, vague and unofficial statements with specific and persistently stated claims to boundary adjustment.

It is not the case that the only disputes to be taken into consideration are legal disputes. Some disputes are based exclusively on considerations of justice, historical evidence or economic convenience. In many cases disputes will have both legal and political elements.

A further point concerns the identification of boundary disputes in contradistinction to other territorial disputes. Strictly speaking, a boundary dispute is concerned with an alignment or a tripoint. A territorial dispute is concerned with the legal status of a whole parcel of territory rather than with the validity of an alignment *per se* (→ Territorial Sovereignty). Thus the claim of Morocco to the retrocession of Mauritania in 1960 (withdrawn in 1969) could not be regarded as a boundary dispute. Similarly, the issue between Ethiopia and Somalia is essentially a question of the status of the Ogaden (Western Somalia) in the light of the principle of self-determination (although there is also a boundary issue involved).

3. *Modes of Settlement*

(*a*) *Bilateral negotiations*

There are several informal modes of settlement which may nevertheless lead to a decisive outcome. The end of a dispute may result from a → unilateral act, as when the King of Morocco recognized the State of Mauritania in 1969 (→ Recognition). Bilateral → negotiations are the normal means of achieving a settlement, the implementation of which may involve a formal treaty on delimitation or simply corresponding administrative action on both sides. Prolonged negotiation and joint demarcation culminated in the definition of the Ethiopia-Kenya alignment in a Treaty of June 9, 1970 (Brownlie, African Boundaries, p. 791). In January 1976, a Heads-of-State Agreement between Gambia and Senegal adjusted the frontier in the districts of Kantora and Vuli (Africa Research Bulletin, Vol. 13 (1976) p. 3889).

Adjudication is available either in the form of *ad hoc* → arbitration or by way of recourse to the → International Court of Justice. Since independence, African States have not, with the doubtful exception of the → Northern

Cameroons Case, resorted to adjudication except in the context of → continental shelf delimitation (→ Tunisia-Libya Continental Shelf Case, 1981). On a number of occasions the bilateral process has been aided by the mediation of heads of State of third States.

(b) Action by institutions

The procedures of → good offices and of → conciliation and mediation may be initiated by the → United Nations or by the OAU. In 1964, 32 member States of the OAU signed the Protocol of the Commission of Mediation, Conciliation and Arbitration provided for in Art. 19 of the OAU Charter.

In practice, the OAU has done much useful work in the field of mediation. The UN organs have tended to defer to the regional body in matters of conflict resolution. However, the → United Nations General Assembly and the ICJ have been involved in the multilateral dispute relating to the Western Sahara (see, in particular, → Western Sahara (Advisory Opinion)).

4. The Principal Disputes

(a) General

Given the total number of African boundaries (the Sudan alone has eight separate alignments), the number and intensity of disputes is on the low side. Extreme caution is called for in the identification of disputes. Some, as reported in the press, do not exist. Others are of a highly restricted and localized nature. In certain cases, it is very difficult to ascertain the facts. This is true of the alignment between Chad and Libya; according to some reports a major issue of principle is involved, but no official Libyan claim has been formulated. The question of the Western Sahara has been prominent on the political agenda for a number of years, but it is not properly described as a boundary dispute. The issues concern the legal status of the territory rather than the determination of boundaries as such. In general, it is to be emphasized that the political dimension of a dispute is not directly related to the legal complexity or to other aspects of the problems involved.

(b) Mali-Upper Volta

The boundary dispute between Mali and Upper Volta which emerged in 1974 has not received much publicity, but is important in that it is symptomatic of a type of legal dispute affecting former units of French West Africa and French Equatorial Africa in the post-independence period.

The frontier had no basis in a treaty, and no French enactment appears to have defined the alignment. As a consequence, the evidence of the alignment rests upon French administrative practice in the colonial period. The best evidence of the administrative practice consists of French official maps, together with maps produced in France and elsewhere in the years after independence in 1960. The map evidence indicates that some sectors of the alignment are undetermined in principle.

Mali claims an area south of the River Beli; her claim appears to be related to ethnic considerations. The position of Upper Volta is based upon the French cartography since 1922. The basic problem is the lack of precision in the original intra-colonial alignment. In 1975 it was agreed that the boundary issue should be referred to a mediation commission. No developments have been reported recently (Brownlie, African Boundaries, p. 427; Africa Research Bulletin, Vol. 12 (1975) pp. 3650 and 3687).

(c) Ethiopia-Somalia

Independent Somalia resulted from the union of former British Somaliland and former Italian Somaliland. Italian treaties of protection with Somali tribes began in 1887, and eventually a colonial → protectorate extended along the coast northward to the Gulf of Aden. An Anglo-Italian arrangement of 1891 involved the partition (→ Dismemberment) of Ethiopia, but Emperor Menelik II prevented its implementation. Indeed, in the period 1886 to 1892 he extended Ethiopian control south of the River Awash.

Following the Treaty of Peace (→ Peace Treaties) concluded in 1896, Ethiopia and Italy sought to agree upon a delimitation of a common boundary. The boundary between Ethiopia and British Somaliland was determined in principle by a treaty of 1897. On May 16, 1908 Ethiopia and

Italy concluded a convention in which the boundary was described, and in accordance with this agreement work was undertaken by a joint commission from 1910 to 1911. The alignment was fixed and demarcated for some 30 kilometres north and east of the western terminal (at Dolo). However, the major part of the work was not completed because the two sides could not agree upon the interpretation of the provisions of the 1908 agreement. The interpretation of the 1908 convention is a delicate operation since the relevant provision refers to "the line accepted by the Italian Government in 1897". There is acute controversy over the meaning of this reference, and certain key pieces of evidence are not available. For its view of the alignment, the Ethiopian Government relies upon certain official Italian maps published between 1912 and 1928.

When the British military administration was withdrawn from the area in 1950, the UN Trusteeship Council (→ United Nations Trusteeship System) accepted a British proposal regarding the "provisional line" between Ethiopia and the territory which was to become the Trust Territory of Somaliland (under Italian administration). In the period of trusteeship (1950 to 1960) efforts were made under UN auspices to resolve the question, but these were unsuccessful. At the time of Somali independence in 1960, the *de facto* territorial division was still on the basis of the British "provisional line".

The dispute concerning delimitation remains unsettled. Moreover, since independence, Somalia has, in any case, claimed the Somali-inhabited areas of the Ogaden province of Ethiopia on the basis of the principle of self-determination. In the Somali view this principle derives from the → United Nations Charter, with Western Somalia seen as a "unit of self-determination". In this context it is argued that the OAU Resolution of 1964 was not accepted by Somalia and, further, that in any event the resolution cannot override the proper application of the legal principle of self-determination (cf. → International Organizations, Resolutions).

In the view of the Ethiopian Government, the OAU resolution has the effect that the principle of self-determination cannot be used to modify alignments. According to this approach, the only outstanding question is the interpretation and application of the provisions of the 1908 agreement. In the recent past Somalia has proposed resort to a → plebiscite in the area concerned (Brownlie, African Boundaries, p. 827).

(*d*) *Malawi-Tanzania*

There is a dormant but unresolved dispute concerning Lake Nyasa, which is also known as Lake Malawi. According to the Government of Malawi, the alignment lies along the eastern shore of the lake and derives from the Anglo-German Agreement of 1890. On this thesis, the boundary at independence remained as it was in 1890. The Tanzanian view is that the correct boundary is the median line of the lake. The basis for this position lies in the argument that the 1890 Agreement was modified by the subsequent conduct of the parties prior to the establishment of the Mandated Territory of Tanganyika in 1922 (→ Mandates). There is evidence of a German presence upon the lake (and in certain small offshore islands) in the period 1890 to 1914. In addition, in the period 1916 to 1934, British official sources indicate a median-line boundary, but the evidence is by no means consistent.

The dispute crystallized after the independence of Tanganyika (later the United Republic of Tanzania) in 1961 and of Malawi in 1964. The governments engaged in inconclusive correspondence in January 1967 (Brownlie, African Boundaries, p. 956; McEwen, International Boundaries of East Africa, p. 170).

Question of the Frontier between the Trust Territory of Somaliland under Italian Administration and Ethiopia, UN GA Official Records, 11th session, 1956–1957, Annexes, Agenda item 40.

SIR EDWARD HERTSLET, The Map of Africa by Treaty, 3 vols. (3rd ed. 1909).
J.G. DRYSDALE, The Somali Dispute (1964).
A.O. CUKWURAH, The Settlement of Boundary Disputes in International Law (1967).
I. BROWNLIE, A Provisional View of the Dispute concerning Sovereignty over Lake Malawi/Nyasa, Eastern Africa Law Review, Vol. 1 (1968) 258–273.
F.E. TROUT, Morocco's Saharan Frontier (1969).
C.G. WIDSTRAND (ed.), African Boundary Problems (1969).
J.C. ANENE, The International Boundaries of Nigeria 1885–1960 (1970).
A.C. MCEWEN, International Boundaries of East Africa (1971).
S. BONO, Le frontiere in Africa (1972).

B. BOUTROS-GHALI, Les conflits de frontières en Afrique (1972).
P. PONDAVEN, Les lacs-frontière (1972).
S. TOUVAL, The Boundary Politics of Independent Africa (1972).
J. MAYALL, The Malawi-Tanzania Boundary Dispute, Journal of Modern African Studies, Vol. 11 (1973) 258–273.
F.A.R.A. TAHA, The International Legal Aspects of the Boundaries of the Sudan with Ethiopia and Kenya, Thesis, University of Cambridge (1973).
C. ROUSSEAU, Haute-Volta et Mali, Etat actuel du différend de frontières existant entre les deux pays. RGDIP, Vol. 79 (1975) 833–836.
V. MATTHIES, Der Grenzkonflikt Somalias mit Äthiopien und Kenya (1977).
J.R.V. PRESCOTT, Boundaries and Frontiers (1978).
I. BROWNLIE, African Boundaries: A Legal and Diplomatic Encyclopedia (1979).
A.J. DAY (ed.), Border and Territorial Disputes (1982) 95–177.

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BOUNDARY DISPUTES IN LATIN AMERICA

1. Origins

From the earliest days of independence in Latin America (1810 to 1832) the Roman law principle of → *uti possidetis* ("As you possess, so may you continue to possess") was invoked in a special form with regard to boundary questions in former Spanish America (→ Boundaries in Latin America: uti possidetis Doctrine). Thus, the newly independent countries adopted as the basis for their boundary delimitation the administrative divisions of the former colonial power (viceroyalties, captaincies-general, *audiencias*, *presidencias* and provinces), taking as their standard the territorial boundary configurations which prevailed at the date when the wars of independence broke out. These convenient "critical dates" (see e.g. L. Goldie, The Critical Date, ICLQ, Vol. 12, p. 1251) were generally assumed to be 1810 for South America and 1821 for Central America. It should be mentioned that the doctrine was not applicable in relation to Brazil as successor to the → sovereignty of Portugal (→ State Succession).

Although the *uti possidetis* doctrine found general acceptance, it did not prevent boundary disputes from arising. Successor States often objected to the administrative colonial boundaries which lacked political significance. Furthermore, such → boundaries were mostly based on crude → maps and inadequate surveys, or merely followed arbitrary lines, thus giving ample scope for disagreement. Fragmentation of the former Spanish Empire proceeded furthest in Central America, leaving many boundary disputes as one of its legacies. Other conflict-prone regions are the Caribbean Basin (cf. → Caribbean Cooperation), the Southern Cone, the Amazon Basin (cf. → Treaty for Amazonian Cooperation), the → La Plata Basin, the triangle formed by Southern Peru, Bolivia and Northern Chile, and → Antarctica. In no other continent have so many frontier/boundary disputes occurred (compare → Boundary Disputes in Africa).

2. Concept

Although often used synonymously, the term "frontier" as used here means a zone which has breadth as well as depth, whereas a "boundary" or "border" signifies a line determined by delimitation or by surveying and marking to fix a → demarcation line. Boundaries thus delimit the furthest territorial extent of a nation-State *vis-à-vis* the neighbouring States and they establish the limits of its sovereignty. It is also necessary to distinguish "boundary disputes" *per se* from "territorial claims". The salient aspects of territorial claims are to be found in the traditional rules relating to the acquisition of → territorial sovereignty (→ Territory, Acquisition), according to which the question of title must first be resolved before the determination of the limits of such title ever becomes an issue.

In addition to the general reasons for boundary disputes, those in Latin America show some particular features. A preponderance of a strongly geopolitical approach by military governments which is linked to the idea of frontiers and → spheres of influence, results in a striking demand for adjustment to the changing facts of political geography. Vast, inaccessible, remote and unsurveyed terrain still exists on the hemisphere. The Brazilian concepts of "living frontiers" (*fronteiras vivas*) and "wandering borders" act to create a certain permeability of boundaries. Transboundary cooperation and integration efforts (→ Regional Cooperation and Organization: American States), physical problems of infrastructural integration, transboundary transit

routes, and access to navigable waterways further complicate the picture. These special circumstances tended to soften the concept of a strictly demarcated border or boundary and to replace it with the notion of a mere frontier region.

3. *Types of Disputes*

Within the framework of a typology of inter-State conflicts in Latin America there are: ideological differences leading to conflicts between systems; great power claims to supremacy leading to hegemonic conflicts (→ Hegemony); the desire for raw materials leading to conflicts over resources (→ Natural Resources, Sovereignty over); differences of economic development leading to conflicts over → migration movements; and finally border controversies leading to territorial conflicts. Undoubtedly, the last-mentioned remain the most important, and the boundary disputes that have arisen in Latin America, in almost all of which an element of contest for territory is present, may be divided into four main categories: (a) those where no recognized boundary, whether delimited or demarcated, exists; (b) those where a *de facto* boundary, either delimited or even demarcated, exists, but where the entire legitimacy of the boundary is challenged by one party; (c) those where two rival delimitations exist with a conflict over which is legitimate; (d) those where a mutually agreed delimitation of the boundary exists, but where there is dispute about the physical demarcation in practice. In Latin America there have been disputes leading to → armed conflict and those stopping short of it, both between States of the region and between those States and extra-regional powers.

4. *The Principal Boundary Disputes*

(*a*) *Disputes leading to armed conflict*

One of the most striking features of boundary/territorial conflicts is that they frequently involve armed conflict. The psychological value of the territory concerned, the concept of prestige and "loss of face" inherent in an eventual loss of the land, and the geopolitical and strategic value of the territory are factors which explain the often highly politicized nature of such disputes. This is clearly demonstrated by some notable war-like conflicts which have occurred since Latin American independence.

Five 19th century post-colonial → wars occurred in connection with the delimitation of national frontiers; two Cisplatine Wars (1825 to 1828 and 1839 to 1852) between Argentina and Brazil on territorial questions, leading finally to the establishment of the Republic of Uruguay; the first War of the Pacific (1839 to 1841) in which Chile split up a political union of the Confederation between Peru and Bolivia; the War of the Triple Alliance (1865 to 1870), in which Paraguay lost vast territories to Argentina and Brazil; and the second War of the Pacific (from 1879 to 1883), in which Bolivia became land-locked and Peru lost two southern provinces to Chile (later regaining one).

The first three regional wars in the 20th century were also territorial/boundary conflicts. The → Gran Chaco Conflict (1932 to 1935) led to a bloody war between Paraguay and Bolivia. The Presidents of Argentina, Brazil, Chile, Peru, Uruguay and the United States in their capacity as arbitrators in equity forced both parties to sign a → peace treaty on July 21, 1938.

The Leticia Incident between Peru and Colombia began on September 1, 1932 with Peru's seizure of the Colombian port of Leticia on the Amazon River. This territory had been ceded by Peru to Colombia in the Treaty of March 24, 1922, which assured Colombia access to the river. As a consequence of a resolution of the Council of the → League of Nations under Art. 15, para. 4 of the League Covenant, Peru withdrew her forces from Leticia. For a period of one year, beginning on June 23, 1933, jurisdiction over Leticia was held by an administrative commission of the League, composed of representatives of Brazil, Spain and the United States. Leticia was finally restored to Colombia on June 19, 1934 on the basis of the Treaty of Peace, Friendship and Cooperation between Colombia and Peru of May 24, 1934. This marked a turning point in international relations and international law, since no single power bloc, but rather the organized international community, had taken the necessary steps to restore peace (→ Peace, Means to Safeguard).

The Marañón Dispute between Peru and Ecuador originated in a conflict over Ecuador's access

to the Atlantic through the Amazon Basin. It erupted into war between July 1941 and January 1942 in the sparsely inhabited Peruvian provinces of Jaén and Maynas lying to the north of the Marañón River. The United States, which had entered World War II in December 1941, was unwilling to allow the destabilizing effect of fighting in South America to continue and forced a settlement of the conflict. A Protocol of Peace, Friendship and Boundaries was signed on January 29, 1942 in Río de Janeiro, and a → mixed commission was appointed to fix the boundary upon which agreement had been reached. The dispute arose once again when the United States Army, authorized by the commission members (Argentina, Brazil, Chile and the United States) tried to demarcate the delimitation physically according to Art. VIII(B)(1) of the Río Protocol. This Article set the boundary at the *divortium aquarum* between the Zamora and Santiago Rivers, but there was no watershed to be found. Pragmatically, the commission resorted to the River Cenepa as a boundary, and in 1959 Ecuador declared the 1942 protocol void, renewing its claim to the disputed provinces.

There have also been two wars in Latin America since World War II. The so-called "Soccer War" (July 1969) between Honduras and El Salvador was principally a migration conflict rather than a territorial/boundary conflict. The partially unresolved Marañón Dispute flared up again when oil explorations in the Cordillera del Condor area proved successful. Armed conflict began on January 22, 1981, in the area of the Cenepa River but soon diminished. An → armistice agreement between the parties was signed on March 9, 1981. Peru, relying on the "critical date" theory, claims that no dispute over the boundary exists, but Ecuador maintains that there is a boundary in dispute.

(*b*) *Disputes not leading to war*

Twentieth century territorial/boundary disputes not leading to → use of force on any significant scale may be illustrated by the following selected examples.

(*i*) *Disputes between Latin American States*

Argentina v. Brazil. In addition to the two Cisplatine Wars between these States, there has been a dispute over the Misiones region since 1825. Brazil relied in this case on the *uti possidetis* doctrine, although Argentina asserted that this colonial doctrine could be invoked only in respect of boundaries between the Spanish-American republics. The dispute was finally settled by an arbitral award of United States President Cleveland of February 5, 1895 (J.B. Moore, History and Digest of International Arbitrations, Vol. 2 (1898) p. 2020) which was executed by the Treaty of October 6, 1898 and the Declaration of October 4, 1920.

Chile v. Argentina. The Argentina-Chile Frontier Case involved a dispute over the boundary line in the Cordillera of the Andes as set forth in the boundary treaty of July 23, 1881. Final settlement was reached by the arbitral award rendered by King Edward VII of England in 1902.

Bolivia v. Peru. In a → *compromis* signed in La Paz on December 30, 1902, Argentina was chosen as arbitrator of the dispute involving largely unexplored jungle territory. The award of July 9, 1909 (RIAA, Vol. 11, p. 141) divided the area according to equitable principles.

Costa Rica v. Colombia/Panama. In a *compromis* of November 4, 1896, Costa Rica and Colombia submitted their dispute to the President of France who delivered his arbitral award on September 11, 1900, splitting up the territory under contention. This dispute was inherited by Panama after achieving her independence from Colombia on November 3, 1903. On March 17, 1910, Costa Rica and Panama signed a new arbitration treaty under which Chief Justice White of the United States Supreme Court acted as arbitrator. He delivered the award on September 12, 1914 (RIAA, Vol. 11, p. 528), but execution did not occur until September, 1921, and then only under heavy diplomatic pressure by the United States.

El Salvador and Honduras v. Nicaragua. A dispute concerning the legal status of the Gulf of Fonseca (→ Fonseca, Gulf of) stemmed from the conclusion of the Bryan-Chamorro Treaty of August 5, 1914 between Nicaragua and the United States (for details on the Treaty and an additional dispute arising out of it, see → Costa Rica v. Nicaragua). El Salvador brought the case before the Central American Court of Justice in 1917 which held, *inter alia*, that the Gulf was a

historic bay (→ Bays and Gulfs; → Historic Rights). For additional aspects of this case, see → Central American Court of Justice.

Colombia v. Peru v. Ecuador. In a controversy over the Oriente district dating back to 1851, Colombia and Ecuador settled their boundary dispute in a treaty of 1916. On March 24, 1922 Colombia and Peru signed the Salomón-Lozano Treaty (LNTS, Vol. 74, p. 9) establishing the Putumayo River as their jungle boundary, to be demarcated by a mixed commission. It was objected to by Brazil. → Good offices of the United States led to a meeting in Washington, D.C. of the three parties involved, who finally accepted the United States proposals in a *procès-verbal* of March 4, 1925 (AJIL, Vol. 19 (1925) p. 580). Peru and Ecuador pledged themselves in the Protocol of Quito of June 12, 1924 to determine the boundary by direct → negotiations.

Peru v. Chile. After having won the second War of the Pacific, Chile forced Peru in the Peace Treaty of Ancón of October 20, 1883 to accept the occupation of her southern provinces Tacna and Arica until 1894, when a → plebiscite was to be held. The Convention of Santiago signed on April 16, 1898 concerning its implementation was not accepted by the Chilean Chamber of Deputies. Only in 1922 did the parties agree to submit the plebiscite issue to arbitration by United States President Calvin Coolidge. His award of March 4, 1925 (RIAA, Vol. 2, p. 921) announced that the election would be held under his nation's supervision, but in June 1926 the plebiscitary commission declared a fair election impossible. Direct negotiations between Peru and Chile finally led to the Treaty of Lima of June 3, 1929, which left Arica with Chile and returned Tacna to Peru (Art. 2). The Additional Protocol to that Treaty further granted Peru a right of previous information and consent concerning all territorial changes affecting that frontier region, a right which Peru exercised on November 18, 1976 to block the bilateral understanding between Bolivia and Chile on the plan for Bolivia's outlet to the sea.

Guatemala v. Honduras. The arbitration treaty of July 16, 1930 effected a compromise as to the jurisdiction of a special tribunal acting as the International Central American Tribunal, established by the Convention of February 7, 1923 to resolve a border in dispute since 1845. The tribunal rendered its award on January 23, 1933 on the basis of the *uti possidetis juris* of 1821 (RIAA, Vol. 2, p. 1322).

Chile v. Argentina. The physical demarcation of the boundary established in the British Arbitral Award of 1902 (see *supra*) in the region between the Palena and Encuentro Rivers in Patogonia raised special problems, for the solution of which both parties agreed in a *compromis* on June 12, 1960 to submit the dispute to the British Crown. Queen Elizabeth II announced the final award on December 9, 1966, dividing up the territory under dispute almost by halves, thus ending a dispute which had continued since 1818 (→ Argentina-Chile Frontier Case).

Honduras v. Nicaragua. The → Honduras-Nicaragua boundary dispute concerning the Arbitral Award made by the King of Spain on December 23, 1906 was finally settled by the ICJ in 1960.

Argentina v. Uruguay. Since the foundation of the Republic of Uruguay in 1852, the delimitation of her La Plata River boundary with Argentina and Uruguay has been a problem. The Protocol Sáenz Peña-Ramírez of January 5, 1920, the Joint Declaration of January 30, 1961, and the Protocol of the La Plata River of January 14, 1964 dealt only with the questions of navigation and use of waters. It was the Treaty of the La Plata River and its Maritime Limits of November 19, 1973 (ILM, Vol. 13 (1974) p. 251) which finally established a "multiple system" containing very flexible rules as to the different riverine areas concerned.

Chile v. Bolivia. After suffering defeat in the second War of the Pacific, Bolivia lost the whole of her Pacific coast, thus becoming land-locked under the armistice treaty of April 4, 1884. This *de facto* loss was juridically consolidated by the Treaty on Peace, Friendship and Commerce of October 20, 1904. Although Chile consented in the Protocol of January 10, 1920 to open negotiations immediately (→ Pactum de contrahendo, pactum de negotiando) on the concession of a corridor to give Bolivia free access to the sea negotiations did not get underway in earnest until August 26, 1975 when Bolivia took the initiative by proposing a detailed plan. Chile reacted positively in its → note of December 19, 1975.

However, the understanding which had almost been reached by Chile and Bolivia concerning the corridor (note of November 18, 1976) was blocked by Peru, exercising her right to consent to every territorial modification in that region, as granted by the Additional Protocol to the Treaty of Lima of June 3, 1929.

Argentina v. Chile. The long-lasting territorial dispute over the islands of Picton, Lennox and Nueva in the Beagle Channel was legally resolved by the → Beagle Channel Arbitration award of Queen Elizabeth II, delivered on April 18, 1977 in favour of Chile's claim. In a note of January 25, 1978, Argentina declared the award null and void (→ Judicial and Arbitral Decisions: Validity and Nullity). At the time of writing, the dispute is unresolved despite mediation efforts by the Pope.

Colombia v. Venezuela. The boundary delimitation in the Gulf of Venezuela gave rise to a number of problems. In the Pombo-Michelena Treaty of 1833 the entire coastline of the Gulf was attributed to Venezuela, whereas an arbitral award of the Queen of Spain of March 16, 1891 and an award of the Swiss Federal Council of March 24, 1922 determined the delimitation of the boundary to be in the Guajira Peninsula. Another boundary treaty of 1941 settled the outstanding questions without dealing with the two major problems, namely the Monk Islands (Islas Monjes) and the delimitation of the Gulf waters. In 1944, Colombia unilaterally declared her territorial sovereignty over the islands. Venezuela vigorously contested this claim and occupied the islands in February 1952. On November 11, 1952 the Colombian Foreign Minister Juán Uribe Holguín formulated a surprising verbal declaration on behalf of the Colombian government renouncing all pending claims over the Monk Islands; Venezuela accepted it immediately. Since 1971 Colombia has contested the validity of this renunciation (cf. the Ihlen Declaration referred to in the → Eastern Greenland Case, Art. 46 of the → Vienna Convention on the Law of Treaties, and → waiver) and a suit has been filed against Uribe Holguín for high treason. With respect to the delimitation of the waters of the Gulf of Venezuela the parties agreed, after twelve years of negotiations, on the Herrera Campins-Trubay Ayala draft treaty on October 20, 1980, which remains to be executed in detail.

Nicaragua v. Colombia. This dispute refers not only to the extension of the → exclusive economic zone up to 200 nautical miles by Nicaragua, but also to the sovereign rights over the San Andrés Islands and the Providencia Archipelago. In the Bárcenas Meneses-Esguerra Treaty of March 24, 1928, Nicaragua, then under United States occupation, was forced to cede to Colombia sovereignty over islands and the archipelago, with the exception of the Roncador, Quitasueño and Serrana Cays. The status of the Cays was frozen until the Vásquez-Saccio Treaty of August 8, 1972 (ratified July 1981), in which the United States relinquished all territorial claims (the Cays included) in favour of Colombia, and reserved to herself only the half-portion of the fishing rights (→ Fishery Zones and Limits). After the victory of the Sandanistas over the régime of Anastasio Somoza, however, the Government of Nicaragua proclaimed a 200 nautical mile exclusive economic zone in December 1979. Further, it declared on February 4, 1980 both the Bárcenas Meneses-Esquerra Treaty and the Vásquez-Saccio Treaty to be null and void, on the grounds that the former treaty was concluded under foreign occupation and that the latter ignores the fact that the Cays lie on the natural Nicaraguan Rise. Colombia, on the other hand, refers to the *uti possidetis* doctrine and to her unquestioned administration of the islands since the time of independence. Prior to Nicaragua's declaration, moreover, Colombia had signed with Panama on November 20, 1976 and with Costa Rica on March 17, 1977 two pertinent boundary treaties on the basis of uncontested Colombian territorial sovereignty.

Guyana v. Venezuela. The → Guyana-Venezuela Boundary Dispute over the mineral-rich Essequibo region, although the subject of an arbitral award of 1899 and the 1970 Protocol of Port of Spain which expired in 1982, remain unsettled at the time of writing.

(ii) Disputes with extra-regional powers

In addition to these boundary/territorial disputes between Latin American States, there are also territorial conflicts in which extra-regional former colonial powers are involved:

Brazil v. United Kingdom. In the arbitral award rendered in 1904 in the Anglo-Brazilian boundary

dispute concerning the boundaries of British Guiana, King Victor Emanuel III of Italy, in his capacity as sole arbitrator, decided to divide the disputed territory "in accordance with the lines traced by nature" (RIAA, Vol. 11, p. 22).

Mexico v. United States. An extensive boundary has given rise to a number of → American-Mexican boundary disputes, the most famous of which involved the Rio Grande River boundary (especially the Chamizal tract). This dispute was resolved by treaties of 1963 and 1970, but maritime boundary problems remain.

Panama v. United States. The régime established by the Hay-Buneau Varilla Treaty of 1903 to govern the → Panama Canal first encountered serious troubles in 1964. Although negotiations began that year, treaties restoring the Canal Zone to Panama and giving the Canal the status of → permanent neutrality were not signed until September 7, 1977.

Guatemala v. United Kingdom. In a boundary treaty of April 30, 1859 Guatemala ceded great parts of its territory to Great Britain, on behalf of the dependent territory British Honduras (since 1981 the independent State of Belize). Disagreement over the treaty provisions led to what is now known as the → Belize dispute.

Argentina v. United Kingdom. Since 1833 the → Falkland Islands (Malvinas Islands) and their dependencies have been under British administration, despite periodic Argentine protests. On April 12, 1982 Argentina invaded the Islands after 17 years of fruitless negotiations but had to → surrender on June 14, 1982 after armed conflict with the United Kingdom.

Antarctica. The régime established by the 30-year Antarctica Treaty of December 1, 1959 does not prejudice any territorial title (Art. IV). Several territorial claims to portions of Antarctica overlap.

5. *Settlement of Boundary Disputes*

In the disputes mentioned above, almost all of the principal types of settlement procedures have been taken into consideration: war, diplomacy (bilateral negotiation, good offices or mediation), arbitration, judicial settlement and action by a collective organization, regional (by the → Organization of American States (OAS) and the → Organization of Central American States (ODECA)) or international (by the → United Nations). The most salient features of dispute settlement in Latin America are the large number of arbitral awards, the predominant position of the United States in this sphere of influence and the role played by the regional security system of the OAS itself or *vis-à-vis* the global UN-System (→ Regional Arrangements and the UN Charter). Due to Art. 52(2) of the UN Charter, Art. 2 of the → Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro (Rio Pact) and Art. 23 of the OAS Charter, all disputes shall be submitted to the Inter-American System before referring them to the → United Nations General Assembly or → United Nations Security Council. However, this principle only refers to procedures of peaceful settlement, whereas enforcement actions still require the authorization of the Security Council under Art. 53(1) of the UN Charter. In practice, not only was the United States successful in giving preponderance to its hegemonical → Monroe Doctrine by interpreting Art. 53 of the UN Charter in a political way, but also the Security Council has exercised its function as the supervisor of regional measures and sanctions to a very limited extent only.

A striking example of the viable intertwining of both mechanisms was the Honduran-Nicaraguan case (1957–1961) in which the Council of the OAS was requested to convoke a Meeting of Consultation. The Council then constituted itself as Provisional Organ and named an Investigation Committee which submitted its report of the facts to the Council. The Council then terminated the activities of the Investigation Committee and created an *ad hoc* committee to seek to bring about a pacific solution. Thereafter this *ad hoc* committee presented its report to the Council together with agreements subscribed to by the parties accepting the compulsory jurisdiction of the ICJ in accordance with the provisions of Art. 23 of the OAS Charter for the pacific settlement of their boundary controversy. The case was decided by the ICJ in 1960 in favour of Honduras and the Inter-American Peace Committee was asked to supervise the execution of the judgment.

Conflicts in Latin America after World War II must be divided into two different phases: from 1948 to 1965 and from 1965 to the present. During the first phase the cooperation of Latin American

States in the collective security system of the Rio Pact (1947) and of the OAS worked very well until the United States' last act of direct military → intervention in the region (in the Dominican Republic in 1965). The second phase is characterized by a greater tendency of Latin American States to enter into conflicts with one another and with extra-regional, ex-colonial powers.

L.H. WOOLSEY, Boundary Disputes in Latin America, AJIL, Vol. 25 (1931) 324–333.
G. IRELAND, Boundaries, Possessions and Conflicts in South America (1938), (1971).
S.W. BOGGS, International Boundaries (1940).
G. IRELAND, Boundaries, Possessions and Conflicts in Central and North America and the Caribbean (1941).
A.O. CUKWURAH, The Settlement of Boundary Disputes in International Law (1967).
E. LUARD (ed.), The International Regulation of Frontier Disputes (1970).
N. BRANDT, Das Interamerikanische Friedenssystem, Idee und Wirklichkeit (1971).
L. MANIGAT, L'ère du gel des conflits entre Etats d'Amérique latine, Revue française de science politique, Vol. 21 (1971) 1260–1271.
M.-J. REID MARTZ, Pacific Settlement of Controversies in the Inter-American System 1948–1970, Thesis, Duke University (1971).
J.E. GREÑO VELASCO, La lucha por las fronteras, Revista de política internacional. No. 138 (1975) 147–164.
M.J. MIDLARSKY, Boundary Permeability as a Condition of Political Violence, Jerusalem Journal of International Relations, Vol. 1 (1975) 53–69.
S.P. SHARMA, International Boundary Disputes and International Law: A Policy-Oriented Study (1976).
H. STARR and B.A. MOST, The Substance and Study of Borders in International Relations Research, International Studies Quarterly, Vol. 20 (1976) 581–620.
G. POPE ATKINS, Latin America in the International Political System (1977) 201–212.
J. CHILD, Geopolitical Thinking in Latin America, Latin America Research Review, Vol. 14 (1979) 89 111.
S. GORMAN, Present Threats to Peace in South America: The Territorial Dimension of Conflict, Interamerican Economic Affairs, Vol. 33 (1979) 51–71.
P.K. MENON, Settlement of International Boundary Disputes, Anglo-American Law Review, Vol. 8 (1979) 24–35.
J. REVEL-MOUROZ, Coopération et conflits dans les zones frontières en Amérique Latine, Problèmes d'Amérique latine, Nos. 4533–4534 (1979) 31–44.
W. HUMMER, Rechtsfragen in zwischenstaatlichen Krisen- und Konfliktslagen in Lateinamerika, Zeitschrift für Lateinamerika, No. 17 (1980) 37–66.
A.J. DAY (ed.), Border and Territorial Disputes (1982) 332–388.
W. GRABENDORFF, Interstate Conflict Behavior and Regional Potential for Conflict in Latin America (1982).

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BOUNDARY DISPUTES IN THE INDIAN SUBCONTINENT

1. Introduction

Boundary disputes in the Indian subcontinent present an object lesson on the relevance and validity of international law. There are three principal boundary disputes which must be considered here: the Sino-Indian dispute; the Rann of Kutch dispute (→ Rann of Kutch Arbitration); and the dispute over the Berubari Union involving problems of settlement implementation. The first two have led to bitter wars between the parties. The Sino-Indian dispute has become a stumbling block in the efforts of the parties to improve soured relations.

In all three disputes the parties claims have been couched in international legal terminology, with recourse made to diplomatic and legal institutions. In fact, the Rann of Kutch dispute was settled in an arbitral venue when the battlefield yielded no decisive result. In the dispute over the Berubari Union peaceful → negotiations produced a result which was consolidated by national courts of one of the parties (India). The continuing rancour over the boundary between → China and India can be partly attributed to reluctance to seek judicial settlement.

2. Sino-Indian Border Dispute

The border between India and China is of some 2500 miles. The dispute arose between the two countries over the whole border in three sectors: the eastern, central and western. The dispute heated up following the Chinese occupation of → Tibet in March 1959 and the consequent Indian action in granting political asylum to the Dalai Lama.

(a) Eastern sector

India bases her claims in this sector on an international agreement, while China denies its existence. The agreement in question was reached following the conference held in Simla from October 1912 to July 1914. India maintains that a → demarcation line called the McMahon line was drawn up at the end of the conference. This line drew a boundary between Tibet and India and between China and Tibet. The Chinese refused to sign the Simla agreement because of reservations

over the demarcation between China and Tibet. China did not object to that part of the McMahon line which pertained to India and Tibet.

The Indian Government sought to establish the validity of the McMahon line on the ground that the Tibetan representative had formally accepted the boundary, and that the Tibetan Government, although under Chinese suzerainty, had in practice often entered into international engagements (→ Foreign Relations Power). The Chinese Government, on the other hand, challenged the "imperialist" basis of the Simla conference, denied its formal adherance to the agreement, and affirmed its stand that Tibet had no right to commit the Chinese Government to the McMahon line. The Indian Government argued that though the Chinese Government had not formally signed or ratified the Simla agreement, its conduct thereafter demonstrated an acceptance in fact.

The Indian Government cited evidence of its *de facto* control over the southern part of the McMahon line and of its continuous exercise of acts of authority. It supported its arguments by reference to cases such as the → Palmas Island Arbitration, the → Clipperton Island Arbitration, the → Eastern Greenland Case, to show that the intention and will to act as a sovereign (→ Territorial Sovereignty) and some actual exercise or display of such an authority was a recognized test of title to territory (→ Territory, Acquisition). It also produced evidence to establish historical possession up to the crest of the Himalayas in the eastern sector (→ Historic Rights). Other bases of India's legal claims rested on the physical and geographical conditions, the watershed rule, and the Chinese → acquiescence and → estoppel.

The Chinese Government, besides challenging the validity of the McMahon line, denied the application of the watershed principle to its boundary with India, refuted the claim of exercise of sovereign authority in the area, and objected to the invocation of the principles of acquiescence and estoppel.

(*b*) *Central sector*

The dispute in the central sector related to the actual location of a certain number of mountain passes and the inference of a boundary from such guideposts. The Indian argument was that since the Chinese Government had consented to the location of the six passes for trade and commerce between the two countries and since the passes coincided with what India regarded as the boundary, the area south of such passes belonged to India. The Indian claim laid stress on the terminology employed in the Indo-China trade agreement of 1954 in which the passes were referred to as "border" passes.

The Chinese Government, on the other hand, emphasized that a trade agreement could hardly form the basis of a border. In its correspondence with the Government of India, the Chinese Government did not raise any formal objection to the boundary in the central sector and subsequently showed willingness to accept the Indian claim over areas south of the border passes.

(*c*) *Western sector*

The dispute between India and China is more serious in the western sector. The Government of India based its claims on two agreements: the 1684 treaty between Ladakh and Tibet and the 1842 treaty between the Maharaja of → Kashmir, the Dalai Lama of Tibet and the Chinese Emperor. The first treaty, according to India, conformed to the traditional Ladakh and Tibet border. But the Chinese Government challenged the existence of the agreement and its continuing validity (→ Treaties, Validity). The 1684 agreement embodied a legacy of King Skyid-Ida-Nageemajon to each of his three sons and did not define the boundary with any precision. The validity of the 1842 treaty was similarly challenged by the Chinese Government on the ground that it had not ratified it and that the agreement did not define the boundary with any specificity. Both the treaties speak of "the established frontiers" without specifying exact locations. India tried to draw some evidence from reports of the surveys made and references therein to demarcation posts. In addition, the parties invoked other historic and geographical features to support their claims.

3. *The Rann of Kutch Arbitration*

The claims of the parties were premised on their status as successors to the State of Sind on the Pakistan side of the Rann, and of Kutch on the Indian side (→ State Succession). Pakistan's submissions in the arbitration were that her border extended to the south into the Great Rann up to its middle on the basis of exclusive and

effective control; that the Rann was a marine feature to which the median line principle was to be applied; and that since such a median line was never drawn up the Tribunal should help in determining it. India, on the other hand, contended that the boundary ran roughly along the northern edge of the Rann, and produced documentary evidence (→ maps, British Government annual administration reports, etc.) to establish that the colonial power had so treated it.

The tribunal announced its award on February 19, 1965 (ILM, 1963, p. 633). The award was not unanimous; the chairman and the nominee of Pakistan formed a majority, while India's nominee dissented. The majority awarded the greater part of the territory to India, while awarding to Pakistan the sectors of major interest to that State. The award did not conform to the claims of either party. However, the Tribunal based its award on reasoning which can be seen as a significant contribution to the development of international law relating to boundary disputes and the award was accepted by both governments.

4. Implementation Problems

Numerous problems of implementation have arisen in the wake of amicable direct and third-party settlements of boundary disputes between India and Pakistan. The charged political atmosphere in the subcontinent has rendered implementation more difficult. The judiciary has played a constructive role in defusing the political tensions and ensuring the smooth implementation of international awards or bilateral decisions involving boundary disputes. Two disputes can be cited to illustrate this point, namely, those over the Rann of Kutch and the Berubari Union. Both settlements led to legal suits in the courts of India.

Under the Constitution of India, the Union (federal) Government is empowered to effect a boundary demarcation by executive action and a cession of territory can be made only by legislative action. The implementation of the Rann of Kutch award by executive action was challenged in courts (Isharwarbhai Patel v. Union of India; AIR 1969 SC 783) on the ground that it involved cession of Indian territory necessitating Parliamentary approval. The Indian Supreme Court rejected the contention. Hidayatullah, C.J., delivering the judgment on behalf of the court, held that a settlement of a boundary dispute "contemplates a line of demarcation on the surface of the earth". The settlement of a boundary needed to be differentiated from cession in so far as each contending State in the former case "*ex facie* is uncertain of its own rights" and therefore consents to third-party settlement. Cession takes place, according to the court, only "of territory known to be home territory".

In another case, Ramkishore Sen and Others v. Union of India (popularly known as Berubari Union II Case; AIR 1966 SC 644), the Indian Supreme Court had no difficulty in disposing of the suit against the Government attempting to stop it from transferring, by an executive act, the village of Chilahati to Pakistan in pursuance of the Indo-Pakistani border agreement. The contention against such transfer was that it amounted to cession which required Parliamentary approval. The court dismissed the suit on the ground that under the "Radcliffe Award" of August 12/13 by the Bengal Boundary Commission the village in question was really part of Pakistan and in implementing the award the village had been mistakenly included in the Indian administrative jurisdiction. The court held that Parliamentary approval was necessary only when the transfer pertained to that territory which was both *de facto* and *de jure* Indian territory, but not when India had *de facto* control of territory belonging *de jure* to another State.

As for territorial transfers of the character of cession *per se*, the court had earlier stated in an advisory opinion (Berubari Union I case; AIR 1960 SC 845) that as the first schedule of the Indian Constitution identified the extent of the territorial boundaries of the constituent units of the Indian federation, any change in them through cession or otherwise could be brought about only by constitutional amendment.

The three major decisions of the Indian Supreme Court derivatively offer some useful guidelines as to how to distinguish territorial disputes from boundary disputes (see → Boundaries). The territories transferred as a consequence of a boundary settlement must be assumed to have belonged *de jure* to the beneficiary all along and wrongfully in *de facto* possession of the other party.

Government of India, White Papers Nos. I to VIII (1954–1963) (containing Notes, Memoranda and Letters exchanged and Agreements signed between the Governments of India and China).

L.C. GREEN, Legal Aspects of the Sino-Indian Border Dispute, China Quarterly, No. 3 (1960) 42–58.
A.P. RUBIN, The Sino-Indian Border Dispute, ICLQ, Vol. 9 (1960) 96–125.
J.G. BAINS, India's International Disputes, A Legal Study (1962).
The Sino-Indian Boundary Question (Peking, 1962).
K. KRISHNA RAO, The Sino-Indian Boundary Question and International Law (1963).
A. LAMB, The China-India Border, the Origins of the Disputed Boundaries (1964).
R. KHAN, Relinquishment of Title to Territory, The Rann of Kutch Award, A Case Study, Indian JIL, Vol. 9 (1969) 157–176.
A.L.W. MUNKMAN, Adjudication and Adjustment, International Judicial Decision and the Settlement of Territorial and Boundary Disputes, BYIL, Vol. 46, 1972–1973 (1975) 1–116 at 70–81.
K. GUPTA, A Note on Source Material in the Sino-Indian Border Dispute, China Report, Vol. 17 (1981) 51–55.
A.J. DAY (ed.), Border and Territorial Disputes (1982) 236–257; 283–294.

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CARIBBEAN COOPERATION

Caribbean regional economic cooperation began only slowly after the emergence of independent nation → States in the area in the 1960s (→ Decolonization; → Decolonization: British Territories).

The origins of the Caribben Free Trade Association (CARIFTA) may be found in the collapse of the West Indian Federation in 1962. With the exception of Guyana, all of the territories that were part of that Federation, which existed from 1958 to 1962, were signatories to the CARIFTA Agreement and supplementary agreements which came into force in 1968 (see the texts of the various agreements in UNTS, Vol. 772, pp. 2 to 145). This was an initial attempt to group together in a single free trade association (→ Free Trade Areas) a number of developing territories in different stages of both constitutional and economic evolution whose trade links were, because of their colonial history as dependencies of the United Kingdom, very largely extra-regional. CARIFTA was essentially an agreement among territories, not States, and among governments, not heads of State. The original eleven signatories were Barbados, Guyana, Jamaica, Trinidad and Tobago, Antigua, Dominica, Grenada, St. Christopher-Nevis-Anguilla, St. Lucia, St. Vincent and Montserrat.

The CARIFTA Agreement resembled very closely in form and content the model of the Convention of Stockholm of November 20, 1959, which established the → European Free Trade Association (EFTA). Its principal object was the liberalization of Caribbean trade by the removal of barriers to intra-regional trade in goods originating in the region. The signatories preserved their freedom in trading policies toward non-member countries. The institutional structure was extremely simple, with a Commonwealth Caribbean Regional Secretariat based at Georgetown, Guyana. A Caribbean Development Bank was established on October 18, 1969 in order to complement this new venture (UNTS, Vol. 712, p. 217); this Bank was launched with the support both of CARIFTA member territories and of non-CARIFTA signatories, the latter including Canada and the United Kingdom (→ Regional Development Banks).

CARIFTA in its early days faced major internal and external problems; the former derived from questions concerning the adequacy of the Agreement for its purposes and the latter from the urgent need to respond to the ending of regional preferential treatment under the Commonwealth Sugar Agreement following the entry of the United Kingdom into the → European Economic Community on January 1, 1973.

CARIFTA ceased to exist on May 1, 1974 and was effectively replaced by the Caribbean Economic Community (CARICOM) which was established by a Treaty signed at Chaguaramas, Trinidad on July 4, 1973, initially by Barbados, Guyana, Jamaica, and Trinidad and Tobago (ILM, Vol. 12 (1973) p. 1033). Subsequently six less developed CARIFTA countries acceded to this Treaty on April 17, 1974; they were Belize, Dominica, Grenada, St. Lucia, St. Vincent and Montserrat. Antigua acceded on July 4, 1974 and St. Christopher-Nevis-Anguilla on July 26, 1974. CARICOM has three major areas of activity: the Caribbean Common Market, a means of movement toward economic integration in the region (→ Economic Communities and Groups);

cooperation in non-economic areas and in the operation of certain common services; and the coordination of the foreign policies of the independent member States. The CARICOM Treaty institutionalized the earlier cooperative work undertaken within CARIFTA and provided a much firmer juridical basis for the exercise of international legal capacity by the principal organ of the Community, the Conference of Heads of Government, and the principal organ of the Common Market, the Common Market Council. The Secretariat, remaining at Georgetown, Guyana, is the successor to the Commonwealth Caribbean Regional Secretariat and acts as the principal administrative organ of both the Community and the Common Market.

The Community has institutions established by the Conference of Heads of Government, which include a Conference of Ministers responsible for Health and Standing Committees of Ministers responsible for education, industry, labour, foreign affairs, finance, agriculture and mines. Institutions associated with CARICOM include the Council of Ministers of the East Caribbean Common Market; the Council of Ministers of the West Indies Associated States; the Caribbean Development Bank; the Caribbean Investment Corporation; the Caribbean Meteorological Council; and the Regional Shipping Council.

The CARICOM Treaty is open to both the member States of CARIFTA and to "... any other State of the Caribbean Region ..." (Treaty of Chaguaramas, Arts. 2 and 29). It provides important safeguards for the less developed countries in the region so that the development gap between them and the more developed countries may be progressively narrowed (→ Developing States: → International Economic Order).

The Caribbean Common Market provides for the establishment of a common external tariff and the progressive coordination of external trade policies. It aims at the adoption of a common scheme for the harmonization of fiscal incentives to industry and for agreements on → double taxation among member States.

CARIFTA launched a project for the harmonization of the company laws of the area in 1971, and a unit for the harmonization of laws was established at the CARICOM Secretariat in October 1976 with funding from the Commonwealth Fund for Technical Cooperation (→ Unification and Harmonization of Laws). The legal basis for this activity was derived from Arts. 2, 24 and 29 of the CARIFTA Treaty and, in particular, from Art. 42 of the annex to the CARICOM Treaty. Assistance to the working party on this project, which met for the first time in October 1972, has been variously rendered by the Caribbean Development Bank, the Caribbean Community Secretariat, the University of the West Indies, the West Indies Associated States Council of Ministries, and the Institute for Latin American Integration (→ Regional Cooperation and Organization: American States). Progress has been slow, although a massive report was published in 1981 on the basis of the work undertaken between 1972 and 1978 which contains draft model legislation designed to amend or add to the existing laws of the member States so as to improve the operation of the common market. There is particular interest in the establishment of a uniform system of regulating the operation in the region of foreign-based → transnational enterprises.

Another example of successful functional cooperation lies in the area of health; this has been coordinated by the Secretariat and guided by the Conference of Ministers responsible for Health. Assistance is rendered to the member States of the Community in the development of a health policy; there is a management development project to train all levels of health staff in health information systems, environmental health strategy, and food and nutrition strategies. Other activities in this area involve the development of Community policies toward disease control, a regional drug policy and regional health legislation (→ Public Health, International Cooperation).

Treaty establishing the Caribbean Community, ILM, Vol. 12 (1973) 1033–1079.

Commonwealth Caribbean Regional Secretariat, CARIFTA and the New Caribbean (1971).

Commonwealth Caribbean Regional Secretariat, From CARIFTA to Caribbean Community (1972).

H. MEIJERS, CARIFTA and Association, Netherlands Yearbook of International Law, Vol. 1 (1970) 55–71.

K.R. SIMMONDS, International Economic Organisations in Central and Latin America and the Caribbean: Regionalism and Sub-Regionalism in the Integration

Process, ICLQ, Vol. 19 (1970) 376–397, 388–394, 396–397.
K.R. SIMMONDS, The Caribbean Economic Community: A New Venture in Regional Integration, ICLQ, Vol. 23 (1974) 453–458.
H.-J. GEISER, The Lomé Convention and Caribbean Integration: A First Assessment, Caribbean Yearbook of International Relations (1975) 330–354.
H.-J. GEISER, P. ALLEYNE and C. GAJRAJ, Legal Problems of Caribbean Integration (1976).
H. WOODING, Regional Integration in the Caribbean and the Commonwealth, in: C.M. Schmitthoff and K.R. Simmonds (eds.), International Economic and Trade Law (1976) 45–57.
H. MEIJERS, New International Persons in the Caribbean, NILR, Vol. 24 (1977) 160–188.
W.A. AXLINE, Caribbean Integration (1979).
A.R. CARNEGIE, Commonwealth Caribbean Regionalism: Legal Aspects, Year Book of World Affairs (1979) 180–200.
C.W. DUNDAS, Ensayos acerca del derecho y la prática de la CARICOM, Integración latinoamericana, Vol. 5 (1980) 49–73.
A. PAYNE, The Politics of the Caribbean Community 1961–79 (1980).

K.R. SIMMONDS

CENTRAL AMERICAN COMMON MARKET

The Central American Common Market (Mercado Común Centroamericano) was established under the General Treaty of Central American Economic Integration, usually known as the Treaty of Managua, which was signed initially by El Salvador, Guatemala, Honduras and Nicaragua on December 13, 1960 (UNTS, Vol. 455, p. 3). Costa Rica adhered to the Treaty in 1962 and it came into force for El Salvador, Guatemala and Nicaragua in June, 1961; for Honduras in April, 1962; and for Costa Rica in September, 1963. The Treaty of Managua became the basic constitutional document and nucleus of the Central American regional economic integration process (→ Latin American Economic Cooperation). The Treaty laid down guidelines for future regional economic policy, established a central system of standards, created a complex mechanism for the implementation of policy and the resolution of disputes, and grouped around itself, so as to form an organic whole, a number of other related instruments.

The Treaty of Managua set out to secure the establishment of a regional common market through the progressive freeing of intra-regional trade and the creation of a standard customs tariff applicable by the five member States on imports from other countries. Honduras, following its dispute with El Salvador in the so-called "Football War" of 1969, did in fact reintroduce duties on imports from other Central American Common Market countries in December, 1970, and thus *de facto* withdrew from its treaty obligations. Subsequently Honduras signed bilateral trade agreements with Costa Rica, Nicaragua and Guatemala, but continued to participate in the institutions of the Common Market.

The Treaty of Managua established three principal organs and extended the scope of organs originally conceived within the framework of the tripartite Treaty of Economic Association which had been signed between El Salvador, Guatemala and Honduras in February, 1960, and other earlier instruments. The principal organs were: the Central American Economic Council (→ Organization of Central American States); the Executive Council of the General Treaty; and the Permanent Secretariat (Secretaria Permanente del Tratado General de Integración Económica Centroamericana, SIECA) which was the administrative arm of the Economic Council and the Executive Council (see also → Central American Common Market, Arbitration Tribunal). The Permanent Secretariat began work in July, 1961, and in 1971 commenced the formulation of a new integration model for the region. Its proposals were eventually expanded into a draft treaty (Tratado Marco) for a Central American Economic and Social Community, which was finalized in March, 1976. This draft treaty provides for new regional institutions, for a → free trade area, a → customs union and common industrial policies of a more sophisticated nature than those of the General Treaty of 1960. The proposals also call for the harmonization of fiscal and financial policies, the establishment of a monetary union and the enactment of common programmes for social and economic development in the region (→ Regional Cooperation and Organization: American States).

The emergence of the new proposals underlines the dissatisfaction felt with the lack of progress

under the system laid down in the Treaty of Managua. Many *de facto* changes have occurred within the original scheme; a Tripartite Commission, composed of Ministers of Finance and Presidents of the Central Banks, has met at intervals since 1972; Ministerial Commissions, composed of Ministers of Economy and their deputies, have met at irregular intervals in place of the Central American Economic Council and the Executive Council. Other institutions and agencies linked with the Common Market have proliferated. Some of the most important are the Central American Bank for Economic Integration (Banco Centroamericano de Integración Económica), established in 1961; the Central American Clearing House (Cámara de Compensación Centroamericana), established in 1961; the Central American Institute of Research and Industrial Technology (Instituto Centroamericano de Investigación y Tecnologia Industrial), established in 1956; the Central American Institute of Public Administration (Instituto Centroamericano de Administración Pública), established in 1954 with the participation of Panama and the support of the → United Nations Development Programme; and the Central American Fund for Monetary Stabilization (Fondo Centroamericano de Estabilización Monetaria) which was established in 1969 in order to provide short-term financial assistance to the member States of the Common Market in case of balance-of-payments difficulties.

After being regarded in its early years as the most vigorous of the regional organizations in the area, the Central American Common Market has failed to secure widespread political commitment. The volume of intra-regional trade has greatly increased, and the composition of that trade has been transformed, as a result of the integration process. Yet nationalist sentiments, and the attendant parochialism and separatism, have dominated at moments of crisis.

General Treaty on Central American Economic Integration, Managua, December 13, 1960, UNTS, Vol. 455 (1963) 3–201.

Inter-American Institute of International Legal Studies, Instruments of Economic Integration in Latin America and in the Caribbean, Vol. 2 (1975) 365–561.

Inter-American Institute of International Legal Studies, Derecho Comunitario Centroamericano (1968).

M.S. WIONCZEK, Integración de América Latina (1964).

J.S. NYE, Central American Regional Integration, International Conciliation, No. 562 (1967).

K.R. SIMMONDS, The Central American Common Market: An Experiment in Regional Integration, ICLQ, Vol 16 (1967) 911–945.

V. CABLE, The "Football War" and the Central American Common Market, International Affairs, Vol. 45 (1969) 658–671.

J.D. COCHRANE, The Politics of Regional Integration: The Central American Case (1969).

K.R. SIMMONDS, Nuevas dimensiones jurídicas en Europa y en Centroamérica, in: La Reestructuración de la Sociedad Internacional (1969) 11–65.

K.R. SIMMONDS, International Economic Organisations in Central and Latin America and the Caribbean, ICLQ, Vol. 19 (1970) 376–397.

R. PRATS, Genèse et évolution du Marché Commun Centraméricain, Notes et études documentaires, No. 3767 (1971).

D.H. MACCLELLAND, The Central American Common Market (1972).

R. PETERWERTH, Das Vertragswerk des Zentralamerikanischen Gemeinsamen Marktes (1973).

E. LIZANO, Cooperación monetaria e integración económica en el Mercado Común Centroamericano (1978).

R.Q. SHAW, Central America, Regional Integration and National Political Development (1978).

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CENTRAL AMERICAN COMMON MARKET, ARBITRATION TRIBUNAL

When the → Central American Common Market was established under the General Treaty of Central American Economic Integration of 1960 (Tratado General de Integración Económica Centroamericana), usually known as the Treaty of Managua, provision was made under Art. XXVI for the → peaceful settlement of disputes either by reference to the Executive Council or to the Central American Economic Council. Both of these organs had separate powers and functions within the Central American Common Market and the → Organization of Central American States (→ Regional Cooperation and Organization: American States). Disputes relating to the origin of goods, unfair business practices and the determination of export subsidies were expressly delegated to the Executive Council under Arts. V, XI and XIII of the Treaty of Managua. If

agreement could not be reached, provision was made for → arbitration by a tribunal consisting of judges from the Supreme Courts of the five member States – Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua (→ Arbitration Clause in Treaties). Awards of this tribunal were to require the affirmative votes of not less than three arbitrators, becoming *res judicata* for all member States in so far as they ruled upon matters of interpretation or application of the Treaty (see also → International Courts and Tribunals).

Weaknesses in the structure of this proposed tribunal, in particular with respect to its *ad hoc* character, to the process of selection of the judges, and to the admissibility of appeals to it, led the member States of the Central American Common Market to concentrate instead upon the resolution of their disputes by reference to the Executive Council with the participation of the Permanent Secretariat. A further attempt was made to clarify the disputes settlement procedure within the Common Market in 1968 by the promulgation of Rules on Procedures for Settling Conflicts (Reglamento sobre Procedimientos para Resolver Conflictos). These Rules significantly provided for direct → negotiations between the parties, reference to the Executive Council and, ultimately, reference to the Economic Council. There was no suggestion of any linkage between the proceedings of these Councils and reference to arbitration.

In spite of the absence of a general political will in the region to reinforce the integration process by the establishment of a permanent arbitration tribunal, a number of initiatives have been taken to explore possible future institutions. An *ad hoc* Committee of Jurists prepared in 1968 a draft "on the establishment of a Central American Tribunal or Commission for the adjudication of the problems of interpretation and application of the treaties on economic integration" and continued work on its proposals even after the *de facto* withdrawal of Honduras from the Common Market in January 1971. The active involvement of SIECA has been extensively discussed, as has the possible enlargement of the competence of the proposed Central American Court of Justice of the Organization of Central American States.

At a meeting of the Central American Parliament (consisting of delegations of the five national parliaments of the member States of the Organization of Central American States) held in September 1971, resolutions were once again adopted supporting the establishment of a regional court with a very broad jurisdiction recalling that of the → Central American Court of Justice which existed from 1908 until 1918.

Nevertheless, the problems to be overcome before a practical and acceptable organ of regional jurisdiction can be established, on whatever basis, are still very considerable, and the faltering progress of the integration movement itself will make for further doubt and delay.

Reglamento sobre Procedimientos para Resolver Conflictos, Derecho de la Integración, Vol. 3 (1968) 148–153; ILM, Vol. 8 (1969) 629–646.

M.G. GOLDMAN, Arbitration in Inter-American Trade Relations, Inter-American Law Review, Vol. 7 (1965) 67–94.

Inter-American Institute of International Legal Studies, Derecho Comunitario Centroamericano (1968).

F. VILLAGRAN-KRAMER, Integración Económica Centro-Americana (1970).

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CENTRAL TREATY ORGANIZATION

1. *Creation*

The Pact of Mutual Cooperation which created an → alliance for → collective self-defence was signed by Iraq and Turkey in Baghdad on February 24, 1955 (UNTS, Vol. 233, p. 199). Known originally as the Baghdad Pact, and sometimes called the Central Pact, the organization was renamed the Central Treaty Organization (CENTO) on August 19, 1959 and was active under this name until its dissolution in 1979. By the treaty, the contracting parties took up the idea of a defence scheme established after the Italo-Ethiopian crisis of 1935, when Turkey, Iran, Iraq and Afghanistan concluded a → non-aggression pact (Saadabad Pact) in July 1937.

The United Kingdom adhered to the Pact on April 5, 1955 followed by Pakistan on September 23 and Iran on October 12. The United States did not formally enter into it, but clearly demon-

strated American approval of the Pact and her intentions by participating actively in the Military, Economic and Counter-Subversion Committees and by signing several bilateral agreements with Turkey, Iran and Pakistan (March 5, 1959; UNTS, Vol. 327, pp. 277, 285 and 299). On March 24, 1959, however, Iraq withdrew from the Pact after the fall of the monarchist régime through the *coup d'état* of August 14, 1958 and the ensuing tensions between Iraq and the other parties to the Pact.

2. *Structure and Activities*

The 1955 Treaty contained eight articles. It was to be considered as the framework for special agreements to be set up between the contracting parties. The purpose of the Treaty was security and defence cooperation in accordance with Art. 51 of the → United Nations Charter (Art. 1; → Regional Arrangements and the UN Charter). The Pact was to be kept open for later membership by any member State of the Arab League (→ Arab States, League of) and by any State which could prove an active concern for security and peace in the Near and Middle East (Art. 5). The only organ expressly set up by the Treaty was the Permanent Council, which operated at the ministerial level (Art. 6).

The Treaty was to be valid for five years, and renewable for additional five-year periods. Any party to the Treaty was allowed to denounce it by notifying a desire to withdraw at least six months before the expiry of each five-year period (Art. 7). The text was drawn up in three authentic languages, Arabic, Turkish and English, the latter being determinative in cases of doubt (Art. 8).

On November 21, 1955, the Permanent Council held its first session at Baghdad and drew up its rules of procedure. In accordance with them, the ministers were to meet at least once a year. For the rest of the time, they were to be represented by ambassadors. After denunciation of the Treaty by Iraq, the representatives of the remaining ministers decided that Ankara should be the new headquarters of CENTO.

Three, later four, committees were established: the Military Committee, consisting of the chiefs of the general staffs or their representatives; the Economic Committee, which was the product of the idea that effective defence depended on rational economic policies; the Counter-Subversion Committee, which was founded as a result of the apprehension of Soviet-Communist infiltration in the area concerned; and the Liaison Committee.

In contrast to its primary purpose, CENTO's main activities fell particularly within the economic sector. These were primarily the construction of a network of traffic and communication facilities, the development of agricultural production and the encouragement of irrigation projects (→ Economic and Technical Aid; → International Law of Development).

3. *Dissolution*

The intention behind creating CENTO was to stabilize the Near and Middle East, which was militarily and politically still shaken by the Suez crisis (→ Suez Canal). At the same time, the Pact was to represent an instrument to counter the expansion of the Soviet Union's influence in that area (→ Spheres of Influence). However, despite that intention, serious opposition arose from the States of the Arab League. CENTO was considered as the prolonged arm of the → North Atlantic Treaty Organization (NATO). The hostile attitude of the Arab League States also was due to the fact that Iran, Turkey and the United Kingdom maintained good relations with → Israel (→ Israel and the Arab States). Moreover, unsettled conflicts existed between Iran and the Arab States concerning the Bahrein Islands and the Arab-populated Iranian province of Khuzistan.

However, the most important danger for the Pact were the diverging interests of the member States. In 1959, after the fall of her monarchy, Iraq deemed her interests to lie nearer to those of the Arab League than to those of CENTO, and she acted accordingly. Pakistan ran into difficulties with India in the conflict over the → Kashmir (1965). Turkey became involved in the conflict over → Cyprus, while at the same time remaining a member of NATO. Iran desired to strengthen her relations with the Soviet Union. None of these problems had a chance of being settled through the intermediary assistance of CENTO. Thus over time, CENTO could not overcome the charges of insignificance lodged against it. After the overthrow of the pro-Western régime of the

Shah in Iran at the beginning of 1979, there was no longer any sense in avoiding the Pact's dissolution.

The process of CENTO's official dissolution started with the denunciation of the Pact by Iran and Pakistan on March 12, 1979. The decision of the Council of Deputies concerning the dissolution was finally sanctioned by the exchange of → notes between Turkey and the United Kingdom on October 2 and 14, and between Turkey and Pakistan on October 2 and 9, 1979 (→ Treaties, Termination).

Pact of Mutual Co-operation, Baghdad, February 24, 1955, UNTS, Vol. 233 (1956) 199–217.
Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Turkey terminating the Pact of Mutual Co-operation . . . Ankara, October 2 and 4, 1979, British Command Paper Cmnd 8065 (1980).

The Baghdad Pact, The Round Table, Vol. 46 (1956–1957) 215–224.
BIRDWOOD, The Baghdad Pact, British Survey, No. 85 (1956) 1–19.
B. ALAVI, Der Bagdad-Pakt, Deutsche Außenpolitik, Vol. 3 (1958) 375–384.
A.J. COTTRELL, Iran and the Central Treaty Organization, Defence Yearbook, Vol. 87 (1976–1977) 68–83.
M. PISAR, The End of CENTO, Review of International Affairs (Belgrade), Vol. 33 (1979) 14–25.

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CIVIL SERVICE, EUROPEAN

1. *Notion; Historical Evolution*

The European civil service exists to assist the organs and institutions of the → European Communities created by the Treaties of Paris (signed 1951) and of Rome (signed 1957). (In a broader sense, the European Civil Service could also include the staff members of other European organizations like the → Council of Europe; see in general → Civil Service, International.) The law governing the European public service began to develop with the founding of the European Coal and Steel Community (ECSC). Until the → European Economic Community (EEC) and the → European Atomic Energy Community (Euratom) established their own staff regulations, those of the ECSC were applied. Under Art. 212 of the EEC Treaty and Art. 186 of the Euratom Treaty, their own Staff Regulations of Officials and the Conditions of Employment of Other Servants entered into force on January 1, 1962. With effect from July 1, 1967, these provisions were replaced by Art. 24 of the Merger Treaty, which provides that officials and other servants of the ECSC, the EEC and Euratom became officials and other servants of the European Communities forming part of the single administration of those Communities upon the entry into force of the uniform Staff Regulations and Conditions of Employment (March 5, 1968). A similar structure in all Community institutions divides the services into Directorate-Generals, Directorates and Divisions, the last being the real working units. As of 1982, the European civil service (with 18504 persons) was divided as follows among the institutions: European Parliament, 2930; Council, 2131; Commission, 12675; → Court of Justice of the European Communities (CJEC), 474, and Court of Auditors, 294. Geographical balance among the staff is assessed not only on the basis of numbers but above all in terms of the nature and degree of responsibility involved in the posts (Staff Regulations, Art. 27).

2. *Current Legal Situation*

The Staff Regulations of the Community form the main part of the written staff rules for officials, that is, those who have been appointed to an established post on the staff of a Community institution (Art. 1(1)). With some qualifications, these regulations also apply to officials during their probationary period, to so-called "political appointees", to posts designated as A1 and A2 in the classification system, and to members of Community institutions, such as Commission members and Judges and Advocates-General of the Court. The Staff Regulations contain general provisions (Arts. 1 to 10(a)), lay down rights and duties of officials (Arts. 11 to 26), and cover recruitment and appointment, administrative status, staff reports, promotion, transfer, termination of service (Arts. 27 to 54 and Annex III), working conditions (Arts. 56 to 61) and emoluments and social security benefits (Arts. 62 to 85). The rules governing disciplinary measures and appeals are set out in Arts. 86 to 91 and Annex IX, while

Arts. 92 to 101 lay down special provisions for officials in the scientific and technical services.

Other servants, who are not officials of the Community but rather are engaged under contract, are covered by the Conditions of Employment of Other Servants (CEOS). The CEOS fall into four main sections corresponding to the four categories of staff who come under the heading of "other servants", that is, temporary staff, auxiliary staff, local staff and special advisors. In other respects, the CEOS follow broadly the same pattern as the Staff Regulations.

The current Staff Regulations have been issued on the level of secondary Community law. They are based on the Communities Treaties but take the form of a regulation (No. 259/68 of February 29, 1968, Journal officiel, L 56, p. 1, as amended) issued by the Council on a proposal from the Commission pursuant to Art. 189(2) of the EEC Treaty and Art. 161(1) of the Euratom Treaty. Such a regulation is binding in its entirety and is directly applicable in all member States (Art. 189(2) of the EEC Treaty and Art. 161(2) of the Euratom Treaty; → European Communities: Community Law and Municipal Law).

3. *Special Legal Problems*

(*a*) *Independence*

There is always the risk of a certain degree of conflict between an official's national origin and his or her position as a servant of the Communities. Under Art. 11(1) of the Staff Regulations, officials must carry out their duties and conduct themselves solely with the interests of the Community in mind; they may neither seek nor take instructions from any government, authority, organization or person outside their institution. In order to ensure loyalty, the Communities offer attractive salaries and comprehensive social security coverage. Nevertheless, a large proportion of Community staff, sometimes 50 per cent in senior posts, are civil servants seconded from the member States. They may retain a position in their national civil service while serving as Community officials. The Communities require all staff to apply for permission from the appointing authority of the Communities before accepting payments, gifts or honours from any other body. Seconded officials remain subject to national disciplinary rules, so that disciplinary proceedings may be brought against them both by the Communities and by the member State for the same act. The disadvantages of such a system notwithstanding, seconded civil servants are indispensable to European civil service, as they bring specialist knowledge and experience as well as a breath of fresh air to the "Eurocracy". When they return to national service, they can help strengthen the commitment to European cooperation. The Commission made proposals along these lines in December 1980 following the Spierenburg Report (for details see Rogalla, Dienstrecht, pp. 84, 109–110, 233–234). Since 1974, the Commission has regularly exchanged staff with government departments of the member States.

(*b*) *Protection of Staff Rights*

The Court of Justice of the European Communities has jurisdiction over any dispute between the Communities and their staff (Art. 179 of the EEC Treaty; Art. 162 of the Euratom Treaty; Art. 91 of the Staff Regulations). Details of the procedure are laid down in Arts. 90 and 91 of the Staff Regulations and in Arts. 46, 73 and 83 of the CEOS. By April 1982 the CJEC had rendered judgment in more than four hundred staff cases (almost one in four judgments heard by the Court and one in two of those published). The most common areas of dispute are over salaries and allowances, pensions, recruitment, internal competitions, promotions, grading, probationary reports, staff reports and disciplinary action. In 30 to 35 per cent of the actions, staff members have prevailed at least to some extent (for details see Henrichs, pp. 134, note 4, 143, 145 note 94a; Rogalla, Dienstrecht, pp. 206, 259).

Although the appeals procedure is set out in great detail, its ability to provide redress in individual cases is somewhat limited in practice. The length of time between filing applications and hearings in staff cases now averages about two years and is increasing. In part due to its heavy workload, the Court insists on strict observance of procedures and dismisses many actions on the ground of inadmissibility. To ease the Court's burden, the Commission made a proposal on August 4, 1978 to the Council to establish an Administrative Tribunal of the Communities to replace the Court in hearing appeals after com-

pletion of the procedures set forth in Arts. 90 and 91 (Official Journal, C 225, September 22, 1978, p. 6; cf. → Administrative Tribunals, Boards and Commissions in International Organizations). The Tribunal would make the first and final determinations as to questions of fact, with Court review of Tribunal decisions on questions of law. However, the Council is unlikely to take a speedy decision on the proposal due to disagreement on whether setting up such a tribunal by way of amending the Staff Regulations would be in conformity with Art. 179 of the EEC Treaty.

(*c*) *Currency and salary problems*

Under Art. 62(1) any duly appointed official is entitled to the remuneration carried by his or her grade and step in accordance with Annex VII. Art. 66 sets out a table of basic monthly salaries expressed in Belgian francs. Salaries are paid in the currency of the country in which the officials perform their duties. A certain amount may be transferred in the currency of the official's country of origin. Particular problems frequently arise in connection with the allowances granted to staff over and above their basic salaries (see Arts. 62(3), 67, 74 and Annexes II, Art. 8 and VII, Art. 1). The Commission now maintains offices in over a hundred countries around the world. In order to compensate for differences in purchasing power and to ensure equal treatment for all staff a weighting system is applied to salaries (Art. 64), with periodic review of weighting and salary levels (Arts. 64 and 65).

The different currencies in the Community and fluctuations in exchange rates are a constant source of problems. Many disputes before the CJEC centre around the question of who should bear the risk in exchange-rate fluctuations. The Court has generally held that the institutions should take all reasonable precautions to ensure that fluctuations and discrepancies in salaries be kept to the minimum, but does not insist on wider-ranging measures. (See for example Case 59/81, Commission v. Council, judgment of October 6, 1982).

(*d*) *Sex equality*

Although women have increasing career opportunities in European civil service, they remain underrepresented in the institutions of the European Communities, particularly in higher-level posts. Since the CJEC judgments on claims for household allowance after marriage (Sabbatini-Bertoni v. Parliament and Cholet-Baudin v. Commission, Cases 20 and 32/71, ECR (1972) pp. 345, 363), more attention has been paid to expanding opportunities for women in these institutions. In cooperation with the trade unions and staff associations, the Commission has compiled a report on women for use as a guide for staff policy.

The question of pensions for widowers of Community officials remains a problem. Under the rules currently in force (Arts. 17 to 29 of Annex VIII of the Staff Regulations), only the widow of an official is entitled to a pension. The widower of an official may receive a survivor's pension only under tightly circumscribed conditions (permanent disability with no independent income; Annex VIII, Art. 23). A mounting number of claims for survivors' pensions are being made by widowers of officials on the basis of the principle of equal treatment and the ban on → sex discrimination. In light of the Newth decision (Case 156/78, ECR (1979) p. 1941), it is likely that the CJEC will declare the present rules unlawful.

(*e*) *Collective rights*

The rights enjoyed by the European civil service staff collectively fall under two headings: firstly, the right to form associations, to be consulted and to participate in decision-making, and secondly, the right to strike.

Each institution has a Staff Committee, a Joint Committee, and a Disciplinary Board (Art. 9(1) of the Staff Regulations; for powers and composition, see Annex II). There is also a Disability Committee for the Communities as a whole. These bodies are mainly consultative and advisory, principally in the fields of social welfare and working conditions (see Rogalla, Beamtenmitsprache).

Three trade unions, with a total membership of some eight thousand, have emerged to represent the staff's broader interests. Their task is to bring about a consensus between the Council and the Commission on staff matters, and to maintain a constant dialogue with the institutions. The trade unions and staff associations have limited legal

capacity. They can institute proceedings under Art. 173(1) of the EEC Treaty for annulment of a decision addressed to them, but have no right of complaint or appeal under Arts. 90 and 91 of the Staff Regulations except where they are specifically affected. Thus they cannot bring class actions.

Whether Community staff have the right to strike or not is a matter of some controversy. The CJEC has avoided the problem but appears to have accepted strikes implicitly. It has upheld the Commission's view that strikers forfeit the right of payment for days lost (Acton and Others v. Commission, Joined Cases 44, 46 and 49, ECR (1975) p. 383; see also Rogalla, Dienstrecht, pp. 225–230). The Commission's agreements with trade unions and staff associations regarding such matters as the period of notice prior to strikes and arrangements for essential services may be taken as explicit recognition of the right to strike. The Council and Parliament have made similar agreements. The Commission proposed adding a section to Art. 24 of the Staff Regulations, which guarantees the right of association, to create a clear legal basis for the right to strike, but the Council did not agree.

4. Evaluation

From 1972 onwards, the heads of government of the member States and the Community institutions have examined several reports on the efficiency of the European civil service. The best-known of these, the Spierenburg Report, was compiled in 1979 by the long-time Ambassador of the Netherlands to the European Communities. His severe criticisms of the Commission cited, for example, lack of cohesion, an imbalance of portfolios, insufficient coordination among senior officials, a maldistribution of staff, and shortcomings in the career-ladder structure. European civil service may be seen as still functioning according to principles of → diplomacy dating from the days of the → Vienna Congress (1815). But the existing civil service and its rules include the proper modernization tools to remedy this deplorable state of affairs. The increasing frequency of exchanges of officials between the institutions and member States' civil services should also aid in this regard. Improvement will probably only be possible, however, if the member States take further steps toward European unification, including further transfer of national competences to the European institutions.

E. KORDT, P. GAUDEMET and E. KERN, Der Europäische Beamte (1955).

G. HENRY, La fonction publique européenne (1961).

T. HOLTZ, Handbuch des Europäischen Dienstrechts (1964) [looseleaf].

D. COOMBES, Towards a European Civil Service (1968).

M. SCHRÖDER, Die "wohlerworbenen Rechte" der Bediensteten in der Rechtsprechung des Gerichtshofes der Europäischen Gemeinschaften (1969).

E. BRÜCKNER, Das Recht der Beamten der Europäischen Gemeinschaften (1971).

L. DUBOUIS, Fonctionnaires des Communautés européennes, Commentaire de la jurisprudence de la Cour de Justice des Communautés européennes, Revue trimestrielle de droit européen, Vol. 11 (1975) 280-307.

H. HERZOG, Doppelte Loyalität (1975).

D. ROGALLA, Beamtenmitsprache im Neuner-Europa (1978).

H. HENRICHS, Die Rechtsprechung des Europäischen Gerichtshofes in Personalsachen, EuR, Vol. 15 (1980) 134–153.

L. DUBOUIS, La politique de choix des fonctionnaires dans les Communautés Européennes, in: C. Debbasch (ed.), La politique de choix des fonctionnaires dans les pays européens (1981) 269–283.

D. ROGALLA, Dienstrecht der Europäischen Gemeinschaften (1981).

D. ROGALLA, La fonction publique européenne (1983).

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COLOMBO PLAN

1. Historical Background

The Colombo Plan was initiated in January 1950 at a meeting of foreign ministers of the → British Commonwealth held in Colombo, Ceylon (renamed Sri Lanka in 1972). The Plan was designed to provide a framework for cooperation between the older and the newer Commonwealth countries in the South and South-East Asian region in advancing post-war reconstruction. The Plan at first consisted of three regional members (India, Pakistan and Ceylon), and four donor members from outside the region (Australia, Canada, New Zealand and the United Kingdom). It was originally intended that the Plan would operate for a six-year period from July 1, 1951, but this period was later extended for successive periods of five years.

In December 1977, following the geographical expansion of the Plan's activities to non-Commonwealth countries, and the participation of Japan and the United States as major donor countries, the Plan's name was officially changed from the "Colombo Plan for Cooperative Economic and Social Development in South and South East Asia" to the "Colombo Plan for Economic and Social Development in Asia and the Pacific". The area covered by the Plan includes most → developing States as far as → Korea in the North, Fiji in the East and Iran and the Maldive Islands in the West. The 26 member countries of the Plan in 1981 were: Afghanistan, Australia, Bangladesh, Bhutan, Burma, Canada, Fiji, India, Indonesia, Iran, Japan, Kampuchea, the Republic of Korea, Laos, Malaysia, the Maldives, Nepal, New Zealand, Pakistan, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand, the United Kingdom and the United States.

At the meeting of the Consultative Committee of the Plan held in Jakarta, Indonisia in November 1980, the member countries reaffirmed the objectives of the Plan and agreed to extend its life indefinitely, thus removing the need for periodic renewal. The same meeting proposed that the major object of the Plan should be technical cooperation, with special emphasis on the provision of scholarships and training.

2. *Organization*

The Colombo Plan has no formal constitution or basic treaty (→ Treaties), although there are a constitution of the Consultative Committee (revised in December 1977) and Rules for the Colombo Plan Bureau, which is located in Colombo. The Plan essentially consists of an annual meeting of participating countries to discuss regional problems of economic and social development, trade, and technical assistance (→ Economic and Technical Aid). The Plan has no central funds of its own; all aid is negotiated bilaterally between the donor and recipient countries (→ Foreign Aid Agreements).

The principal organ of the Plan is the Consultative Committee, which is attended by ministerial representatives of the participating countries and meets annually. The role of the Consultative Committee is to survey the needs and resources within the Plan area, and to determine appropriate ways in which assistance may be provided in order to meet these needs. There is also a Council for Technical Co-operation, attended by official representatives of the participating countries; it meets annually in Colombo in order to promote the provision of experts, training and equipment under the Plan. The Council is serviced by a small secretariat (→ International Secretariat) called the Colombo Plan Bureau for Technical Co-operation.

3. *Nature of the Plan*

Although popularly thought of as being primarily a source of scholarships and training facilities, from its inception the Plan has in fact covered all fields of socio-economic development. Development programmes devised by each participating country have concentrated on areas of basic development needs, such as food production, irrigation, power, railways, industrial development, health, education and housing. Funds for such projects, by way of grants and loans (→ Loans, International), have come from both donor and recipient countries, and from the → International Bank for Reconstruction and Development, the → United Nations Development Programme, and the Asian Development Bank (→ Regional Development Banks). The Colombo Plan has also cooperated with the UN Economic and Social Commission for Asia and the Pacific (ESCAP; → Regional Commissions of the United Nations), in such projects as the Mekong River Development Project.

The technical assistance programmes of the Plan are of special importance. Under the Plan, experts, instructors and advisory missions are provided to assist in planning, development and reconstruction, and for use in public administration, health services, scientific research, agriculture, industry and other productive activities, and in the training of personnel. Local personnel in the countries covered by the Plan may be given scholarships to study in other participating countries where the necessary instruction is available. Equipment required for training may also be provided under the Plan. The Colombo Staff College for Technician Education was established in 1974 in Singapore as the first multilateral project under the Plan.

Under the renewed mandate of the Colombo Plan, approved in 1980, the Colombo Plan Bureau is to give particular attention in the future to the needs of the least-developed countries of the area, to those of the land-locked and island developing countries (→ Land-Locked and Geographically Disadvantaged States). The aim regarding these States is to match their needs with resources and facilities available elsewhere in the Plan area. The Plan will also seek to promote → technology transfer in the region.

The Colombo Plan for Co-operative Economic Development in South and South-East Asia: Report by the Commonwealth Consultative Committee, London, September-October 1950, British Command Paper, Cmd. 8080 (1950).

A. BASCH, The Colombo Plan: A Case of Regional Economic Co-operation, International Organization, Vol. 9 (1955) 1–18.

P.C. SPENDER, Exercises in Diplomacy: The ANZUS Treaty and the Colombo Plan (1969).

Colombo Plan 30th Anniversary, Australian Foreign Affairs Record, Vol. 52 (1981) 350–352.

I.A. SHEARER

CO-OPERATION COUNCIL OF THE ARAB GULF STATES

1. Introduction

On May 25, 1981, a new forum for cooperation emerged on the Arab scene in the shape of the Gulf Co-operation Council, the establishment of which was announced by the foreign ministers of six Gulf States as being, "in recognition of the special relations, common characteristics and similar institutions that link these States, and due to the importance of establishing strong coordination and integration in all spheres including various economic and social fields".

The city of Riyadh, the capital of Saudi Arabia, is the seat of the Co-operation Council of the Arab Gulf States (Bylaws of the Council, Art. 2). However, the Council may hold its meetings in any of its member States (Bylaws, Art. 3).

2. Objectives

The Council's objectives may be summarized as follows:

– The coordination and integration between member States in every field with a view to achieving unity between them;

– the strengthening of ties, relations and all aspects of cooperation already existing between the peoples of the member States;

– the adoption of similar systems in all fields and in particular the following matters: economic and financial affairs, commercial matters, customs and transportation, educational and cultural affairs, social and health affairs, information and tourism, and legislative and administrative matters;

– and the enhancement of scientific and technological advances in the industrial, mining and agricultural areas and with regard to water and animal resources and the establishment of scientific research centres and joint projects and the encouragement of cooperation between the private sectors in the different member States.

3. Membership

Membership in the Council is confined to the six States which participated in the meeting of the ministers of foreign affairs held on February 2, 1981 in Riyadh to set up the organizational structure for the Council. The members are: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

These six States, being situated on the Arab side of the Gulf, constitute a geographical unit having similar economies and political systems. Moreover, recently, bilateral agreements for cooperation in the economic, information and cultural fields have been concluded within the area. It should be noted that Iraq and North and South Yemen were not permitted to join the Council, even though they are located in the same geographical area, due to the fact that the political systems and economic conditions within them are vastly different from those within the six member States.

4. Organizational Structure

The Co-operation Council has the following organs: the Supreme Council (comprising the Conciliation Commission), the Ministerial Council and the Secretariat General.

(a) The Supreme Council

The Supreme Council is composed of the heads of State, presided over by a presidency which

rotates among them. Two ordinary sessions are held every year with the possibility of holding extraordinary sessions as necessary. Each member has the right to call a ministerial meeting so long as this is seconded by at least one other member.

The Supreme Council determines the Co-operation Council's higher policies and the basic lines along which it operates. It discusses the recommendations, rules and regulations submitted by the Ministerial Council and General Secretariat for approval. In addition, it appoints the Conciliation Commission.

Each of the members of the Supreme Council has one vote. The Council's decisions in substantive matters require the approval of all the member States present and voting in the meeting in which such decisions are voted on. Decisions regarding procedural matters are adopted by simple majority.

Annexed to the Supreme Council, the Conciliation Commission is responsible for resolving existing or potential disputes among member States and for interpreting the Co-operation Council's basic regulations (→ Conciliation and Mediation; → International Organizations, Internal Law and Rules).

(b) The Ministerial Council

The Ministerial Council is composed of the foreign ministers or their representatives and meets six times a year, once every two months. Extraordinary meetings as and when requested by at least two member States may also be held.

Its functions include: drawing up the organizational structure of the General Secretariat; preparing the meetings of the Supreme Council, a function that includes compiling projects, studies, recommendations, and agendas; formulating policies, recommendations and studies, and suggesting projects aimed at promoting cooperation among the member States in different spheres; encouraging various forms of cooperation and coordination in different activities of the private sector; ratifying the regular reports as well as the internal regulations relating to administrative affairs proposed by the Secretary-General and approving the budget and final accounts of the Co-operation Council's General Secretariat; and encouraging, developing and coordinating the activities linking the member States in various fields, since these activities will be considered binding once they are sanctioned by the Ministerial Council, which also charges the relevant ministers with the formulation of policies and studies that aid the realization of the Co-operation Council's objectives.

Each member of the Ministerial Council has one vote. As in the case of the Supreme Council, the decisions of the Ministerial Council with regard to substantive matters require the unanimous approval of the member States present and voting while decisions in procedural matters need only a simple majority.

(c) The Secretariat General

The Co-operation Council is headed by a Secretary-General who is appointed by the Supreme Council. The latter also determines the conditions and term of his office. It is a prerequisite that the Secretary-General be a citizen of one of the member States. He is directly responsible for the functions of the Assistant Secretaries, the Secretariat General and the progress of work in its various sectors. The Secretariat General has its own information bureau.

The Secretariat General is responsible for: the preparation of studies specially related to cooperation and coordination; following up the implementation of resolutions and recommendations proposed by the member States, and ratified by the Supreme Council and the Ministerial Council; the preparation of reports and studies requested by the Ministerial Council; the preparation of progress reports on the Co-operation Council's achievements; and the drafting of financial and administrative regulations that help the Organization develop in accordance with the growth of the Co-operation Council and its increasing responsibilities.

The Co-operation Council's Secretariat General has a budget to which all member States contribute equally. (See also → International Secretariat.)

5. Privileges and Immunities

Art. 17 of the Bylaws of the Co-operation Council provides the Council and its organs with legal capacity and entitles it to the privileges and immunities necessary to enable the Council to

fulfil its objectives and carry out its function within the territory of each member State (→ International Organizations, Privileges and Immunities). Under Art. 17 the representatives of the member States and the Council's employees are also entitled to the privileges and immunities specified in an agreement to be concluded between the member States for this purpose. Moreover, the relationship between the Council and Saudi Arabia, where the seat of the Council is located, is also to be regulated by a special agreement.

6. *The Bylaws*

Art. 20 of the Bylaws provides that no change shall be introduced in the Bylaws except with the unanimous approval of the Supreme Council.

The Secretariat General of the Co-operation Council has deposited copies of the Bylaws with the League of Arab States and the → United Nations (→ Depositary; → Arab States, League of).

7. *Achievements*

The leading role in the Council is played by Saudi Arabia. Despite repeated assurances by all the Council's organs that membership in this union of Arab Gulf States is not incompatible with membership in the larger Arab regional union (i.e. the Arab League) and that the six member States are keen on continuing their activities and shouldering their responsibilities within the League, there is an argument which holds that the more these States get closer to each other within the framework of the Council, the more they will distance themselves from the rest of the Arab States in the Arab League.

While it may be difficult to discuss at present the achievements of the Council or to evaluate its performance in its early days, it may be noted that the Council is taking firm and practical steps to bring its members closer together and coordinate their policies, and in this it has met with some success. This success is made possible by the similarity in the political, economic and other conditions of the member States.

The Council has established a number of specialized committees: the Committee of Economic and Social Planning, the Committee of Financial and Economic Cooperation, the Trade Committee, the Committee of Industrial Cooperation, the Petroleum Committee, and the Social and Cultural Services Committee. These committees have determined the spheres of joint action and helped in achieving a real coordination of the programmes and plans in the political and economic areas, also paving the way for the creation of joint companies and institutions which have already become a reality.

One of the most important achievements of the Council is the Economic Agreement between its member States which was signed by the Heads of State on November 11, 1981 and in part entered into force in March 1983. The Agreement deals with facilitating trade, exemptions from custom duties, freedom of movement of goods, services, capital and persons and coordination in the developmental, technical and financial areas (→ Economic Communities and Groups).

Also under discussion is a draft security agreement between the member States which is advocated by Saudi Arabia. The agreement, originally prepared in response to the changes in security realities brought about by the revolution in Iran, has found the support of all the member States of the Co-operation Council, with the exception of Kuwait.

G. MAAREK, Du marché commun arabe au Conseil de co-opération du Golfe, Défense nationale, Vol. 37, août-septembre (1981) 65–78.

MUFEED SHIHAB

COUNCIL FOR MUTUAL ECONOMIC ASSISTANCE

1. *Historical Background*

The Council for Mutual Economic Assistance (Comecon) was founded in January 1949 at an economic conference of representatives from Bulgaria, Czechoslovakia, Hungary, Romania and the Soviet Union held at Moscow. Its formation was partially a response to the Marshall Plan and incipient projects for West European unity (→ European Recovery Programme) and partially an effort to broaden the base of bilateral links among Eastern European nations and the Soviet

Union. Details of the organization's early years remain obscure, although without doubt the level of activity was extremely modest. Signs of revitalization became evident in the mid-1950s, a period when economic integration in Western Europe began to accelerate institutionally.

By 1958, not long after the treaties establishing the → European Communities had entered into force, decisions were taken within Comecon countries to seek a socialist division of labour, the basic principles of which were approved in 1962, and the harmonization of long-term and short-term planning techniques. By 1969, when the European Communities had become more closely linked under a "Merger Treaty" and their membership was on the verge of increasing, Comecon members had commenced the preparation of the Comprehensive Programme for the Further Intensification and Improvement of Co-operation and the Development of Socialist Economic Integration of Comecon Member Countries, which was approved in 1971.

Although in many respects there seems to have been a virtually dialectical relationship between community-building in Eastern and Western Europe, Comecon to date has been unwilling to espouse economic or institutional premises that could lead to supranationality (cf. → Supranational Organizations). State → sovereignty is held to be an indispensable principle of international law (→ Socialist Conceptions of International Law) and is to remain intact while a more rational "internationalization of productive forces" is achieved.

2. *Structure*

Comecon apparently existed for eleven years without a constitutive instrument. The communiqué announcing the formation of Comecon in January 1949 stipulated that membership was open to all countries sharing the principles of the organization, that each member country was to enjoy full and equal representation (→ States, Sovereign Equality), that decisions were to be taken only with the agreement of "interested countries", and that meetings were to be held periodically in respective member countries, in turn, with a rotating chairmanship. To these the 1959 Charter of Comecon added the right of member countries to withdraw upon appropriate → notification to the → depositary, the right of Comecon to enjoy the requisite legal personality on the territory of each member for the performance of its functions (→ International Organizations, General Aspects), and the extension to Comecon personnel of the status of international civil servants (→ Civil Service, International).

(*a*) *Charter*

The communiqué of the Moscow economic conference held from January 5 to 8, 1949 was published on January 25, 1949. The first constitutive document on the public record is the Charter of Comecon agreed at Sofia, Bulgaria on December 14, 1959, which entered into force on April 13, 1960 (UNTS, Vol. 368, p. 253). The Charter was amended (→ Treaties, Revision) at the XVI (Extraordinary) session of the Session (Comecon's highest organ) in June 1962, the XVII session in December 1962, the XXVIII session of June 21, 1974, and the XXXIII session of June 26 to 28, 1979.

(*b*) *Membership*

The original members of Comecon were the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland and Romania. Albania became a member in February 1949, the German Democratic Republic in September 1950, the Mongolian People's Republic in July 1962, Cuba in July 1972, and → Vietnam in July 1978. Four countries have formed a formal special relationship with Comecon: Yugoslavia (1964), Finland (1973), Iraq and Mexico (1975). Albania ceased to participate in Comecon from the end of 1961. The 1949 communiqué and the 1959 Charter originally stipulated that Comecon was an organization open to "other countries of Europe sharing the principles..." of Comecon. The reference to Europe was deleted in the July 1962 amendment to the Charter. Many countries (the People's Republic of → China, North → Korea, Angola, Laos, Yemen, Afghanistan, Ethiopia and others) have been present as observers at sessions of Comecon organs (→ International Organizations, Observer Status).

(*c*) *Organs*

The principal organs of Comecon are: the Ses-

sion of the Council; the Executive Committee of the Council; the committees of the Council; the permanent commissions of the Council; and the Secretariat of the Council. In addition, Comecon has created seven permanently-functioning Meetings and two scientific institutes.

The highest Comecon organ is the Session, comprising delegations, usually headed by a deputy head of government, from all member countries. It meets at least once a year to consider basic questions of economic and scientific-technical cooperation and to determine the principal orientations of Comecon activities.

The Executive Committee is the principal executive organ of Comecon. It normally meets quarterly to perform a variety of tasks, including the directing of work connected with implementing Council recommendations and performing Comecon functions, directing the coordination of national economic plans and specialization and production cooperation, working out basic aspects of the international socialist division of labour for key branches of production, directing the Council Secretariat, permanent commissions, and other Comecon organs, and the like. Representation on the Executive Committee is at deputy-head-of-government level.

There are three committees of the Council: for cooperation in planning; for scientific-technical cooperation; and for cooperation in material-technical supply. They are to ensure that problems in these areas are considered on an integrated, multilateral basis; they report annually to the Executive Committee.

The 23 permanent commissions of Comecon are organized principally on a sectoral basis to develop links and to coordinate sectoral planning among member countries. Each enjoys the services of a secretariat and may form its own working organs. The headquarters of these organs are distributed among various member-country capitals.

The Comecon Secretariat, located in Moscow, services the Council and often performs secretariat functions for other Council organs and permanent commissions. It is staffed by nationals of member countries, who enjoy the status of international civil servants. Among the juridical duties of the Secretariat are: notifying member countries about bilateral and multilateral agreements concluded within the Comecon framework, keeping a register of Comecon recommendations and decisions, preparing draft proposals for the Executive Committee and permanent commissions, and acting as depositary for multilateral agreements.

The seven permanent entities called "Meetings" serve as a forum for ministers or department heads to meet at periodic intervals and to submit proposals to Comecon organs or actually to reach agreement on matters within their specialized competence. There are Meetings to consider legal questions, water conservancy, internal trade, inventions, prices, and labour.

Two research institutes respectively prepare recommendations for the unification or creation of national standards (cf. → Unification and Harmonization of Laws) and for exchanging information or coordinating research on economic problems of the world socialist system. They are Comecon organs.

(*d*) *Decision-making*

Comecon organs adopt two types of enactments. Recommendations are adopted on matters of economic and scientific-technical cooperation and then communicated to member countries for consideration. Member countries have a legal obligation to consider a recommendation and to notify the Council of their acceptance or non-acceptance within 60 days. Decisions are adopted on organizational and procedural questions and enter into force from the date on which the protocol of the session of the respective Council organ is signed, unless the decision provides otherwise or it follows otherwise from the character of the decision.

All recommendations and decisions are to be adopted only with the consent of interested member countries, each country having the right to declare its interest on any question. A negative vote by an interested country thus constitutes a → veto. Non-participation by one or several member countries in particular measures of interest to others is not to obstruct the cooperation of interested countries. Equally, recommendations and decisions adopted by interested countries do not extend to members which have declared their non-participation in the adoption thereof or their non-interest in a particular ques-

tion. However, such countries may subsequently accede to recommendations and decisions adopted by other Comecon members. A third technique of decision-making within the Council, introduced in 1979, is the completion of arrangements by member countries to give effect to measures of economic, scientific, and technical cooperation. No procedural formalities are associated with arrangements.

The legal status and binding nature of recommendations is much debated in socialist international legal doctrine. Some compare the process of adopting recommendations with the → negotiation and concluding of international → treaties, whereas others draw analogies with the legislative process (→ International Legislation).

(e) Finance

Comecon is financed by share contributions paid by member countries. Annual budgets are prepared by the Secretariat and submitted to the Council. The scale of assessment takes economic disparities between member countries into account, and the Soviet Union pays more than 60 per cent of the budget.

3. Functions and Activities

Comecon has responsibility for organizing economic and scientific-technical cooperation of member countries with a view to the most rational use of → natural resources; accelerating the development of productive forces and furthering socialist economic integration; improving the international socialist division of labour through organizing mutual → consultations on economic policy, coordinating national economic plans, working out long-term cooperation programmes, and promoting production specialization and cooperation; studying economic and scientific-technical problems; and assisting member countries in the domains of transport, basic capital investments, expansion of trade, exchanging information on scientific-technical achievements, and integrating bilateral and multilateral levels of cooperation. Specific measures are laid down in Comecon recommendations, most especially in the 1971 Comprehensive Programme, which projects activities to 1990 and beyond.

4. International Legal Personality

The legal capacity and privileges and immunities (→ International Organizations, Privileges and Immunities) of Comecon are laid down in a special convention signed at Sofia on December 14, 1959 (UNTS, Vol. 368, p. 237), as amended in December 1962 and on June 21, 1974. According to the Convention, Comecon is a juridical person empowered to conclude agreements, acquire, lease, and alienate property, and appear in court. Its premises are inviolate, and its property, assets, and documents enjoy immunity unless waived. There are tax and communications exemptions, and specified privileges and immunities are accorded to member-country representatives and Council officials. Comecon relations with countries on whose territories its headquarters or organs and institutions are located are governed by special agreements concluded with the receiving country. The headquarters agreement with the Soviet Union was signed on March 5, 1962 and supplemented by a Protocol of October 3, 1968.

Comecon is empowered by its Charter to establish and maintain relations with non-member countries and international organizations. In addition to the special relationships with Finland, Iraq, Mexico, and Yugoslavia, Comecon has concluded cooperation protocols with the International Bank for Economic Cooperation, the International Investment Bank, all international economic organizations within the Comecon framework, the → Danube Commission, the → International Atomic Energy Agency, the → United Nations Environment Programme, and it is currently negotiating an arrangement with the European Communities.

5. Evaluation

Comecon and its sister entities have introduced innovations into the law of international institutions. The theory of Comecon recommendations deserves the careful attention of international lawyers, as does the emergence of organizations linked to Comecon which combine features of the classical international organization and the classical multinational corporation (see → Transnational Enterprises). Novel issues for concepts of international ownership and State immunity are involved.

W.E. BUTLER (ed.), A Source Book on Socialist International Organizations (1978).
P.A. TOKAREVA et al. (eds.), Multilateral Economic Cooperation among Socialist States (A Collection of Documents) (2d ed. 1972), 1972–1975 (1976), 1975–1980 (1981) [in Russian].
Basic Documents on the Council for Mutual Economic Assistance, 2 vols. (4th ed. 1981–1982) [in Russian].

R.C. RIBI, Das COMECON, Eine Untersuchung über die Problematik der wirtschaftlichen Integration sozialistischer Länder (1970).
J. CAILLOT, Le C.A.E.M. Aspects juridiques et formes de coopération économique entre les pays socialistes (1971).
E. USTOR, Decision-Making in the Council for Mutual Economic Assistance, RdC, Vol. 134 (1971 III) 163–296.
H.W. SCHAEFER, Comecon and the Politics of Integration (1972).
R. STEFFENS, Integrationsprobleme im Rat für gegenseitige Wirtschaftshilfe (RGW) (1974).
L. ERVIN, The Council for Mutual Economic Assistance, A Selective Bibliography (1976).
R. SZAWLOWSKI, The System of International Organizations of the Communist Countries (1976).
R. BYSTRICKY, Le droit de l'intégration économique socialiste (1979).
J.M. VON BRABANT, Socialist Economic Integration: Aspects of Contemporary Economic Problems in Eastern Europe (1980).
V.I. MENZHINSKII (ed.), International Organizations of Socialist States (1980) [in Russian].
G. SCHIAVONE, The Institutions of COMECON (1981).

W.E. BUTLER

COUNCIL OF EUROPE

1. Background

The creation of the Council of Europe was the result of a widespread movement after World War II proclaiming the need for European unity. Isolated philosophers and statesmen had propagated this idea for several centuries. In 1923 Count Coudenhove-Kalergi, in his book "Pan-Europa" called for a European Federation and subsequently founded a movement for the purpose; and in 1929 the French statesman Aristide Briand, in a "Memorandum on European Federal Union", proposed to the → League of Nations "some sort of federal link" between the European peoples. In a speech at Zurich in 1946 Winston Churchill declared: "We must build a kind of United States of Europe." Thus, various movements in favour of European unity combined their forces to organize the Congress of Europe at The Hague in May 1948, which called for a United Europe permitting the free movement of persons, ideas and goods; a charter of → human rights; a court of justice; and a European Assembly. These ideas were further developed in a resolution proposing "an economic and political union" in which the nations of Europe "must agree to merge certain of their sovereign rights". The proposals were submitted to the foreign ministers of the five Brussels Treaty Powers (→ Western European Union); the result was the signature of the Statute of the Council of Europe in London on May 5, 1949 (UNTS, Vol. 87, p. 103; European Treaty Series (ETS) 1).

2. Aim, Membership, Structure and Decision-Making

(a) The aim of the Council of Europe, as stated in Art. 1 of the Statute, is "to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress". This aim is to be pursued "by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms". Matters relating to national defence are expressly excluded from the competence of the Council of Europe (the North Atlantic Treaty had been signed just a month earlier); participation in its work does not prejudice the collaboration of its members in the → United Nations or other international organizations.

These provisions, it will appear, are wide in scope but limited in effect. Wide because the competence of the Council extends to all spheres except the military; political affairs are not expressly mentioned, but the competence of the Council in political matters has never been questioned. The Statute is limited in effect, however, because it envisages "agreements and common action" in an organization "which will bring European States into closer association"; these are the classic concepts of inter-governmental cooperation, which do not reflect even faintly the proposals of the Hague Congress for an economic and political union and a merger of sovereign

rights (cf. → Confederations and Other Unions of States).

(b) The membership of the Council of Europe was originally constituted by the ten States which negotiated and signed the Statute: the five Brussels Treaty Powers (Belgium, France, Luxembourg, the Netherlands and the United Kingdom) and the five who joined them (Denmark, Italy, Ireland, Norway and Sweden). Subsequent accessions have been: Greece (1949); the Federal Republic of Germany, Iceland, Turkey (1950); Austria (1956); Cyprus (1961); Switzerland (1963); Malta (1965); Portugal (1976); Spain (1977) and Liechtenstein (1978), making a total of 21 to date (mid-1982), i.e. all democratic European countries except Finland and certain → micro-States.

Art. 3 of the Statute limits membership to States which respect the principles of the rule of law and of the enjoyment of human rights and fundamental freedoms. Among these principles, of course, are free elections and the right to form a political opposition. This explains why Spain and Portugal during many years were not members and why many other European countries are not eligible for membership. The Statute goes further. Art. 8 provides for the suspension or expulsion of a member State which has seriously violated Art. 3. This provision was about to be applied to Greece in December 1969, when the Greek foreign minister announced the decision of his government to withdraw from the Council of Europe. Greece subsequently rejoined the organization in 1974, after democratic freedoms had been restored.

(c) The Statute provides in its Art. 10 that the organs of the Council of Europe are the Committee of Ministers and the Consultative Assembly.

The Committee of Ministers is an intergovernmental organ of the type usual in international organizations (→ International Organizations, General Aspects); each member State has one representative and each representative has one vote. It is the executive organ "which acts on behalf of the Council of Europe" (Art. 13). Art. 15 confers on it the function of considering what action shall be taken to achieve the aim of the Council; it may do so on its own initiative or on the proposal of the Consultative Assembly; such action may take the form of the conclusion of conventions or agreements, the adoption of common policies and recommendations to governments – the classic procedures of an inter-governmental council or committee. An unusual provision is that the representatives on the Committee of Ministers are the ministers for foreign affairs (Art. 14), testifying to the political importance which its founders attached to this new creation. In practice this provision is only partially observed. The foreign ministers usually attend twice a year and are replaced at the majority of meetings by their permanent representatives, known as the Ministers' Deputies.

The original feature of the Council of Europe was the establishment of its second organ: the Consultative Assembly, consisting of members of the various national parliaments. For the first time the principle of parliamentary participation in international affairs was introduced into an international organization (→ Parliamentary Assemblies, International). This important innovation has since been copied in the → European Communities, the Western European Union, the → Nordic Council and the → Benelux Economic Union, and also, more informally, in NATO and the → European Free Trade Association (EFTA).

National delegations to the Assembly vary in numbers according to the size of the member States, running from eighteen for the major countries (France, the Federal Republic of Germany, Italy, United Kingdom) to two or three for the smallest (Cyprus, Iceland, Liechtenstein, Luxembourg, Malta). In 1981 there were theoretically 170 representatives, though two delegations (Cyprus and Turkey) were absent. In the majority of countries they are elected by the national parliament; for all countries they must include members of the different political parties, roughly in proportion to the strength of the parties in the national parliaments. They therefore reflect in miniature the political spectrum of the member States. The Assembly has its own system of European Political Groups: Socialists, Christian Democrats, Liberals, Communists and others. In 1974, after 25 years' development, the Assembly decided to change its title from "Consultative Assembly" to "Parliamentary Assembly".

The Assembly is the deliberative organ of the

Council of Europe (Art. 22 of the Statute). It may discuss and make recommendations to the Committee of Ministers on any matter within the competence of the organization, either on its own initiative or when requested by the Committee of Ministers for its opinion. It also adopts resolutions on matters not requiring action by the Committee of Ministers. By 1981 the Assembly had adopted more than one hundred opinions, nearly a thousand recommendations and more than seven hundred resolutions.

The → European Commission of Human Rights and the → European Court of Human Rights are generally considered to be organs of the Council of Europe. They are not "statutory organs" as defined in the Statute of 1949, because their establishment results from a later treaty, the → European Convention on Human Rights of November 4, 1950 (UNTS, Vol. 213, p. 221; ETS 5); but they are organs of the Council in the sense that they operate within its framework and are financed by its budget.

The seat of the Council of Europe is in Strasbourg (Art. 11 of the Statute). It was fitting that the capital of a province which had long been a bone of contention between France and Germany should become the symbol of a new European unity.

(d) Over a period of 30 years, the structures of the Council of Europe have developed far beyond what was foreseen in the Statute of 1949. In the first place, the appointment of Permanent Representatives resident in Strasbourg who hold frequent meetings as the Ministers' Deputies, exercising the functions and powers of the Committee of Ministers, gives continuity to the intergovernmental work of the organization. Secondly, Art. 17 of the Statute empowers the Committee of Ministers to set up "advisory and technical committees or commissions for such specific purposes as it may deem desirable", and liberal use has been made of this provision. By 1980 there were a dozen "Steering Committees" or other high-level bodies implementing the Council's programme in the various sectors of its activity (see *infra*), most of them directing the work of numerous committees of experts and sub-committees, making a total of about 150 committees and sub-committees promoting inter-governmental cooperation in Europe. A third development has been the establishment of conferences of specialized ministers. Since the Committee of Ministers brings together the ministers for foreign affairs (or ambassadors from the foreign ministries) but the participation of many other government departments in the work of European cooperation is also essential, separate conferences are organized, on an annual or biennial basis, of the ministers of education, ministers of justice, ministers responsible for labour, family affairs, the environment, culture and so on. The result of these developments is an imposing inter-governmental structure implementing an extensive programme of European cooperation.

The Parliamentary Assembly, for its part, has 13 general committees (political, economic, social, cultural, legal, etc.) which study the matters within their competence and prepare reports and draft texts for the plenary body. The Assembly itself has three part-sessions a year, usually of five to ten days, but its committees hold frequent inter-sessional meetings – some of them in the capitals of the different member States – thus ensuring continuity of the work. In addition, it organizes conferences and colloquies on topical subjects from time to time. On its proposal, and by decision of the Committee of Ministers, the Conference of Local and Regional Authorities of Europe has been established as another permanent body.

(e) As may appear from the preceding description of its structures, the decision-making process in the Council of Europe is twofold. Decisions are taken by the Committee of Ministers, in many cases on a proposal made by the Parliamentary Assembly in the form of a recommendation. While the Committee may accept, reject or modify the Assembly's proposals, it must explain its action and the reasons therefor in the report presented to the Assembly at each part-session by the Chairman of the Committee of Ministers – an occasion when parliamentary questions and debate can have their influence. Secondly, the Committee of Ministers may take decisions "on its own initiative", which usually means on the proposal of a → government – or of one of the many inter-governmental committees.

A simple decision of the Committee of Ministers is in the form of a recommendation to member governments, which requires unanimity (Arts.

15 and 20 of the Statute). Unlike decisions taken in the European Communities, such recommendations are not binding. But few governments will lightly ignore a recommendation in the preparation and adoption of which their representatives have participated.

When it is desired that the governments should accept legally-binding obligations, the appropriate text will be drafted in the form of a convention or agreement, which is then submitted to governments for ratification. The practice of convention-making is an outstanding characteristic of the Council of Europe. By 1980 more than a hundred conventions and agreements had been concluded – far more than in any other international organization, with the single exception of the → International Labour Organisation, created thirty years earlier in 1919.

(f) Like other international organizations, the Council of Europe is financed by a budget to which all member governments contribute; they do so in accordance with a fixed scale roughly in proportion to their population and gross national product. In 1981 the budget amounted to nearly Ff. 250 million (→ International Organizations, Financing and Budgeting).

(g) There is a single Secretariat which serves both organs of the Council and whose composition respects the principle of equitable geographical distribution. An unusual arrangement is that the Secretary-General, the Deputy Secretary-General and the Clerk of the Assembly are elected by the Assembly on the proposal of the Committee of Ministers. The strength of the Secretariat in 1981 was about 850 (→ Civil Service, European).

3. *Activities*

In the early years of its existence, the Assembly of the Council of Europe sought to give effect to the proposal of The Hague Congress calling for the establishment of an "economic and political union" with a certain "merger of sovereign rights", and a number of ambitious proposals of a federal or quasi-federal character were submitted for discussion. Some of them did not secure sufficient support for their adoption by the Assembly; others were adopted by that body but rejected the Committee of Ministers. None came to fruition.

Attention then turned to the development and coordination of European cooperation during a period of proliferation of European organizations: the Brussels Treaty Organisation (later the WEU), the Organization for European Economic Cooperation (OEEC) (later the → Organisation for Economic Co-operation and Development (OECD)), the → European Coal and Steel Community, the → European Economic Community, the → European Atomic Energy Community (Euratom), EFTA and about a dozen technical organizations concerned with transport, air transport, nuclear research, space research and so on. The desire to coordinate their activities led to the idea that the Council of Europe should constitute "the general framework of European policy". This notion had a partial success in that a number of the other inter-governmental organizations – and several of the → United Nations Specialized Agencies – agreed to submit reports on their activities to the Assembly, thus enabling it to review, and make suggestions about, the broad picture of international cooperation in Europe. The best example of this, which extends beyond the confines of Europe, is furnished by the annual economic debate on the work of the OECD, often attended by parliamentarians from Australia, Canada, Finland, Japan, New Zealand and the United States.

But the most significant activity of the Assembly in the political field is its debates on major issues of foreign policy, often with the participation of heads of government or other ministers from member States and other countries. Among the topics of debate have been the role and preservation of parliamentary democracy, Europe's responsibilities in the world, relations with Eastern European countries, the situation in the Middle East (debated on different occasions with the foreign ministers of Egypt, Israel, Jordan and Syria; → Israel and the Arab States), human rights in Latin America, the North-South dialogue, the → Helsinki Conference and Final Act on Security and Cooperation in Europe and its follow-up conferences.

It is natural that the political action of the Council of Europe is manifested principally in the public debates of the Parliamentary Assembly, which considers itself "the voice of democratic Europe". The ministers, on the other hand, meet

behind closed doors. And if their communiqués disclose that they also undertake political discussions (for example, on Helsinki, Afghanistan, and the North-South dialogue), these are less in evidence than the vast "Programme of Intergovernmental Activities" which they authorize and direct, operating through the complex committee structure described above. Though this programme is essentially inter-governmental, the Assembly also contributes to it with suggestions, proposals and sometimes criticism.

The programme is divided into eight main fields which may be summarized as follows: protection and development of human rights; social and socio-economic problems; education, culture and sport; youth questions; public health; regional planning and the environment; regional and local authorities; cooperation in legal matters.

In all these fields extensive programmes of European cooperation have been developed and expanded over the years. The best known is the Council's work for the protection of human rights, based on the European Convention on Human Rights (ECHR) of 1950 and its five Protocols and involving the creation of the European Commission and the European Court of Human Rights.

In the social field nine conventions and agreements have been concluded. The most important is the → European Social Charter of 1961 (UNTS, Vol. 529, p. 89; ETS 35) which is complementary to the ECHR and protects economic and social rights. Several agreements relate to social security; another is the Convention on the Legal Status of → Migrant Workers of 1977 (ETS 93). The Council has established a Resettlement Fund for → refugees and migrant workers; by 1980 the total value of loans made from it amounted to nearly US $1000 million. In the field of education and culture, seven conventions and agreements have been concluded, including in 1954, a general Cultural Convention (UNTS, Vol. 218, p. 139; ETS 18); a separate Cultural Fund has been established to finance cultural activities (about Ff. 6 million per year); the programme includes consultations about and planning of education at all levels, out-of-school education, teacher-exchanges, fellowships for teachers to work abroad, equivalence of diplomas, revision of history textbooks, protection of the cultural heritage and European art exhibitions (→ Cultural Agreements; → Cultural and Intellectual Cooperation; → European Schools); a "Sport for All" Charter has also been drawn up.

The Council's work for youth is realized through the European Youth Centre and the European Youth Foundation. The former is a meeting place and training centre for leaders of youth movements (about a thousand attending study sessions in a year) while the latter finances various activities of national and international youth organizations.

A dozen conventions and agreements have been concluded in the field of public health, the most important being that on the elaboration of a European Pharmacopoeia of 1964 (ETS 50; → Public Health, International Cooperation). The programme includes studies and exchange of information on the organization of health care and the prevention of disease, and fellowships for studying medical techniques in other countries.

The field of regional planning and protection of the environment comprises the elaboration of regional planning policies, the preparation of a Regional Planning Charter, a campaign for urban renewal, the protection of the architectural heritage and nature conservation, including the protection of wildlife (→ Environment, International Protection; → Wildlife Protection).

The organization, role and responsibilities of local and regional authorities is the subject of another branch of the programme. This was inspired by the European Conference of Local Authorities, originally set up in 1957, the basic aim of which was to secure the participation of members of local authorities from all over Europe in the work of European cooperation. The aims include the development of local democracy, technical cooperation between the administrations at different levels and balanced regional development.

4. *The Legal Programme*

The legal programme constitutes the most important (non-parliamentary) activity of the Council of Europe, after its work for human rights (cf. → European Law). It relates to various topics of international law, the harmonization of national legislation and practice in certain sectors (→ Unification and Harmonization of Laws), the

prevention of crime and the treatment of offenders and questions concerning the mass media; it has led to the conclusion of nearly 50 conventions, agreements and protocols. The more important are:

(a) International law: → European Convention for the Peaceful Settlement of Disputes, 1957 (ETS 23); → European Convention on State Immunity, 1972 (ETS 74); conventions on consular functions, 1967 (ETS 61; → Consular Relations); on establishment, 1955 (ETS 19); on the establishment of companies, 1966 (ETS 57); on multiple → nationality, 1963 (ETS 43).

(b) Criminal law: conventions on → extradition, 1957 (ETS 24); on mutual assistance in criminal matters, 1959 (ETS 30); on → war crimes, 1974 (ETS 82); on the suppression of → terrorism, 1977 (ETS 90).

(c) Civil and commercial law: conventions on adoption, 1967 (ETS 58); on the status of children born out of wedlock, 1975 (ETS 85); on foreign money liabilities, 1967 (ETS 60; → Foreign Debts; → Foreign Investments); on a uniform law on arbitration, 1966 (ETS 56).

(d) Legal cooperation and data protection: conventions on information on foreign law, 1968 (ETS 62); on granting legal aid, 1977 (ETS 92; → Legal Assistance between States in Civil Matters; → Legal Assistance between States in Criminal Matters); on protection against misuse of processed personal data, 1981 (ETS 108).

5. Evaluation

In the early years of its existence, it became clear that the Council of Europe was unable to achieve any significant progress on the road to European unification in the federal or pre-federal sense advocated by some of its founders (Adenauer, Churchill, de Gasperi, Schuman, Spaak). No international organization can do more than what its member governments will accept. When the majority of its original members insisted on limiting their engagement to the terms of a carefully drafted treaty, the minority who sought to pursue the path of → European integration were constrained to do so elsewhere (in the European Communities). The Council was limited to practical measures of inter-governmental cooperation.

Over a period of 30 years the Council of Europe has to its credit essentially four main achievements. First, it has introduced the principle of parliamentary participation in the structure and work of international organizations – a precedent followed in the major European institutions established thereafter. Its Parliamentary Assembly, composed of members of the national parliaments of all democratic States in Europe but one has established its position as "the voice of democratic Europe", debating and expressing its views on the major international problems of our times. Secondly, while half its members have opted to join the European Communities, the Council has succeeded in preventing a scission between Community Europe and the rest of democratic Europe, giving to all partners an opportunity of discussing their mutual relations and acting jointly with regard to many matters not dealt with by the Communities – a function of particular importance to those who have not acceded to the treaties of Paris and Rome. Thirdly, the Council of Europe has established the most effective system for the international protection of human rights known anywhere in the world. This constitutes its most important single achievement, known sometimes as "the hall-mark of the Council of Europe", and is so far undoubtedly more effective than the mechanisms established by the United Nations or the → Organization of American States. Fourthly, the Council's programme of inter-governmental activities – corresponding on a regional basis to the work of some of the United Nations Specialized Agencies (ILO; → United Nations Educational, Scientific and Cultural Organization; → World Health Organization) – has brought about a large measure of practical, if unspectacular, cooperation between the countries of democratic Europe. Admittedly, this is far less than the ideal of European unity proclaimed in the aftermath of World War II, but it may constitute an essential prerequisite for the attainment of that long-term objective.

Statute of the Council of Europe, UNTS, Vol. 87 (1949) 103–129; ETS 1.

European Convention on Human Rights, UNTS, Vol. 213 (1950) 221–257; ETS 5.

Council of Europe, European Conventions and Agreements, Vol. 1, 1949–1961 (1971) ; Vol. 2, 1961–1970 (1972); Vol. 3, 1972–1974 (1975).

Report of the Secretary-General on the Activities of the Council of Europe (published annually since 1972).

European Movement, The European Movement and the Council of Europe (1950).

K. CARSTENS, Das Recht des Europarats (1956).

A.H. ROBERTSON, The Council of Europe, Its Structure, Functions and Achievements (2nd ed. 1961).

K. VASAK, Le Conseil de l'Europe, Juris-classeur de droit international, Fascicule 155 A (1964).

Council of Europe, Manual of the Council of Europe: Structure, Functions and Achievements (1970).

C. MELCHIOR DE MOLÈNES, L'Europe de Strasbourg, Une première expérience de parlementarisme international (1971).

Das Europa der Siebzehn, Bilanz und Perspektiven von 25 Jahren Europarat (1974).

F. SUR, La Charte Sociale Européenne: Dix années d'application, European Yearbook, Vol. 22 (1974) 88–136.

H. GOLSONG, Le programme juridique du Conseil de l'Europe, European Yearbook, Vol. 23 (1975) 141–160.

G. ADINOLFI, Pouvoirs limités mais influence réelle d'un organe consultatif: l'Assemblée parlementaire du Conseil de l'Europe, European Yearbook, Vol. 27 (1979) 25–54.

E. HARREMOES, Criminological Research: The Role of the Council of Europe, European Yearbook, Vol. 28 (1980).

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

A. Historical Background and Legal Framework: 1. History of the Court. 2. Legal Framework. – B. Constitution of the Court: 1. Institutional Framework. 2. Composition. 3. Plenary Court and Chambers. 4. Registry and Administration. 5. Representation of Parties. – C. Jurisdiction of the Court: 1. General. 2. Action for Non-Fulfilment of Treaty Obligations. 3. Action for Annulment and Appeal for Failure to Act. 4. Preliminary Rulings. 5. Action for Non-Contractual Liability. 6. Staff Cases. 7. Opinions of the Court. 8. Additional Conventions. 9. Arbitration Clauses. – D. Procedure: 1. Rules of Procedure. 2. Outline of Typical Procedures. 3. Form of Judgments. 4. Incidental Procedures and Urgent Measures. 5. Enforcement of Judgments. – E. Activities and Evaluation: 1. Statistical Data. 2. Assessment of the Court's Work.

A. Historical Background and Legal Framework

1. History of the Court

The Court was originally instituted in the legal framework of the Treaty establishing the → European Coal and Steel Community (ECSC). It began its work in December 1952 in Luxembourg where its seat has since remained fixed. After the entry into force in 1958 of the treaties establishing the → European Economic Community (EEC) and the → European Atomic Energy Community (Euratom), the Court has functioned as a common institution of the three → European Communities under three parallel sets of rules. Their provisions are identical as far as the structure of the Court is concerned, whereas the legal remedies remain governed by the particular rules of each of the treaties.

In the → negotiations which led to the creation of the first Community, the essential task of the Court was seen in exerting legal control over the common executive, called at that time the High Authority. This approach explains why the judicial provisions of the EEC Treaty have been influenced by the concepts of administrative law and, more especially, by the French *recours administratif*, considering the predominant role played by France in those negotiations. This régime was subsequently developed in many respects by the treaties instituting the EEC and Euratom. The system of legal actions as it was established by these treaties is based on four main types of actions: Actions in case of failure by member States to fulfil their obligations under the treaties; review of acts of the Council and the Commission; preliminary rulings in the combined field of interpretation of Community law and control of validity of Community acts; actions for compensation for damage caused by the Community.

In practice, it has been the interpretation of the provisions of the EEC Treaty which have accounted mainly for the Court's business and which have therefore determined the general style of the case-law. Indications in this article refer to the exercise of the Court's jurisdiction in the field of the EEC Treaty, unless otherwise specified.

2. Legal Framework

The basic provisions relating to the constitution of the Court and the legal remedies are contained in the three treaties, in each of which a section devoted to the Court of Justice follows sections relating to the other main institutions. In the EEC

Treaty, the relevant provisions are to be found in Arts. 164 to 188.

Detailed rules concerning the structure and functioning of the Court have been embodied in three separate Protocols on the Statute of the Court, annexed to each of the Treaties. Apart from a few details, the provisions of these Protocols are identical.

Under Art. 188 of the EEC Treaty, the Court is empowered to adopt its own rules of procedure after having obtained the unanimous approval of the Council. These rules were laid down first in the early days of the ECSC and they have been adapted on several occasions since. The latest coordinated version of the rules of procedure has been published in the Official Journal of the Communities (C 39 of February 15, 1982). Details on the composition of the Court and other procedural matters are published periodically in the C series of the same Journal.

B. Constitution of the Court

1. Institutional Framework

According to Art. 4 of the EEC Treaty, the Court is one of the four main institutions of the Community, alongside the Assembly, the Council and the Commission, called upon to carry out in its own field "the tasks entrusted to the Community". The general mission of the Court is described in Art. 164 as follows: "The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed." This is a rather weak transposition of the French original, stemming from Art. 31 of the ECSC Treaty: "La Cour de justice assure le respect du droit dans l'interprétation et l'application du présent traité."

According to these general provisions, the Court has considered its task to be not only that of settling disputes and implementing Community law proper, but also of ensuring observance of the law in its broadest sense. Accordingly, the Court has taken an open approach to the question of the sources of the law governing its functions, deriving its inspiration broadly, i.e. not only from the Treaties and acts of so-called "secondary Community legislation" (regulations, directives and decisions), but also from the common standards of the law of member States, → general principles of law and also → international law, whenever external relations are involved (→ European Communities: External Relations).

2. Composition

Originally, the Court was composed of seven judges. This number has been increased on the occasion of the successive enlargements of the Community to nine judges upon accession of Denmark, Ireland and the United Kingdom, in 1973, and then again to ten judges following the admission of Greece in 1981. At that time, on a request of the Court itself, the number of judges was increased to eleven rather than ten (in order to keep the number uneven).

Under Art. 167 of the EEC Treaty, judges are appointed by common accord of the governments of the member States for a term of six years; appointments are arranged in such a way that a partial replacement of judges takes place every three years.

Judges must be chosen from persons whose independence is beyond doubt and who either possess the qualifications required for appointment to the highest judicial offices in their respective countries, or are lawyers of recognized standing. The treaties do not impose any requirement as to → nationality, but in fact appointments have been made in such a way that each of the member States has the right to propose one judge, the one remaining seat being filled *ad hoc* by agreement of the governments. Judges are eligible for reappointment and it may be noted that so far judges have as a rule served two or three terms. This has resulted in a great stability in the composition of the bench and accordingly in the case-law itself.

The President of the Court is elected by the judges among themselves for periods of three years coinciding with the periodic renewals. Here also re-election has been the rule. Apart from representing the Court and presiding over its deliberations, the President is responsible for the progress of proceedings. It is he who fixes time limits for the parties and establishes the calendar of the Court's hearings and deliberations.

Pursuant to Art. 166 the Court is assisted by advocates-general, appointed under the same conditions as the judges. There were originally two advocates-general. Their number was in-

creased to four upon the first enlargement of the Community and it is at present five. The advocates-general are neither representatives of the Community nor public prosecutors (this role being entrusted rather to the Commission). The task of an advocate-general is to submit in open court legal opinions on cases before the Court, acting with complete impartiality and independence.

According to Art. 6 of the Court's rules of procedure, the precedence of judges and advocates-general is determined by the date of their appointment.

Under the Court's Statute, judges and advocates-general are immune from legal proceedings. A judge or an advocate-general may be removed from his office only by unanimous decision of the Court itself, the person concerned being excluded from such deliberations.

The Court works on a permanent basis and members of the Court must have a permanent residence at the seat of the institution.

3. *Plenary Court and Chambers*

The Court normally sits in plenary session. Under Art. 165 of the EEC Treaty, the Court may "form chambers, each consisting of three or five Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories or cases". The Court has availed itself of this possibility to form three chambers of three judges, designated as being the First, the Second and the Third Chambers, and two chambers of five judges, designated as being the Fourth and the Fifth Chambers. Judges are assigned on a permanent basis to one chamber of three and one chamber of five judges. The Presidents of Chambers are appointed by the plenary Court on the basis of a yearly rotation. (Similar rules apply to the appointment of the First Advocate-General.)

Under the same article, cases brought by member States or by one of the Community institutions must be heard in plenary session. All other cases may be delegated to the chambers. Under the rules of procedure, this applies automatically to all staff cases; other cases may be transferred to the chambers by decision of the plenary Court. According to an established practice the Court avails itself of this possibility in cases which raise mainly technical issues and in matters for which there appears already to be settled case-law. Cases of an intermediate degree of difficulty go to chambers of five judges. Under these arrangements almost one half of the Court's cases are at present handled by chambers.

The Court may sit in three different types of meetings: public hearings with the judges and the advocate-general handling the case with the Registrar in attendance; "administrative meetings" for the purpose of preparing cases and deciding internal matters of the Court with the participation of all members, including the Registrar; deliberations in which only the judges participate. The same applies *mutatis mutandis* to the Chambers.

The quorum is fixed by Art. 15 of the Court's Statute at seven judges for the plenary Court and at three for the chambers.

Decisions of the Court are taken by simple majority. If the Court finds itself evenly numbered, the vote of the lowest ranking judge will not be taken into account. The majority decision constitutes the opinion of the Court. The Court rules do not provide for the expression of any sort of individual opinions, dissenting or concurring. Deliberations of the Court are and remain secret. These rules taken together contribute to a collegial approach to contentious problems. In their practical effect they promote balanced solutions and continuity in the case-law. It is generally considered that they are an essential safeguard for the judges' independence.

4. *Registry and Administration*

The Court appoints its Registrar as well as one or more assistant registrars. The Registrar has manifold functions. On the one hand he is in charge of registry, as in this capacity he follows the procedural development of the cases, channels the relations with the parties and keeps the Court's archives. On the other hand he is the general manager of the Court's administration, composed of a branch for general administration, personnel and finance, a library and research branch, a translation department and a small information unit for public relations. Subject to the approval of the financial authorities of the Community, the Court draws up its own budget, which is implemented under its own authority.

5. *Representation of Parties*

Under Art. 17 of the Statute, member States and institutions of the Community are represented before the Court by an agent appointed for each case. Agents are mostly drawn from the legal departments either of governments or of Community institutions, as the case may be. The agent may be assisted by advisers or by lawyers in private practice or holding an academic appointment where such an appointment gives rise to a right of audience in his member State.

Private parties must be represented by a lawyer entitled to practise before the courts of any one of the member States. There is, in other words, no bar specifically attached to the Court, it being the right of any lawyer qualified for practice before the national courts of any one of the member States to act before the European Court.

C. Jurisdiction of the Court

1. *General*

Under Art. 164 of the EEC Treaty (Arts. 31 and 136 of the ECSC and Euratom Treaties, respectively), the Court is entrusted with the general task of ensuring observance of the law, or, as is said in Art. 173 of the EEC Treaty, of reviewing the legality of the acts of Community institutions. There is, however, no general form of action corresponding to this very broad definition of the Court's task. Legal control is exercised through a certain number of well-defined legal remedies, and actions may be brought before the Court only through one of these predetermined channels. Two provisions of the treaties ensure, on the one hand, that the bounds of these actions are not exceeded by the Court and, on the other hand, that in their own field the legal remedies are exclusive of any other ways of solving legal controversies.

Art. 183 of the EEC Treaty provides that "[s]ave where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States". Under this article, the contractual liability of the Community (Art. 215, para. 1 of the EEC Treaty) comes under the jurisdiction of the competent national courts. Taken together with the provisions on non-contractual liability, Art. 183 ensures that the Community is always subject to the jurisdiction of an appropriate tribunal.

The exclusive character of the Court's jurisdiction is guaranteed by Art. 219 of the EEC Treaty according to which: "Member States undertake not to submit a dispute concerning the interpretation or application of this Treaty to any method of settlement other than those provided for therein". No international court may therefore have jurisdiction in Community matters.

2. *Action for Non-Fulfilment of Treaty Obligations*

This action was first introduced by Art. 88 of the ECSC Treaty under which "[i]f the High Authority considers that a State has failed to fulfil an obligation under this Treaty, it shall record this failure in a reasoned decision after giving the State concerned the opportunity to submit its comments. It shall set the State a time limit for the fulfilment of its obligation." The State concerned may bring an action for annulment before the Court within two months of the notification of the decision. It is to be noted that the ECSC Treaty did not provide for actions brought by member States against each other.

In the EEC and Euratom Treaties, the action for non-fulfilment was maintained, but the conditions of its functioning were substantially changed. Art. 169 of the EEC Treaty reads:

> "If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.
>
> If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice."

Art. 170 gives the same right to any member State. However, before introducing an action in Court, the member State must give the Commission the occasion of expressing its opinion on the matter. In both cases, according to Art. 171, it is for the Court to establish whether a member State has failed to fulfil its obligations, and it is added that "the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice".

Actions under Art. 169 by the Commission are not infrequent, whereas actions by member States under Art. 170 have so far remained exceptional. It appears that member States prefer to bring their complaints informally to the attention of the Commission and leave the action to the latter.

Member States are liable to proceedings under Arts. 169 to 171 for actions of all their branches, whether legislative, governmental, administrative or judicial. It should be noted that so far no actions have been introduced against decisions of national courts (see however the protests of the Commission against decisions of the German Constitutional Court and the French Conseil d'Etat, 8th General Report, 1974, Section 465, and 13th General Report, 1979, Section 599, respectively).

In practice, this legal remedy has proved to be effective not only through the findings of the Court, but also through the preliminary part of the proceedings, which is in the hands of the Commission and which leads in a vast majority of the cases to a voluntary settlement of existing disputes. Detailed information on this aspect may be found in the yearly General Reports of the Commission in which a section is devoted to developments in the field of Community law.

There are no direct means of compulsion obliging member States to abide by the decisions of the Court. Experience shows that though there has sometimes been delay in implementing the judgments, member States have so far always in the end complied with the Court's decisions. For indirect methods of enforcement see section D5 below.

3. Action for Annulment and Appeal for Failure to Act

According to Art. 173 of the EEC Treaty "[t]he Court of Justice shall review the legality of acts of the Council and the Commission". For this purpose the Court has jurisdiction in actions for annulment of such acts brought by member States, the Council or the Commission. An action is open to private persons against decisions which are of direct and individual concern to them. Proceedings under this provision must be introduced within a time limit of two months.

Art. 173 admits control of legality under four grounds which are defined along the well-known pattern of the French *recours administratif* and may therefore seem somewhat unusual by the standards of other legal systems. Practice shows however that the four grounds, being defined as "lack of competence", "infringement of an essential procedural requirement", "infringement of this Treaty or of any rule of law relating to its application" and "misuse of powers" (*détournement de pouvoir*), are so broadly framed that any reasonable complaint may easily be brought under at least one of these headings.

If the action is well founded, the Court of Justice declares the act concerned to be void. By its nature annulment renders the contested act void *ex tunc*. However, the Court may uphold, in the interest of legal security, the past effects of a regulation declared void (Art. 174).

These provisions are complemented by Art. 175. This article provides a remedy in case of default of the Council or the Commission if these institutions have failed to take action where they were bound to do so. In such a case, a member State, an institution or a private person may bring an action before the Court if the institution concerned, after having been called upon to act, has not defined its position within two months.

Whenever the Court has declared an act of one of the institutions to be void, or declared its inaction to be illegal, the institution concerned is required to take the necessary measures to comply with the judgment of the Court (Art. 176).

As is to be seen from these texts, member States and Community institutions may challenge any act, including regulations; private persons, however, are allowed to bring actions only against individual decisions which are of direct concern to them. In other words, private persons have no standing to initiate actions against acts of a legislative character. This restrictive approach to the EEC Treaty has aroused much criticism, but attempts to induce the Court to lower the barriers set up by Art. 173 to actions by private parties against legislative acts have remained unsuccessful under the consistent case-law since Confédération nationale des producteurs de fruits et légumes v. Council, Joined Cases 16 and 17/62 (ECR (1962) p. 471). This approach must be understood against the background of Art. 184 which allows any party in proceedings brought before the Court to invoke at any time by way of exception the inap-

plicability of a regulation if this is the basis of an act challenged under Art. 173. Thus, it is open also to private persons to question the validity of any regulations which are at the basis of individual decisions addressed to them (→ Standing before International Courts and Tribunals).

There is a regular flow of actions for annulment brought by member States and private parties, whereas inter-institutional disputes have remained quite exceptional under Art. 173. It may also be recorded that there have only been very few cases for failure to act under Art. 175 and that none of these actions has succeeded so far; the score is slightly more favourable under the corresponding provisions of the ECSC Treaty (Art. 35).

4. *Preliminary Rulings*

Under Art. 177 of the EEC Treaty, the Court of Justice has jurisdiction to give preliminary rulings on (a) the interpretation of the Treaty and (b) the validity and interpretation of acts of the institutions of the Community. Where such a question is raised before any court or tribunal of a member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give such a preliminary ruling thereon. Where any such question is raised in a case pending before a court of a member State, against whose decision there is no judicial remedy, that court is bound in any case to bring the matter before the Court of Justice.

There are no fixed rules as to the form in which national courts must introduce their request under Art. 177. This is a matter for national judges to decide according to the judicial style of their legal system. In fact, requests for preliminary rulings are generally framed in the form either of interlocutory judgments or orders by national courts setting out briefly the facts of the case as well as the legal problem raised. There is complete freedom as to the formulation of the questions addressed to the Court. It is the established practice to communicate the complete file of the case together with the request. On its part, the Court rules on the questions referred to it in a reasoned judgment. The national court seeking the opinion of the Court is legally bound by this ruling, which is part of the decision-making process and not mere advice.

The implementation of Art. 177 has brought about close cooperation between national courts and the Court of the European Communities. This cooperation has been a powerful instrument in furthering uniform application and the growth of Community law.

Difficulties have been encountered at times, on the one hand, by the fact that sometimes courts having jurisdiction of last instance have not complied with their obligation to refer matters to the Community Court, mostly under the pretext of the doctrine of *acte clair*. There is no remedy for private parties against such failure, which might however give rise to an action for breach of the EEC Treaty against the member State concerned.

On the other hand, some concepts in Art. 177 have to be interpreted by the Court itself with a view to determining the admissibility of certain requests. Thus the question was raised whether international agreements concluded by the Community with third States or agreements in which the Community has been substituted for its member States must be considered as "acts of the institutions" under Art. 177 (see → International Organizations, Treaty-Making Power). The answer of the Court was in the affirmative, it being understood, however, that such an interpretation has authority only within the Community and may of course not be set up against third States (see Haegeman v. Belgian State, April 3, 1974, ECR (1974) p. 449). Another point, which remained unsettled for a long time, is the question whether arbitral tribunals are entitled to request a preliminary ruling under Art. 177. It appears from the case-law that an arbitral body instituted by agreement between private parties does not qualify as a "court of a Member State" under Art. 177, it being understood, however, that a public law court may apply for a preliminary ruling whenever an arbitral award is referred to it on appeal or with a view to obtaining an *exequatur* (see Nordsee v. Mond & Busse, March 23, 1982). On the contrary, arbitral tribunals do qualify under Art. 177 whenever they are vested with an explicit or implicit grant of jurisdictional power by the State (see Vaasen v. Beamtenfonds voor het Mijnbedrijf, Case 61/65, ECR (1966) p. 261, and Broekmeulen v. Huisarts Registratie Commissie, Case 246/80, ECR (1981) p. 2311).

Finally, it is worthwhile mentioning that the

question has been raised under what standards the Court may examine the validity of acts of the institutions under Art. 177. The case-law shows that the Court may use as a guideline any rule of law coming under the broad definition of Art. 164, i.e. not only rules of Community law but also general principles of law and, where appropriate, rules of international law.

5. *Action for Non-Contractual Liability*

Under Art. 215, para. 2 of the EEC Treaty, in the case of non-contractual liability "the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the institutions or by its servants in the performance of their duties". According to Art. 178 the Court of Justice has exclusive jurisdiction in this matter.

The purpose of these provisions in combination is to establish in the Community a régime of responsibility on the basis of the principles which govern liability of public administrations in the member States. At the same time, these provisions ensure that actions in tort may be brought against the Community only in the Community Court itself and not in national courts. Contrasted with the legal position of international organizations (→ International Organizations, Responsibility), the Community is therefore liable to third parties for its actions on the same footing as the member States are liable towards their own citizens.

The terms of Art. 215 are very broad in so far as they cover any sort of damage imputable to the Community, whatever its cause (material facts or wrongful acts in a legal sense). Experience shows, quite strikingly, that cases brought before the Court under these provisions do not resemble in any way cases such as those usually brought against the public administration in national courts, as in almost all the claims for liability, apart from staff matters, the damage for which relief has been sought so far has been based on the effect of Community regulations, i.e. acts of a legislative character. The judgments rendered by the Court in this field make it clear that compensation may be granted in such cases only in exceptional circumstances where it can be established that the damage is due to the violation of some basic rule aimed at protecting the interests of private persons. Apart from these exceptional circumstances, the Court adheres to the opinion widely held in the member States that legislative acts, though they may entail economic disadvantages for some persons or even large sectors of the population, may not give rise to any liability of the State.

6. *Staff Cases*

According to Art. 179 of the EEC Treaty, the Court has jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations (→ Civil Service, European). Under these rules, the Court has power to review the legality of any actions of the institutions in relation to their servants. The ordinary way of exercising this control is by annulment of decisions found contrary either to the Staff Regulations or any legal rule relating to their application. In matters involving pecuniary interests, the Court may substitute its own judgment for the decision of the administration and award compensation or other benefits (cf. → Administrative Tribunals, Boards and Commissions in International Organizations).

7. *Opinions of the Court*

Unlike the → International Court of Justice, the Court of the European Communities has no general power to give advisory opinions (→ Advisory Opinions of International Courts). In this respect, it must again be stressed that preliminary rulings under Art. 177 are not mere consultative opinions but rulings binding on national courts. However, all three of the Community treaties provide for opinions of the Court in special circumstances, it being understood that in all these cases the Court is called not only to give legal advice but to render opinions which have precise legal effects.

Art. 95, paras. 3 and 4 of the ECSC Treaty provide for an autonomous procedure of amendment of the Treaty in certain circumstances without recourse to the formal amendment procedure of Art. 96, which requires ratification by member States. Such amendments must be submitted to the Court for preliminary scrutiny and they may enter into force only if they are found by the Court to be within the framework of the

provisions of Art. 95. Three opinions have been delivered by the Court on this basis: December 17, 1959 (ECR (1959) p. 259) declaring a draft amendment "not compatible"; the same draft having been revised to take account of the Court's opinion, it was declared "compatible" by opinion 1/60 (ECR (1960) p. 39). A further draft amendment met again with objections of the Court in opinion 1/61 (ECR (1961) p. 243) and this was the last word in that matter.

Under Art. 228 of the EEC Treaty, whenever a doubt arises as to the compatibility with the Treaty of an international agreement proposed to be entered into by the Community, the Council, the Commission or a member State may ask beforehand for the opinion of the Court. In case of a negative opinion, the agreement may be concluded only by complying with the provisions of Art. 236 relating to amendment of the Treaty. This procedure has been used several times by the Commission in cases where doubts existed as to whether certain agreements under negotiation were in harmony with the Treaty. The opinions given by the Court under this provision have helped to clarify the problem of the international capacity of the Community. One of the opinions given was negative and the draft agreement had to be abandoned, whereas in the other cases the opinion of the Court was conditional upon the contemplated agreements respecting the provisions concerning the treaty-making power of the Community and the prerogatives of the Council and Commission. (See: Opinion 1/75, Understanding on a Local Cost Standard (ECR (1975) p. 1355); Opinion 1/76 (ECR (1977) p. 741) on a Draft Agreement Establishing European Laying-up Fund for Inland Waterway Vessels; Opinion 1/78 (ECR (1979) p. 2871) on the International Rubber Agreement.)

Similar provisions, applicable to agreements or contracts under negotiation by member States, national agencies or private persons in the field of nuclear energy are to be found in Arts. 103 and 104 of the Euratom Treaty (→ Nuclear Energy, Peaceful Use). So far the Court has been called upon once to give a ruling on this basis and it found in that case that an agreement on nuclear security could be concluded only on condition that the Community would participate on an equal footing with its member States in the contemplated agreement. See: Ruling 1/78 of November 14, 1978 (ECR (1978) p. 2151) on the Draft Convention of the → International Atomic Energy Agency on the Physical Protection of Nuclear Materials Facilities and Transports.

8. *Additional Conventions*

The procedure of preliminary rulings has been extended, with certain modifications, to two conventions concluded among the member States under Art. 220 of the Treaty: By a Protocol on the Interpretation by the Court of the Convention of February 29, 1968 on the Mutual Recognition of Companies and by a Protocol on the Interpretation by the Court of Justice of the Convention of September 27, 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. The latter Protocol has created a steady flow to the Court of requests from national courts of appeal and supreme courts in civil and commercial matters relating to the interpretation of that Convention.

9. *Arbitration Clauses*

Under Art. 181 of the EEC Treaty, the Court of Justice has jurisdiction to give judgment pursuant to arbitration clauses contained in private and public law contracts concluded by or on behalf of the Community. Identical provisions are to be found in the ECSC and Euratom Treaties. Clauses to this effect are included currently in contracts concluded by the Commission, but litigation in such cases has so far been exceptional. It should be recalled that in the absence of such arbitral clauses, the private law contracts concluded by the Community are subject to the combined provisions of Art. 215, para. 1 and Art. 183 whereby the national courts have jurisdiction *ratione contractus*.

D. Procedure

1. *Rules of Procedure*

The rules of procedure established under Art. 188 of the EEC Treaty and the parallel provisions of the other Community treaties contain detailed provisions on the internal organization of the Court (Arts. 1 to 36), the general rules in procedural matters (Arts. 37 to 82) and the special forms of procedure (Arts. 83 to 109).

The general features of Court procedure correspond to the common standards of both national and international courts (→ Procedure of International Courts and Tribunals). The adversarial character of procedure, and, more especially, the equality of parties and the rights of defence are strictly observed. Hearings are public and judgments are read in open Court. There is no charge for litigation, apart from the cost of representation of the parties. Two distinctive features must be mentioned especially. On the one hand, the institution of measures of inquiry is reserved to the Court itself and not left to the discretion of the parties; the Court is to administer justice and not only to play the role of an umpire. On the other hand, apart from urgent matters, the Court acts throughout as a body. There is no room for expression of individual attitudes.

2. Outline of Typical Procedures

Proceedings are instituted by unilateral application of member States, Community institutions or private persons, as the case may be, under claims for the different remedies outlined above. Requests for preliminary rulings, however, may be introduced only by national courts within the terms of Art. 177 of the EEC Treaty.

Upon receipt of an application the President assigns each case to one of the chambers for possible measures of inquiry and appoints one of the judges of this chamber to act as rapporteur. On his side, the First Advocate-General attributes the case to one of the advocates-general. In principle, the judge-rapporteur and the advocate-general are appointed in rotation. The Court has never allowed any sort of specialization to develop among its members.

The judge-rapporteur and the advocate-general follow the development of the case throughout and consider themselves responsible for the progress of proceedings and the preparation of a basis for a solution. It is only by this method of handling cases that the Court has been able to cope successfully with its ever-increasing work load.

The Registrar is bound to publish in the Official Journal (series C) a notice giving the particulars of each application including an indication either of the contentions of the parties or of the questions raised by national courts, as the case may be. Applications for preliminary rulings under Art. 177 must be notified according to Art. 20 of the Statute not only to the parties to the main action, but also to the member States and to the Commission, as well as to the Council whenever an act of the Council is at issue.

In contentious cases the application is followed by a defence and this exchange of documents may be and, in fact, most often is supplemented by a reply from the applicant and by a rejoinder from the defendant, within time limits set by the President of the Court. The exchange of documents constitutes the written phase of the proceedings. In cases for preliminary rulings there is no exchange of written argument but only an opportunity for the parties in the main action, the governments of member States and the institutions of the Community to lodge written observations within two months of the notification by the Registrar of the request of the national Court. It should be noted that the Commission avails itself of this opportunity in all cases.

Upon completion of the written procedure, the judge-rapporteur presents the Court in administrative session with a "preliminary report", in which, after describing the facts at issue and the legal problems raised by the case, he submits to the Court proposals for supplementary inquiries which might be needed. These inquiries may be either requests for further information and production of documents, which is current practice, or requests for personal appearance of the parties, evidence (→ Evidence before International Courts and Tribunals), or expert reports. The preliminary report also contains a proposal as to whether the case is to be retained at plenary level or delegated to one of the Court's chambers. Decisions on this matter are taken by the Court itself and a date is normally set on the same occasion for the oral hearing.

If the Court decides on further inquiries in the form of evidence or reports by an expert, the implementation of these measures is assigned to the competent chamber of the Court. After completion of these measures the chamber reports back to the Court.

The hearings of the Court are public, unless the Court for special reasons decides otherwise. During the hearings, the judges and the advocate-

general may put questions to the parties as they think fit. The opinion of the advocate-general is normally presented at a separate hearing, several weeks after the hearing of the parties.

For the purposes of the oral hearing, the judge-rapporteur has the responsibility of establishing a "report for the hearing" which is a public document, quite distinct from the preliminary report. In the report for the hearing, the rapporteur sets out all the particulars of the case, indicating the parties, the facts alleged or established, the submissions presented to the Court and a concise summary of the legal arguments. Parties may make observations on this report which will finally reappear as the introductory part of the judgment itself.

After hearing the advocate-general, the Court deliberates on the matter in private session. The discussion is opened by the judge-rapporteur who presents the Court with a written introductory note, or an oral statement as he thinks fit; he may also introduce immediately a draft judgment or reserve the right to formulate his draft after a first round of discussion. Deliberation and voting are informal and there is no record kept of the opinions expressed and the decisions taken. Any member of the Court is free to make a motion for oral or written amendments or for a counter-proposal. According to the degree of difficulty of the case, there may be two or more successive readings of the drafts presented by the judge-rapporteur.

If in the course of deliberation the Court feels that it is not fully informed, it may at any time decide on the reopening of the proceedings and request new arguments in writing or orally by the parties, or institute any supplementary measures of inquiry. The Court may also deliver interlocutory judgments, by giving a preliminary decision either on certain principles, or on part of the contentions of the parties, leaving the final decision to a further phase of the proceedings.

In a multinational community the problem of language plays a prominent part. All the official languages of the Community are also official languages of the Court, but a particular language is chosen in each case to be "the language of the case". This language is determined in the following way under Art. 29 of the rules: The language is chosen in principle by the applicant, except that, where the application is made against a member State, the language of the case is the official language of that State. In applications for preliminary rulings, the language of the case is the language used by the national court which refers the matter to the Court. The language of the case must be used in all written statements by the parties and in their oral addresses to the Court. However, the Court may allow a party to depart from that rule after having heard the other party; this option is not open to the institutions, which must be prepared to respond always in the language chosen by the applicant. Representatives of governments have the privilege of addressing the Court in their own language when they present observations in cases for preliminary rulings. The judgment of the Court has to be delivered in the language of the case, this text being the sole authentic version. As a matter of practice, the Court provides a simultaneous translation into all official languages at the oral hearings.

It should be stressed that the linguistic rules apply only to the open part of the proceedings. There are no rules for the internal deliberations of the Court, where business is transacted as the Court thinks fit for practical purposes. The Court has never allowed external considerations to interfere with this attitude.

3. *Form of Judgments*

The decisions of the court (→ Judgments of International Courts and Tribunals) normally take the form of judgments which are structured in three main parts: "Facts and issues", which is nothing other than an updated version of the report for the hearing, giving an objective description of the facts, the procedural development of the case, the submissions of the parties and their arguments. The central part of the judgment is constituted by the Court's reasoning, followed by the actual decision, including a decision on costs. Judgments are signed by all the judges who have participated in the decision and by the Registrar.

Decisions of the Court in procedural matters are couched in the form of orders which are signed in the name of the Court by the President.

Opinions of the Court appear in a form similar to the judgments, in so far as they are introduced by a descriptive part in neutral style, followed by

the Court's reasoning and the final conclusion. As with judgments, opinions are signed by all the judges who have participated and the Registrar.

Judgments, opinions and the more important orders are published in full under their date in the Court's Reports which appear in all the official languages. A short notice is published in the Official Journal (series C).

4. Incidental Procedures and Urgent Measures

Among the incidental procedures for which the Court rules make provision three deserve special mention: Interim measures, preliminary objections and intervention.

(a) Pursuant to Art. 186 of the EEC Treaty the Court may prescribe any necessary interim measures (→ Interim Measures of Protection). According to Art. 36 of the Court's Statute, the decisions on interim measures are taken by the President on a summary procedure; the President may remit the decision to the plenary Court in his discretion. There is no limit set as to the possible content of such measures. In cases where the decision of one of the Community institutions is challenged, the President may decide on the suspension of the contested measure pending the termination of the proceedings. Procedural rules and existing practical arrangements allow the Court to cope expeditiously with urgent matters at any time.

(b) Pursuant to Arts. 91 and 92 of the Court's regulations, parties may ask the Court to rule by separate decision on → preliminary objections. In practice such objections mostly relate to matters of the Court's jurisdiction and matters of admissibility. It is up to the Court to decide whether it will take up such matters separately or, as is often done, reserve them for the final decision.

(c) Pursuant to Art. 37 of the Court's Statute, intervention is open *ipso jure* to member States and institutions of the Community. Private persons may intervene if they can establish an interest in the result of the case, except in cases between member States, between institutions or between member States and institutions. Art. 93 of the Court's regulations provides that an application to intervene must be made within three months of the publication of the notice inserted in the Official Journal on the introduction of the case.

It is to be noted that intervention is not admissible in proceedings for preliminary rulings, these being mere steps in proceedings opened before a national court. Thus participation of third parties could be allowed only when they have standing to intervene in the proceedings pending before the national Court. It must, however, be recalled that under the Court's Statute it is open to the governments of member States as well as to the Commission and the Council to present written arguments and to appear at the oral hearings in preliminary rulings cases.

5. Enforcement of Judgments

Under the combined effect of Arts. 187 and 192 of the EEC Treaty, judgments of the Court which impose a pecuniary obligation on private persons are enforceable. Enforcement is governed by the rules of civil procedure of the State in whose territory it is carried out.

No enforcement measures are available against member States. Art. 88 of the ECSC Treaty contains some provisions for pressure to be brought to bear on a member State in case of breach of the Treaty, but these provisions were not adopted in the treaties establishing the EEC and Euratom. It should though be added that indirect sanctions against defaulting member States may flow from the operation of the Community's legal system. Two typical situations may be noted in this respect. On the one hand, in cases where the Court has found in proceedings for a breach of the Treaty that acts of legislation of a member State are inconsistent with Community law, it has turned out that such legislation has become practically unenforceable in the member State concerned on the basis of the principle of the primacy of Community law (→ European Communities: Community Law and Municipal Law; see the → Sea Fisheries Restrictions Case (E.C. Commission v. Ireland) and the ensuing judgment in Minister for Fisheries v. Schonenberg, Case 88/77 (ECR (1978) p. 473), and Commission v. United Kingdom, Case 804/79 (ECR (1981) p. 1045) and the ensuing judgment in R. v. Tymen of December 16, 1981). On the other hand, a judgment of the Court establishing a breach of the Treaty may be followed by an action for liability against the member State in its own courts, as

may be seen from the judgment of the Belgian Cour de cassation of May 27, 1971 in Etat belge c. Fromagerie Franco-Suisse (Cahiers de droit européen (1971) p. 561).

E. Activities and Evaluation

1. Statistical Data

The Court of Justice of the European Communities has become in the course of the years the most active judicial body on an international level. The number of cases it has handled has steadily increased. The total input of cases has approached 2000 over about 30 years (1952–1981) and the output has been some 1400 judgments and opinions during the same period. The figure of 200 new cases per year was passed in 1978 and the figure of 300 cases in 1981. Corresponding to these numbers, there is an average yearly output of about 150 judgments, account being taken of joinders and withdrawals of cases.

Considering the different legal remedies enumerated above, it is to be noted that about half of the Court's cases come under the procedure for preliminary rulings; this legal channel has allowed for an active exchange and cooperation between the Community Court and national courts and tribunals. The remaining cases are divided fairly evenly among the actions for non-fulfilment of treaty obligations, actions for annulment and actions for damages. Staff cases also provide a steady flow of complaints (an average of 20 per cent of the total), so much so that the Court has proposed to the Council that a staff tribunal of first instance be established.

The Court's administration, which started with very modest numbers, has now attained the level of 450 officials of all grades, one third of whom are occupied in the translation service.

2. Assessment of the Court's Work

From the point of view of international law, it must be said that only a minor part of the Court's work falls into the field of international law properly so called. The bulk of the Court's action relates to the internal problems of the Community itself, to the relationship between the Community and its member States and to the various aspects of private interests involved in the Community process. But again, since all these matters are considered in a multinational perspective, this experience is relevant also for → international relations. The case-law of the Court has made some major contributions to the development of the law, including international law.

As to substantive law, the Court's decisions cover a wide range of matters in an area which may be broadly defined as being that of the law of economic integration as it is to be found in international schemes for the creation of common markets (→ Economic Communities and Groups), → customs union and → free trade areas. The major contribution of the Court to substantive law relates to problems of trade law (→ World Trade, Principles), such as elimination of barriers to trade, fair competition, equality of treatment in tax matters (→ Taxation, International), organization of agricultural markets (→ Commodities, International Regulation of Production and Trade), freedom of establishment and freedom to provide services. There is also extensive case-law on the free movement of persons, the treatment of → aliens (→ Rutili Case), labour law and social security. The Communities' external relations, especially in the field of commercial policy, have raised typical international law issues (→ Donckerwolcke Case; → European Road Transport Agreement Case, → International Fruit Co. Case; see also the Opinions ex Art. 228 of the EEC Treaty and the Ruling ex Art. 103 of the Euratom Treaty mentioned *supra*).

Throughout its decided cases, the Court has from the very beginning directed its endeavours to strengthening the effectiveness of Community law. There is a consistent body of case-law on the coercive and irreversible character of obligations assumed under the Community Treaties (→ Pacta sunt servanda); on the primacy of Community law over national statutes; and on the direct applicability of treaty provisions as well as so-called secondary Community legislation (→ Costa v. ENEL Case; → Van Gend en Loos Case). This case-law undoubtedly is capable of exerting a positive influence on the effectiveness of international law.

From the point of view of general international law, attention must be drawn especially to the experience gained in the field of legal review of the manner in which member States have fulfilled

their Treaty obligations (→ International Obligations, Means to Secure Performance; → Premiums for Reducing Dairy Production Case (E.C. Commission v. Italy); → Sea Fisheries Restrictions Case). It is the first time in history that a systematic follow-up of the action of States has been applied and sanctioned by judicial action.

However, in a quite unexpected way, the procedure for preliminary ruling has turned out to be an even more effective means of compelling member States to abide by their obligations. Analysis of the case-law shows that a major part of requests for preliminary rulings arise out of complaints of private parties to national courts alleging a failure by the national authorities to observe rules of Community law. Thus, questions of interpretation of Community law are not infrequently put with a view to enabling national courts to check the conformity of their own national legislation with Community law. It follows that the interpretation given by the Court may well result in non-application by national courts of provisions found to be incompatible with the law of the Community. This has proved to be highly effective means of sanctioning disregard by the member States of their duties under Community law. The doctrine of the Court in this respect has been epitomized in Amministrazione delle Finanze dello Stato v. Simmenthal, Case 106/77 (ECR (1978) p. 629) in which the Court declared that Community law not only supersedes existing municipal law but also precludes "the valid adoption of new legislative measures to the extent to which they would be incompatible with Community provisions".

One of the most salient features of the Court's constitution is the fact that the Court is accessible not only to States and Community institutions, but also to enterprises and other private persons (→ Standing before International Courts and Tribunals). Though access of private parties is not unlimited, they have a *locus standi* directly in cases for annulment of decisions which are of immediate concern to them and, indirectly, through the procedure for preliminary rulings. Formally, these latter proceedings may be started only by a national court, but parties to the main action have a right to submit observations and to be represented at the oral hearing before the Community Court. Throughout its case-law the Court has shown a particular concern for the protection of the rights of the individual (→ Individuals in International Law). The doctrine of the direct applicability of Community law is but one prominent expression of this concern; mention should be made in this respect also of the construction by the Court of a system of protection for fundamental rights of individuals in the development of the Community (→ Human Rights; → Internationale Handelsgesellschaft Case).

Finally, attention should be drawn to the Court's methods of interpretation (→ Interpretation in International Law). They do not differ in principle from methods applied by any court, international or national, but their liberal inspiration is worthwhile recording. The Court operates in the framework of a completely new legal system which still presents gaps and discontinuities in many respects. Under these circumstances it has to make constructive use of the methods of legal interpretation in order to fulfil its responsibility of rendering justice to all parties concerned, to States and individuals alike (cf. → Denial of Justice). This background of evolution explains why the Court has resorted in important cases to arguments drawn from the overall system of the treaties and the aims of the Communities.

CJEC, Reports of Cases before the Court.
Review of Cases Heard by the Court of Justice of the European Communities [annual].
CJEC, Selected Instruments Relating to the Organization, Jurisdiction and Procedure of the Court (1975).
Rules of Procedure, Supplementary Rules and Instructions to the Registrar, codified versions, Official Journal of the European Communities, C 39 (1982) 1–40.
(All the above publications also appear in the other official languages of the European Communities.)

M. TORRELLI, L'individu et le droit de la Communauté économique européenne (1970).
P. PESCATORE, Aspects of the Court of Justice of the European Communities of Interest from the Point of View of International Law, ZaöRV, Vol. 32 (1972) 239–252.
P. PESCATORE, Les objectifs de la Communauté européenne comme principes d'interprétation dans la jurisprudence de la Cour de justice, in: Miscellanea W.J. Ganshof van der Meersch, Vol. 2 (1972) 325–381.
P. CAHIER, Les articles 169 et 171 du Traité instituant la

Communauté économique européenne à travers la pratique de la Commission et la jurisprudence de la Cour, Cahiers de droit européen, Vol. 10 (1974) 1–38.
P. PESCATORE, Rôle et chance du droit et des juges dans la construction de l'Europe, Revue internationale de droit comparé, Vol. 26 (1974) 5–19.
H.G. SCHERMERS, The European Court of Justice: Promoter of European Integration, AJCL, Vol. 22 (1974) 444–464.
H.G. SCHERMERS, The Law as it Stands on Preliminary Rulings, Legal Issues of European Integration (1974/1) 93–112.
I.I. KAVASS, The Court of Justice of the European Communities: An Annotated Bibliography, 1951–1973, Vanderbilt Journal of Transnational Law, Vol. 8 (1974–1975) 523–650.
A. BARAV, Failure of Member States to Fulfil their Obligations under Community Law, CMLRev, Vol. 12 (1975) 369–383.
F.G. JACOBS and A. DURAND, References to the European Court: Practice and Procedure (1975).
H.G. SCHERMERS, The Law as it Stands on the Appeals for Annulment, Legal Issues of European Integration (1975/2) 95–142.
A.G. TOTH, The Individual and European Law, ICLQ, Vol. 24 (1975) 659–706.
A.G. TOTH, The Law as it Stands on the Appeal for Failure to Act, Legal Issues of European Integration (1975/2) 65–93.
F.G. JACOBS (ed.), European Law and the Individual (1976).
H. KUTSCHER, Methods of Interpretation as Seen by a Judge at the Court of Justice, in: Court of Justice of the European Communities, Judicial and Academic Conference, Vol. 1 (1976) 5–50.
H.G. SCHERMERS, Judicial Protection in the European Communities (1976).
L. NEVILLE BROWN and F.G. JACOBS, The Court of Justice of the European Communities (1977).
G. VANDERSANDEN and A. BARAV, Contentieux communautaire (1977).
M. LAGRANGE, La Cour de Justice des Communautés européennes: Du plan Schuman à l'Union européenne, Revue trimestrielle de droit européen, Vol. 14 (1978) 1–17.
J. DE RICHEMONT, Integration of Community Law within the Legal Systems of the Member States, Article 177 of the Treaty of Rome (1979).
J. GUEGAN, Les méthodes de la Cour de Justice des Communautés européennes, Thesis, University of Rennes (1979).
K. JOUTSAMO, The Role of Preliminary Rulings in the European Communities (1979).
L. NEVILLE BROWN and K. UFF, Some Problems of Procedural Law for Common Lawyers within the Community Legal Order, in: Mélanges Fernand Dehousse, Vol. 2 (1979) 269–277.
P. PESCATORE, Bestand und Bedeutung der Grundrechte im Recht der Europäischen Gemeinschaften, Europarecht, Vol. 14 (1979) 1–12; The Context and Significance of Fundamental Rights in the Law of the European Communities, Human Rights Law Journal, Vol. 2 (1981) 295–308.
A. TIZZANO, I provvedimenti urgenti nel processo comunitario, in: I processi speciali, Studi Andrioli (1979) 361–405.
P. PESCATORE, Le recours, dans la jurisprudence de la Cour de Justice des Communautés européennes, à des normes déduites de la comparaison des droits des Etats membres, Revue internationale de droit comparé, Vol. 32 (1980) 337–359.
G. BEBR, Development of Judicial Control of the European Communities (1981) (with an extensive bibliography and a complete table of cases).
P. CAHIER, Les éléments constitutifs de la responsabilité extracontractuelle de la Communauté économique européenne, in: Mélanges offerts à Paul Reuter (1981) 127–152.
E.-W. FUSS, La responsabilité des Communautés européennes pour le comportement illégal de leurs organes, Revue trimestrielle de droit européen, Vol. 17 (1981) 1–32.
P. PESCATORE, Aspectos judiciales del "acervo comunitario", Revista de instituciones europeas, Vol. 8 (1981) 331–366; Aspects judiciaires de l'"acquis communautaire", Revue trimestrielle de droit européen, Vol. 17 (1981) 617–651.
J. SCHWARZE, Rechtsschutz Privater gegenüber normativen Rechtsakten im Recht der EWG, in: Staatsrecht, Völkerrecht, Europarecht, Festschrift für Hans-Jürgen Schlochauer (1981) 927–946.
D. SIMON, L'interprétation judiciaire des traités d'organisations internationales, Thesis, University of Nancy (1981).

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EAST AFRICAN COMMUNITY

1. Historical Background; Establishment

On June 6, 1967 Kenya, Tanzania and Uganda concluded a Treaty for East African Cooperation which created both the East African Community and an East African Common Market as an integral part of the Community. Like other regional → economic communities and groups in Africa (e.g. → Economic Community of West African States), the East African Community was established to overcome the fragmentation of economic entities which, under colonial rule, had comprised large areas, but were split up into rather small nation States as a consequence of → decolonization (see also → Decolonization: British Territories; → Regional Cooperation and Organization: African States).

East African cooperation, which had been in

existence since about 1917, was granted formal recognition and a legal framework by the East Africa High Commission, established in the then British East African territories by the British colonial power in 1948. In 1961, shortly after Tanganyika had become independent, and prior to the independence of Uganda and Kenya, the colonial governments of the latter and the independent government of Tanganyika entered into an agreement setting up the East African Common Services Organization which was intended to preserve the functions of the East Africa High Commission. When the East African Community came into being on December 1, 1967, it was able to incorporate the existing common services previously administered by the aforementioned organization and at the same time continue and elaborate the existing system of common customs tariffs.

2. *Activities and Structure*

The East African Community carried on the existing common services in the form of the East African Railways Corporation, the East African Harbours Corporation, the East African Posts and Telecommunications Corporation and the East African Airways Corporation. A new element was the establishment of an East African Common Market as an integral part of the Community. To achieve a common market, the arrangements provided, *inter alia*, for a common external tariff, non-imposition of internal tariff and quantitative restrictions, free transferability of and temporary transfer taxes on market goods, a common agricultural policy, the foundation of an East African Development Bank (→ Regional Development Banks) to promote balanced industrial development, and free capital transfer and convertibility of the partner States' currencies (→ Capital Movements, International Regulation).

The Community's main organs were the following: the Authority, consisting of the Presidents of the member States, as the principal executive; the Legislative Assembly; three African Ministers, one being nominated by each member State; Councils for the various areas, the Common Market Council being the most important; the Secretariat; the Court of Appeal for East Africa and a Common Market Tribunal; and the Development Bank. The Legislative Assembly was empowered to pass bills on a wide range of matters listed in the Treaty, but any such bill was to become effective only with the assent of the Authority. Acts of the Community were granted "force of law" within each member State, while Rules and Orders emanating from the Authority were binding upon the institutions of the Community and upon the partner States; in practice, however, the latter had the same immediate effect under national law as Community Acts.

3. *Problems and Failure*

In the first two years of its existence progress in the Community exceeded expectations, not only in respect of management of the existing common services but also as regards the establishment of a considerable number of new common institutions. But problems soon emerged in the course of unified regional development by economic integration in the Common Market; these problems became insurmountable and led eventually to the breakup of the Community. No harmonization of the transport, investment and monetary policies could be accomplished. Kenya was willing neither to have her considerable preponderance in the Community's external trade balanced in her partners' favour nor to reduce industrial investments which concentrated in Kenya, nor to agree to coordinated production on a balanced basis. Tanzania increasingly made use of transfer taxing and built her own railway system TAZARA which even had a different gauge. Initially expanding intraregional trade decreased. Free transfer of capital and currencies was never achieved.

Changes and modifications necessary to overcome the crisis of the Community would have required new initiatives from the East African Authority, i.e. the three heads of State. But the Authority had not held a meeting since 1971, when General Amin assumed power in Uganda and President Nyerere of Tanzania refused to sit at the same table with the Ugandan President. Efforts to preserve at least the functioning of the four common corporations eventually failed as well. The disintegration of the railway system was followed by that of the Harbours Corporation. After reciprocal obstacles had been imposed upon road transit traffic, the final blow

came with the closing down of East African Airways in February 1977. The integrated administration of most of the Community's General Fund Services (including statistics, civil aviation, meteorology, research and fisheries) was also terminated. On February 4, 1977 Tanzania declared the closure of its border with Kenya to all traffic, and this border has not been reopened to date. Although the Treaty for East African Cooperation was not formally terminated, the Community practically had ceased to function by the end of June 1977 (→ Treaties, Termination).

There were a number of reasons for the failure of the East African Community. The partners would not sacrifice their national interests in favour of a policy of balanced regional development which was intended to overcome existing economic disparities. Deterioration of relations after the Uganda *coup* and internal problems concerning respective "nation building" contributed to political strains on the integration process. There were underlying ideological differences, especially between Kenya and Tanzania, as to the fundamental basis of society and economy. Finally, the division of benefits became unacceptable to the member States.

4. *Liquidation and Prospects*

Sponsored by the World Bank; Dr. Viktor Umbricht, a Swiss diplomat, was appointed in early 1978 as mediator with the task of achieving agreement on the division of the Community's assets and liabilities. The presentation of Dr. Umbricht's report in 1980 was followed by an agreement of the Kenyan, Tanzanian and Ugandan Presidents in early 1981 to order a ministerial report on the issue. To date, no further agreement has been reached, nor have any further common talks with the mediator taken place. Tanzania is not prepared to reopen her border with Kenya prior to the successful → negotiation of a complete dissolution of the Community. This position prevented Tanzania from participating in a preferential trade area for Eastern and Southern African States, established by a treaty of December 21, 1981 and signed, along with seven other States, by Kenya and Uganda. Thus prospects for re-emergence in some form of what was regarded as a promising example of sub-regional cooperation between developing countries look rather dim for the near future.

Treaty for East African Cooperation, ILM, Vol. 6 (1967) 932–1057.
L.B. SOHN (ed.), Basic Documents of African Regional Organizations, Vol. 3 (1972) 1095–1482.

I. DOIMI DI DELUPIS, The East African Community and the Common Market (1970).
A.M. AKIWUMI, The Development of the Legislative Process in East African Integration, Afrika Spectrum (1972) 30–47.
Y. TANDON and A. MAZRUI, The East African Community as a Sub-Regional Grouping, in: Y. El-Ayouty and H.C. Brooks, Africa and International Organization (1974) 182–205.
G. FRIEDRICH, Gemeinsamer Markt in Ostafrika und Zentralamerika, Ein Vergleich, Verfassung und Recht in Übersee, Beiheft 6 (1975).
D. KAPPELER, Causes et conséquences de la désintégration de la Communauté est-africaine, Politique étrangère, Vol. 43 (1978) 319–330.
G.T. LECHINI, La Comunidad de Africa oriental, Revista de política internacional, No. 158 (1978) 117–146.
A.T. MUGOMBA, Regional Organizations and African Underdevelopment: the Collapse of the East African Community, Journal of Modern African Studies, Vol. 16 (1978) 261–272.
H. HEIMSOETH, Die Auflösung der ostafrikanischen Gemeinschaft, Verfassung und Recht in Übersee, Vol. 13 (1980) 55–59.

NORBERT WÜHLER

ECONOMIC COMMUNITY OF WEST AFRICAN STATES

The Economic Community of West African States (ECOWAS) was established in 1975 by a treaty signed in Lagos (ILM, Vol. 14 (1975) p. 1200), marking a breakthrough in West African integration (→ Regional Cooperation and Organization: African States).

1. *History; Establishment*

In ancient times, a network of trade routes afforded successive West African empires a nascent economic unity. At the → Berlin West Africa Conference (1884–1885) West Africa was partitioned between France, Germany, Great Britain and Portugal, whose → colonies laid the foundation for the present nation-State system. Trade patterns changed in order to respond to the need of the colonial powers. Thus British West

Africa, French West Africa, and Portuguese West Africa formed distinct groupings, while Liberia, which had been an independent republic since 1847, remained a separate entity. Between 1957 and 1965 most States of West Africa gained independence (→ Decolonization; → Decolonization: British Territories; → Decolonization: French Territories; → Decolonization: Portuguese Territories). Early attempts of Nkrumah of Ghana to foster political union of the West African States were of no avail. Piecemeal efforts produced, for example, the West African Customs Union in 1959, replaced in 1966 by the West African Customs and Economic Union, which was later transformed into the West African Economic Community (Communauté Economique de l'Afrique de l'Ouest: CEAO).

As from 1963 there was increased awareness of the need for an all-embracing economic community of all the States in the sub-region. The United Nations Economic Commission for Africa (→ Regional Commissions of the United Nations) inspired the first attempt in this regard. Between 1963 and 1967 meetings were held in Lagos, Freetown and Niamey. In 1967 the Articles of Association for the Establishment of an Economic Community of West Africa (UN Doc. E/CN/14/399, Annex 14) were signed in Accra by all the independent States of the sub-region, but did not lead to the establishment of the desired community.

General Gowon's Nigerian Government took the initiative to revive the idea. In 1972 Nigeria and Togo signed an agreement pledging to form the nucleus of an economic grouping that would later embrace the entire sub-region. A joint Nigeria-Togo ministerial committee prepared draft proposals outlining the future system, and a joint delegation presented them to all the other West African States in July and August 1973. Ministerial meetings of all the governments were then held in Lomé, Accra and Monrovia to prepare a draft treaty. The Treaty of Lagos establishing ECOWAS was signed initially by Dahomey (Benin), the Gambia, Ghana, Guinea-Bissau, the Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and Upper Volta on May 28, 1975; Cape Verde acceded to the Treaty later under Art. 62. Thus ECOWAS comprises five anglophone, nine francophone and two lusophone States. It has more member States and is more multilingual than older → customs unions such as the CEAO, the → East African Community (EAC) and the Mano River Union (MRU).

2. *Objectives*

The preamble and Art. 2 of the Treaty contain the cardinal aims of the Community: to foster sub-regional economic integration by means of effective economic cooperation and of a concerted policy of self-reliance in all fields of economic activity (→ Economic Communities and Groups). A customs union among the member States is to be progressively established within 15 years (Art. 12). Moreover, a common tariff in respect of all goods imported into the member States from third countries is to be established (→ Customs Law, International). Freedom of movement and residence, and the right to work and undertake commercial and industrial activities within the Community are to be established (Art. 27). The status of "Community citizen" is to be granted to all nationals of the member States. Harmonization of industrial development plans and of agricultural, energy and infrastructural policies, as well as cooperation in monetary and financial matters, are foreseen.

3. *Membership; Duration*

Art. 62(2) provides that any "West African" (a term in need of definition) State may accede to the Treaty. There has been speculation that Zaire might accede, with other States perhaps to follow. Unlike the → European Economic Community and the EAC, ECOWAS does not provide for associate membership. The ECOWAS Treaty is silent on its duration or terminability (→ Treaties, Termination). However, any member wishing to withdraw from the Community must give a year's written notice to the Executive Secretary (Art. 64).

4. *Structure*

The institutions of the Community are set out in Arts. 4 to 11, as amended by Protocol A/SP2/5/81, and Arts. 50 to 52 of the Treaty.

(*a*) *The Authority*

The Authority is the supreme organ of the

Community (Art. 5(1)). Composed of all the 16 heads of State of the member States, it is empowered to take policy decisions (Art. 52) and to issue directives which are binding on all other institutions of the Community (Art. 53). Its protocols and decisions are published in the Official Journal of ECOWAS. The protocols complement or amend the Treaty, while executive decisions are designed to promote the realization of the aims and objectives of the Community. Noteworthy among these protocols are those relating to the definition of the concept of products originating from member States, the ECOWAS Fund, the free movement of Community citizens, and mutual defence assistance.

(b) The Council of Ministers

The Council consists of two representatives of each member State (Art. 6(1)). It is responsible for keeping under review the functioning and development of the Community in accordance with the Treaty and for making recommendations to the Authority and issuing directives to all subordinate institutions of the Community (Art. 6(2)). Its decisions are binding on all subordinate institutions of the Community. Where an objection is recorded on behalf of a member State to a proposal submitted for the decision of the Council, the proposal is to be referred to the Authority for its decision (Art. 6(6)).

(c) The Defence Council

The Defence Council was established in 1981 by Protocol A/SP3/5/81 relating to mutual assistance on defence. According to the Protocol, member States have resolved to give mutual aid and assistance for defence against any armed threat or → aggression from a non-member State and to act as a peacekeeping force when there is a conflict between two or more member States (cf. → Alliance; → Collective Self-Defence).

(d) The Executive Secretariat

The Executive Secretariat is headed by an Executive Secretary whose duty it is to assist all the institutions of the Community in the performance of their functions (Art. 8(10)). (The working languages of ECOWAS are English and French, although African languages may also be declared official by the Authority (Art. 58).) In order to counter any disintegrative effect on ECOWAS which the compatibility of membership in other economic groupings in the sub-region might have, the Secretariat holds regular → consultations with other economic groupings such as CEAO and MRU with a view to harmonizing their goals with those of ECOWAS (ECW/DEVE/C/7781, 45–46).

(e) Tribunal of the Community

The composition, competences and statutes of the Tribunal have still to be prescribed by the Authority in accordance with Art. 11(2). When the Tribunal is eventually established, by virtue of Art. 11(1) its functions will be to ensure the observance of law and justice in the interpretation of the Treaty and to settle such disputes as may be referred to it in accordance with Art. 56 (→ International Courts and Tribunals).

(f) The technical and specialized commissions

Each Commission consists of a representative designated by each member State (Art. 9(3)). The Commissions are to submit from time to time reports and recommendations on various subjects through the Executive Secretary to the Council of Ministers, either on their own initiative, or at the request of the Council or of the Executive Secretary. There are at present five technical and specialized commissions: the Trade, Customs, Immigration, Monetary and Payment Commission; the Industry, Agriculture and Natural Resources Commission; the Transport, Telecommunications and Energy Commission; the Social and Cultural Affairs Commission and the Defence Commission. The Authority is empowered to establish further commissions.

(g) The Fund

The Fund for Co-operation, Compensation and Development, established by Art. 52, has a Board of Directors composed of a Minister from each member State. The Board is invested with all the powers relating to the Fund and ensures its proper management.

5. Decision-Making

Each of the organs of the Community is empowered to determine its own rules of procedure. The Authority meets at least once a year,

while the Council meets twice annually. Extraordinary meetings may be convened if and when necessary. The Commissions are to meet as often as necessary, while the Board of Directors of the Fund is to meet at least quarterly.

Neither the Treaty nor a policy decision determine the method of voting during deliberations. In practice, it would seem that decisions are arrived at by → consensus. By contrast, Art. 27 of the Protocol on the Fund gives each member State one vote, with decisions of the Board to be taken by a simple majority.

6. *Finances*

Arts. 53 and 54 of the Treaty, and the Protocol relating to contributions, stipulate that the Community is to be financed by contributions of each member State, assessed on the basis of its Gross Domestic Products (GDP) and per capita income. Payments are made in convertible currency under the terms declared by the → International Monetary Fund (IMF). Meanwhile, the West African Clearing House (WACH) has been established with a view to facilitating foreign exchange transactions within the Community (→ Monetary Law, International). Given the large number of currencies in the sub-region, a West African Unit of Account (WAUA), which is equivalent in value to one Special Drawing Right (SDR) of the IMF, has been created. The finances of the Community are audited by an external auditor (Art. 10).

7. *Significance*

The Treaty of Lagos is the consummation of the Pan Africanists' envisioned integration of West Africa. This multilateral economic cooperation agreement has set in motion a process of harmonization of international trade law and international economic law in the sub-region (→ Economic Law, International; → World Trade, Principles). Sceptics regarding the Treaty's implementation point to the geographical size, administrative difficulties and heterogeneity of ECOWAS, aggravated by the multiplicity of economic groupings in the sub-region. Some see ECOWAS as a "reluctant Community" whose members are failing to act in accordance with the Treaty (Eze). These considerations notwithstanding, ECOWAS has made an impressive start. Its functional links with the EEC and with some → United Nations Specialized Agencies are noteworthy (see → European Economic Community, Association Agreements; → Lomé Conventions). Moreover, as Art. 59 of the Treaty recognizes the right of member States to join other organizations, the multiplicity of economic groupings in the bosom of ECOWAS should not cause undue concern.

Treaty of the Economic Community of West African States, Lagos, May 28, 1975, Nigerian Annual of International Law, Vol. 1 (1976) 293–316; ILM, Vol. 14 (1975) 1200–1209.

A. ADEDEJI, ECOWAS: Ideals and Realities, Nigeria Trade Journal, Vol. 22 (1975) 9–10.
R.J. LANGHAMMER, Die Wirtschaftsgemeinschaft westafrikanischer Staaten (ECOWAS), Ein neuer Integrationsversuch, Europa-Archiv, Vol. 31 (1976) 163–168.
S.A. AKINTAN, The Law of International Economic Institutions in Africa (1977) 178–196.
S. OLOFIN, ECOWAS and the Lomé Convention, Journal of Common Market Studies, Vol. 16 (1977) 53–72.
A.Y. YANSANE, West African Economic Integration: Is ECOWAS the Answer?, Africa Today, Vol. 24 (1977) 43–59.
T.O. ELIAS, The Economic Community of West Africa, Year Book of World Affairs, Vol. 32 (1978) 93–116.
J.P. RENNINGER, Multinational Co-operation for Development in West Africa (1979).
A.A. JALLOH, Recent Trends in Regional Integration in Africa, Nigerian Journal of International Affairs, Vol. 6 (1980) 71–81.
O.J.B. OJO, Nigeria and the Formation of ECOWAS, International Organization, Vol. 34 (1980) 213–237.
O. YEROKUN, The Economic Community of West Africa: Its Evolution and Scope, Indian Journal of International Law, Vol. 20 (1980) 284–306.
O. EZE, ECOWAS and Freedom of Movement, Nigerian Forum, Vol. 1 (1981) 22–28.
R.I. ONWUKA, The ECOWAS Protocol on the Free Movement of Persons: A Threat to Nigerian Security, African Affairs, Vol. 81 (1982) 193–206.

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EUROPEAN ATOMIC ENERGY COMMUNITY

1. *Establishment; Basic Structure; Purposes*

The European Atomic Energy Community (Euratom) is one of three → European Communities (EC). The Treaty establishing the Euratom Community was signed by Belgium, France,

the Federal Republic of Germany, Italy, Luxembourg and the Netherlands in Rome on May 25, 1957 (UNTS, Vol. 295, p. 259) simultaneously with the Treaty establishing the → European Economic Community (EEC). Both these treaties entered into force on January 1, 1958. The Euratom Treaty was adjusted to permit the accession of Denmark, Great Britain and Ireland as member States as from January 1, 1973 and of Greece as from January 1, 1981.

The institutional structure of Euratom is almost identical with that of the EEC, comprising four institutions: an Assembly, a Commission initially consisting of five members (Luxembourg not being represented), a Council of Ministers and the → Court of Justice of the European Communities (CJEC). The Assembly and the Court have been shared from the beginning by the three European Communities as common institutions. In 1967 a merger created one single Council and one single Commission. In order to carry out the tasks entrusted to them, the Council and the Commission have five legal instruments at their disposal: regulations, directives, decisions, recommendations and opinions; in the EEC and Euratom, their use has identical legal consequences.

The Commission and the Council are assisted by an Economic and Social Committee as well as by a great number of advisory committees. In 1974 the Scientific and Technical Research Committee was set up to advise the Council and the Commission on general EC research work (→ Nuclear Research).

The decision to lay down provisions relating to nuclear cooperation in a separate treaty, following the adoption of the Spaak Report in 1956, was based on the assumption that such an approach would best suit the nuclear industry, which appeared at the time to be free of vested interests. The Suez crisis (→ Suez Canal), which occurred while the Euratom Treaty was being negotiated, alarmed public opinion by dramatically revealing the insecurity of Europe's oil supplies. It was believed that without nuclear energy, Europe's energy imports would reach intolerable proportions and that close cooperation with the United States, the United Kingdom and Canada was required to develop nuclear energy in Europe.

However, shortly after the creation of Euratom, the costs of imported fuels decreased and European coal production led to an energy surplus. Nuclear reactor construction appeared more costly and lengthy than foreseen; there were growing costs of → waste disposal, reprocessing, storage, administration and, above all, of necessary safety measures. These developments made the work of Euratom appear less urgent.

Euratom was never meant to play an industrial role. Its task, according to Art. 1 of the Treaty, is to foster progress "by creating the conditions necessary for the speedy establishment and growth of nuclear industries". The activities of the Community are to support research and development work undertaken by others, which obviously requires their cooperation. This direct relationship with industry and with the scientific community is a characteristic of Euratom (see also → European Atomic Energy Society; → European Organization for Nuclear Research). The Treaty imposes a supervisory relationship of Euratom over industry and science, to the exclusion of the member governments. This inevitably led to tensions which Euratom lacked the power to overcome. Moreover, Euratom was never given the means to become an important partner of the national nuclear institutions.

Euratom is exclusively devoted to the peaceful development of nuclear industries.

2. Financing

Initially, Euratom had separate operating and research and development budgets. Both were covered by financial contributions of the member States on a fixed scale (→ International Organizations, Financing and Budgeting). In April 1970, these contributions were replaced by the EC's own resources, and Euratom financing is now simply a chapter in the overall EC budget. This does not exclude the financing of specific research projects by member States having a particular interest in them; such supplementary programmes are coordinated by the Commission. Euratom has the right to raise loans for the financing of research and investment, including nuclear power stations, and may borrow on the capital market (→ Contracts between International Organizations and Private Law Persons; → Loans, International). As of 1981, loans totalling 1000 million European Units of Account (EUA) had been raised. In addition, US $43.4

million has been drawn on a US $135 million line of credit concluded in 1959 with the Export-Import Bank (United States), which was the first organization outside Europe to recognize Euratom's international legal capacity.

3. *Activities*

Euratom carries out the activities enumerated in Art. 2 of the Treaty; these activities form the subject of the ten chapters of Title Two of the Treaty, which are discussed in the following subsections.

(*a*) *Research*

The Treaty gives a prominent place to nuclear research. The Commission is responsible for promoting and facilitating nuclear research in the member States and for Euratom's own research and training programmes.

The implementation of the first programme (1958–1962) led to fundamental disagreements between France and the other members, mainly over the financial support the Commission had proposed be given to the construction in Europe of reactors on the American model.

For the first time the Council came to a qualified majority vote, and France was overruled in a matter which she had declared to be of vital national interest. A further programme was enacted for the period 1963 to 1967 but a new crisis over the budget occurred in 1964 when France urged a complete review of Euratom's basic research and industrial priorities. When the 1965 budget was not fixed in time, a supplementary budget was adopted by the Council. From 1967 to 1973, only annual or limited programmes were enacted; it was not until 1974 that a new comprehensive research and development programme was adopted.

Part of the programme is carried out by the Joint Nuclear Research Centre set up under the Treaty, later named the Joint Research Centre (JRC); in 1973 its activities were extended to non-nuclear fields. The JRC makes major testing facilities available for Community use and provides services to scientists and industrialists. It also aims to collaborate with the Third World in development policy, for example on solar energy (→ Economic and Technical Aid).

A great deal of Euratom's research is effected by contracts with public or private research institutes or firms which carry out work within the scope of the various programmes. The necessary contracts are in general subject to the law of the contractor, but jurisdiction is reserved to the CJEC; none of them has been brought to the Court. Instead of distributing research funds on the basis of efficiency and competence, the Commission was often put under strong pressure to distribute contracts in such a way that funds returned to the member States in proportion to their financial contribution to the budget. This disadvantage of sector-wide integration has been to some extent neutralized by integrating nuclear research into wider EC science and technology programmes. Such programmes have been carried out by the Commission since 1974, when the Council adopted a "Resolution on the coordination of national policies and the definition of projects of interest to the EC in the field of science and technology" (Official Journal, C 7 of January 29, 1974, p. 2). In 1980 the Commission spent 330 million EUA on research and development, including 130 million EUA in the nuclear field.

(*b*) *Information dissemination*

As a result of its contracts and research activities, the Commission possesses patent rights and licences (→ Industrial Property, International Protection; → European Patent Organisation). Chapter II of Title Two of the Treaty provides for a system of dissemination, extending to compulsory communication of information and of patent rights, and to the use of arbitration. The volume of Community patents and licences is considerable; the compulsory communication and arbitration procedures have not been applied.

(*c*) *Health and safety*

Basic standards were established for the protection of workers and the general public against dangers from ionizing radiation; they have been up-dated. A five-year research programme on biology and radiation protection is carried out.

The Commission has no power to interfere with the disposal of radioactive waste unless a plan for the disposal of waste of one member State is liable to result in contamination of the water, soil or airspace of another member State. Even then it

can do no more than give a non-binding opinion. The Commission has no right to consider the siting of nuclear installations. These legal gaps on such major issues demonstrate the limitations of drafting detailed rules in a hitherto unregulated domain.

(*d*) *Investment*

Although investment projects must be communicated to the Commission by those who want to implement them, the Commission may only discuss and express its views; it has no means to direct them to common production targets. Programmes indicating targets and types of investment required for their attainment were published in 1966 and 1972, but they failed to impress the investors.

(*e*) *Joint undertakings*

→ Joint undertakings are undertakings which in the view of the Council are of fundamental importance to the development of the nuclear industry in the EC. They are created by Council decision after inquiry by the Commission and without regard to founding requirements in national law. The Council may permanently or temporarily grant such undertakings any or all of the advantages listed in Annex III of the Treaty; the Treaty accords legal personality to joint undertakings. The statutes of joint undertakings and amendments thereto require the approval of the Council. The Treaty does not require that the participants in a joint undertaking stem from more than one member State; a joint undertaking is therefore not necessarily a multinational joint venture. On the other hand, Euratom, a third State, an international organization or a national of a third State may participate in the financing or in the management of such an undertaking with the unanimous approval of the Council.

As of 1981, the status of joint undertaking had been granted to eight undertakings, most of them pre-existing companies in the Federal Republic of Germany. A true example of a multinational joint undertaking is the Joint European Torus (Jet). Jet was established by Council Decision of June 7, 1978 (Official Journal, 1978, L 151, p. 10) for an initial period of twelve years, to construct, operate and exploit a large thermo-nuclear fusion facility in Culham (United Kingdom) as a part of the Euratom fusion programme.

(*f*) *Ore and fuel supplies*

Euratom has the obligation to ensure that all users in the Community receive a regular and equitable supply of ores and nuclear fuels (Art. 2(d)). Chapter VI of Title Two of the Treaty creates a common supply system based on the principle of equal access to the sources of supply by the users, unless such use is unlawful or contrary to conditions imposed by suppliers outside the Community. The functioning of this system is entrusted to an Agency which has legal personality and financial autonomy, but operates under the supervision of the Commission. The Agency has a right of option on ores, source materials and special fissile materials produced in the member States and an exclusive right to conclude contracts relating to the supply of such materials coming from inside or from outside the Community (see also → European Company for the Chemical Processing of Irradiated Fuels (Eurochemic)). The Agency has the duty of meeting orders and, where necessary, of rationing supplies.

The full application of the Agency's monopoly to conclude contracts soon appeared somewhat excessive and cumbersome in view of the abundance of natural uranium. Therefore, by a Regulation of May 5, 1960 (Journal officiel, 1960, p. 777), contract negotiations were left to the parties on condition that the users respect the general conditions issued by the Agency relating to the content of contracts and that they submit the contracts to the Agency, which was deemed to have concluded them, if it did not object within eight days. In 1975 the Regulation was amended so as to require the Agency to sign or refuse to sign the contracts within ten working days (Official Journal, 1975, L 193, p. 37).

The provisions on sharing the market in the sense of buying the materials by using the right of option have never been applied. The Agency's participation in the contracts has always been interpreted as a pro forma exercise of that right. The provisions on price fixing and equalization have never been applied. Where unforeseen circumstances so require, the provisions of the supply chapter of the Treaty, such as those on

ownership and safeguards, may be adjusted by the Council at the request of a member State or of the Commission; these amendments do not require ratification.

Seven years after the entry into force of the Treaty, the Council had the opportunity to confirm the supply chapter or, failing such confirmation, to adopt new provisions (Art. 76). In the late 1960s the French Government abstained from complying with the supply rules, whereupon the Commission applied to the CJEC. France did not deny the facts but submitted that the Chapter had lapsed as from the end of the seven year period following the Treaty's entry into force (January 1, 1965). In its judgment in Case No. 7/71 the Court rejected the assertion (ECR (1971) p. 1003, at p. 1018).

In 1979 France took the initiative to have Chapter VI amended and in particular to abolish the Agency's option right, its exclusive right to conclude contracts and its task of organizing the market, but it failed to obtain any support from other member States or from the Commission.

(g) Safeguards

The Commission has set up a safeguard system including control, inspection (→ Verification of Facts), and enforceable → sanctions in conformity with Chapter VII of Title Two. The establishment and implementation of this system was a condition of the United States Government for signing in November 1958 an Agreement for Cooperation in which the United States, as an exception from its standard policy, left to Euratom the responsibility to ensure through safeguards that all material, equipment or devices made available by it under the Agreement would be utilized solely for peaceful purposes.

In later years, the political impetus for wider international control and inspection grew. Euratom and its member States concluded a cooperation agreement (December 1, 1975; Official Journal, 1975, L 329, p. 28) with the → International Atomic Energy Agency (IAEA) under which Euratom acts as the regional guarantor of the world-wide responsibilities of this → United Nations Specialized Agency. In practice, the IAEA's safeguarding system runs parallel to that of Euratom.

The IAEA safeguards do not apply to nuclear weapon States unless they conclude an Agreement with the IAEA specifying the nuclear installations to be inspected. The United Kingdom (on September 6, 1976) and France (on July 28, 1978) concluded such agreements to which Euratom is equally a party. The Euratom system, on the other hand, applies to all member States, but not to materials intended to meet their defence requirements under the conditions set out in Art. 84 of the Euratom Treaty. This situation gave rise to differences between the Commission and France in 1960.

The fact that nuclear weapon States are free to choose which of their installations or materials will be subject to international inspection detracts from the significance of the safeguarding system. However, the Euratom system gives maximum assurance to third States or international organizations which have concluded an Agreement with the Community that the obligations assumed thereunder in respect of utilization and safeguarding will be met in all member States, whether or not they are nuclear weapon States.

(h) Property ownership

Euratom has *de jure solo* (that is, without any transfer or legal procedure being required) the right of ownership of special fissile materials which are produced in or imported into the Community. This right excludes the possibility of anyone else eluding the Community rules by invoking property rights. Community ownership is designed in particular to reinforce the safeguard system. Consequently, Euratom has no right of ownership of materials intended to meet defence requirements (see Art. 84 together with Art. 86). Euratom's ownership in no way impinges upon the right of use and consumption by those who have properly come into the possession of such materials. However, Euratom may at all times reclaim materials if the users did not or do not continue to respect the Community rules such as those relating to safeguards, supply, or health and safety.

(i) Nuclear common market

A common market for specialized materials, equipment, capital investment and employment, including a common external tariff, was

established in accordance with the Treaty, but after a few years it was overtaken by the general rules and tariffs of the EEC. In pursuance of Art. 98 of the Euratom Treaty, the member States facilitated the insurance of nuclear risks by adhering, within the framework of the → Organisation for Economic Co-operation and Development (OECD), to the Paris Convention on third party liability in the field of nuclear energy of July 29, 1960; to the Brussels Convention on the liability of operators of → nuclear ships of May 25, 1962; and to the Vienna Convention on Civil Liability for Nuclear Damage of May 21, 1963, concluded within the framework of the IAEA. The main purpose of these Conventions is to attach the liability for damage to the operator of a nuclear installation and to fix limits for compensation (→ Damages).

(*j*) *External relations*

Provisions on external relations and contractual agreements may be found in Chapter X of Title Two and in various other parts of the Treaty. Art. 64 confirms the Agency's exclusive right to enter into contractual agreements the principal aim of which is the supply of nuclear materials coming from outside the Community. Art. 29 provides that the Commission may conclude contracts or agreements for the exchange of scientific or industrial information between a member State, person or undertaking on the one hand and a third State or international organization or a national of a third State on the other (→ European Communities: External Relations). The right of the Commission to conclude such contracts and agreements is confined to those which require on either part the signature of a State "acting in its sovereign capacity" (→ Sovereignty). Faced with the legal predicament of when a foreign State or a member State is acting in its sovereign capacity, the Commission has preferred to refrain from its prerogative and instead to authorize the conclusion of such agreements, provided that the information to be exchanged will be communicated to it in accordance with Art. 29.

Chapter X of Title Two of the Treaty confirms in Art. 101 Euratom's capacity to conclude agreements or contracts, within the limits of its power and jurisdiction, and lays down the procedure therefor. Art. 106 seems indirectly to give a monopoly to Euratom to conclude agreements "providing for cooperation in the field of nuclear energy" with third States. It provides that the rights and obligations arising out of agreements concluded by member States prior to the entry into force of the Treaty, shall as far as possible be assumed by the Community, subject evidently to the collaboration of the third State concerned. It may be argued that all agreements fostering progress in the peaceful uses of nuclear energy "provide for cooperation" in one way or another and that therefore Euratom should conclude them all to the exclusion of the member States. In practice, the Commission has never claimed such a monopoly and has always approved the conclusion of general cooperation agreements between member States and third countries, which sometimes duplicate agreements concluded by Euratom.

Besides agreements for cooperation, the Treaty in Art. 102 recognizes so-called mixed agreements (or contracts) to which Euratom and one or more member States are parties. Art. 103 mentions a third category of agreements which "concern matters within the purview" of the Treaty. These agreements have to be communicated to the Commission which assesses whether or not they contain clauses impeding the implementation of the Treaty. The Commission then makes its comments known to the State concerned, which may conclude the agreement when the objections of the Commission are removed.

The delimitation of Euratom's rights and of the rights of member States has given rise to a court case of general interest (Ruling 1/78 of the CJEC, ECR (1978) p. 2151). The Belgian Government applied to the CJEC asking whether, in the absence of concurrent participation of the Community, Belgium was entitled to adhere to the Convention on the Physical Protection of Nuclear Materials, Facilities and Transports, which at the time was being drawn up under the aegis of the IAEA. Some clauses of the draft convention, Belgium rightly feared, would impinge on areas in which Euratom has direct responsibilities. Therefore, participation in the Convention might impede the application of the Euratom Treaty. The Court held that such participation would be compatible with the Treaty "only subject to the condition that, in so far as its own powers and

jurisdiction are concerned, the Community as such is a party to the convention on the same lines as the States". Thus the Court confirmed the opinion (see case 22/70 Commission v. Council, ECR (1971) p. 263) that the EC has external powers in all areas in which it has internal powers.

Euratom has concluded agreements with numerous countries and international organizations (→ International Organizations, Treaty-Making Power). In 1958 it entered into an Agreement for Cooperation with the United States which provided for a joint research and construction programme. An Additional Agreement for Cooperation of 1960, amended several times since, contains the conditions now governing the use of nuclear materials of United States origin. These conditions are agreed by Euratom for all member States. In 1959, Euratom and Canada concluded a Cooperation Agreement (Journal officiel, 1959, p. 1165), which was updated by an exchange of letters in 1978 (Official Journal, 1978, L 65, p. 16) and by a further exchange in 1981 (Official Journal, 1982, L 27, p. 25). The purpose of the updatings was to provide more specific assurances for the peaceful use and safeguarding of materials subject to the Agreement, and to set out conditions governing their reprocessing.

In 1981 Euratom and Australia concluded an agreement which contained comprehensive provisions governing the peaceful use, safeguarding, protection, and retransfer of materials.

The Euratom-IAEA Cooperation Agreement (1975) and the signature by Euratom with its member States of the International Convention on the Physical Protection of Nuclear Materials are further illustrations of Euratom's international role.

4. *Evaluation*

Euratom has achieved a limited success in terms of political, technical and economic usefulness to its member States and to European integration as a whole. The treaty was overtaken by technological, economic and political events. Part of Euratom's deficiences have resulted from the slowing trend of European integration as a whole. Moreover Euratom was severely weakened by the fact that France soon after 1958 became unwilling to cooperate when Euratom promoted the use of American nuclear technology and reactor types in Europe instead of giving priority to French techniques.

In retrospect, one may wonder whether the establishment of a separate European Community for nuclear energy was justified instead of integrating it from the outset into the EEC as has been done with some success since the 1967 merger of the Commissions and in particular since the mid-1970s. In the field of research and development, with few exceptions, equivalent results might have been achieved either within the OECD or on a bilateral or multilateral basis. On the other hand, Euratom has served as a market place on which European industrialists, scientists, lawyers and politicians have established contacts, thus furthering European integration.

More positive achievements have been attained in the fields of supply from outside the Community, safeguards, and external relations. Euratom has demonstrated that Europe is a major force in international nuclear affairs and that dealing with the Community offers added political, economic and legal security. Non-proliferation on a world scale seems best assured through regional organizations, in which the members may survey one another and in which the organization itself has the authority and the legal means to enforce the rules, as Euratom has.

Euratom started with great hopes and ambitions. Some of its premises proved to be wrong; others, such as the belief that nuclear energy is something good contributing "to the advancement of the cause of peace" (Treaty, Preamble) and to the prosperity of the European nations, are now questioned by influential groups in the population.

The fact remains, however, that Europe needs energy, including safe nuclear energy, on which its development, prosperity and freedom of action depend. Europe's chronic energy shortage requires "a joint effort undertaken without delay" (Preamble), now even more so than in 1957. For this reason, Euratom still constitutes an instrument of actual and potential value as well as an instructive experience in the quest for European unity.

Euratom Treaty, Euratom Member Treaties, Euratom Non-Member Treaties, in: Encyclopedia of European Community Law, Vol. B I, Parts B5-7 (1973, with later additions) [looseleaf].

L. ARMAND, F. ETZEL and F. GIORDANI, A Target for Euratom, Report Submitted to the Governments of the Six (1957).
H. BALLREICH, Die Europäische Atomgemeinschaft, ZaöRV, Vol. 19 (1958) 24–53.
J. ERRERA et al., Euratom, Analyse et commentaires du Traité (1958).
H.J. HAHN, Euratom, The Conception of an International Personality, Harvard Law Review, Vol. 71 (1958) 1001–1056.
T.W. VOGELAAR, Het eigendomsrecht van Euratom over bijzondere splijtstoffen (1961).
J.G. POLLACH, Euratom, Its Background, Issues and Economic Implications (1964).
P. MATHIJSEN, Some Legal Aspects of Euratom, CMLRev, Vol. 3 (1965) 126–343.
T.W. VOGELAAR, Le droit européen au service de l'atome (1965).
L. SCHEINMAN, Euratom: Nuclear Integration in Europe, International Conciliation, No. 563 (1967) 5–66.
T.W. VOGELAAR, Die wissenschaftliche Zusammenarbeit in den Europäischen Gemeinschaften und ihre Bedeutung für die künftige Entwicklung der Forschung, in: Zusammenarbeit in der Europäischen Atomgemeinschaft, Veröffentlichungen des Instituts für Energierecht an der Universität zu Köln, Nos. 16/17 (1967) 1-16.
E. LIBBRECHT, Les caractères essentiels des entreprises communes de l'Euratom selon le titre II, chapitre V du Traité instituant la C.E.E.A., Revue trimestrielle de droit européen, Vol. 7 (1971) 623–686.
P. BRUSH, Permanence of Powers, Commission of the European Communities v. France, California Western International Law Journal, Vol. 4 (1973) 43–60.
M. PEDINI, La Comunità europea dell'energia atomica, Panoramica e prospettive, in: Studi di diritto europeo in onore di Riccardo Monaco (1977) 567–583.
G. APOLLIS, La déliberation de la CJCE sur la participation d'EURATOM à la Convention sur la protection physique des matières et installations nucléaires, Revue du Marché Commun, Vol. 22 (1979) 185–206.
D. NICKEL, Zur Revision des Euratom-Vertrages, in: Das Europa der zweiten Generation, Gedächtnisschrift für Christoph Sasse (1981) 565–581.
P. WEILEMANN, Die Anfänge der Europäischen Atomgemeinschaft (1982).
See also bibliography in → European Communities and in → European Economic Community.

THEO VOGELAAR

EUROPEAN ATOMIC ENERGY SOCIETY

The European Atomic Energy Society (EAES; Société européenne de l'énergie atomique) was set up on June 15, 1954 by representatives of Belgium, France, Italy, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom. In the meantime Denmark, the Federal Republic of Germany, Finland, Greece, Portugal, and Spain have become members of the organization.

Under the statute of June 15, 1954, as revised on July 22, 1954, the EAES is to promote research in respect of atomic energy and nuclear technology (→ Nuclear Research), by regular gatherings of scientists and experts, the exchange of reports, the promotion of studies in the field of radiation protection, the publication of scientific writings, the editing of a periodical, the unification of terminology and symbols as well as by the establishment of an information centre for nuclear technology. In the 1950s, the Society carried out its major task by the organization of numerous symposia on subjects concerning the diverse elements of nuclear research and nuclear technology in their entirety, and accordingly served as a European forum for the firsthand exchange of thought between scientists and experts.

In the meantime, the number of Society-sponsored symposia has deminished. This is a consequence of the activities of other institutions at the international level regarding the peaceful uses of atomic energy, such as those of the → International Atomic Energy Agency (IAEA), the Nuclear Energy Agency of the → Organisation for Economic Co-operation and Development, the → European Atomic Energy Community, and the → European Organization for Nuclear Research. Nonetheless, the informal gatherings arranged by the EAES have retained their practical and scientific value. In that context, the Society has taken up the discussion of alternative sources of energy (see also → International Energy Agency).

The primary organ of the EAES is the Council. Between meetings of that body, working parties prepare the substantive and procedural bases of the topics to be considered. The society appoints annually a President, an Executive Vice-President and another Vice-President. A statutory contribution of members to the expenditures occasioned by the EAES has not been envisaged so far. Expenses ensuing from work carried out within the framework of and for the Society are borne by the members concerned.

The legal status of the Society is a consequence of its functions. These are devoid of elements implying the exercise of → sovereignty as shown by the functions described above. Any European State may become a member of the EAES and be represented there by its central nuclear authority or another agency organized for that purpose by the government concerned. Indeed, considering its main field of activity, the EAES is not so much an arrangement among States, but a loosely organized entity designed to promote a topic of scientific and economic importance; it is devoid of traits characteristic of an international organization. Accordingly its statute is not a multinational agreement among governments or governmental administrations (→ Treaties), but a guideline for the operation of an arrangement identifiable as a kind of association devoid of any link to a specific legal order.

G. FISCHER, La coopération internationale en matière d'utilisation pacifique de l'énergie atomique, AFDI, Vol. 1 (1955) 228–257, at 251.

M. DE GEER (rapporteur), Report on European Organizations in the Field of Atomic Energy, presented on behalf of the Committee on Economic Questions, Council of Europe Doc. 538. A 46 (1956) A. 29.981, at p. 26.

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EUROPEAN CIVIL AVIATION CONFERENCE

1. Historical Background

The European Civil Aviation Conference (ECAC) was set up in 1955 among 19 European States. In 1951, three proposals had been placed before the → Council of Europe on the regulation of European civil aviation (Revue générale de l'air, Vol. 14 (1951), p. 359). The Consultative Assembly of the Council of Europe, which favoured predominantly non-supranational solutions, recommended the formation of an association of European airlines and the convening of a European conference on civil aviation. The Committee of Ministers of the Council of Europe accepted the Consultative Assembly's proposal in 1953, with the proviso that the initiative for inviting States to this Conference would be left to the → International Civil Aviation Organization (ICAO). Upon the initiative of the Council of Europe and at the invitation of ICAO, the Conference on Coordination of Air Transport in Europe (CATE) met in April 1954 at Strasbourg. It recommended, *inter alia*, that a European Civil Aviation Conference should be set up as a permanent institution. Nineteen European States met from November 23 to December 16, 1955 at Strasbourg for the inaugural session of the new European Civil Aviation Conference.

2. Purposes and Structures

According to the Constitution of the Conference, adopted in 1955 and revised in 1968 (European Yearbook, Vol. 16 (1968), p. 760), the purposes of the Conference are to:

"(a) review generally the development of European air transport in order to promote the coordination, the better utilization and the orderly development of such air transport;

(b) consider any special problem that may arise in this field." (Art. 1(1)).

Under Art. 2(1) of the Constitution, any European State may become a member of the Conference; accession of any new member requires the unanimous consent of the Conference. The Constitution does not provide expressly for the terms under which membership may be terminated. At the end of 1981, 22 European States were members of the Conference.

The primary institution of ECAC is the plenary Assembly (Constitution, Arts. 4(1)(a), 5 and 6). It is composed of the representatives of member States; they are, as a rule, high officials of the national civil aviation administrations (Art. 5(3) and Art. 6(3)) and not political appointees or diplomats. The plenary Assembly convenes in Triennial Sessions to adopt the working programmes and to take basic policy decisions (Art. 5(3) and Art. 6(2)) and meets in an Intermediate Session once a year to deal with current business.

In 1976, an additional institution called the "Meetings of Directors General of Civil Aviation" (DGCA) was introduced, consisting of the administrative heads of the national civil aviation departments of member States (Art. 8). This body meets frequently for consultations (sometimes on a relatively informal basis), and its status and decisions are equivalent to those of the plenary Assembly (Art. 8(1)). These meetings deal essen-

tially with urgent business and have assumed the functions of a permanent "executive" body.

In accordance with Art. 15 of the Constitution, there are four Standing Committees: two Economic Committees, the Technical Committee, and the Facilitation Committee, which have established numerous working groups, task forces and groups of experts (e.g. on air transport policy and fares and rates). These groups have developed considerable expertise and act *de facto* as common planning and policy-making units in their respective fields for the member States. Each group reports as a rule to a Committee, which in turn reports to the plenary Conference. The work of the four Standing Committees and of the DGCA is coordinated by a special Coordinating Committee which also supervises the finances of the Conference (Art. 14).

The President of the Conference presides over the plenary Assembly and represents the Conference between sessions (Art. 13). The Conference also elects not more than three vice-presidents and the chairman of the Standing Committees (Art. 9, para. 1).

According to Art. 1, para. 3 of the Constitution, the functions of the Conference are consultative in nature and its resolutions, recommendations and other conclusions are subject to governmental approval. Statements directed towards non-member States or other international organizations are normally expressed in the form of resolutions, whereas decisions directed towards member States are normally expressed in the form of recommendations. Resolutions and recommendations are passed by the plenary Assembly or the Meetings of Directors General with a simple majority. Every member State has one vote. One State cannot represent another. In cases of urgency it is possible to take decisions by mail vote (Art. 17).

The Conference is neither a regional subordinate body of ICAO nor independent of it. It enjoys an "intermediate" status, which has never been clearly defined. However, it is understood that it is to make use of the ICAO office at Paris for secretarial purposes and to maintain close liaison with ICAO (Arts. 1, para. 2(c) and 3); but it fixes its own working programme, convenes its own meetings and sets its own agenda. In practice, it enjoys a large degree of autonomy.

In accordance with the administrative arrangements between ICAO and ECAC (ICAO Assembly Resolution A 10-5, of July 16, 1956, ICAO Doc. 7709, p. 34), any indirect cost incurred by ICAO and attributable to the activity of ECAC (e.g. the cost of secretarial services) is borne by ICAO, while any direct cost attributable to ECAC is apportioned among the member States of the Conference. The apportionment of costs among member States is calculated in proportion to the number of units of their contribution to ICAO (ECAC Constitution, Art. 18).

3. *Activities*

Originally, the primary fields of activity of the Conference were the facilitation of air transport in Europe (by simplification and partial abolition of formalities connected with transborder traffic) and the liberalization of traffic rights among the member States (→ Traffic and Transport, International Regulation; → Air Transport Agreements; → Aircraft Operations). While its work in the field of facilitation has been generally successful, the liberalization efforts have met with only partial success. Agreements have been elaborated under the auspices of ECAC, regarding non-scheduled air services (ICAO Doc. 7695), procedures of establishing tariffs for scheduled air services (ICAO Doc. 8681, under revision) and certificates of airworthiness for imported aircraft (ICAO Doc. 8056). Also important has been the coordination of airworthiness rules and other technical standards of member States.

Since the late 1960s, the Conference has turned from liberalization efforts towards a common approach to regulatory problems of international air transport, in particular for transatlantic routes. The aim has been to develop and implement a common balanced policy to be applied by all member States in the field of transatlantic charters (Memorandum of Understanding on North Atlantic Charters, signed on June 5, 1975 at Paris, Doc. ECAC/INT.S/8, Annex), of transatlantic scheduled services (ECAC-U.S. Memorandum of Understanding on Transatlantic Pricing, signed on May 2, 1982, at Washington, D.C.), and on intra-European scheduled air transport.

4. *Significance*

The Conference was the first regional govern-

mental civil aviation body to be set up after the establishment of ICAO. Although it was originally feared that its "intermediate" status would lead to a weakening and fragmentation of ICAO, ECAC's activities have proved to be largely complementary to those of ICAO. ECAC has served as an example for the establishment of similar bodies in other parts of the world, namely the African Civil Aviation Commission (1969), the Latin American Civil Aviation Commission (1973), and the Arab Civil Aviation Council.

Constitution and Rules of Procedure, ECAC Information Paper No. 13, October 1969; European Yearbook, Vol. 16 (1968) 760–783.

J.-M. COTTERET, Les organisations aéronautiques européennes, RGDIP, Vol. 68 (1964) 446–471.
G.W. REHM, 10 Jahre Europäische Zivilluftfahrtkonferenz (ECAC), Europa Verkehr, Vol. 13 (1965) 193–196.
M. DOZ, L'oeuvre de la CEAC, Revue du Secrétariat général de l'aviation civile (Paris) No. 150 (1974) 120–126.
V. VERES, La Commission européenne de l'aviation civile, ibid., 114–118.
L. WEBER, Les éléments de la coopération dans le cadre de la Commission européenne de l'aviation civile (CEAC), Revue française de droit aérien, Vol. 31 (1977) 388–412.
L. WEBER, The European Civil Aviation Conference, Report[s] on its Activities, Annals of Air and Space Law, Vol. 2 (1977) 461–464; Vol. 3 (1978) 593–597; Vol. 5 (1980) 649–654; Vol. 6 (1981) 543–555.
L. WEBER, Die Zivilluftfahrt im Europäischen Gemeinschaftsrecht (1981) 26–36.

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EUROPEAN CIVIL SERVICE *see* Civil Service, European

EUROPEAN COAL AND STEEL COMMUNITY

1. Establishment

Chronologically the first of the three → European Communities (→ European Economic Community; → European Atomic Energy Community), the European Coal and Steel Community (ECSC) was created with the conclusion of the Paris Treaty on April 18, 1951 (UNTS, Vol. 261, p. 140). The ECSC Treaty, whose duration was set at 50 years (Art. 97), came into force on July 25, 1952, and was amended in 1956, 1957, 1965, 1972 and 1980. The foundation of the ECSC marks the result of efforts to promote regional integration in Europe at a supranational level (→ Supranational Organizations), that is to say, beyond the confines of conventional inter-governmental cooperation (→ International Organizations, General Aspects; → European Integration). In 1945, in a devastated and exhausted post-war Europe, a desire for reconciliation and aspirations to consolidate peace through economic recovery and cooperation generated a number of proposals for European cooperation; these ranged from close pragmatic cooperation in defined areas (→ Regional Cooperation and Organization: Western Europe) to a straight move towards progressive and comprehensive federation between European States (→ European Defence Community; → European Political Community; → Western European Union).

On May 9, 1950, Robert Schuman, the then French Foreign Minister, proposed on France's behalf a scheme (the Schuman Plan) which did not favour a federal approach but did go beyond traditional patterns of inter-governmental cooperation. He advocated immediate action concentrated "on one limited but decisive point" – the pooling of French and German coal and steel production (hitherto the key sectors of the economy affecting the industrial and military strength of nation-States) under a "High Authority". As an organization with novel legal dimensions, this High Authority would exercise former competences of the member States, and would be open for accession by other States. There would be a parliamentary assembly (as an element of democratic participation) (→ Parliamentary Assemblies, International), a council of ministers to represent the interests of member States, and a court of justice with compulsory jurisdiction. Schuman's pragmatic and functionalist approach allowed the concrete elaboration of an idea already put forward within the European Movement and the Assembly of the → Council of Europe. This idea had also been included in an ambitious suggestion made earlier in March 1950 by Konrad Adenauer, the then German Federal Chancellor, who favoured a complete union (→ Confederations and Other Unions of States)

between France and Germany and referred to constitutive elements which resembled those that later underlay the ECSC. Jean Monnet, then French National Plan Commissioner, promoted and elaborated the Schuman Plan and actively participated in the drafting of the ECSC Treaty. Responding positively to the Schuman Plan, Belgium, Luxembourg and the Netherlands (→ Benelux Economic Union), and Italy joined France and Germany to become the original six founding member States of the ECSC. A → waiver under the → General Agreement on Tariffs and Trade (Art. XXV(5)) provided for the compatibility of the ECSC with the GATT system (→ Customs Union). During a transitional period, a common market for coal, iron ore and scrap iron was established on February 10, 1953; for steel on May 1, 1953; and for special steels on August 1, 1954. The original membership was enlarged with the accession of the United Kingdom, the Republic of Ireland (Eire) and Denmark as from January 1, 1973, and of Greece as from January 1, 1981.

2. *Aims and Structure*

(*a*) *Aims*

The historical context of the ECSC's inception demonstrates that the broad aims of the ECSC are to serve the purpose of peace and the realization of the idea of European integration. A more directly economic and social aim of the ECSC is, through the establishment and administration of a common market for coal and steel and "in harmony with the general economy of the Member States", to contribute "to economic expansion, growth of employment and a rising standard of living in the Member States". (Art. 2.) This includes, as an ancillary aim, the creation of conditions which in themselves are capable of ensuring "the most rational distribution of production at the highest possible level of productivity, while safeguarding continuity of employment and taking care not to provoke fundamental and persistent disturbance in the economies of the Member States". (Art. 2, para. 2.)

(*b*) *Structure*

In economic terms, the structure of the ECSC involves a common market with a harmonized external tariff for coal and steel (see Annex I to the ECSC Treaty for definitions of coal and steel) applicable to the ten member States. In legal terms, it constitutes a legal system *sui generis* (see section 2(c) *infra*); the sources of its law are the ECSC Treaty (as amended) with related documents, norms promulgated by the ECSC institutions (secondary legislation; see *infra*) and decisions of the → Court of Justice of the European Communities. In institutional terms, the ECSC consists of (i) the Commission (earlier the High Authority) as an executive organ (Arts. 8 to 19), assisted by a Consultative Committee with members comprising "equal numbers of producers, of workers and of consumers and dealers" (Art. 18); (ii) an Assembly (the European Parliament) (Arts. 20 to 25) capable of exercising certain budgetary and supervisory functions; (iii) a Council of Ministers (Arts. 26 to 28); and (iv) a Court of Justice with compulsory jurisdiction (Arts. 31 to 45). All the main institutions (i.e. with the exception of the Consultative Committee) are organs common to all three European Communities.

(*c*) *Decision-making*

The binding effect of decisions made by the ECSC is based on the legal nature *sui generis* of the ECSC. Decisions are directly binding upon undertakings and authorities in the member States, i.e. without being subject to further approval or ratification by municipal authorities (→ European Communities: Community Law and Municipal Law). By virtue of Art. 6, the ECSC enjoys, in each of the member States, "the most extensive legal capacity accorded to persons constituted in that State". In its external relations (→ European Communities: External Relations) the ECSC has "the legal capacity it requires to perform its functions and attain its objectives".

Explicit reference to supranationality, found in the original ECSC Treaty text, with respect to the powers of the High Authority, was eliminated when Art. 9 was replaced by Arts. 10 to 15 and 17 of the Merger Treaty (1965). The decision-making process of the ECSC is nonetheless fundamentally supranational because, in addition to the directly binding effect of decisions, the Commission is an independent body with members who are not representatives of the member States. The Coun-

cil of Ministers may take decisions with a similar binding effect. Under Art. 14, the Commission may take, as instruments of secondary legislation, "decisions", which are "binding in their entirety", and make "recommendations", in accordance with "the tasks assigned to it". "Opinions", which the Commission may deliver," have no binding force." (See section 3, *infra*.) Thus, the scope of decision-making lies within the defined and delimited ambit of competences laid down in the ECSC Treaty. The contents and procedural aspects of these competences and the decisions based thereon are subject to the compulsory jurisdiction of the Court of Justice of the European Communities (reflecting notions of the rule of law and the due process of law, Arts. 31 to 43). The Assembly (European Parliament) is, by virtue of Art. 78, competent to participate in the adoption of the ECSC budget (see *infra*). Within the framework of the minor revision of the treaty (Art. 95, para. 4), the Assembly is equally competent to participate in the amendment of the ECSC Treaty and is capable of blocking an amendment. The economic and social provisions of the ECSC Treaty prescribe that the Commission shall consult, in the fulfilment of its tasks, the governmental authorities of the member States, as well as undertakings, workers, consumers and dealers.

In keeping with a teleological approach (→ Interpretation in International Law), the decision-making scope of the ECSC may be extended under Art. 95, para. 1, whenever it "is necessary to attain . . . one of the objectives of the Community set out in Articles 2, 3 and 4". The implementation and enforcement of decisions of the ECSC is fundamentally incumbent upon the authorities of the member States, as the Treaty provides for the ECSC's competences to make decisions, but does not provide for their implementation or enforcement by its institutions.

(*d*) *Finances*

In keeping with the functions and tasks assigned to it by the Treaty (Arts. 2 to 5), the ECSC has a budget (drawn up in European Currency Units (ECU) of account) consisting of an institutionally-allocated administrative expenditure, the contents and procedural aspects of which are governed by Arts. 78 to 78h, and a non-administrative expenditure relating to "financial resources [to be placed] at the disposal of undertakings for their investment" (Art. 5, para. 2). The non-administrative budget concerns loans, guarantees for interest on loans, loan subsidies, subsidies for technical research or development, funds for promoting "improved working conditions and an improved standard of living for the workers in each of the industries for which [the ECSC] is responsible" (Art. 3(e)). On the revenue side, under Art. 49 the Commission is "empowered to procure the funds it requires to carry out its tasks: by imposing levies on the production of coal and steel; [and] by contracting loans". It may also receive gifts. The levies on coal and steel constitute the first case of taxation by an international organization and represent the first European tax. The substantive and procedural aspects of the levies are governed by Art. 50, which also provides that surcharges may be imposed "upon undertakings which do not comply with decisions" of the Commission. Arts. 51 to 56 regulate the conditions under which funds obtained by borrowing operations must be appropriated for loans as financial assistance pursuant to Arts. 49, 54 and 56 (investments in the coal and steel industries and for social projects). (See section 3 *infra*.)

3. *Functions and Activities*

The activities of the ECSC are closely related to its aims of effecting the proper functioning of a common market for coal and steel.

The ECSC endeavours to ensure "an orderly supply [of coal and steel products] to the common market, taking into account the needs of third countries"; "equal access to the sources of production" by "all comparably placed consumers in the common market"; equitable prices; the promotion of production potential and the rational management of available resources in order to avoid "their unconsidered exhaustion". It aims further to promote "the growth of international trade" and the maintenance of "equitable limits" in export pricing, "the orderly expansion and modernisation of production, and the improvement of quality" while maintaining standards of justified competition practices (Art. 3).

As a socially-orientated activity, the ECSC

promotes improved working conditions and an improved standard of living for the workers in the industrial sectors concerned.

With respect to all these administrative and supervisory activities, including those affecting conduct "incompatible with the common market for coal and steel" (tariff barriers, quantitative restrictions or other measures having an equivalent effect; discriminatory measures; governmental subsidies, aids or charges; and restrictive practices distorting the sharing or exploitation of markets), the ECSC is directed under Art. 5 to act "with a limited measure of intervention" when carrying out "its task in accordance with the Treaty", to which end the ECSC provides "guidance and assistance" by obtaining information, promoting → consultations and by laying down general objectives; by providing financial resources for investments by undertakings and by bearing "part of the cost of readaptation"; by ensuring the maintenance and observance of established competitive conditions (Arts. 65 and 66 on agreements and concentrations; → Antitrust Law, International); by exerting a direct influence upon production or upon the market, however, "only when the circumstances so require"; by publishing the reasoning underlying its actions and by adopting the necessary measures to ensure the observance of the rules laid down in the ECSC Treaty. Art. 5 directs the ECSC furthermore to carry out its activities with a "minimum of administrative machinery" and in "close co-operation with the parties concerned".

In addition to basic administrative, supervisory and advisory activities related to the sectors of coal and steel production, the ECSC has also engaged in a significant range of financial activities. These form a coherent body of positive intervention measures favourable to the coal and steel sectors. They take the form of loans and guarantees and non-repayable aid. The loans reflect a dominantly economic/financial dimension (industrial reconversion, technical and economic research), and a dominantly social dimension (housing and retraining of workers). The legal basis for these activities rests on the contents of Arts. 54 to 56 and Commission Communications. With respect to the retraining of workers, the principle of additionality or complementarity is applied, that is, a grant is conditional upon payment by the member State concerned of an amount at least equal (with certain exceptions) to the ECSC contribution. The lending operations of the ECSC, while concentrated in the production sector, are also devoted to needs in the energy sector and infrastructure.

Thus, the activities of the ECSC relate not only to administration and supervision, but also to the needs of the coal and steel sectors as they evolve new production standards and respond to technological change and changing international market conditions.

4. *Legal Problems*

In a historical perspective involving the nature and dynamics of integration economics and integration law, the ECSC and its legal system assume a problematic dimension. That the "Community shall progressively bring about conditions which will *of themselves ensure the most rational*" development (emphasis added) of the common market for coal and steel (Art. 2), that it shall carry out its task "*with a limited measure of intervention*" (Art. 5) (emphasis added) clearly reflect the tenets that the common market, for its proper functioning, is to rely largely on self-regulatory market forces and mechanisms, and that insofar the competences of the ECSC are to be interpreted restrictively. While such an approach may have been unproblematic in the first decades of the ECSC, at a time when economic factors had a propitious and as such self-regulatory effect on the development and functioning of the ECSC, the emergence of (a) the economic recession of the 1970s and 1980s, (b) shifts of emphasis affecting the competitiveness of the coal and steel industries in the wake of technological and market changes in a global context, and the structural problems they involve: and (c) the dynamics of integration, indicate that the approach adopted in the past is no longer satisfactory. It is clear that the "fundamental and persistent disturbances" (Art. 2) harrassing the economies of the member States could be better tackled in a Community rather than a national context. Yet the ECSC lacks corresponding powers to do so; the emphasis of the Treaty, on the basis of a restrictive and thus static interpretation, has been on administrative, supervisory

and advisory powers, with little attention being given to policy-making powers and the corresponding mandatory implementation of measures effective on a Community basis. In the wake of integration dynamics, economic, industrial, transport, energy, and external commercial policies have become more and more interrelated and interacting, indicating the need for (a) a Community approach to them, (b) the willingness of the member States to equip the European Communities with corresponding competences and (c) a substantial degree of coordination of related competences between the three European Communities, for example, in the spheres of commercial and energy policy. The Community has powers to deal with economic disturbances of a cyclical nature but lacks them to deal with changes of a structural and more permanent nature affecting production and market conditions. The legal and structural system of the ECSC is in need of development beyond the phase of a law of integration of markets and their subsequent management, so that it can become a system capable of tackling, through its policies, upheavals in a period of persistent recession. While part of the ground in such a direction could be covered by a more extensive approach to the interpretation of the ECSC Treaty, long-term prospects for its maturing into a law of integration that governs the realities and exigencies of economic integration will ultimately depend on the member States' perceptions of the ECSC's potential and the formation of consensus among them to transfer, probably by amending the Treaty, the relevant sovereign competences to the ECSC.

5. *Evaluation*

The ECSC constitutes a milestone in the development of integration law in a sphere which is *sui generis*, lying between the conventional categories of municipal and public international law. Serving as a model in a specific area of integration limited to coal and steel, it has been the starting point for further developments in the area of integration law, above all with respect to the two other European Communities (but see also → Andean Common Market). As such, it has made a contribution to the emergence of such concepts as integration law, supranationalism, → European law, the international civil service (→ Civil Service, European), international competition law, the primacy of community law, and economic law (→ Economic Law, International).

Treaty establishing the European Coal and Steel Community, as amended by subsequent treaties (Paris, 18 April 1951), British Command Papers, Cmnd 7461, Treaty Series No. 16 (1979).

Encyclopedia of European Community Law, Vol. B I, Parts B 1–3 (1973, with later additions) [looseleaf].

G. BEBR, The European Coal and Steel Community, A Political and Legal Innovation, Yale Law Journal, Vol. 63 (1953) 1–43.

H.L. MASON, The European Coal and Steel Community, Experiment in Supranationalism (1955).

W. DIEBOLD, The Schuman Plan, A Study in Economic Cooperation (1959).

L. LISTER, Europe's Coal and Steel Community, An Experiment in Economic Union (1960).

S.A. SCHEINGOLD, The Rule of Law in European Integration, The Path of the Schuman Plan (1965).

E.B. HAAS, The Uniting of Europe, Political, Social and Economic Forces, 1950–1957 (1968).

A.H. ROBERTSON, European Institutions: Cooperation – Integration – Unification (3rd ed. 1973) 150–173.

K. KUJATH, Bibliography on European Integration, with annotations (1977) 171–175.

J.J. HEUSDENS and R. DE HORN, Crisis Policy in the European Steel Industry in the Light of the ECSC Treaty, CMLRev, Vol. 17 (1980) 31–74.

D. PETZINA, The Origins of the European Coal and Steel Community: Economic Forces and Political Interests, Zeitschrift für die gesamte Staatswissenschaft, Vol. 137 (1981) 450–468.

B.-C. RYBA, Le Traité de Paris (C.E.C.A.) en 1980, Revue trimestrielle de droit européen, Vol. 17 (1981) 58–67.

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EUROPEAN COMMUNITIES

1. Historical Background; Objects. 2. Enlargement and Development. 3. Structure: (a) The Council. (b) The Commission. (c) The Assembly. (d) The Court. (e) Other organs. 4. Community Legislation. 5. Duration. 6. Legal Personality, 7. Privileges and Immunities. 8. Finances and Budget. 9. The Community Legal Order.

1. *Historical Background*; *Objects*

The European Communities are a unique experiment in regional organization (→ Regional Cooperation and Organization: Western Europe), being designed to achieve a high degree of economic and, ultimately, political integration (→ European Integration), and having created a

body of law which combines characteristics of both international and municipal law.

Historically, the development of the European Communities can be traced to the Pan-European Movement which was active before World War II, and to the European Movement which gained momentum after the war and which led to the founding of the → Council of Europe in 1949 and to other institutional developments. Among other organizations established at that time were the → Western European Union, a defence organization, and, in response to an American initiative, the Organisation for European Economic Co-operation which later expanded into the → Organisation for Economic Co-operation and Development.

However, the founders of the European Communities envisaged going beyond cooperation on the inter-governmental level and sought to establish supranational institutions (→ Supranational Organizations), and ultimately perhaps to set up a federal Europe or a "United States of Europe". On May 9, 1950 the French Foreign Minister, Robert Schuman, declared that a united Europe was essential for world peace and that the ancient enmity between France and Germany must be eliminated. As a first practical step towards that goal, he proposed placing the whole Franco-German coal and steel production under one joint High Authority, in an organization open to the participation of the other countries of Europe. This venture he described as the first stage of the European Federation. The Schuman Declaration led to the negotiation of the Treaty establishing the → European Coal and Steel Community (ECSC), signed in Paris on April 18, 1951. The Treaty entered into force on July 25, 1952, the six original member States of the Community being Belgium, France, the Federal Republic of Germany, Italy, Luxembourg and the Netherlands.

These six States continued their work on European unification. The attempts to set up a → European Defence Community and a → European Political Community were unsuccessful, but, following an initiative by the Benelux countries in 1955, a conference held at Messina in the same year, and preparations by a governmental committee under Paul-Henri Spaak, the same six States decided in 1956 to adopt the Spaak Report as the basis for negotiating further treaties to establish a common market and to organize the peaceful development of atomic energy. Two treaties, the Treaty establishing the → European Economic Community (EEC) and the Treaty establishing the → European Atomic Energy Community (Euratom), were ready for signature in Rome on March 25, 1957 and entered into force on January 1, 1958 for all six member States of the ECSC.

The successful course of the negotiations and of ratification was due primarily to the efforts of the Action Committee for the United States of Europe, a European pressure group founded and guided by Jean Monnet of France. Monnet, the principal architect of the Schuman plan, had been appointed the first President of the High Authority of the ECSC but resigned from that post to devote his energies to the "*relance européenne*"

2. Enlargement and Development

The three founding Treaties all provide that any European State may apply to accede (ECSC Treaty, Art. 98; EEC Treaty, Art. 237; Euratom Treaty, Art. 205). Denmark, Ireland and the United Kingdom joined the three Communities on January 1, 1973; Greece joined on January 1, 1981.

The enlargement of the Communities has not, however, been accompanied by a greater degree of integration, beyond the achievement of a → customs union and certain common policies, so as to attain, for example, an economic and monetary union, or a form of political union. The heads of State and of government, meeting in Paris in October 1972, set themselves the task of "transforming, before the end of the present decade and with the fullest respect for the Treaties already signed, the whole complex of the relations of Member States into a European Union". The Belgian Prime Minister, Leo Tindemans, was invited to define what was meant by the term "European Union" and presented a report on how it might be achieved (Bulletin of the European Communities, Supp. 1/76). But the climate, both political and economic, was less favourable to integration in the 1970s than it had been in the 1950s, and little progress has been made towards the goals of the Paris summit.

There have, however, been a number of significant developments in recent years, including the introduction of direct elections to the European Parliament, the establishment of the European Monetary System (→ European Monetary Cooperation) and the development of cooperation, outside the Treaties, in the field of foreign policy (→ European Political Cooperation). Such political cooperation has increasingly led to "the Ten" presenting a common position in the → United Nations and other international bodies.

3. Structure

The Communities have four institutions: the Assembly, the Council, the Commission and the → Court of Justice of the European Communities. Each of the three founding Treaties provides for those institutions, although the terminology varies: the Treaty establishing the ECSC provided for a "High Authority" (instead of the Commission) and for a "Special Council of Ministers" (instead of the Council). But since the setting up of the EEC and Euratom there has been a single Assembly and a single Court for the three Communities, by virtue of the Convention on Certain Institutions Common to the European Communities, annexed to the EEC and Euratom Treaties. The Treaty establishing a Single Council and a Single Commission of the European Communities (the "Merger Treaty") entered into force on July 1, 1967. Its → preamble envisages "the unification of the three Communities"; but the three Communities remain separate in law, and the common institutions still exercise the powers and jurisdiction conferred on the institutions they replace in accordance with the provisions of the respective founding Treaties.

(a) The Council

The Council consists of representatives of the member States: each government delegates one of its members (Merger Treaty, Art. 2). In practice, besides the "general" Council, normally attended by the Ministers of Foreign Affairs, "specialized" Council meetings take place to deal with specific subjects such as agriculture, finance, social affairs, etc. The Council's work is prepared by the Committee of Permanent Representatives of the Member States (Merger Treaty, Art. 4), and it has a substantial staff of officials, some permanent, while others are seconded from national administrations (→ Civil Service, European). The Council has the final power of decision on Community legislation, at least under the EEC Treaty, and on the conclusion of international agreements between the Community and third countries; it shares budgetary powers with the European Parliament. While notionally a Community institution, the Council often acts as an intergovernmental organ in which short-term national interests predominate at the expense of the Community interest.

(b) The Commission

The Commission consists of 14 members, appointed by common accord of the governments of the member States (Merger Treaty, Arts. 10 and 11). In practice, two are nominated by each of the four largest member States, and one by each of the others. They are to be independent of the governments, are to act in the interest of the Communities and are not to take instructions from any government or from any other body (Merger Treaty, Art. 10).

The Commission, with a staff of some 11000, is the largest employer among the Community institutions, and has the central place in the institutional structure. It has the exclusive right of proposal for the adoption of Community legislation, it negotiates international agreements under guidelines laid down by the Council, and it has a duty to ensure the observance of Community law, in particular by member States. It was initially conceived as the dynamo of the Community but, with the resurgence of national pressures and jealousies, it has lost power and influence to the Council.

(c) The Assembly

The Assembly, or European Parliament as it is now known, consists of "representatives of the peoples of the States brought together in the Community" (EEC Treaty, Art. 137). It consisted initially of delegates designated by the Parliaments of the member States from among their members (EEC Treaty, Art. 138), but since 1979 its members have been elected by direct universal suffrage in accordance with Council Decision and Act of September 20, 1976 on Direct Elections (Official Journal, 1976, L 278). Of the total of 434 mem-

bers, 81 are elected in each of the four largest member States, and the remaining 110 in varying numbers in the other member States.

The Parliament is not a legislature but has, in many cases, the right to be consulted on proposals for Community legislation before they are adopted. It has certain budgetary powers, as mentioned below. It also has, but has not yet exercised, the power to dismiss the Commission on a motion of censure. (See generally → Parliamentary Assemblies, International.)

(*d*) *The Court*

The Court of Justice consists of eleven judges and five advocates-general, appointed by common accord of the governments of the member States (EEC Treaty, Arts. 165 to 167). It has a wide-ranging jurisdiction and in almost all cases its jurisdiction is both compulsory and automatic.

(*e*) *Other organs*

Apart from the institutions enumerated in the Treaties, a number of other organs have been set up. Some of these are peculiar to one or other Community, e.g. under the ECSC Treaty, the Consultative Committee (Art. 18); under the Euratom Treaty, the Agency (Art. 52); under the EEC Treaty, the Economic and Social Committee (Art. 193) and the → European Investment Bank (Art. 129). Others are common to the three Communities, such as the Court of Auditors (EEC Treaty, Art. 206, as amended by the Budgetary Treaty of July 22, 1975; Official Journal, 1977, L 359, p. 1).

Another body has no Treaty basis at all: the regular "summit" meetings of heads of State and of government are now institutionalized under the confusing title "European Council" (to be distinguished from the Council of Europe, a separate organization with which it has no connection). The European Council is intended to take decisions at the highest political level on matters which cannot be resolved within the normal institutional framework of the Community.

In addition, representatives of the member States not acting in the exercise of powers conferred by the Treaties may take decisions (sometimes described as decisions of the representatives of the governments of the member States) which have the status of international agreements rather than of Community law.

The seat of the Community institutions is to be determined by common accord of the governments of the member States (ECSC Treaty, Art. 77; EEC Treaty, Art. 216; Euratom Treaty, Art. 189). No final decision has yet been taken, and the institutions are provisionally located in Brussels, Luxembourg and Strasbourg. The Council and most of the Commission's offices are sited in Brussels; the Court of Justice, the remainder of the Commission's offices and the Parliament's offices are located in Luxembourg; the Parliament at present holds its sessions in Strasbourg.

4. *Community Legislation*

The Communities, in contrast with traditional → international organizations, have wide legislative powers, and all four institutions have a function in relation to such legislation (cf. → International Legislation). Under the EEC Treaty, legislation is enacted by the Council on a proposal from the Commission, which may itself adopt subordinate legislation. Under the EEC Treaty, such legislation takes the form of regulations or directives (Art. 189); and while the Council may usually act only on a Commission proposal, it may if unanimous amend the proposal (Art. 149). Under the ECSC Treaty, where the Commission has a greater legislative competence, the corresponding measures take the form of decisions or recommendations (Art. 14). Legislation is published in the Official Journal of the European Communities, which appears at approximately daily intervals.

On many areas of Community activity, the Council is required by the EEC Treaty to consult the European Parliament before acting on a Commission proposal, but the Parliament's role is consultative and the Council is not bound to follow the Parliament's opinion. The EEC Treaty generally provides that the Council is to act by a simple majority or by a qualified majority. In the latter case, the votes are weighted to favour the larger member States (Art. 148; → Weighted Voting). In some cases, however, the Treaty requires unanimity. In particular, unanimity is required to amend a proposal of the Commission (Art. 149); to legislate under certain provisions of the Treaty (e.g. Arts. 100 and 235); or to admit a

new member to the Community (Art. 237). In practice, since the so-called "Luxembourg Accords" of January 1966, the Council has failed to apply the majority voting rules and has adopted a unanimity rule where "very important interests of one or more partners are at stake".

Jurisdiction to rule on the interpretation and validity of Community legislation, as well as many other areas of jurisdiction, is vested in the Court of Justice.

5. *Duration*

The ECSC Treaty is concluded for a period of fifty years from its entry into force (Art. 97); in contrast, the EEC and Euratom Treaties are expressed to be concluded for an unlimited period (EEC Treaty, Art. 240; Euratom Treaty, Art. 208).

6. *Legal Personality*

Each of the Communities has legal personality (ECSC Treaty, Art. 6, para. 1; EEC Treaty, Art. 210; Euratom Treaty, Art. 184). In municipal law, each Community has in each member State the most extensive legal personality accorded to legal persons under their respective laws; for this purpose, the Community is represented, under the EEC and Euratom Treaties, by the Commission or, under the ECSC Treaty, by the appropriate institution (ECSC Treaty, Art. 6, paras. 3 and 4; EEC Treaty, Art. 211; Euratom Treaty, Art. 185). In addition, the European Investment Bank and the Euratom Agency have legal personality in the municipal law of the member States (EEC Treaty, Art. 129; Euratom Treaty, Art. 54).

International legal personality is conferred on the ECSC by the ECSC Treaty which provides that: "In international relations, the Community shall enjoy the legal capacity it requires to perform its functions and attain its objectives" (Art. 6, para. 2). This functional approach echoes the language of the Advisory Opinion of the → International Court of Justice, → Reparation for Injuries Suffered in Service of UN (ICJ Reports (1949) at p. 180). No general provision to like effect is contained in the EEC or Euratom Treaties, but specific treaty-making powers are envisaged in the EEC Treaty by Art. 113 (common commercial policy), Art. 229 (relations with international organizations; → European Communities: External Relations) and Art. 238 (association agreements; → European Economic Community, Association Agreements). Moreover, according to the Court of Justice, Art. 210 of the EEC Treaty implies that in its external relations the Community enjoys the capacity to establish contractual links with third countries over the whole field of objectives defined in Part One of the Treaty (→ European Road Transport Agreement Case). In general, international agreements are negotiated by the Commission and concluded by the Council (Art. 228).

7. *Privileges and Immunities*

There are common rules for the three Communities, conferring the customary privileges and immunities, in the territories of the member States, on them, on the members of their institutions, on their officials, on the representatives of the member States and on the missions of non-member States accredited to the Communities (Merger Treaty, Art. 28, and the Protocol on the Privileges and Immunities of the European Communities annexed to that Treaty). However, in contrast with the general rule for international organizations (→ International Organizations, Privileges and Immunities), the Communities do not have a complete immunity from the jurisdiction of municipal courts; the municipal courts have jurisdiction if, but only if, jurisdiction is not conferred on the Court of Justice (ECSC Treaty, Art. 40, para. 3; EEC Treaty, Art. 183; Euratom Treaty, Art. 155). In practice the jurisdiction of municipal courts is likely to be limited to cases concerning the contractual liability of the Communities, jurisdiction in cases of non-contractual liability being reserved to the Court of Justice (ECSC Treaty, Art. 40, para. 1; EEC Treaty, Art. 178; Euratom Treaty, Art. 151). Even in cases arising out of contract, the Court of Justice will have jurisdiction if the contract contains an arbitration clause which so provides (ECSC Treaty, Art. 42; EEC Treaty, Art. 181; Euratom Treaty, Art. 153).

8. *Finances and Budget*

There is a single budget for the three Communities (Merger Treaty, Art. 20). Financial operations are expressed in a European "unit of account", a "basket" based on the values of the

currencies of the member States on the foreign exchange markets (cf. → Monetary Law, International). Since the establishment of the European Monetary System in 1979 the unit of account has been known as the European Currency Unit (ECU) and is at the time of writing worth approximately one US dollar.

The total Community budget amounts to some 20 billion ECUs, the major part of which serves to finance the common agricultural policy. Under the terms of Council Decision of April 21, 1970 on the replacement of financial contributions from member States by the Communities' own resources (Journal officiel, 1970, L 94, p. 23), the Community budget is financed by all customs duties and agricultural levies on imports from third countries, together with a proportion, not exceeding one per cent, of the value added tax (VAT) levied by member States, the uniform basis used for assessing VAT being determined by a Council Directive (Sixth Directive on VAT, Directive 77/388; Official Journal, 1977, L 145, p. 1).

The preliminary draft budget is drawn up annually by the Commission, established by the Council, and forwarded to the Parliament, which may approve, amend or reject it. There usually follow further exchanges between the Council and the Parliament. The Parliament has the final decision in certain budgetary matters; it also formally adopts the budget and exercises control, with the assistance of the Court of Auditors, over its implementation.

9. The Community Legal Order

The EEC Treaty has as its object the integration of the entire economies of the member States, in contrast with the ECSC and Euratom Treaties which are confined to limited sectors of the economy. Art. 232 provides that the EEC Treaty shall not affect the provisions of the ECSC Treaty and shall not derogate from those of the Euratom Treaty. However, the three Treaties and the implementing legislation can be regarded as constituting a single legal order, a system of law separate from the national laws of the member States and distinct also from → international law, having the character of a common internal law. The Community legal order is based on the twin doctrines of direct effect and primacy, being directly enforceable in the courts of the member States and prevailing over any conflicting municipal law (→ European Communities: Community Law and Municipal Law). These two basic doctrines, developed by the Court of Justice in a progressive body of case-law from the inception of the Communities, have been widely if not universally accepted by the municipal courts of the member States.

European Communities, Office for Official Publications, Treaties establishing the European Communities.
Encyclopedia of European Community Law (1973, with later additions) [looseleaf].

H.P. IPSEN, Europäisches Gemeinschaftsrecht (1972).
P.J.G. KAPTEYN and P. VERLOREN VAN THEMAAT, Introduction to the Law of the European Communities (1973).
W.J. GANSHOF VAN DER MEERSCH, L'ordre juridique des Communautés européennes et le droit international, RdC, Vol. 148 (1975 V) 1–433.
E. STEIN, P. HAY and M. WAELBROECK, European Community Law and Institutions in Perspective (1976).
L.-J. CONSTANTINESCO, Das Recht der Europäischen Gemeinschaften (1977).
O. JACOT-GUILLARMOD, Droit communautaire et droit international public (1979).
A. BLECKMANN, Europarecht (3rd ed. 1980).
D.J. GIJLSTRA et al. (eds.), Leading Cases on the Law of the European Communities (3rd ed. 1980).
J.-V. LOUIS, The Community Legal Order (1980).
P.S.R.F. MATHIJSEN, A Guide to European Community Law (3rd ed. 1980).
R. PLENDER and J. USHER, Cases and Materials on the Law of the European Communities (1980).
T.C. HARTLEY, The Foundations of European Community Law (1981).
D. LASOK and J.W. BRIDGE, An Introduction to the Law and Institutions of the European Communities (3rd ed. 1982).

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EUROPEAN COMMUNITIES: COMMUNITY LAW AND MUNICIPAL LAW

1. Basic Issues

Within the territory of each member State of the → European Communities, community law applies alongside municipal law. The former is binding not only on all member States (and accordingly on their legislative agencies, courts and

administrations) but also on natural and legal persons under their jurisdiction. The simultaneous application of two legal systems, which are independent and distinct whilst in large measure complementary, gives rise to a certain number of problems.

From the point of view of municipal law, the conclusion of the treaties establishing the → European Coal and Steel Community (ECSC), the → European Atomic Energy Community (Euratom) and the → European Economic Community (EEC) (and subsequently of the acts of accession) created a situation similar to that which occurs with the conclusion of any international → treaty which is intended to produce effects within the municipal system (→ International Law in Municipal Law: Treaties). In order to ensure such effects and to remove any hindrances created by prior municipal provisions, some States enacted implementing legislation, whilst in others the publication of the ratified treaty sufficed (the ratification being usually authorized by the national legislature; → Foreign Relations Power; → Treaties, Conclusion and Entry into Force). Each member State thus followed its own standard procedure, even with regard to the Community Treaties.

However, the implementation of these Treaties led to a problem of greater complexity. The treaties gave rise to a new legal order, as the → Court of Justice of the European Communities (CJEC) has ruled on a number of occasions (e.g. in the → Van Gend en Loos (1963) and the → Costa v. ENEL (1964) judgments). Consequently, when each member State joined the Communities, it had to recognize the Community order with all its unforeseeable, potential developments. Recognition of the Community order meant introducing it into a field previously governed exclusively by municipal law, permitting the Community institutions to begin exercising their powers in the fields contemplated by the Treaties and requiring national agencies to refrain from interfering in these fields. This coincides with the doctrine of the limitation of the sovereign rights of the member States and the transfer to the Communities of certain of their powers (→ Sovereignty; → Supranational Organizations), a doctrine which was adopted by the CJEC in the Van Gend en Loos and Costa v. ENEL judgments.

2. *Constitutional Adjustments*

It was inevitable that the recognition of community law, producing such a far-reaching effect on the legal systems of the member States, should give rise in many of these States to doubts regarding its compatibility with their constitutions. In fact, the previous constitutional structures were altered: even though the Community does not amount to a → federal State, the powers of the legislature and administration of the member States were henceforth limited by its existence and operations.

The importance of this change for the various member States differed in accordance with their constitutional orders (in certain States, an appropriate amendment was made to the constitution, either prior to joining the Community, as in the case of Ireland, or subsequently, as in the case of Belgium). Some constitutions provide for the limitation of sovereignty or for the transfer or delegation of powers in favour of international organizations (there are such rules, albeit expressed in varying terms, in the constitutions at present in force in Belgium, Denmark, the Federal Republic of Germany, Greece, Italy, Luxembourg, and the Netherlands). On the basis of such provisions, recognition of Community law was considered compatible with the fundamental principles of these States and it was accordingly admitted that measures of the Community institutions might have effect *per se.* A new clause was inserted in the Irish Constitution which makes specific reference to the Communities and to the acts, laws and measures which the Communities may adopt. In the United Kingdom, which does not have a written constitution, a single section in the European Communities Act of 1972 was sufficient to provide for the direct legal effect of existing and future Community measures. Finally, with regard to France, although the → preamble to the Constitution permits (in a provision very close to that of Art. 11 of the Italian Constitution) restrictions on sovereignty which are necessary for the organization and preservation of peace, the Conseil Constitutionnel ruled that this does not imply that sovereignty may be transferred wholly or in part to international organizations (decision of December 30, 1976). This attitude reflects the general opinion that the procedure followed in approving the

Treaties establishing the Communities, which was identical with that applicable to other international treaties, was not based on any particular rule of the Constitution. Thus, possible doubts as to the conformity of the Community requirements with the French Constitution were not solved, but merely bypassed, since the problem was not raised before the Conseil Constitutionnel within the prescribed time-limits.

3. *Incorporation of Community Law*

Regardless of the member States' different bases for the recognition of Community law, it is important to emphasize that this law does not undergo any process of "nationalization".

The theory of the transformation of international law into municipal law (which postulates the need for the creation of rules of municipal law in accordance with international rules whenever they aim to produce effects within the State) has its proponents and opponents (→ International Law and Municipal Law), but in any case it does not apply to Community law, which retains its own characteristics (in particular independence and uniformity) at the stages of both its creation and its application. In this connection it is significant that the CJEC has issued a clear condemnation of the practice of re-enacting Community regulations by provisions of municipal legislation, thereby emphasizing the importance of the distinctive legal guarantees provided by Community law. However, within the member States' municipal systems, Community law does not take on the same nature as legislation deriving from these States' own sources of law. The Community provisions remain the expression of a distinct system of law even though their application frequently requires various forms of combination with national provisions and the assistance of the national administrations and courts.

4. *Priority of Community Law*

The risk of conflict between Community law and municipal law naturally exists, as where a member State enacts provisions contrary to Community law. The solution resides in the so-called principle of the priority or primacy of directly applicable Community provisions over the laws of the member States – a principle which is incontestable from the Community point of view but whose application has often created difficulties for the national courts.

In very general terms, the CJEC indicated in the Costa v. ENEL Case the logical basis for the primacy of Community law, declaring in substance that the binding force and integral nature of that law, its uniform effect and more particularly the direct effect of regulations preclude the possibility of subsequent unilateral provisions adopted by the individual member States overriding it. That view has been confirmed by a body of consistent case-law (see e.g. the judgment of March 9, 1978, Simmenthal (Case 106/77, ECR (1978) p. 629)). In that judgment, the Court indeed inferred from the primacy principle that the valid adoption of new national legislative measures is precluded to the extent they would be incompatible with Community provisions; all conflicting provisions of national law are "automatically" inapplicable, with the consequence that domestic courts are under a duty to refuse of their own motion to apply such national provisions.

Nevertheless, since the legal systems of the member States retain their independence, the principle of the primacy of Community law can be applied only where those systems themselves afford a basis for that primacy. That basis may take the form of constitutional rules acknowledging that international treaties have priority over legislation (as in France, Greece and the Netherlands) or of authoritative decisions of the courts proceeding from the same doctrine (as in Luxembourg with the decision of July 14, 1954 of the Cour Supérieure de Justice and more recently in Belgium through the judgment of May 27, 1971 of the Cour de Cassation). Even in situations of this nature, difficulties may exist; in France, for example, the Cour de Cassation in its ruling of May 24, 1975 held that the primacy of the Treaty establishing the EEC should be upheld having regard to Art. 55 of the Constitution, the Conseil d'Etat in its decision of March 1, 1968 held that Art. 55 is addressed to the legislature and that the courts do not have the power to disregard provisions of municipal law which are incompatible with prior international agreements.

Another and more specific foundation for the primacy of Community law consists in that law's

recognition within the municipal systems: Such recognition should also entail recognizing its precedence over national legislation (such a view was upheld in England by the Chancery Division of the High Court in its judgment of November 7, 1973 in the Aero Zipp Fastener Case). Similar, although not identical, notions guided the West German and Italian Constitutional Courts in their rulings that, since Community law proceeds from an independent power whose exercise is correlated to constitutional limitations on the sovereignty of the member States, the national legislatures may not validly intervene in fields where competence is reserved to the Community institutions (cf. the judgment of June 9, 1971 of the German Federal Constitutional Court and the judgment of December 27, 1973 of the Italian Constitutional Court).

As a whole, then, the courts of the member States have gradually adopted the view that directly applicable Community law takes precedence over prior and subsequent national provisions conflicting with that law. Two problems, however, still remain. First, the CJEC and the Italian Constitutional Court disagree as to the course to be adopted by the ordinary courts when they have to deal with incompatible municipal legislation. According to the CJEC, every national court must declare such legislation inapplicable, whilst the Italian Constitutional Court, in its ruling of October 22, 1975, held that the power was reserved to itself to declare the unlawfulness of Italian legislation in so far as it contradicts Community law. That ruling also held that it is not within the powers of ordinary courts to determine whether the legislature acted *ultra vires*, since only the Constitutional Court is entitled to assess the compatibility of legislative acts with the superior rules of the Constitution. Although this conflict may appear of minor importance, it places the ordinary Italian courts in a grave dilemma, namely whether to adopt the views of the CJEC or those of their own Constitutional Court.

Secondly, the West German and Italian Constitutional Courts have held that the provisions of their respective constitutions on fundamental rights and liberties must prevail over Community legislation which may infringe them (cf. the Order of May 29, 1974 of the West German Court and the ruling of December 27, 1973 of the Italian Court). These views would jeopardize the uniformity of Community law, should they be interpreted as being prompted by the idea that the constitutional rules are inviolably superior. Such an idea is indefensible since Community law has been recognized within the municipal systems, and that recognition has, on its own, very widely affected the constitutional structures of the member States. However, the two Constitutional Courts were probably concerned principally with what they perceived as scant protection of → human rights within the Community legal system. If that is the case, these reservations have subsequently lost a large part of their *raison d'être*, since the CJEC has recognized in numerous judgments that the principles concerning the protection of human rights form part of the Community system, as fundamental principles common to the laws of the member States which may be inferred from their constitutional traditions, as well as from the international agreements which they have concluded in this field (especially the → European Convention on Human Rights).

5. *Effect on Individuals*

Recognition of Community law within the municipal systems ensures that all Community legislation can in fact apply to the persons to which it is addressed within those systems, in particular conferring rights upon such persons, with the same guarantees as these systems provide for the observance of their own rules (→ Individuals in International Law). Clearly, this concerns primarily the directly applicable Community rules, that is, the → self-executing treaty provisions, and the far greater number of such rules introduced through regulations. Nevertheless, there exists another category of Community rules which are directed to the member States or to the institutions of the Communities and impose duties upon them; the CJEC has held that under certain conditions such rules confer rights upon individuals. This is the origin of the "doctrine of direct effect" which applies both to some rules of the Treaties and to directives and decisions addressed to the member States.

The content and scope of that doctrine emerge from numerous judgments of the CJEC starting with the ruling in the Van Gend en Loos Case. According to that case-law, the existence of rights for individuals may be deduced from four sources:

(a) rules which lay down negative obligations for the member States (for example, the prohibition of quantitative restrictions and measures having equivalent effect (cf. the judgment of March 22, 1977, Jannelli e Volpi (Case 74/76, ECR (1977) p. 557));

(b) rules which oblige the member States to abolish within a certain time-limit provisions incompatible with Community law; in those cases, the direct effect comes into operation once the time-limit expires (cf., *inter alia*, the judgment of December 16, 1976, Comet (Case 45/76, ECR (1976) p. 2043));

(c) rules which make provision for the abolition by a certain time of restrictive national measures whilst rendering the abolition subject to the issue of Council directives (cf. the judgment of June 21, 1974, Reyners (Case 2/74, ECR (1974) p. 631));

(d) provisions which require the States to ensure that a specified principle is applied by a certain date, should the State fail to do so by that date (cf. the Defrenne Case of April 8, 1976 (Case 43/75, ECR (1976) p. 455, concerning Art. 119 of the EEC Treaty on equal pay for men and women (→ Sex Discrimination)).

It should be noted that in cases (a), (b) and (c), the rights of individuals were recognized against public administrations; while in case (d) the rights were also upheld *vis-à-vis* other private persons. Finally, it is a requirement for direct effect that the provision in question should not be subject to conditions depending on the discretion of the State or of the Community institutions.

With regard to when the doctrine of direct effect should be considered binding on the national courts, it would appear that not only the letter of Community law but also its dynamics and developments are to be recognized in municipal law. On the other hand, the duty of the CJEC to interpret Community law at the request of the national courts (under Art. 177 of the EEC Treaty) confers substantial binding force upon its decisions on questions of principle, including its rulings concerning direct effect. But the Court's doctrine of direct effect has been contested by some national tribunals.

6. *Complementary Provisions*

Regarding the degree to which the municipal law of the member States and Community law are complementary to each other, one should bear in mind that the Community legal system is not self-sufficient; in numerous fields it relies on cooperation with the national legal systems.

With regard to legislation, apart from the measures prescribed by many provisions of the Community Treaties, the member States are required to enact laws in implementation of directives whose content exceeds the framework of domestic rules already in existence. In fact, the directives constitute Community sources of law which are intended, by their nature, to be followed and supplemented by legislation or administrative measures of the States; the directives accordingly serve, *inter alia*, to initiate that process of approximation of legislation which is the clearest example of the use of national legislation to bring about the integration of the Community. The enactment of legislation may be required even for Community regulations in spite of the fact that they have direct effect, as for example in cases where the budget of the State requires amendment in order to meet charges imposed by Community regulations.

Community law is implemented in many instances through the administrative processes of the member States. The most important examples of this are to be found in the field of agricultural policy and in matters concerning the social security of → migrant workers. Equally important is the fact that the Community's "own resources" in its budget are collected by the revenue and customs officials of the member States. Furthermore, it is the duty of the national authorities to enforce decisions of the Community which impose pecuniary obligations on natural and legal persons and also to enforce judgments of the CJEC in relation to such persons.

Finally, the municipal courts and tribunals contribute in large measure to ensuring that Community law is observed. The national courts must apply Community law to disputes coming within their jurisdictions whenever it is necessary to ascertain the existence of an obligation stemming from Community law or of a right which a natural or legal person claims under the same law.

7. *Renvoi*

A last point concerns the existence of references from Community law to municipal law and *vice versa*. "Renvoi", the technique whereby one legal system utilizes the rules of another

system for various purposes and by various means, is occasionally employed in the Treaties establishing the Communities. There is, for example, a reference to the various national legal systems in Art. 211 of the EEC Treaty in accordance with which the Community enjoys in each member State the most extensive legal capacity accorded to legal persons under its laws. Other examples of references to the national legal systems may be found in secondary Community law, above all in directives. However, of much greater interest is the comprehensive reference to the general principles common to the laws of the member States contained in Art. 215 of the EEC Treaty. Moreover, in the case-law of the CJEC the reference to the general principles common to the laws of the member States (cf. → General Principles of Law) has received an appreciably wider application (e.g. in relation to human rights). The way has thus been paved for the transmission of certain values of the municipal legal systems to the Community system, provided of course that they are compatible with the objectives of → European integration.

E. SUY, Les rapports entre le droit communautaire et le droit interne des Etats membres (1964).

Droit communautaire et droit national/Community Law and National Law, Semaine de Bruges 1965 (1965).

H.P. IPSEN and E. BÜLOW, Des Verhältnis des Rechts der europäischen Gemeinschaften zum nationalen Recht, in: Aktuelle Fragen des europäischen Gemeinschaftsrechts (1965) 1–59.

G. CONSTANTINIDES-MÉGRET, Le droit de la Communauté économique européenne et l'ordre juridique des Etats membres (1967).

M. GAUDET, Conflits du droit communautaire avec les droits nationaux (1967).

R. MONACO, Diritto delle Comunità europee e diritto interno (1967).

R. SAINT-ESTEBEN, Droit communautaire et droits nationaux (1967).

H.J. SCHLENZKA, Die Europäischen Gemeinschaften und die Verfassung der Mitgliedstaaten (1967).

H. LESGUILLONS, L'application d'un traité-fondation: Le traité instituant la C.E.E. (1968).

L.-J. CONSTANTINESCO, Die unmittelbare Anwendbarkeit von Gemeinschaftsnormen und der Rechtsschutz von Einzelpersonen im Recht der EWG (1969).

W.J. GANSHOF VAN DER MEERSCH, Le droit communautaire et ses rapports avec les droits des Etats membres (1969).

K. ROEMER, Betrachtungen zum Verhältnis Gemeinschaftsrecht – nationale Rechte (1969).

M. WAELBROECK, Traités internationaux et juridictions internes dans les pays du Marché Commun (1969).

M. ZULEEG, Das Recht der europäischen Gemeinschaften im innerstaatlichen Bereich (1969).

G. BADIALI, Il diritto degli Stati negli ordinamenti delle Comunità Europee (1971).

Gemeinschaftsrecht und nationale Rechte, Das Zusammenwirken der europäischen Rechtsordnung mit den nationalen Rechtsordnungen, 5. Internationaler Kongreß für Europarecht, vom 23.-26. September 1970 in Berlin (1971).

La Communauté et ses Etats membres, Actes du 6e Colloque de l'Institut d'études juridiques européennes (1973).

Il primato del diritto comunitario e i giudici italiani (1978).

L. LUZZATTO, La diretta applicabilità nel diritto comunitario (1980).

J. USHER, European Community Law and National Law: The Irreversible Transfer? (1981).

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EUROPEAN COMMUNITIES, COURT OF JUSTICE *see* Court of Justice of the European Communities

EUROPEAN COMMUNITIES: EXTERNAL RELATIONS

Though the activities of the three → European Communities (EC) – the → European Economic Community (EEC), the → European Atomic Energy Community (Euratom) and the → European Coal and Steel Community (ECSC) – are governed by three distinct constituent instruments, their external relations are based on the same or at least similar legal principles.

A. Subjects of International Law

Each Community is a → subject of international law (EEC Treaty, Art. 210; Euratom Treaty, Art. 184; and ECSC Treaty, Art. 6, paras. 1 and 2). The → Court of Justice of the European Communities (CJEC) has relied on this fact in order to qualify Community law as superior to national law (→ Costa v. ENEL; → European Communities: Community Law and Municipal Law) and to identify the existence and the scope of implied treaty-making powers (→ European Road Transport Agreement Case; Cases 3, 4 and 6/76, Kramer, ECR (1976) p. 1279).

By January 1, 1982, 60 countries had entered

into 198 agreements with one or another of the Communities, in addition to the 62 countries of Africa, the Caribbean and the Pacific (ACP countries) that had concluded the second → Lomé Convention. Ninety-nine countries had established formal diplomatic relations with the three Communities, and 119 States had done so with at least one of the Communities. The Communities had established missions to Australia, Canada, Israel, Japan, Thailand, the United States, Venezuela, Yugoslavia and to two → Regional Commissions of the United Nations (Economic Commission for Latin America and Economic Commission for South Asia and the Pacific). Furthermore, in 1982 the Commission of the European Communities had 52 delegates in various ACP and Maghreb/Mashrak countries.

B. Scope of Regulatory and Treaty-Making Powers

The regulatory and treaty-making powers of the three Communities cover all actions necessary to attain their objectives (→ International Organizations, Treaty-Making Power). These powers flow from the expressly attributed powers, the implied powers (→ International Organizations, Implied Powers) and the fall-back provisions of the EC Treaties (EEC Treaty, Art. 235; Euratom Treaty, Art. 203; and ECSC Treaty, Art. 95, paras. 1 and 2). In addition, Art. 17 of the Protocol on the Privileges and Immunities of the European Communities (→ International Organizations, Privileges and Immunities) recognizes the right of the Communities to accredit missions of third countries. The right to send missions is not expressly provided for but follows from the external powers of the Communities.

1. *EEC Treaty-Making Powers*

(*a*) *EEC commercial policy*

Under Art. 113 of the EEC Treaty, which incorporates the most important of all expressly attributed treaty-making powers, the EEC is charged with developing a common commercial policy. Since January 1, 1970 this has been an exclusive Community power. Member States can act only if they are specifically authorized to do so (→ Donckerwolcke Case). Special rules apply to finance (Opinion 1/78, Natural Rubber, ECR (1979) p. 2871). According to the CJEC, Art. 113 is to be interpreted broadly and not to be limited to traditional instruments (Opinion 1/78).

Pursuant to Art. 113, the EEC has concluded multilateral agreements within the framework of the → General Agreement on Tariffs and Trade (GATT) such as the Multifibre Agreement of 1973 (Official Journal of the European Communities (OJ) 1974, L 118), and the agreements resulting from the Tokyo Round (OJ 1980, L 71). It also participates in international commodity agreements such as the International Wheat Agreement of 1971 (OJ 1974, L 219) and the international agreements on tin, coffee, natural rubber, olive oil and cocoa (→ Commodities, International Regulation of Production and Trade). Examples of bilateral trade agreements concluded pursuant to Art. 113 are the free trade agreements of 1972 with the seven member States of the → European Free Trade Association, some of the agreements with Mediterranean countries (e.g. with Spain, Journal officiel 1970, L 182), the agreement with Romania (OJ 1980, L 352), agreements with a series of Latin American and Asian countries (e.g. with China, OJ 1978, L 123) as well as sectoral agreements such as the 28 textile agreements and agreements on trade in agricultural products. In several cases, bilateral agreements involving cooperation have been concluded pursuant to Arts. 113 and 235 of the EEC Treaty (e.g. with Canada, OJ 1976, L 260; with the member States of the → Association of South-East Asian Nations, OJ 1980, L 144; and with India, OJ 1981, L 328).

(*b*) *EEC association agreements*

Under Art. 238 of the EEC Treaty, the EEC may establish, by agreement, an association involving reciprocal rights and obligations, common action and special procedures (→ European Economic Community, Association Agreements). Some so-called association agreements are in reality no more than trade agreements (e.g. the agreements with Malta (OJ 1971, L 61); Cyprus (OJ 1973, L 133); Algeria (OJ 1978, L 263); Egypt (OJ 1978, L 266); Jordan (OJ 1978, L 268); Lebanon (OJ 1978, L 267); Morocco (OJ 1978, L 264); Syria (OJ 1978, L 269); Tunisia (OJ 1978, L 265)). Other agreements are genuine association

agreements, but are "mixed" agreements (see section E *infra*), e.g. the agreement with Turkey (OJ 1964, 217) and the second Lomé Convention.

(c) Implicit EEC treaty-making power

According to Opinion 1/76 of the CJEC, every internal Community power implies a treaty-making power. Normally this implicit Community power is not *a priori* exclusive. However, it becomes exclusive once the Community has recognized the necessity of Community action (Opinion 1/76 of the CJEC concerning the laying-up fund for inland waterway vessels, ECR (1977) p. 741). The implicit Community power is also exclusive if the envisaged international agreement might affect or alter the scope of internal Community rules; this is the so-called ERTA doctrine (European Road Transport Agreement Case). Examples of the practical application of the ERTA doctrine are the decisions to adhere to the Convention for the Protection of Animals kept for Farming Purposes (OJ 1978, L 323) and the Convention on the Conservation of Antarctic Marine Living Resources (OJ 1981, L 252). The ERTA doctrine and Opinion 1/76 explain the exclusive Community competence for fisheries agreements which has been exercised since January 1, 1977 (→ Fisheries, International Regulation). Examples of bilateral fisheries agreements are those with Canada, Norway and Sweden (OJ 1980, L 226).

(d) EEC treaty-making powers and objectives

In addition to enjoying its expressly attributed and implicitly recognized powers, the EEC is empowered to conclude international agreements if this is necessary to attain one of its objectives (EEC Treaty, Art. 235; Case 22/70). This power becomes exclusive once the Community has recognized the necessity of Community action or if the ERTA doctrine is applicable (e.g. EC participation in several environmental conventions: Paris Convention of 1974 (OJ 1975, L 194); Bonn Convention of 1976 (OJ 1977, L 240); Barcelona Convention of 1976 (OJ 1977, L 240). See also the bilateral agreements involving cooperation mentioned above).

2. Euratom Treaty-Making Powers

Art. 101 of the Euratom Treaty expressly established a parallelism between internal regulatory and treaty-making powers. This power is *a priori* exclusive with respect to the exchange of scientific or industrial information (Euratom Treaty, Art. 29) and supplies (Art. 52). It is also exclusive if the envisaged international agreement might affect or alter the scope of internal Community rules. For its powers with respect to physical protection, see Ruling 1/78, ECR (1978) p. 2151.

Art. 206 of the Euratom Treaty regarding association agreements corresponds to Art. 238 of the EEC Treaty; Art. 203 of the Euratom Treaty corresponds to Art. 235 of the EEC Treaty. Euratom has concluded agreements relating to cooperation and transfer of nuclear material with Argentina (OJ 1963, L 186), Australia (OJ 1982, L 281), Brazil (OJ 1969, L 79), Canada (OJ 1959, 60) and the United States (OJ 1959, 17). It has concluded three safeguards and verification agreements with the → International Atomic Energy Agency (one agreement published in OJ 1978, L 51). It is a party to the Convention on Physical Protection of Nuclear Material (OJ 1980, L 149).

3. ECSC Treaty-Making Powers

The ECSC Treaty does not contain any express provision which enables the ECSC to conclude international agreements. The treaty-making power of the ECSC is therefore limited to implied powers and to those provided in Art. 95, paras. 1 and 2 of the ECSC Treaty, which correspond largely to Art. 235 of the EEC Treaty and to Art. 203 of the Euratom Treaty. The most important ECSC agreement is the steel export arrangement with the United States (OJ 1982, L 307).

C. Distribution of Competences

The distribution of competences between Community institutions in the treaty-making process closely follows the Communities' decision-making process in general. Negotiations have to be conducted by the Commission (EEC Treaty, Art. 228; Euratom Treaty, Art. 101). Though expressly provided for only in Art. 113 of the EEC Treaty and in part by Art. 101 of the Euratom Treaty, prior authorization and negotiation directives decided by the Council, as well as assistance by a committee of representatives of

member States, have become generalized practice. Normally, conclusion of an agreement is either within the competence solely of the Council (EEC Treaty, Art. 228) or is a competence shared with the Commission (Euratom Treaty, Art. 101). The Council must act either by qualified majority (EEC Treaty, Art. 113; Euratom Treaty, Art. 101; in the case of implied powers, other treaty provisions apply, e.g. Art. 43 of the EEC Treaty as regards fisheries) or unanimously (EEC Treaty, Arts. 235 and 238; Euratom Treaty, Arts. 203 and 206; ECSC Treaty, Art. 95; other treaty provisions apply in case of implied powers). In exceptional cases, the Commission can enter into binding commitments without prior approval of the Council (cf. Art. 101, para. 3 of the Euratom Treaty and implied powers resulting from an internal competence held by the Commission alone, particularly in the ECSC Treaty). The role of the European Parliament is limited to consultation between signature and ratification (expressly provided for only in Art. 238 of the EEC Treaty and Art. 206 of the Euratom Treaty, but extended through practice). Before the conclusion of an international agreement, the Council, the Commission or a member State may obtain the opinion of the CJEC as to whether the agreement envisaged is compatible with the EEC Treaty (EEC Treaty, Art. 228).

D. Status of International Law in EC Law

International agreements concluded by the Communities are binding on their institutions and on their member States (general principle expressed in Art. 228 of the EEC Treaty). They are part of Community law (→ European Law), ranking between the (higher) constituent instruments and the (lower) legislation of the institutions (see Art. 228, Case 181/73, Haegeman, ECR (1974) p. 449, and → International Fruit Company Case (1972)). As Community law they take precedence over national law. Their status and character do not depend on and are not altered by the type of decision used for the authorization to conclude an agreement (normally a regulation or a decision of the Council).

Provisions of international agreements have direct effect in Community law if they are unconditional and sufficiently precise (cf. → Self-Executing Treaty Provisions). This is determined with reference to the object, aim and context of the agreement (see Case 87/75, Bresciani, ECR (1976) p. 129, Case 17/81, Pabst & Richarz, ECR (1982) p. 1331, Case 104/81, Kupferberg (1982) (to be published); see, in contrast, International Fruit Company Case).

International agreements concluded by the member States are binding on the Communities only in exceptional cases, as in the case of GATT, through a process of succession (International Fruit Company Case). International agreements concluded by the member States before the entry into force of the EEC, Euratom or ECSC Treaties must be respected by the EEC, Euratom or the ECSC, but incompatibilities have to be eliminated (general principle, Art. 234 of the EEC Treaty; particular modalities, Art. 105 of the Euratom Treaty). Later agreements concluded by member States do not normally have to be respected by the Communities.

General principles of international law are binding on the Communities' institutions. Their status in Community law is the same as that of international agreements.

E. Mixed Agreements

International agreements which are concluded by one of the Communities and by all of its member States (in exceptional cases only some of them) are called "mixed" agreements. A mixed agreement is used if the subject matter is considered to be wider than that encompassed by the treaty-making power of the Community. Most mixed agreements could be avoided if the EC Council would accept the use of not yet exclusive Community powers.

Mixed agreements present special features with respect to → negotiation, conclusion and implementation. The Communities and the member States often form a single delegation, the member States mandating the Commission (negotiating for the Communities) or the Presidency of the Council to speak on their behalf. In other cases, every member State negotiates on its own behalf alongside the Commission. Mixed agreements require joint conclusion by the Community and the member States. The Community normally concludes the agreement after the last of its member States has done so (cf. Euratom Treaty, Art. 102).

A mixed agreement should be neutral with respect to voting power (no more and no fewer votes than if the member States alone were to become contracting parties). It has to allow for action by the Community when the Community's rights are at stake. Likewise, it has to allow for action against the Community where the Community's obligations are concerned. The Community and its member States are opposed to provisions which oblige them to identify their respective powers. (See, however, Art. 5 of Annex IX to the Law of the Sea Convention; → Conferences on the Law of the Sea.) Mixed agreements raise further problems with respect to termination and responsibility which have not yet been sufficiently explored (→ International Organizations, Responsibility; → Treaties, Termination).

Examples of mixed agreements are the commodity agreements (with the exception of the International Olive Oil Agreement), the genuine association agreements listed above, the conventions with regard to the ERTA doctrine and with respect to Art. 235 of the EEC Treaty, the safeguards and verification agreements and the Convention on Physical Protection.

F. International Organizations

The Communities have not become a formal member of any pre-existing international organization. The status of the EEC in GATT is, however, largely equivalent to formal membership (International Fruit Company Case). The EEC has become formal member of several new international organizations, either replacing its member States as in the Northwest Atlantic Fisheries Organization (OJ 1978, 327) or supplementing them (as in all commodity agreements except the International Olive Oil Agreement). International organizations which deal with matters of Community competence but do not count the Communities among their members have granted the Communities observer status (e.g. the → United Nations General Assembly, the → United Nations Conference on Trade and Development, the → International Bank for Reconstruction and Development and the → International Monetary Fund, among others; → International Organizations, Observer Status). The content of this status differs according to the relevant rules and practices of each organization. If the observer status does not accommodate the Community's constitutional requirements, such as the provision regarding the EC Commission's task to negotiate, member States of the Communities are obliged to negotiate amendments. In the meantime, the Communities have recourse to transitional devices, including so-called bicephal representation (by the Commission and by the member State holding the Presidency in the Council; see also Art. 116 of the EEC Treaty).

Office for Official Publications of the European Communities, Collection of the Agreements concluded by the European Communities (1958–1975) 4 vols.; annual supplementary vols.

Office for Official Publications of the European Communities, Commission of the European Communities, The European Communities, International Organizations and Multilateral Agreements (1977–1980).

Commission of the European Communities, Agreements and Other Bilateral Commitments Linking the Communities with Non-Member Countries (1982).

P. PESCATORE, Les relations extérieures des Communautés Européennes, RdC, Vol. 103 (1961 II) 1–244.

W.J. GANSHOF VAN DER MEERSCH (ed.), Les novelles, Droit des Communautés européennes (1969).

H. KRÜCK, Völkerrechtliche Verträge im Recht der Europäischen Gemeinschaften (1977).

O. JACOT-GUILLARMOD, Droit communautaire et droit international public (1979).

E. WELLENSTEIN, 25 Years of European Community External Relations (1979).

J. MÉGRET, J.V. LOUIS and P. BRUCKNER, Le droit de la Communauté économique européenne, Vol. 12 (1980).

C.W. VEDDER, Die auswärtige Gewalt des Europa der Neun (1980).

H. VAN HOUTTE, International Law and Community Treaty-Making Power, Northwestern Journal of International Law and Business, Vol. 3 (1981) 621–639.

H.G. SCHERMERS, Les relations de droit international public de la Communauté, in: Trente ans de droit communautaire (1982) 233–248.

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EUROPEAN COMMUNITY LAW AND INTERNATIONAL LAW *see* European Law

EUROPEAN COMPANY FOR THE CHEMICAL PROCESSING OF IRRADIATED FUELS (EUROCHEMIC)

The European Company for the Chemical Processing of Irradiated Fuels (Eurochemic) is a → joint undertaking by member States of the Organisation for European Economic Co-operation and Development (OEEC), the forerunner of the → Organisation for Economic Co-operation and Development (OECD). The creation of the undertaking was the first attempt to operate a reprocessing plant for irradiated fuels (→ Nuclear Energy, Peaceful Use) within a framework of international cooperation. Eurochemic went into liquidation in 1982 after its site and installations had been transferred to the Belgian State.

1. Legal Basis

Eurochemic was created by the Governments of twelve member States of the OEEC which signed the Convention on the constitution of the company on December 20, 1957. The States were Austria, Belgium, Denmark, France, the Federal Republic of Germany, Italy, the Netherlands (which withdrew in 1975), Norway, Portugal, Sweden, Switzerland and Turkey (which withdrew in 1980). The Convention had been prepared by the Steering Committee of the European Nuclear Energy Agency (→ Organisation for Economic Co-operation and Development, Nuclear Energy Agency) and had been approved beforehand by the Council of the OEEC. The Convention entered into force on July 27, 1959. Spain joined the same day.

Art. 1 of the Convention and Art. 1 of the Statute annexed to the Convention define the company as a "joint undertaking". According to Art. 2(b) of the Convention it possesses legal personality. Eurochemic was constituted in the form of a joint stock company governed by the Convention and the Statute and, residuarily, by the law of the host State (Statute, Art. 1). Eurochemic was initially established for a duration of 15 years with its headquarters at Mol, Belgium (Statute, Art. 1). The Company's duration was successively extended for periods of five and three years until July 26, 1982, with the unanimous approval of the Special Group of the Steering Committee of the European Nuclear Energy Agency, which is composed of representatives of the governments participating in Eurochemic (hereafter referred to as "Special Group"; Arts. 11(b) and 17(b)). On July 24, 1978, Eurochemic and Belgium concluded a convention (not published) on the takeover of the Company's installations and the execution of its legal obligations relating to the decontamination and dismantling of the reprocessing plant, as well as to the conditioning and storage of the radioactive wastes. The Convention which had created Eurochemic will cease to be in force upon completion of the Company's liquidation (Art. 17(c)) (→ Treaties, Termination). By an act of August 8, 1980, the Belgian State was authorized to participate in a semi-public company which will recommission the reprocessing plant after the Belgian Parliament has pronounced itself in favour thereof.

2. Aims; Structure

Eurochemic's task was to build and operate a laboratory and a plant for the processing of irradiated fuels under economic conditions (Statute, Art. 3). It was also to develop techniques and train specialists in this field (→ Nuclear Research). The initial authorized capital amounted to 20 million European Payments Union units of account, divided into 400 shares; it was later increased to 35.75 million units of account, divided into 712 shares (Statute, Art. 4 to 4 *quater*). Thus the form of a joint stock company made it possible for the governments, public and semi-public entities of the member States, as well as for private industry to become shareholders.

The superior body of the company is the General Assembly composed of all the shareholders of the Company (Art. 10). The General Assembly appointed the Board of Directors (Arts. 10(1), 18). The 16-member Board was responsible for managing the business of the Company (Art. 18). The General Assembly took its decisions by the majority vote of the shares represented (Art. 15), while the Board acted by a majority of the Directors present or represented (Art. 23). For decisions on many subjects, two-thirds majorities

of both bodies were required (Arts. 15, 21(3) to (8) and 23). In contrast to the usual structure of a joint stock company, the Eurochemic Convention makes basic decisions subject to the (sometimes unanimous) approval of the Special Group (Convention, Arts. 11 to 15). Since July 27, 1982 the Company is being wound up by a Board of Liquidators composed of one representative each of the participating governments or public bodies.

Under Art. 16 of the Convention, any disputes arising between the parties to the Convention are to be dealt with by the Special Group and can be submitted by agreement to the tribunal established by the Convention on the Establishment of a Security Control in the Field of Nuclear Energy, signed on the same date as the Eurochemic Convention. The autonomy of Eurochemic in relation to the legal order of the host State is guaranteed by a number of privileges and immunities (Convention, Arts. 6 to 10) (→ International Organizations, Privileges and Immunities).

3. *Activities*

On June 7, 1966, the facilities constructed by Eurochemic for the reprocessing of nuclear fuels were put into operation. During its operating time, the plant at Mol reprocessed some 210 tons of nuclear fuels having different enrichment grades and burnup rates. In 1971 it was decided to cease reprocessing operations by the end of 1974. The decision was occasioned by economic difficulties due to reprocessing overcapacity in Europe and ensuing competition which made it unlikely that the plant could be operated economically, even at full capacity. Eurochemic's capital did not cover its contractual and legal obligations concerning, above all, the cleaning and decontamination of the plant as well as the treatment and storage of the radioactive wastes resulting from the reprocessing activities. The governments of the participating States had already, during the period of operation of the plant, helped to cover the expenditures of the Company by special financial contributions made through the budget of the OECD. After operation of the plant had ceased in 1974, they continued to ensure the financing of the work necessary to leave the plant in safe condition and to allow for the treatment of the radioactive wastes. They also committed themselves to finance the expenses resulting from the execution of the 1978 Convention with Belgium.

4. *Evaluation*

Eurochemic affords a valuable example for international cooperation relating to the nuclear fuel cycle amongst States having differently organized national fuel markets and industries. Though the initiative of setting up the Company was taken by the OEEC/OECD, and although the member States sitting on the Special Group kept the company under their control and ensured the financing of any unforeseen expenditures by special contributions, Eurochemic was not an organ of the OEEC/OECD. As a legally independent joint stock company established under an international convention, Eurochemic had a different status in comparison to the other joint undertakings created by the European Nuclear Energy Agency in Halden, Norway, and Winfrith, England, which have no separate legal personality. Eurochemic is also to be distinguished from the joint undertakings set up under Arts. 45 to 51 of the Treaty establishing the → European Atomic Energy Community (Euratom).

The legal structure chosen for Eurochemic proved to be inadequate to cope with its economical difficulties and the financial obligations remaining after the shutdown of the plant. Neither the Convention nor the Statute contain provisions as to the financing of the costs to be borne after the closure of the reprocessing plant (see provisions on liquidation, Statute, Arts. 31 and 32). Its legal form as a joint stock company was in practice denatured by the financial interventions of the participating governments which, as regards the financing of the Company's obligations towards the host government concerning the safety of the site and the management of the radioactive wastes, were certainly justified by their responsibility under international law (→ Responsibility of States: General Principles).

Eurochemic may thus be qualified as a semipublic international undertaking *sui generis*, serving the public interest of the participating governments and operating under their economic control.

Though Eurochemic was successful in finding

technical solutions for the reprocessing of fuels, it failed in the end due to economic and financial problems which could not be handled within the given structure of a joint stock company. Nevertheless, Eurochemic remains one of the models for the internationalization or, where appropriate, regionalization of parts of the international fuel cycle.

OECD/NEA, Convention on the Constitution of the European Company for the Chemical Processing of Irradiated Fuels (EUROCHEMIC) [with Statute] (1963).

P. HUET, L'Agence européenne pour l'énergie nucléaire et la Société Eurochemic, AFDI, Vol. 4 (1958) 512–535.

P. STROHL, Problèmes juridiques soulevés par la constitution et le fonctionnement de la Société Eurochemic, AFDI, Vol. 7 (1961) 569–591.

Y. DEVADDER, Une entreprise commune de l'Agence européenne pour l'énergie nucléarie (E.N.E.A.) en Belgique: La Société européenne pour le traitement chimique des combustibles irradiés (EUROCHEMIC), in: Droit nucléaire européen, Colloque, Paris, 5–6 mai 1966 (1968) 215–221.

O. VON BUSEKIST, Europäische Wiederaufbereitung, Der Werdegang der EUROCHEMIC, Eine Bilanz, Atomwirtschaft, Vol. 25 (1980) 258–265.

MEINHARD HILF

EUROPEAN COMPANY FOR THE FINANCING OF RAILWAY ROLLING STOCK (EUROFIMA)

The Convention for the creation of the European Company for the Financing of Railway Rolling Stock was signed on October 20, 1955 (UNTS, Vol. 378, p. 159) by 14 States; two further States subsequently became parties. Its object was to permit its members, who serve the whole of continental Europe except Finland, Albania and the members of the → Warsaw Treaty Organization, to modernize their rolling stock and particularly their fleets of freight cars, with a view to through-running between the different national systems. This was a particularly pressing problem in the middle 1950s because of the rapid growth of long-distance road haulage with which Europe's antiquated and war-ravaged railways were hardly in a position to compete (→ Railway Transport, International Regulation; → European Conference of Ministers of Transport).

The contracting States created a body which, although it is undoubtedly public in its composition and objects, is in law a private company, with its headquarters in Switzerland (→ Plurinational Administrative Institutions). Nevertheless, Eurofima is not a Swiss company in the accepted sense: its Statutes, annexed to the Convention, are valid notwithstanding any provision to the contrary in Swiss law (Convention, Art. 2(a)), and in general, it is only subject to that law in a subsidiary sense. Switzerland does, however, occupy a special position in relation to the Company as the consent of the Swiss Government is required for certain fundamental amendments to the Statutes, the amending function being otherwise within the sole competence of the General Assembly of shareholders. Furthermore, the Swiss Government is in a certain sense custodian of the Convention, since accession to and withdrawal from it require notice to that Government, and the Convention could itself only enter into force one month after Swiss ratification (→ Treaties, Conclusion and Entry into Force).

The Statutes of the Company provide that Eurofima is established for a period of 50 years, for the purpose of obtaining rolling stock of standard type or performance for its shareholders, as well as for other railway administrations. In the latter case, one of the shareholders must act as guarantor; this possibility appears to have been used only once, when a batch of sleeping-cars were bought for the Wagon-Lits company.

Admission to membership of the Company is granted by decision of the General Assembly and such membership is open to any railway administration of a signatory State. Thus, the States parties themselves are not members of the Company, but the Convention does require them to guarantee the obligations which their railway administrations undertake towards the Company (Art. 5). The registered share capital now amounts to some 500 million Swiss francs, 40 per cent of which is paid up. These shares are held in varying numbers by the different railways, ranging from the Germans and French with 25 per cent each down to the Danes and Norwegians with only 0.02 per cent each. Shares are only transfer-

able between shareholders, and only with the approval of the General Assembly.

The General Assembly is the supreme authority of the Company (Statutes, Art. 10) and is composed of the members voting in proportion to the nominal value of their total holdings. Its powers are those normally associated with company general meetings, including amending the Statutes, fixing the maximum amount of loans to be contracted during a given period, appointing the Board of Directors and designating its officers. The General Assembly meets annually in ordinary session; an Extraordinary General Assembly may be convened in certain circumstances (Statutes, Art. 12).

Art. 18 of the Statutes provides that two directors shall be appointed for each shareholder holding more than 2 per cent of the capital, on the proposal of the shareholder concerned. Thus, whether a shareholder holds 2 per cent or 25 per cent of the capital, it has the right to propose two and only two directors, while the five shareholders with less than 2 per cent are not represented at all. It is also worth noting that though directors are appointed "without regard to nationality" each of the shareholders entitled to be represented has proposed two serving members of its senior management. The directors are elected for three years, and one-third of the Board is renewed annually. Outgoing directors may be reelected. Vacancies occurring between sessions of the General Assembly are only filled if a shareholder requests the convening of an Extraordinary General Assembly for this purpose and directors so appointed serve only for the unexpired portion of their predecessors' terms.

The General Assembly appoints the Chairman and Vice-Chairman of the Board from among the directors. Although the Statutes do not specify this, there are in fact three Vice-Chairmen and these, along with the Chairman, are appointed for the period of their term of office as directors. The Board "decides upon all matters not allocated to another body of the Company" (Statutes, Art. 22). In effect, therefore, it deals with all matters except those which the Statutes reserve for the General Assembly. Furthermore, it can delegate all but a few of its own powers either to the member railways as representatives or to professional managers.

Finally, the Statutes contain the usual provisions relating to the auditing of accounts, which is carried out by a body of three auditors appointed by the General Assembly, initially for one year and subsequently for three years. As with the directors, the auditors are in fact serving officials of the member railways.

Eurofima operates by financing the purchase, either out of its own funds or with monies borrowed on the international financial markets in a variety of currencies, of locomotives or other motive power and rolling stock of all kind which is then sold to the members on a hire-purchase basis. Thus, Eurofima remains owner of the vehicles until the last instalment has been paid. It is worth noting also that at least 5 per cent of the purchase price of any vehicle must be borne by the railway concerned. The total number of vehicles financed by Eurofima in its first 25 years of activity amounted to 2500 locomotives, 900 multiple-units, 2800 passenger cars and 57 000 freight cars; or enough to equip a medium-sized European railway.

Although its achievements are not negligible, Eurofima has not entirely lived up to the hopes of its founders. It has, of course, permitted a considerable renewal of its members' locomotives and rolling stock but its efforts in the field of standardization have been notably less successful. In effect, it has suffered from Europe's bugbear: economic nationalism. Each railway has developed its own technology and each is wedded to its own solutions. Furthermore, pressures to have equipment built by each country's own manufacturers have reduced the benefits of large-scale manufacture of standardized vehicles. Nevertheless, standardization of the less complex types of freight car is now a reality and six of the members are using a standard type of passenger car in international traffic. Perhaps this is as much as Europe could reasonably hope to achieve in so short a time.

Convention on the Establishment of "Eurofima", European Company for the Financing of Railway Equipment, Berne, October 20, 1955, UNTS, Vol. 378 (1960) 159–247.

Eurofima, Annual Report[s].

H.T. ADAM, Société européenne pour le financement du matériel ferroviaire, Eurofima, European Yearbook, Vol. 3 (1957) 70–91.

H. WEBER, Eurofima, 25 années de bonne conduite Rail International (1981) 403–411.

MICHAEL KENNY

EUROPEAN CONFERENCE OF MINISTERS OF TRANSPORT

1. *Historical Background; Establishment*

The Council of the Organisation for European Economic Co-operation (OEEC), the forerunner of the → Organisation for Economic Co-operation and Development (OECD), decided on December 9, 1952 to convene a State Conference to consider whether the existing organization and regulation of international transport by rail, road and inland waterways was adequate (→ Traffic and Transport, International Regulation).

The Conference on European Inland Transport, which took place in Paris from March 18 to June 17, 1953, was attended by representatives of Austria, Belgium, Denmark, the Federal Republic of Germany, France, Greece, Italy, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, Turkey and the United Kingdom (i.e. all the OEEC members except Iceland and Ireland which at the time were not interested) as well as Spain, the United States of America and Yugoslavia. In its report to the OEEC Council and the participating governments of June 17, 1953 the Conference concluded that it was advisable to strengthen the coordination of all elements in transport policy. To this end the Conference made suggestions regarding the principles of organization and method of working which might serve as a basis for a Conference of Ministers of Transport embracing all countries represented at the Conference of European Inland Transport.

Following a decision of the OEEC Council of July 24, 1953, the Belgian Government invited all States which had participated in the preparatory conference to take part in a constituent conference at ministerial level. Meeting in Brussels (October 13 to 17, 1953), the Ministers of Transport of these countries drew up the text of a Protocol concerning the European Conference of Ministers of Transport. It was opened for signature on October 17, 1953 and entered into force on December 31, 1953 (→ Treaties, Conclusion and Entry into Force).

2. *Structure*

(a) *Members*

The European Conference of Ministers of Transport (ECMT)–Conférence européenne des Ministres de Transport (CEMT)–has its seat in Paris. It consists of 19 member States (Austria, Belgium, Denmark, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and Yugoslavia) and four associate members (Australia, Canada, Japan and the United States). It is open for membership to any European State upon unanimous approval of its application by the Council of Ministers (Protocol, Art. 15). Under the same conditions, any State may become an associate member irrespective of its geographical location (Art. 4(2)).

(b) *Organs*

The principal organs of the Conference (Art. 2) comprise the Council of Ministers of Transport and a Committee of Deputies, both assisted by an administrative secretariat. The Council of Ministers (Art. 5) meets twice a year and is composed of the ministers of member States responsible for inland transport. If inland transport issues fall within the competence of two or more ministries, any of the ministers responsible may participate in the work of the Council, provided that no member State shall have more than one vote. The Council of Ministers is assisted by a Committee of Deputies (Art. 6) which meets at least six times a year. It is composed of senior officials of all member countries appointed on the basis of one deputy for each minister, provided that each member State has only one vote. The Committee prepares the work and the meetings of the Council, deals with questions delegated to it by the Council and reports on measures taken by the member States to implement the decisions of the Conference. The administrative secretariat (Art. 7) had close ties with the secretariat of the OEEC (→ International Secretariat). This administrative integration was continued with OECD (cf. OECD

Doc. C (61) 11, September 30, 1961). Nevertheless, the secretariat is solely under the control of the Conference. It assists the organs of the Conference, in particular by preparing agendas, records and minutes of meetings, by preparing and distributing documents and by managing the archives.

In the course of structural adjustments made in 1978, a steering committee was set up. It is composed of the three officers of the Committee of Deputies (the chairman and the two vice-chairmen) and three other delegates elected in such a way that a fair balance is achieved with regard to the geographical and economic situation of ECMT countries as well as between EEC member and non-member States. The steering committee submits to the Committee of Deputies proposals concerning action to be taken on the work of the Council of Ministers, the organization of the work of subsidiary bodies, general supervision and the establishment of relations with other international organizations. A special liaison committee is designed to facilitate cooperation between ECMT and OECD. Among the topics of common interest figure environmental protection (→ Environment, International Protection), energy and the future of the car, as well as traffic and road safety.

In addition to these organs, three types of subsidiary bodies deal with particular issues: permanent committees and groups (for economic research, for road traffic signs and signals, for road safety, for urban transport and a combined transport group), *ad hoc* groups (for transport and energy, for transport and environment, for railway policy, for inland waterways of European interest, for the allocation of infrastructure costs and for liberalization), and restricted groups of certain EEC countries for roads and routes across the Alps. The subsidiary bodies consist mainly of representatives of those member States especially concerned with the matters at issue. Nevertheless, participation is open to all members. Only the formation of restricted groups is provided for by the Protocol (Art. 8). Apart from these organs regular round tables, conferences and seminars play a role in the work of ECMT. They take place at the expert level and deal with specific questions.

(c) Decision-making

The quorum for meetings of the Council of Ministers and the Committee of Deputies consists of two-thirds of the members (Rules of procedure, Art. 9). Amendments of the Protocol require a unanimous decision of the Council of Ministers based upon the authorization of its members by their respective governments. Such amendments enter into force only after approval by all member States (Protocol, Art. 13). Major structural adjustments of the ECMT were made in 1978 without formal amendment of the Protocol. Matters of procedure can be decided by majority vote of the members present (Rules of procedure, Art. 8). Routinely, decisions of the Conference are adopted through a taking of votes. Only those States which vote in favour of a conclusion are bound to apply it. A State which is not able or willing to comply with certain parts of a decision may formulate an appropriate reservation to it.

Decisions of the Conference are taken either as resolutions or as conclusions. There is no significant difference between them. Resolutions often include detailed recommendations to member States, but also may take the form of decisions on policy and instructions addressed to other ECMT bodies. Conclusions generally have primarily internal effects (e.g. approval of a report, terms of reference or the programme of work). Important conclusions are adopted by the Council of Ministers or the Committee of Deputies. Within their terms of reference the other bodies prepare conclusions mainly by cooperating with other international institutions, drawing up studies and reports and making proposals.

The Ministers of Transport are to take or propose any measures necessary to put into effect on the national level recommendations directed at the member States (Art. 9(a)). With regard to any international agreement proposed by the Conference, the Ministers must try to achieve its ratification by their respective governments (Art. 9(b)).

(d) Finance

Under Art. 10(a) of the Protocol, as supplemented by an agreement between ECMT and OEEC, the latter was responsible for the salaries and expenses of the administrative secretariat and

for the facilities required for the proper functioning of the Conference. This system of financing was taken over by OECD (cf. OECD Doc. C (61) 11, September 30, 1961). Only member States which are not members of OECD are required to contribute to the expenses of the Conference under special arrangements concluded between them and OECD. Whenever a body meets elsewhere than at the administrative seat of the Conference, the host country is responsible for all expenses incurred by the meeting except the salaries of the secretariat (Art. 10(b)).

The details of financing ECMT are laid down in the Financial Regulations of OECD (see Art. 20 of the OECD Convention). Under these provisions, the annual expenses of ECMT are included in a subsidiary budget. Contributions to it are fixed under a special scale which differs from the scale of contributions applicable to the ordinary budget of OECD. Only OECD members which are also members of ECMT take part in decisions concerning this particular subsidiary budget and contribute to it.

(e) External relations

Special emphasis is placed upon relations with international organizations of any kind provided that they deal with questions of European inland transport (Protocol, Art. 11). If possible, ECMT is to avail itself of the facilities and skills of other international organizations with particular regard to the undertaking of special studies (Art. 11(b)). The closest relations exist with OECD, not only as a result of the various administrative and financial links based on the Protocol (Arts. 7(b), 10 and 11(c)) but also since the same fundamental questions (e.g. the environment, energy, public investment, and unemployment) all influence the work of both organizations to a growing extent. There is also close cooperation with the → European Economic Community (→ European Communities: External Relations), the United Nations Economic Commission for Europe (→ Regional Commissions of the United Nations) and the → Council of Europe. Relations with other international organizations can be given only by way of example: with the → European Civil Aviation Conference, the Union internationale des chemins de fer (→ Railway Transport, International Regulation), the Central Commission for the Navigation of the Rhine (→ Rhine), the European Conference of Ministers Responsible for Regional Planning and the Conference of Local and Regional Authorities of Europe.

3. Activities

The purposes of the ECMT laid down in Art. 3 of the Protocol are "to achieve... the maximum use and most rational development of European inland transport of international importance"; and "to co-ordinate and promote the activities of international organizations concerned with European inland transport . . . ." The first decade of ECMT's existence (1953 to 1963) was characterized by a new awareness of the importance of policies transcending national boundaries and by the specific demands arising from the reconstruction of the European economy. In that period, at the outset of new developments in Europe, ECMT dealt with a series of concrete problems in a very pragmatic way. During the second decade (1963 to 1973) enormous economic growth coincided with a bursting expansion of international traffic both for passengers and freight. During this period various developments turned out to be most important: the rising rate of car ownership, the accelerating process of urbanization, the substantial growth in air transport and the considerable increase of personal mobility. Under the assumption of continuing economic growth, the main objective of transport policy was to optimize the operation of the transport market. In 1963 ECMT adopted its first programme of work which is adjusted annually to the changing necessities. The third decade (1973 to 1983) was overshadowed by problems of energy supply, environment, regional planning and by the economic decline which strongly influenced the transport sector. As a consequence the enthusiasm and optimism of the preceding years have given way to a more cautious attitude. It was realized that not all problems of international transport can be solved by international organizations and that routine work over the years had prevented the consideration of basic questions and had thus obscured the role and purpose of the organization. Although the guide-

lines for the activities of ECMT adopted in 1978 maintained the consideration of the three inland transport modes (road, rail and inland waterways) as the main issues, it was decided to pay very careful consideration to economic research in the transport field in general, to urban transport problems, as well as to the impact of environmental, energy and regional planning issues upon the transport sector.

The significance of ECMT is always underestimated. The following outline of activities in matters concerning road, rail and inland waterways should give a clearer picture of its considerable importance.

(a) Road

A characteristic feature of this sector is close cooperation with the UN Economic Commission for Europe. ECMT has been engaged in the preparation of numerous European conventions. One important field of activities concerns road safety, including road traffic rules, signs and signals; road safety for pedestrians, children and young people; high-powered motor-cycles; driver training; drink as a factor in road accidents; restriction of lorry traffic on Sundays and public holidays; general speed limits; the compulsory use of seat belts; and statistical reports on trends in road accidents. Another important field of action is the improvement of the European road system by influencing planning processes and by eliminating obstacles concerning transfrontier traffic, in particular international road transport (e.g. the transport of perishable and dangerous goods as well as the harmonization of competitive conditions in goods transport by establishing a multilateral quota of transport licences). Attention is also devoted to the development of public transport, including unconventional means.

(b) Rail

Since its establishment ECMT has encouraged governments to reorganize the European railway system and national railway companies to cooperate more closely, particularly in the technical field. One important result of these efforts was the creation of the → European Company for the Financing of Railway Rolling Stock (Eurofima). With regard to the serious financial situation of railways, a number of studies were undertaken on subjects such as inter-modal competition, cost analyses, closer alignment of prices and costs, long-range rail traffic forecasts, optimal dimensions of railway networks, investment and changes in the concept of public service. These investigations confirmed that putting the railways on a sounder basis was a long-term task, well beyond the power of railway managements alone. Since 1977 the work of the Conference follows two main objectives: the determination of financial and legal relationships between governments and railways with regard to the public service function, and the use of railway technology to the advantage of the organization of international transport in Europe.

(c) Inland waterways

In this area ECMT is trying to influence planning processes, for example, by putting forward development projects for inland waterways of interest to Europe as a whole and by classifying inland waterways. The Conference also engages in specific questions such as the standardization of vessels, European pipeline systems, links of inland waterways with large sea → ports as well as links across the English Channel and the Channel tunnel question.

Protocol (with annexed Rules of Procedure and Final Act) concerning the European Conference of Ministers of Transport, Brussels, October 17, 1953, UNTS, Vol. 184 (1954) 41–63.
ECMT, Transport and the Activity of the Conference [publ. annually].
ECMT, Resolutions of the Council of Ministers of Transport and Reports approved [publ. annually].

D. VIGNES, Conférence européenne des ministres des transports, AFDI, Vol. 1 (1955) 496–502.
E. CORBIN, La Conférence européenne des ministres des transports (1966).
ECMT, The European Conference of Ministers of Transport (1969).
See also the documentary section in European Yearbook/Annuaire européen.

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EUROPEAN CONFERENCE OF POSTAL AND TELECOMMUNICATIONS ADMINISTRATIONS

1. Historical Background

The European Conference of Postal and Telecommunications Administrations was established in 1959 by the administrations of 19 European States. As early as 1951, the Consultative Assembly of the → Council of Europe, which promoted European unification by way of "sectoral" integration (→ European Integration), had proposed the creation of a "European Postal Union". In 1955, the French Minister for postal, telegraph and telephone services, E. Bonnefous, proposed the establishment of a permanent "Conference of Ministers of Posts and Telecommunications" to the members of the Council of Europe. Both plans, however, failed to secure the necessary acceptance among States.

It was not until the postal administrations of the six founding member States of the → European Economic Community in 1958 recommended the establishment of a "European Community of Posts and Telecommunications" with supranational powers (→ Supranational Organizations), that other members of the Council of Europe expressed their renewed interest in a common European postal body. The ministers of the six EEC States agreed that it was desirable to set up a postal organization on a wider European basis. A meeting of 13 States in September 1958 reached agreement on the technical and non-political character of the new organization and set up a Preparatory Committee which met in January 1959 in Montreux, Switzerland. The Committee elaborated the text of an "Arrangement Establishing the European Conference of Postal and Telecommunications Administrations" setting forth the basic rules of the new body. The new arrangement was finally signed on June 26, 1959 at Montreux and entered into force on September 30, 1959.

2. Purposes and Structure

The Conference has primarily coordinating functions. Its purposes are, according to Art. 4 of the Arrangement, "the tightening of relations between the Member Administrations and the harmonisation and practical improvement of their administrative and technical services". This includes, *inter alia*, the promotion of research into questions concerning the organization, technique, and functioning of services, the joint consideration of and concerted action on proposals submitted to the Congresses of the → Universal Postal Union (UPU) and the → International Telecommunication Union (ITU), as well as the exchange of information and officials.

The Conference is an international body of a technical nature. Under Art. 3(1) of the Arrangement, membership is open only to European postal and telecommunications administrations which are members of the UPU or the ITU. In order to become a member, a European postal and telecommunications administration needs, after signing the Arrangement, merely to "confirm" its signature (Art. 3(2)); ratification is not required. Membership may be terminated upon six months' notice to the Secretariat (Art. 13(1)). At the end of 1980, the following 26 European States were members of the Conference: Austria, Belgium, Cyprus, Denmark, the Federal Republic of Germany, Finland, France, Greece, the → Holy See, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, the United Kingdom and Yugoslavia.

The Conference is more than a periodically reconvening Conference, since it has permanent organs and a permanent structure even though the administrative headquarters rotates among member States. The Conference has a plenary Assembly which meets annually (Art. 6(1)) and which deals with constitutional questions as well as with major problems concerning postal and telecommunication matters (Art. 5(2)). The Plenary Assembly is chaired by the member administration designated to organize it (called the Organizing Administration; Art. 7(1) and (2)). The Assembly appoints a Bureau composed of a Chairman, two Vice-Chairmen and a Secretary (Art. 2 of the Rules of Procedure). In the Assembly's work on postal and telecommuni-

cation questions, it is assisted by a "Postal" Committee and a "Telecommunications" Committee which report to the Plenary Assembly (Art. 5(3)) and which may set up working parties to study particular questions (Art. 5(4)). There is no permanent secretariat, secretarial services being provided by the respective Organizing Administration during both the Assembly and the interval until the next Assembly (Art. 7(2)), so that the secretariat rotates among member States.

There is, however, a permanent Liaison Office at Berne. Several liaison committees have been created in conjunction with other international bodies.

In the Assembly, two-thirds of the members constitute a quorum. Each member administration has one vote. One member may by arrangement represent one other member, but not more than one (Art. 6(3)). Decisions usually require a simple majority (Art. 8(2)), except for revisions of the Arrangement which require a two-thirds majority (Art. 12(3)). Decisions concerning the working of the organization are binding, while all other decisions, taken in the form of recommendations (Art. 8(3)), are non-binding (cf. → International Legislation).

The expenses of the Conference are borne by all members jointly, in accordance with a formula of apportionment comprising three categories. Members are either in the one-share, ten-share, or twenty-five-share category (Art. 10(2) and (3)). Expenses for current secretarial services are borne by the Organizing Administration, while those for working parties are borne by the host administration (Art. 10(1) and (2)).

The Conference is independent from any political or economic organization, including the Council of Europe (Art. 2(1)), but since 1969 it has been a restricted union within the UPU in accordance with Art. 8 of the UPU Convention.

3. *Activities*

The Conference works primarily in the field of simplification and improvement of postal services (e.g. postal planning; resolution of problems of introducing automatic-sorter equipment; harmonization of postal charges) and telecommunications services (e.g. coordinated action on teleprocessing; harmonization of procedures and charges for telecommunications). It also renders certain common services, such as a clearing service for member administrations, and it coordinates the issuance of an annual "EUROPA" stamp. One of the most important functions consists of elaborating amongst its members a common position on proposals to be submitted to the UPU and the ITU before the respective Congresses of these organizations. In the field of harmonization of charges, it is one of the basic orientations of the Conference to establish more favourable conditions for the user than under general UPU/ITU standards.

4. *Significance*

The Conference is an interesting example of an "embryonic" form of an international organization (→ International Organizations, General Aspects). Although a merely consultative body (→ Consultation), its recommendations – often a result of acquired expertise – are usually followed by member administrations. While assisting member administrations in the solution of common problems, the Conference, by means of the coordination of positions with regard to the world-wide bodies UPU and ITU, also promotes the common postal and telecommunications interests of the European region. (See also → Postal Communications, International Regulation; → Telecommunications, International Regulation.)

Conference of Postal and Telecommunications Administrations, Basic Texts, European Yearbook, Vol. 7 (1959) 639–659.

ECPT, Handbook of General Information on ECPT and Recommendations Adopted by the Conference (current ed.).

A.H. ROBERTSON, The European Conference of Postal and Telecommunications Administrations, European Yearbook, Vol. 7 (1959) 100–115.

F. KOLLER, Die Entstehungsgeschichte der Europäischen Konferenz der Verwaltungen für Post und Fernmeldewesen, Archiv für das Post- und Fernmeldewesen, Vol. 12 (1960) 237–250.

E. WEBER, The Universal Postal Union and Its Restricted Unions, Union Postale, Vol. 88 (1963) 4A–6A.

G.A. CODDING, The Universal Postal Union, Coordinator of the International Mails (1964) 229–234.

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EUROPEAN DEFENCE COMMUNITY

1. Historical Background

The idea of a European Defence Community (EDC) came about through the convergence of two political movements. On the one hand, there was the interest in the stabilization of Western European defence within the framework of the → North Atlantic Treaty Organization (NATO); on the other, there was an increasing desire for European unification and → European integration which manifested itself in the creation of the → European Coal and Steel Community (ECSC). It was Sir Winston Churchill who first made the proposal for an EDC, influenced by the outbreak of the Korean War in 1950 (→ Korea). The idea was accepted by a substantial majority in the Consultative Assembly of the → Council of Europe during the same year. In October 1950 the French Prime Minister René Pleven received the consent of the French National Assembly for his plan to form an integrated European army, to include German forces. In January 1951, the French Government took the initiative of organizing a conference on the foundation of an EDC. The negotiations between Belgium, the Federal Republic of Germany, France, Italy, Luxembourg and the Netherlands (the last two initially being observers, joining in the negotiations only in October 1951) began in February 1951 and ended 15 months later, on May 27, 1952, with the conclusion of a Treaty on the Foundation of the EDC. There were critical phases in the negotiations, and ultimately the EDC as such did not come into being.

Incorporated in the Treaty were eight protocols (see Art. 127) on questions concerning, *inter alia*, the legal status of the European Defence Forces, juridical and financial considerations and the relationship of the EDC and of its member States to NATO and its member States. At the same time, an agreement between the United Kingdom and the members of the EDC for mutual support in cases of armed attack was accepted (→ Collective Self-Defence), and a → declaration of the three Western Allied Powers regarding the EDC and the special status of → Berlin was signed.

2. Main Features of the Treaty

Pursuant to the Treaty, armed → aggression towards one member of the Community was considered as hostility towards all of them, thus triggering the obligation to provide appropriate military and other assistance on the part of all member States. This principle was expanded to cover the relationship of the EDC to the United Kingdom and to the member States of NATO by the above-mentioned agreements. However, the Treaty not only provided for a military → alliance in the classical sense, with national units operating under a common command, but also for a → supranational organization with limited sovereign rights, being equipped with an integrated Community army, institutions independent from instructions of the member States, and having a budget of its own. Thus, the EDC model had some similarity to features of a → federal State.

The four main institutions of the EDC were to correspond to those of the ECSC. The Council consisted of members from the national → governments (one from each State) and was to have had a legislative function (cf. → International Legislation). Its general task was to coordinate political activities between the Board of Commissioners and the national governments, Decisions, in general, were to be made by majority vote; more important decisions required a two-thirds majority while the most important decisions, such as the determination of the budget, were to be made unanimously. The Board of Commissioners consisted of nine members and was considered as the executive authority of the Community. Its more extensive decisions were dependent upon the consent of the Council. The Assembly was to be that of the ECSC, but increased by three further delegates each from Germany, France and Italy respectively. As well as having the right to approve the budget, the Assembly was entrusted with the authority to investigate the possibilities of forming an assembly based on democratic elections and to promote the idea of a → European Political Community in general. The Court was also to be that of the ECSC. Its function was to interpret and apply the provisions of the Treaty and the rules implementing it. Any conflict arising from the application or execution of Treaty provisions could be brought before the Court.

The military forces of the EDC (its army, navy and air force) were to be subdivided into homogeneous national units with Community status. In times of peace, active contingents were to be maintained for surveillance functions under the Supreme Commander of NATO. In times of → war, they were to be part of the NATO command structure. Notwithstanding the obligation to place national forces at the Community's disposal, a limited number of national contingents could be retained by the member States for certain functions (e.g. to guarantee the interior order of the State). Lastly, the military protocol provided for a unified regulation of compulsory military service in all the member States of the EDC.

All members had to contribute towards a common budget. The size of national contributions was determined on the same basis as that of the NATO budget. The Board of Commissioners was entrusted with making expenditures upon their having been approved by the Council by a two-thirds majority. With regard to the economic aspect of the EDC a common régime for the armament, equipment, supply and infrastructure of the European Defence Forces was provided for, together with a strict control of the production of → war materials.

The Treaty was concluded for a period of 50 years. Any European State was entitled to join the Community, subject to the unanimous approval of the Council.

3. *Failure of the Treaty*

The ratification procedure (→ Treaties, Conclusion and Entry into Force) was successfully concluded between 1953 and 1954 in most signatory States. However, a mood critical of the EDC prevailed in the French parliament, mainly because of antipathy towards German rearmament and the prospect of losing sovereign rights in the area of defence. As the French Government did not deem certain concessions, mainly suggested by the other five signatory States with regard to French overseas interests, to be sufficient from its viewpoint and since the other States were unwilling to compromise further as far as the supranational character of the Community was concerned, the element of consensus was lost. The French National Assembly refused, without debate, to approve the Treaty in August 1954. In the following months, the British Government initiated a political alternative to the EDC. This resulted shortly afterwards in the conclusion of the Paris Agreements of October 1954 (→ Bonn and Paris Agreements on Germany (1952 and 1954)), providing for the accession of the Federal Republic of Germany to the North Atlantic Treaty, as well as the Italian and German accession to the Treaty of Brussels of March 17, 1948 (→ Western European Union).

Traité instituant la Communauté européenne de défense/Vertrag über die Gründung der Europäischen Verteidigungsgemeinschaft [with Protocols], German Bundesgesetzblatt (1954 II) 343–436; The European Defence Community Treaty, British Command Paper, Cmd. 9127 (1954).

La Communauté européenne de défense, Chronique de politique étrangère, Vol. 5 (1952) 521–878.

J.A. GRAF KIELMANNSEGG, Der Vertrag über die Gründung der Europäischen Verteidigungsgemeinschaft, Europa-Archiv, Vol. 7 (1952) 5009–5019.

J.L. KUNZ, Treaty establishing the European Defence Community, AJIL, Vol. 47 (1953) 275–281.

J. LEGARET and E. MARTIN-DUMESNIL, La Communauté européenne de défense, Etude analytique du traité du 27 mai 1952 (1953).

R. ARON and D. LERNER (eds.), La querelle de la CED, Essais d'analyse sociologiques (1956).

J. GUERISSE, A propos de l'armée européenne, Une rétrospective des travaux du Comité intérimaire militaire de la CED, Res publica, Vol. 13 (1971) 551–576.

P. NOACK, Das Scheitern der Europäischen Verteidigungsgemeinschaft (1976).

E. FURSDON, The European Defence Community: A History (1980).

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EUROPEAN ECONOMIC COMMUNITY

A. Historical Background and Development: 1. Establishment. 2. Development. – B. Structure of the EEC: 1. Membership. 2. Applicability of the Treaty. 3. Institutions. 4. Competences and Powers. 5. Finances. 6. External Relations. – C. Aims and Substantive Competences: 1. Common Market: (a) Customs régimes. (b) Freedom of movement. (c) Competition rules. (d) Agricultural policy. (e) Transport. (f) Commercial policy. (g) Taxes. (h) Harmonization of law. 2. Cooperation: (a) Economic and monetary cooperation. (b) Labour and social policies. (c) New fields. (d) European Political Cooperation. 3. Art. 235: Implied and Additional Powers. – D. Special Legal Problems. – E. Evaluation and Future Prospects.

A. Historical Background and Development

1. Establishment

The conclusion of the treaty establishing the European Economic Community (EEC) on March 25, 1957 (UNTS, Vol. 298, p. 11; in force since January 1, 1958) is a milestone in the post-war processes of → European integration. The first important step was the foundation of the → European Coal and Steel Community (ECSC) on April 18, 1951. Yet the establishment of these communities entailed only a partial implementation of the original plan to create a "United Europe", conceived as a real → federal State with vast competences, replacing the nation-States which seemed incapable of mastering Europe's problems in the 20th century.

When the French National Assembly in 1954 rejected the treaty establishing a → European Defence Community, European initiatives as a whole, including plans for a political community, came to a halt. Nevertheless, the "European spirit" and renewed East-West tensions (after the suppression of the Hungarian uprising of 1956) proved strong enough in 1955/1956 to promote at least sectoral integration in the economic field, which also met the requirements of the generally export-oriented national economies of the six original EEC member States (Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, and the Netherlands). As the Organisation of European Economic Co-operation (now the → Organisation for Economic Co-operation and Development (OECD); see also → Regional Cooperation and Organization: Western Europe) had a more limited field of action, a new European institution was needed. An initiative on the part of the Benelux States ("relance européenne") brought about a conference of foreign ministers in Messina (June 1955) which in turn set up a governmental group of experts (the "Brussels Committee") under the guidance of the Belgian Foreign Minister Paul-Henri Spaak. Its report of April 21, 1956 formed the basis for the so-called Rome Treaties of 1957 creating the EEC as well as the → European Atomic Energy Community (Euratom).

2. Development

Although the EEC is only one of three distinct → European Communities (EC) (the others being the ECSC and Euratom), it was linked to the others from the beginning. The Convention on Certain Institutions Common to the European Communities of March 25, 1957 created a single → Court of Justice of the European Communities and a single Parliamentary Assembly (later known as the European Parliament). On April 8, 1965 the Treaty Establishing a Single Council and a Single Commission of the European Communities (the so-called Merger Treaty) united these two other organs. The important developments that the three Communities have faced in their subsequent history have affected them all in the same way, so that today people tend to see one "European Community" rather than three of them. The important events in the history of the EEC are thus shared by the ECSC and Euratom. Worthy of particular mention in this context are the membership enlargements in 1973 (Denmark, Ireland and the United Kingdom) and in 1981 (Greece), the first direct elections to the European Parliament in 1979 (see Decision and Act concerning the Election of the Representatives of the Assembly by Direct Suffrage, September 20, 1976, Official Journal, 1976, L 278) and the creation of the → European Political Cooperation in the 1970s. Of primary importance for the EEC, however, was the establishment of the European Monetary System (EMS) in 1979, which may be regarded as the first step towards a European Economic and Monetary Union which in turn could lead to a full-scale European Union (→ European Monetary Cooperation).

B. Structure of the EEC

The EEC is by far the most important of the three Communities and forms the real core of the integration process, because its field of action covers virtually all sectors of the economy (with some exceptions such as arms and other military products; see Art. 223). Furthermore, the EEC serves as a yardstick for possible progress in integration. Most crucial questions have arisen from this Community, the other two being not much more than complements to the EEC. Therefore, many structural aspects discussed in this article are also valid for the other Communities.

1. Membership

Ten States are at present members of the EEC (and of the other Communities as well). → Negotiations with Portugal and Spain will probably lead to another enlargement in the 1980s. Furthermore, Turkey has from time to time expressed her wish to join, although her membership is not likely to materialize in the near future, if at all. Art. 237 provides that any European State may apply for membership of the Community, without stipulating further conditions: even the qualification "European" may have to be interpreted quite widely, as the case of Turkey shows. Nevertheless, interested States must, in order to be eligible for membership, have an economic and political system similar to that of the original member States. Although the Treaty nowhere expressly requires a free market system, it is understood from its whole framework and from many individual provisions (e.g. on competition, or on aid granted by States) that members with a completely State-controlled economy would inevitably break up the functioning of many institutions of the common market.

More problematic is the question of the right to leave the Community, which was recently discussed in connection with the United Kingdom. The answer is closely connected with the problem of the character of the EEC, especially whether the so-called "point of no return" has already been passed. A realistic evaluation still has to regard the member States as "masters of the Treaties", retaining even now the basic competences and the right to regain their full → sovereignty. However, experience has shown that despite all crises no member State seems willing to withdraw from the EEC. And, notwithstanding their "master" position, member States are obliged to refrain from any action which, although perhaps not formally illegal, might possibly endanger the attainment of the objectives of the Treaty (Art. 5, para. 2).

2. Applicability of the Treaty

The EEC Treaty is in principle applicable to the whole territory of all member States, except Greece where certain transitional provisions apply (e.g. on freedom of settlement, which is not to be granted before 1988 (Arts. 44 to 48 of the Act of Succession of Greece; → Migrant Workers). Further exceptions are the overseas countries and territories which fall under the special provisions of Arts. 131 to 136 and the → Lomé Conventions (1975 and 1980; → European Economic Community, Association Agreements). As far as the sea is concerned, the Treaty applies also to the → exclusive economic zones of member States (see CJEC Joined Cases 3, 4 and 6/76, Kramer, ECR (1976) p. 1279), which is especially important as regards the common fisheries policy (→ Fisheries, International Regulation; → Fishery Zones and Limits).

The German Democratic Republic, quite apart from the question of its legal status (→ Germany, Legal Status after World War II), is not a part of the EEC, but West Berlin is. The special problems of trade between the two Germanys are covered by a separate protocol to the Treaty.

Within the territories, all subjects of economic life are bound by the Treaty provisions, and the regulations, directives and decisions issued in pursuance of them. The position of the "citizen of the Community" is especially concerned because the far-reaching competences of the Community organs may affect individual rights (→ Individuals in International Law). Here it becomes important that the EEC is not only directed towards the member States, but that → European law is directly applicable within each State (→ European Communities: Community Law and Municipal Law). As the Communities at present still lack democratically legitimated executive and legislative branches and a specific catalogue of guaranteed individual rights, the position of the "citizen of the Community" is still not satisfactory.

As regards duration, the EEC Treaty (like Euratom, but unlike the ECSC) has been concluded for an indefinite period; problems of eventual cancellation or dissolution may therefore arise (→ Treaties, Termination). The resolution of this issue is closely connected with the problem mentioned above, that is, whether the EEC has already passed its "point of no return".

3. Institutions

The organs of the EEC are identical with those

of the ECSC and Euratom; some differences in functions, however, may be noted. Unlike the former High Authority of the ECSC, the EEC Commission enjoys less legislative competence. The EEC Council enacts regulations and directives, whereas the EEC Commission exercises mainly a right of initiative ("motor of the Treaty"), has subdelegated powers, and decides individual cases. The shifted balance in the structure of the EEC results from its wider scope. The member States did not want to accept a legislative organ, acting largely outside their sphere of influence, within an almost unlimited field which, moreover, was vital for their national interests.

Other institutions devised specially to serve the purposes of the EEC are the European Social Fund (Arts. 123 to 128), the → European Investment Bank (Arts. 129 to 130) and the Economic and Social Committee (Arts. 193 to 198). The latter has advisory status and must be consulted by the decision-making organs whenever the Treaty so requires (e.g. in Arts. 43, 49, 54 and 63). One task of the European Investment Bank is to contribute to the financing of development projects in less developed regions of the Communities or to the financing of projects for modernizing undertakings.

4. Competences and Powers

One must distinguish between the EEC's substantive areas of competence and the degree of its competence in each area. The former are delimited by the Treaty itself and the fields of action it transfers to the Community. Areas not entrusted to the EEC remain with the member States (competence by attribution). However, the Treaty itself has created in Art. 235 wide competence to enable appropriate measures to be taken in cases not foreseen originally, although this provision only applies in connection with the implementation of the common market and not to the whole of EEC activities. Furthermore, endeavours have been made to construct implied or additional powers as more and more national affairs have become of common concern (→ International Organizations, Implied Powers).

The instruments for the exercise of these competences are enumerated in Art. 189 (Art. 161 of the Euratom Treaty is identical; the ECSC uses a different nomenclature). Art. 189 provides for regulations (generally and directly applicable and binding in their entirety); directives (binding only as to the result to be achieved but not as regards to choice of form and methods); decisions (binding in their entirety on those to whom they are addressed); and recommendations and opinions (having no binding effect). However, according to general opinion, the catalogue of Art. 189 is not exhaustive and other forms of action *sui generis* may be chosen including, for example, programmes of action, actions towards third States (diplomatic relations) and other → declarations and resolutions adopted within the framework of the Council. On the other hand, as regards the degree of competence in an area, the Treaty provisions form an outer boundary. Thus, no Community action intended to have binding effect is admissible where only recommendations are allowed.

Art. 189 shows that the Community is essentially a "law community". In particular, the direct applicability of regulations (and sometimes even of directives), seen in connection with the provisions on approximation of laws (Arts. 100 to 102), shows that, in the spirit of the Treaty, European unification is to grow out of a common legal basis. Finally, it should be noted that the implementation and enforcement of Community law is completely up to the member States in conformity with their own rules of civil procedure (Art. 192). If they fail to observe Community law, the Commission can start the procedure foreseen in Art. 169 and ultimately bring the matter before the Court of Justice. Here the difference between the limited competences of the EEC and the sovereign power of a State becomes visible.

5. Finances

Until 1970 the expenses of the EEC were covered by financial contributions of member States (Art. 200). By a Council decision of April 21, 1970 on the "Replacement of Financial Contributions from Member States by the Communities' Own Resources" (Journal officiel, 1970, L 94, p. 19), the Communities were allocated the revenues from agricultural levies and customs duties (Art. 2 of the Decision). In addition,

resources accruing from the value-added tax applying a rate not exceeding one per cent to an assessment basis completes the Community budget. From 1975 onwards these revenues enabled the Communities to meet all expenses, although in the near future the one per cent margin may be exhausted. The dispute since the late 1970s regarding the so-called British and German "contributions" to the expenses of the European Communities therefore is ill-named. The actual effect is that the Communities' own resources flowing from British territory or transactions with respect to Britain are exceeding the sums spent by the Communities in Britain or on British subjects. The discussion also shows another important effect of the Treaties: the trend towards financial equalization among member States. Poorer States feel discriminated against if they do not get a "fair share" of the EEC budget. All items of revenue and expenditure of the Communities are included in estimates and shown in the annual budget, which can to a limited extent (as regards expenditure not necessarily resulting from the Treaty and secondary Community law, e.g. in the social field or in regional development) be influenced by the European Parliament (Art. 203). The conflicts between the European Parliament and the EEC Council, which has the final say in approving the budget, have shown that this device is suited to help the enlargement of parliamentary and democratic influence in Community affairs.

6. External Relations

In a time of increasing internationalization of economic questions (→ International Economic Order; → Charter of Economic Rights and Duties of States), the EEC can fulfil its task of establishing a common market only when it is also entitled to act in the international field (→ European Communities: External Relations). From the very beginning, even the creation of a → customs union led to grave external complications, since a → waiver from the provisions of the → General Agreement on Tariffs and Trade (GATT) was necessary. It is understood that the EEC not only has the competence to maintain general contacts with foreign States or international organizations, and especially to receive diplomatic representatives, but also has treaty-making power in the whole area of the aims set forth in the Community Treaties. Its competence in the field of commercial policy follows directly from Art. 113; its competence in other fields can be deduced by systematic and teleologic considerations (for details see → European Road Transport Agreement Case).

C. Aims and Substantive Competences

The principal provisions regarding the substantive goals and competences of the EEC are found in Arts. 2 and 3 of the Treaty. According to Art. 2, the Community is to promote "a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it". Means to achieve this are the establishment of a common market and the progressive approximation of the economic policies of the member States. Art. 3 lists the various activities (agriculture, transport, etc.) which reappear later as separate titles and chapters of the Treaty. Thus, the creation of a common market and the approximation of policies are both the means for the achievement of the five aims named in Art. 2 and at the same time themselves the results to be brought about by implementing the variety of individual activities listed in Art. 3. The concepts "common market" and "approximation of policies" name the two major fields of action in which the EEC has to engage, the first having been designated "integration" and the second "cooperation" (sometimes also "core" and "shell" of the Community). This division, however, is not reflected in the structure of the Treaty itself, nor do the two parts, "Foundations of the Community" and "Policy of the Community", correspond to this division since the former also includes rules of cooperation (e.g. Arts. 50 and 51) while the latter in a similar manner contains certain provisions essential for the common market (e.g. rules on competition).

1. Common Market

Although there is no clear-cut definition of "common market", one may nevertheless identify certain vital criteria of the notion such as the customs union (Arts. 12 to 29), the fundamental freedoms (Titles I and III of Part Two), the

prohibition of discrimination (Art. 7), the rules on competition and State subsidies (Arts. 85 to 94), the common policies (i.e. agriculture) (Arts. 38 to 47), transport (Arts. 74 to 84), commercial policy (Arts. 110 to 116), and perhaps even the rules on the approximation of laws (Arts. 100 to 102). A detailed elaboration of the elements of the common market is not only of theoretical interest, but also has legal consequences in regard to Art. 235, which allows an extension of competences only as regards the operation of the common market.

(a) Customs régimes

According to the wishes of the member States, the EEC should be more than a mere → free trade area or a customs union. The notion of "common market", however, quite naturally contains at the least the former. Thus Art. 12 expressly prohibits customs duties or charges having equivalent effect among member States, while Art. 30 provides the same in regard to quantitative restrictions and measures having equivalent effect.

Existing customs duties and quantitative restrictions have been abolished during different transitional periods, although both the Commission and the Court of Justice are still occupied with identifying trade barriers which are hidden in, for instance, technical provisions such as safety rules. However, restrictions justified, *inter alia*, on grounds of public morality, security and health are not precluded (Art. 36).

State monopolies of a commercial character have to be adjusted in order to avoid any discrimination regarding production and marketing of goods (Art. 37). Parallel to this a common customs tariff has been established by Council Regulation 950/68 of June 28, 1968 in accordance with Art. 19 (Journal officiel, 1968, L 172; for the most recent version see Regulation 3000/82, Official Journal, 1982, L 318) employing the arithmetical average of the duties applied in the four customs territories which originally constituted the Community (Benelux area (→ Benelux Economic Union), Federal Republic of Germany, France, Italy). The member States are no longer competent to alter or even to interpret this tariff autonomously. As regards alterations in the context of general commercial policy, the Community's competence is based on Art. 113; all other alterations or suspensions of duties are governed by Art. 28. During its history the EEC has, in conformity with Art. 18, engaged in many tariff negotiations, especially within the GATT framework (Dillon, Kennedy and Tokyo Rounds). According to the Court of Justice (Joined Cases 37 and 38/73, Social Fonds voor de Diamantarbeiders, ECR (1973) p. 1609), quantitative restrictions towards third countries also fall within the Communities' competences, although this is not expressly provided for in the Treaty.

(b) Freedom of movement

The second important element in the establishment of a common market is the liberalization of the movement of the factors of production, i.e. workers, services and capital. Art. 48 provides freedom of movement for workers by the end of the transitional period for the purpose of employment and the right to stay after employment has ended. Many regulations and directives have been passed by the Council to implement this freedom, especially in the field of social security (see Art. 51), to prevent disadvantages to workers moving into another member State (see, in particular, Council Regulation 1612/68 of October 15, 1968, Journal officiel, 1968, L 257, p. 2). Nevertheless, "European citizenship" has not yet been achieved.

As regards self-employed persons, Arts. 52 to 58 set forth in principle the right of establishment within the Community which has been achieved for many activities. Some factors, however, have impeded and still impede its complete realization; different qualifications, diplomas and rules govern especially the exercise of various professions such as law and medicine. In these circumstances, the jurisprudence of the Court of Justice is again important; the Court regards Arts. 52 and 59 as being directly applicable (Case 2/74, Reyners, ECR (1974) p. 631, as regards Art. 52; Case 33/74, Van Binsbergen, ECR (1974) p. 1299, as regards Art. 59).

Arts. 59 to 66 provide for the freedom to render services as a self-employed person in other member States (with the exception of transport, which is governed by special provisions). Here, a distinction from the right of establishment may be difficult in some cases. The régime applies, for

example, to lawyers who, though residing in their home country, want to give legal assistance to foreign persons or undertakings in their respective countries.

Finally, Arts. 67 to 73 provide for the freedom of movement of capital, which means both money and tangible assets (cf. → Capital Movements, International Regulation). The freedom to transfer capital is to be distinguished from the freedom to effect payments, incorporated in Art. 106; this is a necessary corollary to the other freedoms, as, for example, the freedom to provide services is of no value if the payment is not equally free. This right is also directly applicable.

All freedoms guaranteed in the Treaty must be read together with the prohibition of discrimination (Art. 7). Not only are open differentiations between nationals and foreigners prohibited, but also hidden ones, for example those effected by setting up criteria normally only fulfilled by one group.

(c) Competition rules

For the purpose of achieving a common market, the EEC Treaty could not be satisfied with guaranteeing certain freedoms, but also had to establish some safeguards for its protection. Those are the rules on competition and State aid and the prohibition of dumping, which, however, has lost relevance after the transitional period. Art. 85 in principle forbids the formation of cartels or other "agreements ... and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market" (→ Antitrust Law, International). According to Art. 85(3), however, certain advantageous agreements or practices may be permitted by the Commission. Art. 86 deals with the abuse of a dominant position in the common market or in a substantial part of it. Both provisions have been implemented by Council Regulation 17/62 of February 6, 1962 (Journal officiel, 1962, p. 204) and many subsequent alterations and specialized rulings. Violations of the said article can be sanctioned with penalties up to one million European Currency Units (ECU). Agreements contrary to the Treaty are void. Although not expressly mentioned in Arts. 85 to 90, the merger of undertakings also falls under the competition provisions (see CJEC Case 6/72, Europemballage Corporation, ECR (1973) p. 215). Nevertheless, the power of preventive merger control still remains disputed.

According to Art. 90, member States are obliged to refrain in the case of public undertakings from any measure contrary to the competition provisions. Art. 90(3) enables the Commission to address directives and decisions directly to States without any prior recourse to the Court. European competition law in many respects overlaps and collides with national law. According to the older theory, both groups of provisions are independently valid, i.e. agreements or practices are prohibited if they are incompatible with only one legal order. On the other hand, the prevailing opinion today holds that the priority of European law, in general, rules out that a certain agreement, having been admitted by the Commission, may be forbidden by national authorities. In any case, the principle of Art. 5, para. 2 forces member States to avoid any collision with the Treaty.

Another possible impediment for the implementation of the common market is treated in Arts. 92 to 94, according to which State aids granted to undertakings are in principle illegal. Only payments having a social or similar character are exempted (Arts. 92(2) and (3)). The Commission is entrusted to keep all systems of aid existing in the member States under constant review (Art. 93).

(d) Agricultural policy

Of special importance for the EEC is the agricultural policy (Arts. 38 to 47). When the Community was founded, this sector of the economy was trailing behind others. In order to secure sufficient production of food, the agricultural policy was devised to rationalize farming, to guarantee farmers a secure income (and consumers tolerable prices) and to protect the Community from the world market which was, and still is, much cheaper. Thus the agricultural sector is subject not only to the general rules of the common market (e.g. free movement of goods), but also to a very sophisticated common agricultural policy (CAP). Of the possibilities set out in Art. 40(2) in respect of most goods, the third alternative (European market organization) has been

chosen. Accordingly, there are altogether more than 20 market arrangements, e.g. a European Beef Market Order and a European Sugar Market Order. The basic principles of all these systems are freedom of movement of products throughout the EEC, protection against imports from third countries and price guarantees for producers. In the case of falling prices, so-called "intervention authorities" are obliged to buy products at the guaranteed rate, with the resulting creation of "butter mountains" and "wine lakes". The operations are financed by the European Agricultural Fund, which is subdivided into two departments: "guarantee", for the operations just mentioned and "guidance", for the subvention of structural reforms in the agricultural sector.

The CAP is in many respects very problematic. In addition to the surpluses already mentioned, moving exchange rates have induced considerable distortions of competition so that fluctuations have had to be neutralized with the tool of so-called "green" currencies. As a consequence, products from countries with stronger currencies, which because of their high prices abroad could no longer compete, are now favoured by repayments of an amount equal to the increase of the exchange rate. The same applies *vice versa* to products from weak-currency countries. In any case, CAP becomes more expensive every year. As regards CAP in general, there has always been much discussion about a possible reform. As it is responsible for the greatest part of the Community budget, the problem is closely linked with the financing of the EEC and overall reforms of the Communities.

The creation of a common fisheries policy is still another problem area. Its resolution became urgently necessary after the proclamations of exclusive economic zones as a consequence of the Third United Nations Conference on the Law of the Sea (→ Conferences on the Law of the Sea). Finally, on January 25, 1983, member States reached an agreement on this subject, compromising between the principle of common utilization of the "EC-Sea" and interests of coastal States.

(e) Transport

Since one major element of competition is the cost of transport, it was necessary to include this item in the EEC Treaty. Arts. 74 to 84 apply to transport by rail, road and inland waterway (→ Traffic and Transport, International Regulation). The power to create provisions for sea and air transport has so far hardly been used by the Council. According to Art. 79, any discrimination on grounds of origin of goods in regard to transport rates or conditions is prohibited. Furthermore, Art. 80 contains a prohibition of State subsidies on transport additional to the prohibitions in Arts. 92 to 94. Charges or dues in respect of the crossing of frontiers may not exceed a reasonable level. An unusual provision is found in Art. 78, which requires that account be taken of the economic circumstances of carriers whenever Community organs are engaged with implementing Arts. 74 to 84. By and large, a complete and cohesive regulation of the transport sector in the Community has not yet been achieved and the full implementation of powers is still awaited.

(f) Commercial policy

A necessary corollary to the setting up of a customs union and a common market is the establishment of an at least coordinated commercial policy. Art. 113 provides that from the end of the transitional period (i.e. from 1970 onwards) the common commercial policy must be based on uniform principles. That applies especially to changes in tariff rates, the conclusion of tariff and trade agreements (this also being one major example of the treaty-making power of the Community), export policy, and trade protection. Art. 110 outlines the contents of this policy, obliging the Community to adopt trade liberalization. In case of deflections of trade or other economic difficulties, appropriate protective measures may be taken (Art. 115). According to Art. 116, member States shall proceed within the framework of international organizations of an economic character only by common action. In practice, common commercial policy has made considerable progress since the 1970s, although member States try from time to time to take separate actions.

(g) Taxes

Another major component of the price of products and thus of competition is taxation. Arts.

95 to 99 try to harmonize the respective rules of the member States. Art. 95 prohibits internal taxation on products of other member States in excess of that imposed directly or indirectly on similar domestic products. In turn, Art. 96 excludes any repayments in excess of the internal taxation, where products are exported. In principle, however, taxes and repayments upon the crossing of tax-borders are not forbidden; they are not regarded as "customs duties... or... charges having equivalent effect" (Art. 12) so long as the principle of non-discrimination between domestic products and those from other member States has been upheld. Art. 99 deals with the harmonization (not unification) of indirect taxes, whereas direct taxes fall only under Arts. 100 to 102. The most important achievement so far has been the introduction of the common value-added tax system on January 1, 1973.

(h) Harmonization of law

Arts. 100 to 102 deal with the same problems of harmonization of the law between member States in a wider context (→ Unification and Harmonization of Laws). Virtually the whole national economic law, in a more or less direct way, influences trade and competition among Community States (e.g. safety provisions). Thus, Art. 100 gives the Council the power to issue directives for the approximation of such provisions. A great number of directives has been issued already in this way. Art. 102 establishes a system of → consultation for the prevention of new distorting national legislation.

2. Cooperation

Notwithstanding the sometimes extensive Community activities, the EEC's powers are enumerated, and, in principle, the shaping of economic policy remains with the member States. In this respect the task of the EEC is restricted to cautious coordination, whereas member States are, in accordance with Arts. 5 and 7, obliged to refrain from every action endangering the common market. Art. 145, however, shows that the Community lacks the power to issue binding coordination rules.

Even as regards the existing weak competences, the EEC Treaty does not contain provisions for all sectors of general economic policy. According to Art. 103, member States are to regard their conjunctural policies as a matter of common concern. The same applies, according to Art. 107, to the policy with regard to exchange rates. Art. 105 obliges States to coordinate their economic policies in general. Although it is not expressly stated, this provision is regarded as attributing to the Community (i.e. the Council) the power to issue legal directives in this respect. Some programmes and decisions have already been adopted (e.g. the setting up of a Committee on Economic Policy). Difficulties with the balance of payments are to be met by common action provided for in Arts. 108 and 109. Finally, Art. 106 provides for the already mentioned freedom of payments connected with the other fundamental freedoms guaranteed in the Treaty.

(a) Economic and monetary cooperation

All of the provisions just enumerated did not conceal the necessity to establish a more comprehensive economic and monetary cooperation. Thus the Hague summit of December 1969 decided on the establishment of an economic and monetary union. In 1970 the so-called Werner Plan was presented and accepted. The Plan provided for its implementation during a transitional period until 1980; its principal aim was the creation of a uniform economic policy as a Community competence and the fixing of exchange rates with full convertibility of currencies. A European Monetary Cooperation Fund was established in 1973, but so far it has not even been possible to reach the second stage of the original programme, due mainly to the internal and external monetary difficulties experienced by most member States during the 1970s.

Although progress towards an economic and monetary union has come to a standstill at present, an important result in the process of its realization has been achieved with the creation of the European Monetary System (EMS) in 1979 (see Council Regulation (EEC) 3181/78 of December 18, 1978, Official Journal, 1978, L 379, p. 2). It consists of the introduction of a European Currency Unit (ECU) composed of all currency units of member States or fractions thereof, a credit system and restricted margins of fluctuation. Whenever exchange rates of a member States' currency pass agreed intervention points,

the central banks concerned are obliged to intervene in order to keep the currency within the margin. Money spent on these transactions is offset among member States; countries which, because of economic difficulties, are unable to meet their obligations are eligible to obtain credit (→ Monetary Law, International). So far the EMS has worked properly, although one important member, the United Kingdom, is still not taking part.

(b) Labour and social policies

This area of policy is another which has found only marginal regulation in the Treaty. In Art. 117, member States agree upon the need to promote improved working conditions and an improved standard of living for workers. The Community is thus entrusted with promoting close cooperation towards the harmonization of social systems. Art. 119 specifically demands equal pay for men and women (see CJEC Case 43/75, Defrenne, ECR (1976) p. 455; → Sex Discrimination). Under Arts. 123 to 128, a European Social Fund has been established with the task of subsidizing projects in pursuance of the aims mentioned in Art. 117. The social provisions in a broader sense are supplemented by Arts. 129 and 130 on the European Investment Bank, which finances projects in less developed regions, modernizations and the creation of additional jobs.

(c) New fields

The EEC Treaty is not complete in the sense that it does not deal with all policies presumably important for the achievement of the aims of the Community. Therefore, the heads of States and governments decided at the Paris summit of 1972 that the EEC should be active in some of these "new" fields. Important in that respect are regional, industrial, environmental, energy and science policies. Although both the ECSC and Euratom Treaties already cover important aspects of European energy policy, it is still restricted to a rather loose cooperation and isolated measures (see also → International Energy Agency). Nevertheless, the additional policies are evidence of the dynamic character of the EEC and of the nature of integration which tends to cover more and more areas, although they are still not fully integrated into the Treaty.

(d) European Political Cooperation

Finally, since 1970 the member States of the Communities have developed the system of → European Political Cooperation (EPC), devised to deal with questions of general (not only economic) international policy of common concern, touching, among others, the EEC fields as well. The EPC, virtually unlimited in its extent, is a rather informal instrument for the coordination of foreign policy without having any decision-making powers. Nevertheless, it is a new instance of European development, and already some important progress has been made (e.g. in the → Helsinki Conference and Final Act on Security and Cooperation in Europe, the Middle East policy and the work in the → United Nations and in the → United Nations Specialized Agencies such as the → United Nations Conference on Trade and Development). Another area of activity is association of overseas countries and territories (Arts. 131 to 136), and certain African, Caribbean and Pacific States (Lomé Conventions I and II of 1975 and 1980), and is intended to serve their development needs.

3. Art. 235: Implied and Additional Powers

The aim of the EEC Treaty to establish a common market on the one hand and the limited number of competences on the other quite often lead to a point where Community action seems necessary to avoid distortions or to promote the further integration of member States, although the necessary powers are not incorporated in the Treaty. Art. 235 provides in this respect that the Council, acting unanimously and having consulted the Assembly on a proposal from the Commission, may take the appropriate measures. This, however, only applies in the course of the operation of the common market (see *supra*). It is rather difficult to delimitate the concept of "common market"; legal writing and, since the 1972 Paris summit decision, practice tend to interpret this restriction widely and to apply Art. 235 for all aims of the whole Treaty. Whether the criteria for such action are fulfilled is subject to review by the Court of Justice. Art. 235 has quite often been used, e.g. for the additional policies listed *supra* in section C(2) (c). However,

it cannot be regarded as a general and unlimited enabling clause.

In addition to Art. 235, implied powers to a limited extent also exist within the framework of the EEC Treaty (cf. → International Organizations, Implied Powers). According to the Court of Justice, the general rule of international law that each power also includes all powers necessary to make the former operable is equally applicable to the Communities. In contrast to Art. 235 powers may be implied only in cases where there is already a power, whereas Art. 235 may sometimes even apply when a competence is completely lacking. Ancillary powers, i.e. powers to prepare for or to facilitate the exercise of other powers (e.g. statistics, collection of information, public relations) must also be mentioned (for a special case see Art. 213). Notwithstanding all these written and unwritten powers and competences, the common market in some areas still remains incomplete. Quite a number of gaps can only be closed by amending the Treaty (Art. 236; → Treaties, Revision).

D. Special Legal Problems

The special problems resulting from the dynamic and progressing character of a common market, the ever-growing need to cover more and more hitherto national fields of action and the factual impossibility of annuling and revoking steps taken towards integration in the past, seen together with Western Europe's continuing domination by national States, shows the ambivalent situation of the EEC and European integration in general. All progress has to be achieved through a struggle between these differing factors. Thus a legal analysis of the powers or, more generally, of the status of the Communities has to take into account that the EEC does not follow a static concept, but rather an evolving one.

Another characteristic of the EEC is its supranationality (→ Supranational Organizations) which is exemplified both in the priority of Community law over municipal law and, in a more general way, in the direct relevance of the Communities' work for the Community citizen. As soon as the Communities have the power to create law directly applicable in all member States, thus really replacing national authority, some institutions of national (constitutional) law will have to be taken over by them. Thus the European Communities (and especially the EEC) are still lacking full democratic legitimization and a catalogue of basic rights, although some progress has been made. Since the direct elections of 1979 the European Parliament has gradually gained more authority and the → European Convention on Human Rights is, according to general opinion, also applicable to the Community organs in a somewhat informal way. The Court of Justice has developed non-written basic rights on the Community level in the sense of → general principles of law. The legal protection of the individual and the division of powers are still to be improved inside the Community. The solution of these fundamental problems is essential for further decisive steps towards European unity.

E. Evaluation and Future Prospects

Notwithstanding points of justified criticism, crises and periods of standstill, the EEC has thus far accomplished many of its tasks. Trade barriers among member States by and large have been abolished and intra-Community trade has considerably increased. Even the much disputed agricultural policy has secured a steady rise of production and a stabilization of the food supply. The standard of living in all member States has risen and closer relations among peoples have developed. The still existing "integrative powers" are evidenced by important improvements of the late 1970s and the early 1980s, such as the extension of European Political Cooperation, the creation of the European Council and of the European Monetary System, the direct elections to the European Parliament and the second membership enlargement in 1981. Thus it seems that the often proclaimed aim to create a "European Union" is possible, at least in the sense of a more or less confederated superstructure of West European States. The question remains whether the often mentioned "point of no return" of the EEC in the sense of the inviolability of its ties has been reached. The ambitious aim of the founders of the EEC in the 1950s – to view economic integration as the nucleus of a European federal State – does not seem attainable in the foreseeable future. It should, however, be clear that any progress in

European integration necessarily means a loss of national authority.

Treaty establishing the European Economic Community, Rome, March 25, 1957, in: Encyclopedia of European Community Law, Vol. B, Section 10 (1973 with later additions) [looseleaf].
International Organization and Integration, Annotated Basic Documents, Vol. II.A., European Communities (2nd ed. 1982).

R. QUADRI, R. MONACO and A. TRABUCCHI (eds.), Trattado istitutivo della Comunità economica europea, Commentario, 4 vols. (1965).
A. CAMPBELL, Common Market Law, 3 vols. with later supps. (1969).
W.J. GANSHOF VAN DER MEERSCH (ed.), Droit des Communautés européennes (1969).
J. MEGRET et al., Le droit de la Communauté économique européenne, 12 vols. (1970–1980) [14 vols. planned].
H.P. IPSEN, Europäisches Gemeinschaftsrecht (1972).
P.J.G. KAPTEYN and P. VERLOREN VAN THEMAAT, Introduction to the Law of the European Communities (1973).
K. LIPSTEIN, The Law of the European Economic Community (1974).
E. STEIN, P. HAY and M. WAELBROECK, European Community Law and Institutions in Perspective (1976).
L.J. CONSTANTINESCO, Das Recht der Europäischen Gemeinschaften (1977).
T. OPPERMANN, Europäisches Gemeinschaftsrecht, in: R. Weber-Fas (ed.), Jurisprudenz (1978) 117–139.
W. HALLSTEIN, Die Europäische Gemeinschaft (5th ed. 1979).
A. BLECKMANN, Europarecht (3rd ed. 1980).
D. WYATT, The Substantive Law of the EEC (1980).
T.C. HARTLEY, The Foundations of European Community Law (1981).
A. PARRY and J. DINNAGE, EEC Law (2nd ed. 1981).
B. BEUTLER et al., Die Europäische Gemeinschaft, Rechtsordnung und Politik (2nd ed. 1982).
D. LASOK and J.W. BRIDGE, Introduction to the Law and Institutions of the European Communities (3rd ed. 1982).
H. VON DER GROEBEN, H. VON BOECKH, J. THIESING and C.D. EHLERMANN, Kommentar zum EWG-Vertrag (3rd ed. 1982/83).

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EUROPEAN ECONOMIC COMMUNITY, ASSOCIATION AGREEMENTS

The → European Economic Community (EEC) has the power to conclude association agreements involving reciprocal rights and duties, common action and special procedures (EEC Treaty, Art. 238). Part Four of the EEC Treaty provides for the EEC's association with non-European countries and territories which have special relations with the EEC member States (→ Economic Communities and Groups).

1. Types of Agreements

(a) Association to membership

The association agreements with Greece (1961) and Turkey (1963) were designed for their later accession to the EEC. Whereas Greece has already joined the EEC as of January 1, 1982, only a preparatory phase has been determined with respect to Turkey. In close reference to the EEC Treaty, both association agreements provide for the establishment of → customs unions. The free movement of workers (→ Migrant Workers; → Aliens; → Aliens, Admission), freedom of establishment and free supply of services are to be realized over time, and legal harmonization (→ Unification and Harmonization of Laws) is to result in certain areas. The EEC provides financial aid (→ Economic and Technical Aid).

(b) Mediterranean policy

The association treaties with Malta (1970) and → Cyprus (1972) are likewise aimed at the establishment of customs unions, but they only regulate the movement of goods in a preliminary phase. In pursuance of the Mediterranean policy of the → European Communities (EC) since 1972, both agreements have been extended by arrangements relating to economic cooperation and financial aid.

"Cooperation agreements" with the Maghreb States (Algeria, Morocco and Tunesia) as well as with the Mashrik States (Egypt, Jordan, Lebanon and Syria) were signed in 1976 and 1977 respectively. These treaties have the common goal of expanding cooperation to promote economic and social development of these States, in particular the diversification of their economic structures, industrial and technological cooperation and financial aid. The EEC grants unilateral free entry for industrial goods originating in these countries. According to the agreements with Algeria, Morocco and Tunesia, which have special rela-

tionship with France, employees enjoy domestic treatment concerning labor, salary and certain social conditions, i.e. to this extent they suffer no discrimination due to nationality. This leaves the entry regulations of the EEC member States untouched.

(c) Overseas development

In Arts. 131 to 136 the EEC Treaty provides a legal basis for the association of "non-European countries and territories which have special relations with" the member States, such as the → colonies of the member States and the French overseas departments. A 1958 member States agreement, in which the mutual most-favoured-nation treatment for trade was established, illustrates such association (→ Most-Favoured-Nation Clause). Free establishment was allowed for companies and the self-employed, but not for workers. Financial aid was to be granted. This association of dependent territories was continued first unilaterally by agreements of the EEC member States and later by regulations of the EEC Council which are analogous to the later association agreements (e.g. Council Decision 80/1186, December 16, 1980, Official Journal, 1980, L 361, p. 1).

The treaties of Yaoundé (Cameroon) I (1964) and II (1969) were signed with 18 newly independent African and Malagasy States (→ Decolonization). Mauritius joined in 1972. These treaties provide for → free trade areas. In fact, however, only a one-sided free trade has resulted from these treaties, since the associates were allowed to retain their tariffs under certain conditions. Certain measures regarding the liberalization of establishment as well as the free movement of payments and capital, and the supply of services have been considered (→ Capital Movements, International Regulation; → Monetary Law, International). The EEC also grants financial and technical aid. Agreements were signed likewise with Nigeria in Lagos (1966, not in force) and Tanzania, Uganda and Kenya in Arusha (1968, did not enter into force, renegotiated in 1969 and entered into force in 1971). Except for the arrangement of financial aid, they largely correspond to the Yaoundé agreements.

(d) Lomé Conventions

The United Kingdom's accession to the EEC in 1972 made necessary a new association agreement to include countries which were her former dependents. Thus the → Lomé Conventions (1975 and in a slightly more developed form 1980) created a new association system, initially with 46 and now including 62 countries of Africa, the Caribbean and the Pacific (ACP). Therein, for the first time, and in all following EEC association agreements, the term "association", suggesting dependency, was eliminated. As a new "model for relations between developed and developing countries", these agreements intend to enhance economic development and social progress on a wide scale (→ International Economic Order; → International Law of Development; → Developing States). The goods from the ACP States are allowed free entry to the EEC, while reciprocal treatment of EEC goods is no longer required. In respect to establishment and services, non-discrimination rather than domestic treatment has been agreed upon (→ Court of Justice of the European Communities (CJEC), Case 65/77, Razanatsimba, Judgment of November 24, 1977, ECR (1977), p. 2229). However, the importance of the Lomé Conventions lies in the agreement to promote measures for the stabilization of export proceeds (STABEX), trade promotion, financial aid, technical cooperation for industrial infrastructure and diversification, as well as → technology transfer.

2. Legal Basis and Structure

(a) Legal basis

In the law of international organizations, the term "association" means an affiliation or relationship of lower rank than full membership (→ International Organizations, Membership). In → European law, the legal basis for association agreements is Art. 238 of the EEC Treaty. No use has been made of the identical Art. 206 of the Treaty creating the → European Atomic Energy Community (Euratom). Products subject to the Euratom Treaty normally are included in the EEC association agreements by special notes. For goods falling under the Treaty of the → Euro-

pean Coal and Steel Community (ECSC), parallel trade agreements with the ECSC and its member States are signed.

Art. 238 of the EEC Treaty authorizes the EEC to conclude "agreements establishing an association involving reciprocal rights and obligations, common action and special procedures", although the Treaty does not include any legal definition. Initially, this regulation was seen as enabling closer relationships to the EEC without providing full access. Following long political and legal debate, it has now been generally recognized that the EEC can make association agreements in so far as the Treaty itself regulates certain matters. Independent of the interpretation of Art. 238 itself, unanimous opinion has for some years found congruency between the EEC's treaty-making power (→ International Organizations, Treaty-Making Power) and its internal legislative power (→ European Road Transport Agreement Case; → European Communities: External Relations). Despite the described changes in this legal institution and the elimination of the term "association", all treaties signed on the basis of Art. 238 are association agreements.

As far as financial aid is granted, this arrangement exceeds the above defined treaty-making power of the EEC, as this aid is raised by the member States, mediated by the European Development Fund, rather than by Community means. Therefore, the association agreements, except those with Malta and Cyprus but including also those without financial aid, are signed using a "mixed procedure", that is, on behalf of the EC both by the EEC and by the member States. In order to safeguard uniformity in the execution of the rights and duties undertaken by the member States, the association agreements are accompanied by internal agreements of the EEC member States.

The procedure for the conclusion and entry into force (→ Treaties, Conclusion and Entry into Force) is derived from Art. 228 of the EEC Treaty and, as far as the powers of the member States are involved, from national treaty-making procedures. On the basis of Art. 228(2) (and the specific regulations of the EEC Council and the national laws approving the agreements), the association agreements are directly applicable in the EEC and its member States (CJEC, Case 87/75 Conceria Daniele Bresciani, Judgment of February 5, 1976, ECR (1976), p. 129; → European Communities: Community Law and Municipal Law).

(b) Legal structure

Association agreements are → treaties under international law for "the foundation of an association" (in the language of the earlier agreements). Except for the one with Nigeria, these agreements all created institutions, this being their only common feature. The institutional framework includes a Council of Ministers or Association or Cooperation Council, a Parliamentary Conference of the Association (→ Parliamentary Assemblies, International) and a Court of → Arbitration. The last named, however, has not been retained in the Lomé Conventions. The Councils of Ministers are responsible for further definition of the agreements' provisions, which are often phrased in a very general manner on such matters as goals and programmes. Under the various provisions of the agreements, the Councils take binding decisions by unanimous vote. Nevertheless the associations are not international organizations and the association has no international personality (→ Subjects of International Law). The association relationship is a bilateral one between the EC on the one hand and the associated State on the other.

3. Significance

The association agreements are the main instruments of the development policy of the EC. They are complemented by the General System of Preferences (Regulations of December 7, 1981, Official Journal 1980 L 365, p. 1) for the intended benefit of the developing States (which system was the EEC response to a demand raised during the 1968 session of the → United Nations Conference on Trade and Development), and by a vast number of → foreign aid agreements, as well as by EEC trade agreements with Asia and Latin American States.

With their one-sided free trade regulations, the association agreements stand in contradiction to → world trade principles which were established in the → General Agreement on Tariffs and

Trade (GATT), particularly most-favoured-nation treatment and → reciprocity. The element of non-reciprocity is covered by a special arrangement under Art. XXXVI (8) of the GATT. Treating its contracting parties in preference to the other developing States, however, the EEC is not in accordance with GATT regulations (not even with the Enabling Clause of the 1979 Tokyo Round; see also → Economic Law, International).

For the → international law of development, the Lomé Conventions constitute a new "model for relations between developed and developing States" (Preamble, Lomé Conventions). They can be termed a "communitarian partnership" (J. Becker, Die Partnerschaft von Lomé (1979), pp. 153–174). Their decisive features are their institutions, which provide for complete → consultation and advice along with close cooperation among the partners, but nonetheless leave the → sovereignty of the signatories untouched by use of the unanimous vote (→ Veto). This institutional framework also promotes regional cooperation among the ACP States in order to reach a common goal within the Lomé institutions (see also → Caribbean Cooperation; → Regional Cooperation and Organization: African States; → Regional Cooperation and Organization: Pacific Region). The central demand of the international law of development and the new international economic order for the redressing of inequality is satisfied by the association agreements of the EEC, for they primarily promote the economic and social development of the contracting developing countries without demanding reciprocity. The significance of these agreements lies in their representing the first contractual manifestation of the duality of the law regulating world trade. This duality entails a division of world trade into the trade of the developed States among themselves on one side and their trade with developing countries on the other.

Encyclopedia of European Community Law, Part B 12, EEC Non-Member Treaties (1973 with later additions) [looseleaf].

G. ZIEGER, Zum Rechtsbegriff der Assoziierung, in: Wirtschaft und Atomenergie im internationalen Recht, Institutsfestgabe für Georg Erler (1965) 1–89.

P. HOLLENWEGER, Die Assoziation von Staaten mit internationalen Organisationen (1967).

A. CAMPBELL, Common Market Law, Vol. 1 (1969) 545–555, Vol. 3 (1973) 438–448, Supp. 1975, 461–480.

N. DELORME, L'association des Etats africains et malgache à la Communauté économique européenne (1972).

E.U. PETERSMANN, Struktur und aktuelle Rechtsfragen des Assoziationsrechts, ZaöRV, Vol. 33 (1973) 266–311.

K. LIPSTEIN, The Legal Structure of Association Agreements with the E.E.C., BYIL, Vol. 47 (1974–1975) 201–226.

F. LUCHAIRE, Les associations à la Communauté économique européenne, RdC, Vol. 144 (1975 I) 241–308.

E. GRABITZ, Die Entwicklungspolitik der Europäischen Gemeinschaften, Europarecht, Vol. 12 (1977) 217–239.

H. KRÜCK, Völkerrechtliche Verträge im Recht der Europäischen Gemeinschaften (1977).

D. CARREAU, T. FLORY and P. JUILLARD, Droit international économique (2nd ed. 1980) 328–340.

C. VEDDER, Die Auswärtige Gewalt des Europa der Neun (1980).

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EUROPEAN FREE TRADE ASSOCIATION

1. Historical Background; Establishment

When in the late 1950s the project for a wide European → free trade area had failed due to resistance from the → European Communities (EC), seven European States, including the United Kingdom, three Nordic (→ Nordic Cooperation) and two permanently neutral States (→ Permanent Neutrality and Economic Integration) combined to form a smaller free trade area. The aim was to make up for losses expected for non-EC-members from the integration of the "Six" and to create a platform for → negotiations in view of accession to or free trade agreements with the EC. The Convention establishing the European Free Trade Association (EFTA) was signed on January 4, 1960 in Saltsjöbaden near Stockholm and entered into force on March 3, 1960 (UNTS, Vol. 370, p. 3). Its original members were Austria, Denmark, Norway, Portugal, Sweden, Switzerland (also for Liechtenstein) and the United Kingdom. Finland became an Associate in 1961, and Iceland joined in 1970. When Denmark and the United Kingdom joined the EC in 1973, they withdrew from the Association. In

the meantime, the remaining EFTA States had concluded bilateral agreements with the EC so that EFTA now exists as one element in a wider European free trade system.

2. Structure

EFTA is an international organization with its headquarters in Geneva. Accession is open to any → State upon approval by the Council (EFTA Convention, Art. 41(1)). Also new associations may be founded between the members and any other State, union of States or international organization (Art. 41(2)). Such an agreement was concluded with Finland (UNTS, Vol. 420, p. 109). Strictly speaking, therefore, there exist two associations (EFTA and FINEFTA), but for practical purposes they may be regarded as one. Withdrawal from EFTA is possible on twelve months' notice.

The Convention itself provides for only one organ, the Council (to which corresponds a Joint Council in FINEFTA). In addition, the Council has set up a Secretariat and a number of committees and working parties, in which the bulk of technical work is done (e.g. Committee of Trade Experts, Committee of Origin and Customs Experts). A Consultative Committee and a Committee of EFTA Parliamentarians provide direct channels to the interested sectors of the public in member States.

The Council, as the main organ, sits weekly at the official and twice yearly at the ministerial level, simultaneously with the Joint Council. Every member State has one vote. Decisions and recommendations are adopted on the unanimity principle, but a simple majority will suffice in specific cases (mainly of conflict). In practice, informal decisions are also taken and inserted in the Summary Record.

Under special provisions, the Council may even amend the Convention or its Annexes (→ Treaties, Revision). But normally amendments are dependent upon formal acceptance by all members (Art. 44).

Disputes are usually handled informally by the Council or technical committees. The elaborate complaints procedure of the Convention (Arts. 31 and 33), whereby the Council may establish an Examining Committee and authorize members to take → sanctions, is hardly ever resorted to.

EFTA's legal status is defined in a Protocol on Legal Capacity, Privileges and Immunities (UNTS, Vol. 394, p. 37) and in the Headquarters Agreement with Switzerland (Sammlung der eidgenössischen Gesetze, (1961) p. 749). EFTA thus enjoys public international and private municipal law personality.

The annual budget of the Association is established by the Council. Contributions are assessed by reference to the gross national products at factor cost to the member States (→ International Organizations, Financing and Budgeting).

EFTA's external relations are rather limited. There are regular contacts with other organizations such as the → Organisation for Economic Co-operation and Development, the → Council of Europe, the EC and the → European Patent Organisation (at secretariat level or as an observer (→ International Organizations, Observer Status)).

3. Rules and Activities

EFTA's immediate aim was the establishment of a free trade area for industrial goods. This implied (a) abolishing all direct obstacles to the free flow of goods, such as customs duties and quotas; (b) securing the conditions for fair competition; and (c) eliminating other indirect barriers to trade (→ World Trade, Principles). Agricultural goods and fish are on the whole not covered by the free trade provisions of the Convention. But a reasonable degree of → reciprocity was sought for the main exporters of such goods, mainly by way of bilateral agreements (cf. Arts. 21 to 28 and Annexes D and E).

EFTA's first objective was the dismantling of import and export duties between member States and the removal of quantitative restrictions on trade, such as quotas and import licences. Import restrictions were gradually abolished by systematically cutting down tariffs (under Art. 3) and raising import quotas (under Art. 10); this process was virtually completed by the end of 1966. Revenue duties and internal taxes (Art. 6) were purged of protectionist elements. Export duties (Art. 8) and quantitative export restrictions (Art. 11) had already been abolished by the end of 1961. The crucial point for any free trade arrangement lies in the definition of "origin". Only goods

originating in the Area are eligible for area-tariff treatment. The notion of origin can take different shapes which stand for different degrees of liberalization and integration. EFTA, in 1973, changed over to the system current in the Association Agreements with the EC (as described in Art. 4 and Annex B of the Convention). Like other economic treaties, the Convention contains safeguard clauses which, under certain conditions, permit departure from its obligations (Arts. 18 to 20).

The Rules of Competition (Arts. 13 to 17) exist to ensure that the benefits expected from the Association's rules eliminating State hinderances to free trade are not frustrated by other protectionist measures and practices. Forbidden are: certain government aids; discriminatory purchasing practices of public undertakings; business practices which restrict competition within the Area; restrictions on the establishment of firms of other EFTA members; and dumping. The broad principles of the Convention were later clarified by authoritative interpretations of the Council.

As tariffs and quotas disappear, other barriers to trade, such as national product standards, requirements for tests, inspection and registration, and the restrictions imposed by patent and trade mark systems become the focus of attention. These "second-generation issues" were dealt with by a system of notification and by supporting the work of other institutions (International Organization for Standardization; → General Agreement on Tariffs and Trade (GATT), → European Patent Organisation). An original contribution of EFTA lies in its arrangements for the reciprocal recognition of tests and inspections. Under this system, products are tested by the exporting country according to, and thus fulfilling, the requirements of the importing country.

EFTA has also been active in the field of economic development, by granting special treatment to Portugal and Iceland, and by creating an Industrial Development Fund for Portugal (in operation since 1977). Cooperation has also been extended to Yugoslavia (a Joint EFTA-Yugoslavia Committee was founded in 1977) and to Spain, with which a free trade agreement was concluded in 1979. On the whole, EFTA has become a framework for economic cooperation in general in which common positions are defined (e.g. *vis-à-vis* GATT and the EC) and new challenges can be discussed by member States.

4. *Special Legal Problems*

Free trade areas are permissible exceptions from the → most-favoured-nation clause of GATT, so long as they extend to "substantially all the trade" between members (Art. XXIV(8)(b) of GATT). Whether EFTA fulfils this condition in all respects is an open question. In terms of quantity this is certainly so, but in terms of quality it may be relevant that agricultural goods and fish are excluded from Area treatment. The question seems now to be of academic interest only, since many of GATT's contracting parties have adhered to similar arrangements.

Most of EFTA's reciprocal recognition arrangements were concluded in the form of "Schemes" (e.g. on pressure vessels, ships' equipment, etc.). These Schemes defy legal classification as they lie somewhere between informal agreements and acts of the Association: drafted within the framework of EFTA and approved by the Council, they nevertheless include non-members such as the Federal Republic of Germany and Yugoslavia. But no signature is required for either, and the participants are "competent authorities and bodies", including private associations.

5. *Evaluation*

EFTA stands for an economic grouping which was sometimes felt to be, but in fact never was, a rival to the EC (→ Economic Communities and Groups). Originally conceived as a temporary platform for "bridging the gap" in Europe, it became paradigmatic in that it showed that a free trade area may function despite the absence of a common external tariff and centralized policies. EFTA thus smoothed the way to a wider European free trade system of which it is one – and not the least important – element. From a legal point of view, EFTA excels by virtue of its simple structure which can easily be adapted to new aims and needs. EFTA is, moreover, known for its pragmatic non-legalistic approach when handling particular problems – a feature which is quite typical for an economic organization.

Convention establishing the European Free Trade Association, UNTS, Vol. 370 (1960) 3–398.
Annual Report(s) of the European Free Trade Association.
EFTA Bulletin, annual.

J.S. LAMBRINIDIS, The Structure, Function and Law of a Free Trade Area, The European Free Trade Association (1965).
R. MORI, Rechtssetzung und Vollzug in der Europäischen Freihandelsassoziation (EFTA) (1965).
Graduate Institute of International Studies, Geneva, The European Free Trade Association and the Crisis of European Integration (1968).
H. CORBET and D. ROBERTSON (eds.), Europe's Free Trade Area Experiment; EFTA and Economic Integration (1970).
F. JAEGER, GATT, EWG und EFTA: Die Vereinbarkeit von EWG- und EFTA-Recht mit dem GATT-Statut (1970).
P. FUCHS, Die Liberalisierung des Handels der öffentlichen Unternehmungen in der EFTA, Art. 14 EFTA-Konvention (Thesis, University of Zürich 1971).
A. SZOKOLOCZY-SYLLABA, EFTA: The Settlement of Disputes, ICLQ, Vol. 20 (1971) 519–534.
A. SZOKOLOCZY-SYLLABA, EFTA Restrictive Business Practices (1973).
V. CURZON, The Essentials of Economic Integration: Lessons of EFTA Experience (1974).
R. MIDDLETON, Negotiating on Non-Tariff Distortions of Trade, The EFTA Precedents (1975).
H. SCHULZ, Ursprungsregelung der Freihandelsabkommen EWG – EFTA-Staaten (3rd ed. 1977).
EFTA Secretariat, The European Free Trade Association (1980).

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EUROPEAN INTEGRATION

1. Notion. – 2. The Sectoral Approach. – 3. The Institutional Structure of European Organizations: (a) Inter-governmental organs. (b) Supranational organs and majority rule. (c) Supranational enforcement. (d) European parliamentary assemblies. – 4. The Sectoral Development of European Integration: (a) Economic integration. (b) Military integration. (c) Political integration. – 5. Conclusion.

1. Notion

The term "European integration" came into use after World War II to describe the process as well as the goal of forming a closer association, union, or even federation among the States of Western Europe (→ Regional Cooperation and Organization: Western Europe). It was a convenient term, sufficiently general and vague to cover the whole spectrum of the various approaches to integration, ranging from traditional inter-governmental cooperation to the establishment of → supranational organizations.

The organizational framework in Western Europe is characterized by a multiplicity of arrangements and institutions of differing legal character in the various fields of governmental activity. Thus, all doctrinal efforts to define European integration by linking it with specific institutional characteristics have failed. Owing to their great impact on the integration process, the → European Communities (EC) have attracted more attention than other European institutions; as a result, their particular supranational structure is often considered as solely representative of the mechanisms of European integration. However, a number of other European organizations with different structures and even wider membership than the European Communities have also contributed substantially to the process of European integration.

The remarkable progress of integration among the States of Western Europe has been facilitated by their common cultural heritage and their homogeneous political and economic systems. It was motivated, especially during the first decade after World War II, by the widely-shared conviction among those States that the task of political and economic recovery exceeded their individual capabilities and required a joint effort. Geographically, however, this integration process remained restricted to Western Europe, owing to the fundamentally different political and economic systems prevailing in the States of Eastern Europe, which in turn led to the formation of the separate group of Eastern European Socialist States and other methods of integration (→ Regional Cooperation and Organization: Socialist States).

The history, structure and functions of each of the European institutions which are part of the integration process are described in more detail elsewhere in this Encyclopedia. The object of the following review is an analysis of the different institutional approaches which have been pursued in the process of European integration and an evaluation of the achievements in this process.

2. The Sectoral Approach

Despite efforts of the European Movement (founded 1948 as a non-official association of political groups favouring a closer union of European States) it proved politically impossible to establish a federal union of the European States with general competence in all matters of common concern. In the formative period of European integration in the first years after the war different institutional approaches were pursued in matters of economics, defence and foreign policy, and different institutions with different legal character and membership were established in each of these sectors.

The → Council of Europe (created in 1949) was originally conceived as the principal European organization, with over-all competence "to achieve a greater unity between its Members ... by agreements and common action in economic, social, cultural, scientific, legal and administrative matters" (Art. 1) with the notable exception of defence. However, it has been unable to promote far-reaching integration in these sectors; only in the field of the protection of → human rights has an effective integrated system been developed on the basis of unified standards (→ European Convention on Human Rights). In matters of economics, defence and foreign policy other European Institutions with different structures, the EC among them, by-passed the Council of Europe and took the lead in the integration process. The efforts of the Council of Europe to assume at least a coordinating role for all these other specialized European institutions also failed.

It must, however, be acknowledged that the work of the Council of Europe has led to the conclusion of over 100 European conventions and agreements which aim, *inter alia*, at the liberalization of inter-State travel, road traffic, communications and commercial establishment (e.g. the Conventions on Establishment of 1955 and 1966 for persons and companies), the facilitation of legal intercourse (e.g. → commercial arbitration, reciprocal recognition of judgments and other administrative acts), the harmonization of social standards (e.g. → European Social Charter of 1961, agreements relating to social security), and the resolution of conflicts between member States (e.g. → European Convention for the Peaceful Settlement of Disputes of 1957). These conventions and agreements have provided a useful legal infrastructure for further integration. Unfortunately, the process of ratification of some of these conventions and agreements has been rather slow and, in most cases, has not included all member States (see the State of Signatures and Ratifications published periodically by the Council of Europe).

3. The Institutional Structure of European Organizations

The doctrinal dispute during the first decades of European integration as to whether and to what extent the embryonic European organizations should be modelled after the traditional institutional forms of inter-governmental cooperation or, more ambitiously, provided with institutions which are characteristic of federal States has now lost much of its significance. The pragmatic and sectoral approach, dictated by a realistic assessment of what was politically attainable, has produced in the different organizations special institutional structures which have proved their practical value – but also revealed their inherent limits of application.

(a) Inter-governmental organs

The Organisation for European Economic Co-operation (OEEC; see → Organisation for Economic Co-operation and Development), established in 1948 at the instigation of the United States for the concerted implementation of the → European Recovery Programme (Marshall Plan), was structured along traditional lines of governmental cooperation: Its Council, from which all decisions flowed, was composed of delegates of member governments and decisions required their mutual agreement – although there was the proviso that the abstention of a Council member accompanied by a declaration of no interest in the matter did not prevent a decision, which was then binding only for the other members. Despite the unanimity requirement, the common interest of the participating States in the liberalization of European trade was sufficiently strong to produce respectable results in reducing and abolishing quantitative restrictions and other obstacles to the free exchange of goods, services and payments. The level of integration of the

economies of member States thus reached during the first post-war decade provided the indispensable basis for the subsequent establishment of a common market within the EC.

The institutional pattern of concentrating decision-making power in a council or conference of government delegates has been followed in a number of other European organizations in which member States wish to retain their discretion on how to decide any matter of common concern (e.g. → Western European Union (1948); → Council of Europe (1949); → European Conference of Ministers of Transport (1953); → European Organization for Nuclear Research (1953); → European Civil Aviation Conference (1955); → Benelux Economic Union (1958); → European Free Trade Association (1960); → European Space Agency (1975)).

(b) Supranational organs and majority rule

It was and is still a widely held opinion that European integration could not and cannot progress much further so long as decisions of inter-governmental organs require unanimity, and thus depend on a → consensus between governments; according to this opinion, the outcome of such decisions will normally be nothing more than a compromise between national interests at the lowest common denominator (see also → Voting Rules in International Conferences and Organizations). Whether this pessimistic assessment was justified in view of the results of economic integration attained by the work of the OEEC may be debatable; in any event, other institutional methods were sought which would enable the European institutions to orientate their decisions more surely towards the advancement of integration. Two courses were followed in this respect: specified powers of decision were conferred on so-called "supranational" organs, composed of highly qualified independent persons who are not permitted to seek or take instructions from their governments and who are under the obligation to act solely in consideration of the common interest; and a wider use of the majority vote was allowed in the decision-making procedure of inter-governmental organs in order to restrain the → veto power of any single government which might impede the integration process.

In the EC both these devices were employed in tandem. It is interesting to note that in the earlier and more specialized → European Coal and Steel Community (ECSC) the power of decision is concentrated to a higher degree in the supranational Commission whose decisions require the assent of the ministerial Council in some specified cases only. In the later → European Economic Community (EEC), with its wide range of competences in economic matters, decisions of a legislative or otherwise policy-making character are generally taken in the last resort by the ministerial Council on the basis of proposals of the supranational Commission. This difference in approach cannot be explained merely by a growing reluctance to vest supranational organs, which lack a democratic basis, with law-making powers; rather, it was influenced by the conceptual difference of the treaties which established both Communities. While the ECSC Treaty contained detailed provisions for the policies which the Commission had to follow in governing the coal and steel industry and from which the Commission was not allowed to deviate except with the unanimous assent of the Council, the EEC Treaty defines the economic policies to be followed in the establishment and maintenance of the common market between the member States in general terms only, so that broad political discretion remains with the Council in defining and applying these policies. Therefore in the EEC the final decision has been left to a Council of (national) Ministers – with the important restriction, however, that for almost all decisions the Council requires the prior introduction of a proposal by the supranational Commission and cannot proceed except on the basis of that proposal. Through this virtual monopoly of the right of proposal the Commission may exert a determining influence on the formation of truly "European" policy in the Council.

An elaborate system of checks and balances has been devised for the introduction of majority rule in the EC Council of Ministers. The main apprehension expressed by national governments – that, by allowing majority decisions in the Council, vital national interests of one or more States might be outvoted by a majority coalition of the other States – has been overcome by introducing two safeguards. In those cases where majority decisions are allowed, the required majority has

been qualified in two ways: first, there is → weighted voting by differentiation between large, middle and small member States as to the number of their respective votes and by requiring such a number of votes that a coalition of the large States cannot outvote the smaller ones, or vice versa, and that no single large State has sufficient votes to veto a decision; second, the Council is not empowered to change the substance of the Commission proposal (which is required for nearly all substantive decisions of the Council) except by a unanimous vote. The supranational Commission as an organ is obligated under the Treaty to formulate its proposals with exclusive regard to the common interest, thus providing a reasonable assurance that the majority cannot use its voting power to satisfy its national interests with complete disregard of those of the minority. Although these safeguards have made it possible for EC member States to accept the principle of majority rule for quite a number of categories of decisions, its application has remained very rare in Community practice. This has not only resulted from the provision that if the Council wants to change a proposal of the Commission (which it does in most cases), it can do so only by a unanimous vote, but also, and much more so, it is a consequence of the general understanding among member governments (see the so-called Luxembourg Resolution of the Council of January 28, 1966; Bulletin of the European Economic Community (1966) No. 3, p. 8) that decisions of the Council on any matter which is regarded by any member government as of vital concern to its country will be discussed in the Council until a unanimous decision is reached, irrespective of whether a majority decision would have been possible under the provisions of the EEC Treaty. Thus the majority rule has played a much smaller role in the EEC than had been anticipated, and repeated efforts to encourage its wider use have thus far not met with a response. Experience recommends rather a cautious approach in this direction where major national interests are involved. The formal way in which decisions could be taken in European institutions has been less relevant than the political will to reach a consensus in matters of common interest.

(c) Supranational enforcement

Another institutional element of the European Communities which has been considered an indispensable element of true supranational organizations is the way in which the decisions of their organs are executed: the legislative and administrative acts of the organs of the Communities are, without the interposition of national authorities, immediately valid and directly enforceable in the member States; their uniform application and execution is controlled by the supranational Commission and legally guaranteed by the availability of judicial procedures before the national courts and the → Court of Justice of the European Communities. This has resulted in the creation of a body of uniform and directly applicable → European law which offers stronger guarantees for its equal and effective application than are contained in European conventions and agreements of the traditional type, the implementation of which depends on parallel national legislation and enforcement through national authorities. Experience in the European Communities leads to the conclusion that supranational structures have proved their inherent value particularly at the level of implementation and execution of agreed policies.

(d) European parliamentary assemblies

Another line of institutional integration has been pursued through the creation of consultative parliamentary assemblies (→ Parliamentary Assemblies, International), as a compromise solution in response to the European Movement's quest for a true European parliament. When the Council of Europe was established in 1949 a Consultative Assembly was attached to it composed of parliamentarians from each member State who need not be, but usually have been, simultaneously members of their national parliaments. As a purely consultative body the Assembly lacks the legislative and budgetary powers which are the attributes of a true parliament; it is empowered only to discuss and make recommendations to the Council. Similar consultative assemblies were created in 1954 for the Western European Union and in 1955 for the Benelux Economic Union. With the creation of the European Communities a similar Assembly with primarily consultative functions was established. Its members were originally elected by the national parliaments from their own membership; since 1979, however, they have been

directly elected by the citizens of the member States of the Community. The Assembly of the European Communities – which since 1962 has been styled the "European Parliament" – still lacks legislative competence, but has meanwhile succeeded in being vested with some limited powers in the budgetary procedure of the Communities.

Though lacking true parliamentary powers these Assemblies, if composed of influential national parliamentarians, are nevertheless able to exert political pressure on the decision-making organs of the organization and may provide democratic legitimacy for their decisions. The practice of the representatives in these Assemblies to avoid voting by national blocks and to organize themselves in "supranational" groups on party lines tends to build up "European" viewpoints and to restrain the defence of narrow national interests at the expense of the common interest. Whether the "parliamentary line" will be pursued in the process of further integration and whether in future real legislative and other parliamentary powers will be conferred on such assemblies remains uncertain; much will depend on whether the "supranational" attitude so far shown by national parliamentarians in such assemblies will be preserved in cases where they themselves will have to take decisions in conflicts between European and national interests. At present, national governments as well as their parliaments seem to be reluctant to confer part of their powers on European parliamentary institutions.

4. The Sectoral Development of European Integration

(a) Economic integration

The OEEC, which comprised all States of Western Europe, succeeded in the abolition of most quantitative restrictions in European trade (with the exception of some sensitive sectors, e.g. textiles); the state of liberalization thus far attained was consolidated in so-called "liberalization codices" and in the European Payments Union (later succeeded by the European Payments Agreement). The member States of the OEEC failed, however, to agree on the next steps for further integration, in particular with respect to the abolition of customs tariffs. The six member States of the ECSC, who had meanwhile successfully established a supranational régime for the coal and steel industry, favoured a closely integrated European economic union with supranational institutions, while the other members of the OEEC were unwilling to proceed much beyond a → customs union or → free trade area. The lack of agreement resulted in a critical cleavage in the process of European integration: In 1957 the six ECSC States (Belgium, France, Federal Republic of Germany, Italy, Luxembourg and the Netherlands) established the EEC and thenceforward pursued their separate course of closer integration.

Efforts to prevent an economic division of Western Europe or to mitigate its effects by establishing a comprehensive European free trade area comprising the EEC as a member failed; seven OEEC members which remained outside the EEC (Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom) established the European Free Trade Association (EFTA), which has no supranational elements and has restricted its main activities to the gradual abolition of customs tariffs and other trade barriers for industrial goods between its members. Efforts to negotiate free trade arrangements between the member States of the EEC and EFTA failed again. In 1973 Denmark, Ireland and the United Kingdom joined the EC; at the same time association agreements which provided for the reciprocal abolition of customs tariffs for industrial goods parallel to the gradual abolition of these tariffs within the EEC and EFTA were concluded with the remaining EFTA members. Thus, at least for most industrial goods, a free trade area throughout Europe has been achieved. By further enlargement of the EC (Greece (1981), Spain, Portugal) and by association agreements with the remaining Western European States the political and economic weight of the Community approach in European economic integration has become dominant. Nine Western European States still remain outside (Austria, Cyprus, Finland, Iceland, Liechtenstein, Malta, Norway, Sweden and Switzerland), particularly those who fear that full participation in such a highly integrated supranational organization might affect their independence and ability to pursue a policy of neutrality (→ Permanent Neutrality, Economic Integration).

The EEC has succeeded in establishing among its member States a common market for the exchange of industrial and agricultural goods and other commercial services and, in some measure, for the free movement of industry, labour and other professions; common policies have been established relating to the organization of agricultural markets, control of industrial concentration, granting of subsidies, and trade with third countries. Despite these achievements the goal of full economic union has not yet been attained; the EEC is still confronted with serious problems which result from the lack of a common economic and monetary policy with member States pursuing divergent courses for reasons of internal politics. The various *relances* for the gradual development of an "economic and monetary union" among the member States have not yet been implemented (→ European Monetary Cooperation). The floating exchange rates between member States, which necessitated the imposition of equalization charges on transfrontier trade in agricultural goods, created new artificial barriers within the Community market. The European Monetary System (1979) which has been put into operation between eight of ten member States mitigates, but does not cure, the disintegrating effects of divergent national monetary policies. It seems that the solution of this problem requires political decisions which are beyond the powers of the institutions of the EC.

(b) Military integration

The concept of an integrated defence force has been developed in the → North Atlantic Treaty Organization (NATO) for the defence of Western Europe; for obvious reasons military integration remained restricted to those States in Western Europe which are members of the NATO → alliance.

The integration process originated in the decision of the North Atlantic Treaty Council of September 26, 1950 whereby the member governments agreed upon the establishment of an integrated force in Western Europe, made up of those national units which would be allocated for this purpose by the national governments, under a Supreme Commander who was to be assisted by an international staff representing all nations contributing to the force. Subsequently, the integrated command structure was broadened through the appointment of regional commanders with similarly integrated staffs and the establishment of central and regional NATO headquarters. Military planning takes place at the integrated level under the guidance of the NATO Military Committee composed of the national chiefs-of-staff. The military units allocated to the integrated defence force remain during peace time under national command and discipline; only during the periodic exercises have national units been combined into an integrated force under a NATO commander. The Treaty establishing a → European Defence Community, which was signed in 1952 and provided for closer integration of the national forces of the six original member States of the ECSC under a common supranational military administration, was not ratified because the French Parliament rejected the "supranationalization" of the French forces. All national forces of the member States of NATO which are stationed in Europe have now been allocated to or "earmarked" for the integrated NATO defence force with the exception of French forces, since France withdrew from the integrated military organization of the NATO alliance in 1966.

Another aspect of military integration within NATO has been the extensive common "infrastructure" programme for the construction of airfields, communications, pipelines, radar and other modern reconnaissance systems in the European NATO countries. The infrastructure measures are jointly planned and financed by the member States of NATO, but executed and maintained at the national level. Considerable progress has also been made in joint defence production and standardization of equipment.

All integration of the defence structure within NATO has been achieved by unanimous decisions of the NATO Council and its subordinate committees, which are composed of representatives of national governments, motivated by the common defence interests of the participating States.

(c) Political integration

As early as 1949 the Consultative Assembly of the Council of Europe advocated the development of the Council into an organ with broader political competences in European matters; in a

Resolution of September 6, 1949 the Assembly proclaimed that "the aim and goal of the Council of Europe is the creation of a European Political Authority with limited functions but real powers". The Assembly proposed extensive amendments to the Statute of the Council in this direction, but no action was taken by governments in this respect. Since then the efforts to create a European political authority shifted into the forum of the EC.

In 1952 the ECSC Assembly was invited by the governments of the member States to work out a draft treaty for a → European Political Community as a basis for a future European federal or confederal structure. The draft Treaty elaborated by the *Ad hoc* Assembly (as it was called) envisaged an organization modelled after the institutional concept of the Coal and Steel Community with a supranational European Executive Council under the control of a bicameral European Parliament, one chamber to be elected by direct universal suffrage, the other, representing the States, composed of representatives delegated from the national parliaments. The competences of the Community would have been comprehensive, including foreign policy, defence, and the establishment of a common market, but dependent on a specific transfer of the respective competences by legislative decisions of the European Parliament and the concurring unanimous consent of a Council of National Ministers. However, following the rejection of the European Defence Community Treaty by the French Parliament in 1954, the draft Statute of the European Political Community was not considered further.

On July 18, 1961 the Heads of Government of the six EC member States agreed to harmonize their foreign policies and, in particular, to reach common conceptions for the political unification of Europe; they instructed a committee of officials of their foreign ministries to draft a statute for the latter purpose. The Committee produced the so-called "Fouchet Plan" (named after the Committee chairman) for the creation of a "Union of European States" which conceptually differed significantly from the draft of the *Ad hoc* Assembly for the European Political Community: It vested all powers for the determination of a common policy for defence and foreign relations in a Council composed of the Heads of Government, decisions of which required unanimity, but with the proviso that an abstention would not prevent a decision, but instead would relieve the abstaining member from the obligation to comply with it; a parliamentary assembly was provided for, but only as a forum of discussion. The "Fouchet Plan" was severely criticized by both the EC Assembly as a retrograde step by comparison with the existing Communities, and by the governments of Belgium and the Netherlands; it was not considered any further.

The first arrangement for cooperation in the field of foreign policy that has been put into practical effect is the system of → European Political Cooperation practiced by EC member States since 1970. It is based not on a formal treaty but on a sequence of agreed decisions of the Heads of Government and of the foreign ministers. The system provides for regular meetings of the foreign ministers and for continuous coordination at the level of senior officials, ambassadors, and delegations to international organizations and conferences in order to adopt common positions on foreign policy issues where possible and desirable; each government has pledged itself not to take a final position in a matter of common concern before consulting the others. On December 10, 1974 the Heads of Government decided to meet regularly as the "European Council", which acts simultaneously as Council of the EC in matters within their competence and as organ of European Political Cooperation in other matters, so as to ensure a maximum of coordination between the two areas of competence. The installation of the European Council composed of the Heads of Government as the supreme coordinating organ marks a further weakening of the supranational element at the policy-making level within the European Communities.

5. Conclusion

The belief in the need for some form of political union of the European States is still a strong motive in European politics and has once and again found expression in statements of governments, parliaments and politicians. However, despite the remarkable progress made in some fields, particularly in the economic sector, the appropriate and politically attainable institutional structures for such a union of European States

remain a matter of controversy and uncertainty. In retrospect, experience seems to have shown that neither federal nor supranational structures will readily be accepted if integration reaches the policy-making level; at this level, confederal structures which require the consensus of national governments in the shaping of common policies are probably more acceptable so long as national governments are regarded as the primary repository of the responsibility for the well-being of their peoples. Below the policy-making level, however, where equal and effective implementation and execution of the agreed policies is required, institutions of the federal or supranational type can probably be more usefully employed.

R.L. BINDSCHEDLER, Rechtsfragen der europäischen Einigung (1954).

G. JAENICKE, Bundesstaat oder Staatenbund, in: Völkerrechtliche und Staatsrechtliche Abhandlungen, Carl Bilfinger zum 75. Geburtstag (1954) 71–108.

E.B. HAAS, The Uniting of Europe: Political, Social and Economic Forces (1958).

K. LINDSAY, European Assemblies, The Experimental Period (1960).

W. HALLSTEIN, United Europe, Challenge and Opportunity (1963).

H.G. KOPPENSTEINER, Die europäische Integration und das Souveränitätsproblem (1963).

W. HALLSTEIN, Die echten Probleme der europäischen Integration (1965).

W. HALLSTEIN and H.J. SCHLOCHAUER (eds.), Zur Integration Europas, Festschrift für Carl Friedrich Ophüls (1965).

G. JAENICKE, Die Supranationalität der Europäischen Gemeinschaften, in: Zur Integration Europas, Festschrift für Carl Friedrich Ophüls (1965) 85–106.

E. VON CAEMMERER et al. (eds.), Probleme des europäischen Rechts, Festschrift für Walter Hallstein (1966).

A. SATTLER, Das Prinzip der funktionellen Integration und die Einigung Europas (1967).

P. PESCATORE, Le droit de l'intégration (1972).

W. HALLSTEIN, Die Europäische Gemeinschaft (1973).

C. PENTLAND, International Theory and European Integration (1973).

A.H. ROBERTSON, European Institutions, Co-operation, Integration, Unification (3rd ed. 1973).

J.A. CAPORASO, The Structure and Function of European Integration (1974).

H. VON DER GROEBEN and E.J. MESTMÄCKER (eds.), Ziele und Methoden der europäischen Integration (1974).

S. HAUSBERGER, Europäische Integration (1974).

P. PESCATORE, Les exigences de la démocratie et la légitimité de la Communauté européenne, Cahiers de droit européen (1974) 499–514.

P. MAILLET, La construction européenne (1975).

U. SCHEUNER, Perspektiven einer Europäischen Union, Zum Bericht des Ministerpräsidenten Leo Tindemans, Europarecht, Vol. 11 (1976) 193–212.

M. ZULEEG, Die Gestalt der Europäischen Union im Tindemans-Bericht, Europarecht, Vol. 11 (1976) 549–558.

P. VERLOREN VAN THEMAAT, Quelques réflexions sur les méthodes de l'intégration, Mélanges Fernand Dehousse, Vol. 2 (1978) 95–100.

U. EVERLING, Possibilities and Limits of European Integration, Journal of Common Market Studies, Vol. 18 (1980) 217–228.

H. VON DER GROEBEN and E.J. MESTMÄCKER (eds.), Möglichkeiten und Grenzen einer Europäischen Union – Die Europäische Union als Prozeß (1980).

H. VON DER GROEBEN, Aufbaujahre der Europäischen Gemeinschaft (1982).

A. TOLEDANO-LAREDO, Integration and Democracy (1982).

GÜNTHER JAENICKE

EUROPEAN INVESTMENT BANK

1. Legal Status

The European Investment Bank was established by Art. 129 of the Treaty establishing the → European Economic Community (EEC), implementing Art. 3(j); its Statute is annexed to that Treaty in the form of a protocol. It was accorded legal personality by Art. 129, para. 1. In each of the member States, it enjoys the most extensive legal capacity accorded to legal persons under their laws. Its property is exempt from all forms of requisition or appropriation (Statute, Art. 28). The seat of the Bank is in Luxembourg.

2. Membership

The membership of the Bank consists of the member States of the EEC. The initial capital of the Bank in 1957 was one thousand million units of account, each unit being valued at 0.88867088 grams of fine gold. It has over the years been substantially increased and in 1981 amounted to 14,400 million units of account; the unit of account has been redefined and now corresponds to the value of the European Currency Unit (ECU) whose rate of exchange in national currencies is published regularly in the Official Journal of the → European Communities. The capital is subscribed by the member States according to an agreed system of shares. Capital increases are

decided by the Board of Governors (Arts. 4 and 5). In addition to the subscribed capital the Bank may, if it is unsuccessful in borrowing on the capital markets, require its members to grant special loans which are to bear an annual interest of 4 per cent. Such loans must not exceed 400 million units of account and are to be paid in national currency (Art. 6). This provision has not yet, however, been applied. If the parity of the currency of a member State is reduced, this State is obliged to make a supplementary payment to offset the Bank's loss (Art. 7). If a member State fails to meet its obligations to pay its share of the subscribed capital, to grant special loans, or to service its borrowings, the privileges of membership may be suspended (Art. 26).

3. Organization

The management of the Bank is entrusted to the Board of Governors, the Board of Directors and the Management Committee (Art. 8).

The Board of Governors consists of Ministers designated by the member States. It lays down the general directives for the Bank's credit policy. It also decides whether to call in special loans (Art. 9). Decisions of the Board of Governors are generally taken by a simple majority (Art. 10).

The Board of Directors consists of 19 directors and 11 alternates. It has the sole power to decide on the granting of loans and guarantees and to raise loans. The directors and alternates are appointed by the Board of Governors for a period of five years. Decisions of the Board of Directors are also normally taken by a simple majority (Art. 12).

The Management Committee consists of a President and five Vice-Presidents who are appointed by the Board of Governors on the recommendation of the Board of Directors for a period of six years. It conducts the day-to-day business of the Bank and prepares the decisions of the Board of Directors. The President represents the Bank in judicial and other matters (Art. 13).

The annual audit is carried out by three auditors appointed by the Board of Governors (Art. 14).

The Bank cooperates with all international organizations active in fields similar to its own (Art. 16).

4. Activities

The task of the bank is to contribute to the "balanced and stable development of the common market". Thus, the majority of the Bank's loan activities concentrate on the less developed regions in Europe. In particular, it is to assist in the financing of new projects and modernization schemes by granting loans and giving guarantees. This also applies to projects of common interest to several member States of such size or nature that they cannot be entirely financed by individual member States. The Bank draws the means for such loans from its own resources or by borrowing on the capital markets (EEC Treaty, Art. 130). In principle only projects carried out within Europe are financed by the Bank (Statute, Art. 18). This geographical limitation is in line with the Implementing Convention provided for in Art. 136 of the EEC Treaty which established a special "Development Fund" for overseas countries and territories. However, since the signing of the Yaoundé Conventions in 1963 and 1969 between the EEC and francophone African States and of the → Lomé Conventions of 1975 and 1979 between the EEC and a number of → developing States in Africa, the Caribbean and the Pacific, the Bank has been required to place a portion of its resources at the disposal of overseas countries.

Loans by the Bank to undertakings or corporations in the member States are conditional on a guarantee from the government of that State or other "adequate guarantees" (Statute, Art. 18(3)). The outstanding loans and guarantees granted by the Bank must not exceed 250 per cent of its subscribed capital (Art. 18(5)). The Bank is not to acquire an interest in any undertaking unless this is the only way to ensure recovery of funds lent (Art. 20(2)).

The Bank may not finance any undertaking which is opposed by the government of the country in which it is to be carried out (Art. 20(6)).

Applications for loans or guarantees can be made to the Bank through the Commission of the European Communities, through member States or directly. Whatever way is chosen, the member State concerned and the Commission must deliver their opinions within two months. The applications are then examined by the Management Committee and submitted to the Board of Directors for its approval. If the opinion of both the

Management Committee and the Commission is unfavourable, the Board of Directors may not grant the requested loan or guarantee; the same applies if the member State concerned delivers an unfavourable opinion. If only the Management Committee or only the Commission reports unfavourably, the Board of Directors can still grant the loan or guarantee if its vote is unanimous (Art. 21).

European Investment Bank, Annual Report[s].

D. KILLMER, Die Europäische Investitionsbank, Thesis, University of Frankfurt (1963).

G.P. MENAIS, La Banque européenne d'investissement (1968).

J. LICARI, The European Investment Bank, Journal of Common Market Studies, Vol. 8 (1970) 193–215.

La banque européenne d'investissement, Notes et études documentaires, Nos. 4022–4023 (1973).

J. KÄSER, Die Europäische Investitionsbank und die deutsche Wirtschaft, Europarecht, Vol. 11 (1976) 130–154.

F. MOSCONI, La Banca europea per gli investimenti, Aspetti giuridice (1976).

H. VON DER GROEBEN, H. VON BOECKH and J. THIESING, Handbuch für die europäische Wirtschaft, Instalment 150 (1978) with detailed commentary on the Statute.

Le droit de la Communauté européenne, Vol. 8, Banque européenne d'investissement (1979).

G. MYLES, European Investment Bank, Journal of the Law Society of Scotland, Vol. 25 (1980) 285–289.

HELMUT COING

EUROPEAN LAW

1. Notion

The notion of European law has been developed by scholars not by the practice of States. It includes in its narrowest meaning the law of the → European Communities only. In a wider sense it extends to the conventions of the → Council of Europe and particularly to the → European Convention on Human Rights. In an even broader meaning, we might extend the notion to the law of the other European organizations such as the → Western European Union, the → Benelux Economic Union, the → Organisation for Economic Co-operation and Development (OECD), the → North Atlantic Treaty Organization and even to other bilateral and multilateral conventions, as well as to European customary law (→ Regional International Law).

European law in this very broad sense possesses a certain number of common features. On the one hand, all European law is public → international law, applying to the → international relations between European countries. This is generally considered also to apply even for the law of the European Communities. This law, it is true, has certain institutional structures which diverge from those of general public international law, and in some respects it approaches the structure of a → federal State. But as public international law is relatively flexible, it can be adapted by treaty to introduce such structural modifications. We might also conclude that Community law belongs to the sphere of public international law because, though it possesses a central legislature and an obligatory judicial jurisdiction, it lacks its own means of execution and therefore depends for its functioning on the mechanisms of public international law (→ International Obligations, Means to Secure Performance).

European law within this larger sense does not constitute a unique legal order. It comprises a great number of individual → treaties which constitute relatively independent legal orders within the overall legal order of public international law. We may nevertheless discover certain legal relations between these treaties. In the first place, this is true for the three Community treaties. They are in principle separate treaties, each of which founds a Community of its own. Nevertheless, these three treaties constitute a part of the common legal order that forms the European Community, and in which the other treaties concluded between the member States, the general principles of European law and European customary law find their place. The legal relationship between these treaties is so close that we have to treat them as though they were simply three closely related statutes of one and the same legislator. This permits analogies from one treaty to the other and a systematic interpretation of all three treaties together.

This common legal order of the European Community embraces the three Communities, but, in contrast to the three Communities, does not as such possess an international or internal personality or its own competences (→ Subjects

of International Law). The three communities possess common organs which act in particular cases as the relevant organ of that Community whose treaty it is then executing. The unity provided in the common legal order of the European Community is particularly well demonstrated by the fact that the provisions of the treaties which refer to the composition and the functioning of the common organs must necessarily lead to a uniform interpretation; the → Court of Justice of the European Communities (CJEC) has also consistently referred to a single legal order of the Communities for which it has developed common general principles of European law.

On the other hand, there are also close relations between the different treaties of the Council of Europe which regulate similar matters. Thus the European Convention on Human Rights may serve for the interpretation of the → European Social Charter, and *vice versa*. Even between the treaties of the Council of Europe and of the European Communities, there exist close relations, to be seen in the fact that the European Convention on Human Rights and even the Social Charter may be referred to in order to develop general principles of European law within the framework of the European Community.

It is true that the literature on European law and the jurisprudence of the CJEC do not seek to ground the applicability of the principles of the European Convention on Human Rights in the framework of the law of the European Community on a united European legal order. Some commentators argue that the European Convention on Human Rights binds the European Community directly because all the European Community member States have acceded to the European Convention on Human Rights. This view receives support from the jurisprudence of the CJEC in the cases involving the → General Agreement on Tariffs and Trade (GATT), as the member States of the European Community are all, individually, signatories of the GATT. But in reality, the direct effect of the GATT on the European Community results from the fact that the European Community as such participated in the GATT → negotiations and has hereby tacitly acceded to the GATT. Such cannot be said for the European Convention on Human Rights so long as the European Community does not accede to this Convention. The CJEC has developed an indirect effect of the European Convention on Human Rights, based on the reasoning that this Convention discloses the common constitutional tradition of the member States, a necessary ingredient for the development of European → general principles of law.

But a certain relationship also exists between the European Community, the Council of Europe and the other European organizations. While the treaties referring to each of these organizations were concluded on different dates, we must assume that the founders of the various treaties wanted to establish a reasonable distribution of work between these institutions. It thus becomes necessary to delimit the competences of these organizations by reference to the treaties of other organizations.

There exists between the Western European States great homogeneity of values founded on common democratic constitutional traditions and on a common function of law. This common constitutional and legal tradition influences the whole of European law. The shared notion of the rule of law and of a democratic tradition is expressly referred to in most of the European Community treaties. Even if this were not the case, it would still be possible to develop general principles of law by reference to this tradition in interpreting the European treaties.

The shared tradition of the rule of law and the rejection of the means of → power politics in the relations between the European States after World War II have strengthened the position of law in international relations in Europe. The European States are today strongly inclined to solve their disputes by reference to the public order established by European law. In order to strengthen the rule of law in European relations, the member States of the European Community have agreed to the compulsory jurisdiction of the CJEC and of the → European Court of Human Rights. Alongside this, the European States have nearly all accepted the jurisdiction of the → International Court of Justice or of other international tribunals (→ International Courts and Tribunals).

European law in its entirety is further oriented towards an economic, political and legal integration of Europe (→ European Integration). In

the economic area, the law of the European Community and of the OECD are aimed at establishing a Common European Market. In the political area, the integration is intended to develop a common foreign policy by the establishment of a European union or a federal State. In the legal area, a unification or at least a harmonization is sought in all areas of inter-Community relations and regarding the position of the individual in relation to the State (→ Unification and Harmonization of Laws).

The common features described above indicate that European law holds a special position in public international law. But the relations between the different European treaties are not so close that one may speak of a particular European legal order. According to Hans Kelsen (Reine Rechtslehre (2nd ed. 1960)) the unity of a legal order may be defined by all rules of this order being deducible from a common *Grundnorm* (fundamental norm) (→ Positivism). But a particular European *Grundnorm* cannot be said to exist. All European law, according to this theory, as public international law, is deducible from a common *Grundnorm* of universal public international law. Universal international law may therefore be thought applicable in the relations between the European States in so far as it is not excluded by special rules of European law. On the other hand, the special European law is bound by the universal → *jus cogens*; it is to be interpreted against the background of universal international law.

2. *Characteristics*

The special features of European law have been particularly well-developed in the law of the European Community. European Community law is first of all supranational law – the law of → supranational organizations. European Community law is directly applicable within the legal orders of the member States, without any special transformation or adoption by the national legislative organs (→ European Communities: Community Law and Municipal Law). It is directly applicable by the national authorities and courts to individuals, in so far as the dispositions of European law are self-executing, that is, so far as they are sufficiently clear and leave no intermediate discretion to the European organs or to the member States (→ Self-Executing Treaty Provisions). The notion of supranationality today implies that in the legal orders of the member States, European Community law has priority over all national law concerned with areas included within the law-making competences of the Communities. It is also a typical feature for the European supranational organizations that in their political processes the independent (Commission) and elected (European Parliament) organs are more inclined than the inter-governmental Council of Ministers to pursue general European interests.

It is further typical for the European organizations that economic and political integration is to be achieved by the means of law. The law in such an organization receives a value of its own. This law, on the other hand, is to be interpreted in such a way that integration is realized. One of the consequences of such a conception is that the teleological and systematic means of interpretation rank above a reference to the intention of the parties (→ Interpretation in International Law). The strong accent on this role of law finds its expression in the establishment of the obligatory jurisdiction of the CJEC which is competent in cases between the member States, between the organs of the organizations and between the organs and individuals and member States. Contrary to the legal situation under universal international law, even the abstract law of the member States can violate European Community law.

European Community law constitutes an independent, original legal order, different from universal international law and from national law, though in a broad sense it does form part of public international law. One of the consequences of this situation is that the rules of public international law are not automatically applicable to European legal relations even when the Community treaties do not actually contain different rules. However, despite the fact that European law in some ways approaches the law applicable in federal States, it cannot automatically be accepted that the rules applicable in federal States apply directly to European Community law. Regarding all legal questions which find no direct expression in the treaties, one must, on the contrary, compare the solutions obtained under public international law and under the law of federal

States and then seek a solution which best applies to the special features of Community law. Thus, the principles of → reprisals in international law cannot be directly applied in European Community law. In fact, this institution is unknown to the internal legal systems on the continent; over time, → self-help has been largely replaced in those systems by special means of State execution of judgments. As European law possesses no centralized means of execution, the system is structurally very close to that of public international law. After the exhaustion of all available legal remedies we have, therefore, ultimately to accept the necessity for recourse to direct measures in Community law as well.

In this context, it should be noted that European Community law constitutes an objective legal order in which the rights and obligations of the member States are not reciprocal (→ Reciprocity). In order to be excused from its legal obligation, a member State or European organ cannot rely on other member States' or European organs' non-fulfilment of their obligations.

Assuming that European Community law constitutes an independent legal order which differs from public international law and from municipal law, it follows that European Community law has to permit the solution of all legal problems of economic and political integration. Seen from the perspective of regulatory functions, European Community law shows an enormous need for norms which the articles of the Community treaties and the acts of secondary law cannot satisfy.

One of the consequences of this is that in European Community law methods of legal innovation have been developed by the CJEC. This is true for the interpretation of the primary and the secondary law for which the teleological means of interpretation have been given a higher rank than the literal wording of the treaties in order to arrive at the requisite solutions. It appears that the CJEC will go further and also develop new means of interpretation. New rules can also be developed by reference to the conditions necessary for the functioning of the legal institutions of the European Community. For example, the European Parliament can only function in a satisfactory way if elections to it take place under democratic conditions. This implies that the foundation and functioning of the parliamentary parties must be free from outside interference and that the freedoms of expression and assembly must be respected. From the conditions necessary for the normal functioning of the European Parliament, European fundamental rights can be developed.

The methods of the development of general principles of European Community law must also adapt themselves to this scarcity of norms. In public international law, general principles of law can only be recognized if the national rules of law of all States or at least of all the representative States of the various legal systems all have the same content (→ Sources of International Law). If these conditions were applied in European Community law one would not arrive at general principles in several areas due to the divergence of national solutions. The consequence of this is that different means must be employed to arrive at a general principle of European law even given the differences in the legal systems of the member States. The literature as well as the arguments of the Advocates-General at the CJEC refer to a value-oriented comparison of laws. This theory of comparative law involves two alternative methods of comparison. On the one hand, the legal situation in different member States very often permits the conclusion that a set of legal rules in States A and B may be considered as developments of the same set of rules in the other countries. It can then be argued that European Community law as a progressive body of law has adopted the most modern solutions. Alternatively, in cases where such a development of law is not ascertainable, priority may be given to the rules of countries A and B because their body of rules best serves the ends and structures of Community law. The results of these comparative methods can then be tested in suitable cases by reference to an interpretation of the treaties in a very wide sense.

As European Community law constitutes supranational law, the relations of coordination that typify universal international law tend to be replaced by relations of subordination. This is why in European Community law general principles of law are developed no longer by a comparison with private, but rather with public law rules.

The hunger for norms evident in European

Community law has led finally to a situation in which not only principles of law underlying the special rules, but also these special rules themselves have been adopted by the European Court of Justice. Particularly prominent are the influences on European Community law of the rule of law, of democratic ideals and of principles of social justice. This approach is seen clearly in the treaties themselves which provide for the Court's obligatory jurisdiction and require that reasons be stated for all Community acts.

The jurisprudence of the CJEC has developed these rule of law principles. Recently the Court has rendered certain decisions which underline the proposition that the rule of law and the principle of social justice themselves form part of European Community law. Other decisions have developed European fundamental rights and rules of procedure referring to the rule of law by analogies drawn from the Western constitutional law tradition. The principle of the predictability of law has also acquired a firm standing in European law. In a number of decisions, the Court has examined whether this principle was violated by Community law and has annulled the retroactive effect of secondary Community law.

The rule of law component of European Community law also expresses itself in the fact that the Court examines whether the European political organs, in the exercise of their wide discretionary powers, have committed an abuse of power (*détournement de pouvoir*). In this context, the Court does not merely examine whether the organs have pursued European objectives; it also takes into consideration whether the grounds for the decisions are free from arbitrariness.

3. *The European Convention on Human Rights*

Important to the development of the rule of law as part of European law generally is the European Convention on Human Rights and the jurisprudence of its organs, the → European Commission of Human Rights and the → European Court of Human Rights, both in Strasbourg. Though these organs often restrict their interpretation of the law to the decision in the particular case, a slow development of particular basic principles of → human rights can nevertheless be discerned. While this Convention has been incorporated into the internal legal orders of the great majority of the member States (→ International Law in Municipal Law: Treaties), it holds only the rank of a simple statute in national law, except in Austria. Nevertheless, in certain member States the constitutional courts interpret their constitutional fundamental rights by reference to the principles of the European Convention on Human Rights. It may thus be hoped that international standards for human rights may be embraced on the national level.

The high stage of development of the rule of law, and principles of democracy and social justice in European Community law and in the law of the Council of Europe has not yet influenced legal relationships established under other treaties between the European States. But as European Community law and the European Convention on Human Rights may be considered as the incipient constitutional law of Europe, it can be expected that these principles will eventually influence the other areas of European law as well.

4. *European Customary Law*

Besides the above-mentioned legal standards, which stem from treaties, the regional customary law of Europe must also be taken into account. Very little European customary law has been developed since 1945, but the opinion might be ventured that the principles of the rule of law and of democracy in the law of the European Community and the Council of Europe are in fact already part of European customary law; at the least, these principles contain the conditions for the accession to European organizations.

The literature pays little attention to the existence of rules of European customary law which were developed before 1945. Interestingly, the extension of public international law to all countries of the Third World after the acceleration in the → decolonization process did not necessarily include all the rules of this older law (→ New States and International Law). This was particularly true for the law of → aliens and especially for the international law of → expropriation and confiscation which seem to be slowly dissolving through the practice of the new States. The literature has tried to develop a single rule of universal international law from European and non-European practice. It would, however, appear better to accept the slow divergence of

European and universal international law in some areas. In this connection there seems to be much scope for the codification of customary European law by the Council of Europe. On the other hand, the efforts of the Council of Europe to codify universal international law, as for example the rules of State immunity, would lead to an unnecessary diversification of European and universal customary law rules.

5. *Constitutional Law*

In the above discussion, the question of the existence of a common European constitutional law has been raised. If constitutional law is understood in the sense used by Alfred Verdross (see Die Verfassung der Völkerrechtsgemeinschaft (1926)), that is, as a body of fundamental principles of international law applied in a certain region, one can argue that European Community law forms part of the constitutional orders of the member States. Indeed, Community law does not contain merely a limited regulation of the relations between the member States; rather, these rules regulate the very core of these relations. The principles of European Community law must therefore in the long run influence all the relations between the member States of the Community, as has already been shown by the interpretation of Art. 5 of the EEC Treaty by the CJEC. (For a discussion of the relevant cases see A. Bleckmann, Die Rechtsprechung des Europäischen Gerichtshofs zu Gemeinschaftstreue, Recht der Internationalen Wirtschaft, Vol. 27 (1981) p. 653.)

On the other hand, not all countries of Europe have as yet acceded to the European Community treaties. Therefore, the basic "European" law of all the Western European countries comprises the European Convention on Human Rights and the European Social Charter only. We have to accept, however, that the democratic and rule-of-law principles also form part of the constitution of Europe. International *jus cogens* is part of this rule of law and binds the European States in all their bilateral and multilateral acts.

6. *European Law and General International Law*

The special development of European law finally poses the question of whether the rules and principles developed in this area may be transferred to general public international law. The first question in this regard is whether European law still constitutes public international law or a new legal order. Only if European law constitutes public international law can an automatic transfer of its rules and principles into general international law be possible. Even then, the structures of the European legal order sometimes differ so greatly from the structures of general international law that every case has to be examined to see whether the transfer of a rule into general public international law is possible.

But even if European law constitutes a legal order of its own, it can be transferred to international law by way of analogy, if the legal situation and the structures of international and of European law are comparable. In contrast, the constitutional principles of European law – the rule of law and principles of social justice and democracy – are not susceptible to transfer to general international law because this legal order has not yet been integrated to the same extent as in European law. On the other hand, after ratification and implementation of the international → Human Rights Covenants by a large number of States, the jurisprudence of the European Court of Human Rights may be transferred to the universal international level. Also, models based on the European Convention on Human Rights and on European Community law have tended to be accepted in other regions of the world, i.e. in Latin America, Africa and Asia (see → Regional Cooperation and Organization articles).

The international legal order, too, shows a certain hunger for norms. It is therefore necessary to examine whether the general principles of law developed for the European Communities may also be transferred to the universal level. This is without any doubt possible for the value-oriented comparative law method. Even when the municipal laws of the States of the world diverge, it seems necessary to give priority to the national solutions which are best adopted to the aims and structures of the international community. In addition, the interests of the further general development of public international law require that not only the broad principles underlying the national rules, but the national rules themselves be transferred to the international level.

In so far as the individual general principles developed by the CJEC are concerned, a preliminary consideration is whether the legal situation on the universal level can be compared with that of the European Community. As the CJEC has developed general principles of European law primarily in order to limit the powers of the European organs over individuals, these general principles cannot be applied to international organizations which do not have such powers over individuals (→ Individuals in International Law). However, the general principles developed in this manner by the CJEC have also been applied in favour of the member States. To this extent, a transfer of these rules to the relations of other international organizations with their member States seems to be possible. In this way rules might be developed in fields where general public international law is silent.

It is to be expected that the strong emphasis of the CJEC on general principles of law, a development which is also clearly evident in other parts of the world, will revive on the international level this source of law which has been nearly forgotten by other international courts and tribunals. In the development of general principles of law, the CJEC seems to possess a broader area of discretion than other international judicial bodies. Similar to the national administrative tribunals of the 19th century, the CJEC has been charged by the European Community treaties to protect the interests of individuals and of member States against the power of the European organs. This competence therefore necessarily implies the power of that Court to develop the administrative and procedural rules necessary for such protection through the creation of new principles.

H. MOSLER, European Law – Does It Exist?, Current Legal Problems, Vol. 19 (1966) 168–191.

H. MOSLER, Begriff und Gegenstand des Europarechts, ZaöRV, Vol. 28 (1968) 481–502.

H. MOSLER, Europarecht – ein neues Fach der Rechtswissenschaft?, Jahrbuch der Aristotelischen Universität Thessaloniki (1968) 419–438.

W.J. GANSHOF VAN DER MEERSCH (ed.), Droit des Communautés européennes, Les novelles (1969).

H.P. IPSEN, Europäisches Gemeinschaftsrecht (1972).

A. RIKLIN, Die Europäische Gemeinschaft im System der Staatenverbindung (1972).

H. VON DER GROEBEN, H. VON BOECKH and J. THIESING, Kommentar zum EWG-Vertrag, 2 vols. (2nd. ed. 1974).

W.J. GANSHOF VAN DER MEERSCH, L'ordre juridique des Communautés européennes et le droit international, RdC, Vol. 148 (1975 V) 1–433.

D. LASOK and J.W. BRIDGE, An Introduction to the Law and Institutions of the European Communities (2nd ed. 1976).

L.-J. CONSTANTINESCO, Das Recht der Europäischen Gemeinschaften (1977).

A. BLECKMANN, Die Einheit der europäischen Gemeinschaftsordnung, Europarecht, Vol. 13 (1978) 95–104.

A. BLECKMANN, Die Rechtsnatur des Europäischen Gemeinschaftsrechts, Die öffentliche Verwaltung, Vol. 11 (1978) 391–398.

A. BLECKMANN, Teleologie und dynamische Auslegung des Europäischen Gemeinschaftsrechts, Europarecht, Vol. 14 (1979) 239–260.

O. JACOT-GUILLARMOD, Droit communautaire et droit international public (1979).

A. BLECKMANN, Europarecht (3rd ed. 1980).

P. MATHIJSEN, A Guide to European Community Law (3rd ed. 1980).

R. BERNHARDT, Zur Auslegung des Europäischen Gemeinschaftsrechts, in: Europäische Gerichtsbarkeit und nationale Verfassungsgerichtsbarkeit, Festschrift zum 70. Geburtstag von Hans Kutscher (1981) 17–24.

A. BLECKMANN, Zu den Grundrechten im Europäischen Gemeinschaftsrecht, Europäische Grundrechte Zeitschrift, Vol. 8 (1981) 257–274.

T.C. HARTLEY, The Foundations of European Community Law (1981).

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EUROPEAN MOLECULAR BIOLOGY COOPERATION

The molecular approach to biology, the essence of which is the understanding of biological phenomena in terms of physics and chemistry, stems from the 1940s when groups of scientists in England and the United States were investigating biological problems at the same time but with different techniques. In England emphasis centered on the three-dimensional structure of biological molecules and crystallography; in the United States the genetic route to the solution of basic biological problems was emphasized using the simplest biological systems to study the mechanism and chemistry of heredity. These two movements met in 1953, when the structure of DNA was discovered, creating the discipline of molecular biology as known today. In this field, inter-governmental cooperation and agreements have several distinct advantages: They reduce the cost of what has become the so-called "big

science" and avoid unnecessary duplication; they maximize the intellectual benefit to the smaller European countries which have considerable difficulties in establishing a thriving national community of molecular biologists; and they help promote the inherently international character of all science.

At a meeting in Ravello, Italy, in 1963 between 18 European and 5 American biologists it was agreed to establish a European Molecular Biology Organization (EMBO) which would have as one of its main objectives the establishment of a European laboratory of fundamental biology. Nobel prizewinner Max Perutz became chairman of a provisional executive council. In February 1964, 140 molecular biologists from 12 European countries and Israel were invited to become members of EMBO; in July a draft constitution which was to form the basis of EMBO's statutes and rules was approved by the Council. EMBO was incorporated under Swiss law as a private non-profit making organization and formally came into existence in 1964. Its membership comprises the majority of Europe's prominent molecular biologists (1983: 550 scientists), who apply as individuals and are elected by the General Assembly. From the outset EMBO possessed no independent source of funds, its first priority was to set up a programme of activities which could attract such support. The breakthrough came in 1965 when the Volkswagen foundation came forward with an offer of a three year grant totalling 2.7 million Deutschmarks to run from 1966 to 1968. The first inter-governmental meeting was held in Geneva in April 1967 and was attended by 13 countries: Austria, Belgium, Denmark, the Federal Republic of Germany, France, Greece, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom. It became clear that there was no readiness amongst the majority of governments attending the conference to support a planned European Molecular Biology Laboratory (EMBL). In January 1968 the second inter-governmental conference drafted an international agreement designed to guarantee long-term inter-governmental support for EMBO's courses, workshops and fellowships.

Nonetheless, plans for the laboratory were not abandoned. The date of February 13, 1969 was fixed for the conclusion of an inter-governmental agreement establishing the European Molecular Biology Conference (EMBC), through which financial support for EMBO's programme would in future be channelled. The agreement establishing the EMBC was signed by 12 countries at CERN, the → European Organization for Nuclear Research, near Geneva (British Command Papers Cmnd. 4550 (1970)). The Conference Agreement was deposited in the archives of the Swiss Government, entering into force in April 1970, following ratification by the Federal Republic of Germany, France, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom. Shortly afterwards the Agreement was ratified by Austria and Denmark, and then by Greece, Italy and Spain. In subsequent years Israel (1970), Ireland (1974), Finland (1976) and Iceland (1977) joined the EMBC. States may accede to the EMBC by a unanimous vote of the Conference (Arts. XI(3), III(2)); States may withdraw after the agreement has been in force for five years with a specified notice (Art. XI(5)). The Conference provides for cooperation between European States for fundamental research in molecular biology. Implementation of a General Programme to be carried out under the responsibility of the Conference is entrusted to EMBO. The General Programme, or the means of its implementation, may be modified by decision of the Conference taken unanimously by the members present and voting.

Between 1970 and 1972 plans for the laboratory began to take a definitive shape. By 1972 it was clear that ten member States of EMBC were, in principle, in favour of the project. A decision was taken to locate the laboratory at Heidelberg, Germany, and to establish outstations at the Deutsches Elektronen-Synchrotron in Hamburg and at the Institut Laue-Langevin in Grenoble, France. On May 10, 1973 nine governments signed the Laboratory Agreement, which obtained sufficient ratifications to enter into force on July 5, 1974 (British Command Papers, Cmnd. 5835 (1973)). On May 5, 1978 the main laboratory in Heidelberg was inaugurated.

The Laboratory signed a Headquarters Agreement with the Federal Republic of Germany on December 10, 1974, which came into force in 1975 after the necessary parliamentary ratification (Bundesgesetzblatt, 1975 II, p. 933–

949). A similar agreement reached with France on March 3, 1976 with respect to the outstation in Grenoble came into force in 1977 (Journal officiel (1977) p. 4450).

The executive authorities of EMBL are the Council and the Director General. The Council is composed of delegates from the ten member States. Each country sends two delegates, who may be accompanied by advisers. A chairman and two deputy chairmen are elected for a term of one year and can be re-elected on no more than two consecutive occasions. The Council's main task is to establish the Laboratory's policy with regard to scientific, technical, financial and administrative matters; it also appoints a Scientific Advisory Committee and a Finance Committee. The Scientific Advisory Committee is composed of 15 scientists and assists the Council to decide on proposals from the Director General concerning the implementation of the EMBL Scientific Programme. The Committee members are not nominated as representatives of the member States, but as individuals. The Finance Committee is composed of representatives of the member States.

The Council designates the Director General, who is the highest authority and the legal representative of the Laboratory. The Director General draws up the EMBL scientific programme. He is supported by a scientific, technical and administrative staff; senior appointments are subject to approval by the Council. The Director General is assisted by a Standing Advisory Committee composed of representatives elected by the staff members and representatives appointed by the Director General. Member States have equal voting rights but contribute to the budget in proportion to their net national revenues (Austria 2.56 per cent. Denmark 2.61 per cent, Federal Republic of Germany 29.7 per cent, France 22.03 per cent, Israel 0.79 per cent, Italy 12.92 per cent, Netherlands 6.31 per cent, Sweden 4.38 per cent, Switzerland 4.21 per cent, United Kingdom 14.49 per cent). The contributions for 1982 from member States amounted to 30.2 million Deutschmarks.

Since 1970, the genetic approach to molecular biology has undergone developments almost revolutionary in their significance and potential. The way the genetic information in DNA is expressed in proteins was elucidated 20 years ago with the cracking of the genetic code. In the last ten years methods have been devised to analyse rapidly the four sub-units from which DNA is made, to synthesize DNA molecules, to dissect genes, and to make new combinations of specific genes. These techniques may well lead to a new bio-technology industry and in most countries it has come to be realized that the hypothetical dangers of such techniques are less than had been feared. In this connection in 1978, the EMBL obtained the agreement of the German Central Committee for Biological Safety for Experiments.

Agreement establishing the European Molecular Biology Conference, Geneva, 13 February 1969, Treaty Series No. 76 (1970), British Command Papers, Cmnd. 4450.

EMBL, Annual Reports.

M. PERUTZ, EMBO – The Year of Decision, New Scientist (February 29, 1968) 460.

G. CHEDD, A New Laboratory for Europe, Science Journal (February 18, 1971) 367.

L. DRATH, M. GIBBONS and J. RONAYNE, The European Molecular Organisation: A Case Study of Decision Making in Science Policy, Research Policy, Vol. 4 (1975) 56–78.

K. HAILBRONNER, Völkerrechtliche und staatsrechtliche Aspekte fiskalischer Immunität im Sitzstaatabkommen des Europäischen Laboratoriums für Molekularbiologie, GYIL, Vol. 22 (1979) 313–334.

DIETER C. UMBACH

EUROPEAN MONETARY COOPERATION

1. Notion; History

The term "European monetary cooperation" is as many-sided as its component terms "European", "monetary" and "cooperation".

"European" is used to describe monetary cooperation both within the → European Communities and also within the whole of Europe. Moreover, the use of the term "European monetary cooperation" to refer also to monetary cooperation arrangements involving the European Communities which extend beyond Europe shows that the term"European" does not simply serve to set geographical limits. One example of cooperative action which takes place outside Europe is the joint action of the members of the European

Communities in the → International Monetary Fund.

"Monetary" describes the subject matter of this form of European cooperation: cooperation in monetary affairs in the broadest sense of the word, and including banking and finance.

Finally, the many-sidedness of the term "cooperation" derives both from the heterogeneity of the partners who participate in cooperation and from the variety of types of instrument for cooperation. The partners in cooperation are → States, international organizations, international → non-governmental organizations, national entities such as central banks and ministries, and finally private bodies involved in international cooperative matters. The instruments of cooperation used by these partners range from the → gentlemen's agreements which are very common in monetary matters, through → treaties between States, → contracts between States and foreign private law persons, to bilateral and multilateral agreements in private law as well as activities carried out by federations and international organizations.

The multiform character of the term "European monetary cooperation" produced by the variety of cooperative partners and instruments of cooperation is attested to in its legal framework. Depending upon the legal status of the cooperative partners, the actual forms of instruments of cooperation and also the subject matter of cooperation and the regions covered, one can regard the legal framework of European monetary cooperation as embracing a mixture of public international law, international monetary law (→ Monetary Law, International), international economic law (→ Economic Law, International), → European law, → private international law and municipal law. Furthermore, it should also be noted that the field of international monetary law contains both components of public international law and components of private international law.

As the historical context in which European monetary cooperation developed, financial transfrontier cooperation is as old as the transfrontier movement of goods and services. There were institutional phenomena of such cooperation in the ancient world, in the Middle Ages, and particularly in the 19th century in the form of → monetary unions and zones. The history of Europe in the inter-war years was marked primarily by cooperative impulses which were stimulated by the difficulties attendant on the payment of the → reparations that had been stipulated in the → peace treaties after World War I. The foundation of the → Bank for International Settlements in 1930 also forms part of this context. This institution, which was founded by the European central banks in order to promote their cooperation and to facilitate international financial settlements, is still functioning today, with additional tasks, and has been a leading force during the most recent and significant period of European monetary cooperation.

In all, the history of European monetary cooperation in the 20th century has been an outstanding illustration of the changing structure of public international law from being the law of → coexistence to becoming the law of cooperation (→ International Law of Cooperation).

2. Monetary Cooperation in Europe

The economic problems which the European States experienced after World War II compelled them towards economic cooperation. As early as 1945, the so-called "E-Organizations" were founded: the Emergency Economic Committee for Europe (EECE), the European Coal Organization (ECO) and the European Central Inland Transport Organization (ECITO). In 1947, their functions were taken over by the United Nations Economic Commission for Europe (ECE; → Regional Commissions of the United Nations) a regional sub-committee of the → United Nations Economic and Social Council. The first United Nations regional economic organization to be founded, the ECE is now the only European economic organization in which all the geographically European States work together.

After the war, an enormous demand for investment and consumer goods faced an insufficient productive capacity and a lack of currency reserves in the European States. In order to prevent further drains on currency reserves which would have damaged their currencies, these States resorted in the period immediately following the war to severe exchange control measures alongside bilateral trade and payments agreements.

In the Marshall Plan (→ European Recovery Programme), which was presented in 1947, the United States made multilateral economic cooperation between the European States a condition of her economic assistance in European reconstruction. The Committee for European Economic Cooperation (CEEC) was given the task of laying the groundwork of European economic cooperation. It was succeeded in 1948 by the Organisation for European Economic Cooperation (OEEC; → Organisation for Economic Co-operation and Development). The end of 1947 had already seen the conclusion of a payments- and compensation agreement which was improved upon in 1948 and 1949. In 1950 this agreement was replaced by the European Payments Union (EPU). All members of the OEEC became EPU members.

The EPU represented a combination of a multilateral clearing system for financial settlements (→ Clearing Agreements) with a multilateral lending mechanism. The Bank for International Settlements (BIS) was entrusted, as agent for the OEEC, with the technical operation of the EPU agreement and also with the task of acting as banker for the Union. The EPU mechanism was based on the reporting of balances to the BIS by the central banks of member countries and on the settlement of these balances. The BIS performed functions of a purely technical character. The Bank ascertained the amounts of the surpluses and deficits between States and calculated the net position of each country in relation to the Union after general settlement of the bilateral balances. The net deficits were settled by the debtor countries with the Union or by the Union with the creditor countries, partly by payments in gold or United States dollars and partly by the automatic opening and cancellation of credit within certain limits and according to rules laid down in advance.

With the introduction of the dollar-convertibility of the most important European currencies, the EPU was replaced in 1959 by the European Monetary Agreement (EMA). In place of the automatic monetary support which had until then been given within the framework of the EPU, the European Fund was introduced with the task of providing loans, upon which interest was charged to member States which applied for assistance to deal with temporary balance-of-payments difficulties. In addition monthly adjustments of balances took place within the multilateral clearing system. Under this arrangement, the members lent to each other for the purposes of intermediary financing only within the monthly accounting periods. Again, the technical operation of fund activity and payment settlements was carried out by the BIS as agent.

In 1972, as a result of the successful development of a system for multilateral transactions in convertible currencies, the EMA's life was not extended and the European Fund was liquidated.

Parallel with the improvement of the liberalization of payments, the OEEC was already making efforts to achieve a gradual liberalization of goods, services and capital movements across national borders. The relevant liberalization codes were further improved by the organization which succeeded the OEEC, the Organisation of Economic Co-operation and Development (OECD).

Experience with the EPU and EMA confirmed the central role of the BIS, around which the monetary cooperation of the central banks revolved, so that alongside monetary cooperation between States, it has been possible for very effective cooperation to evolve in Europe in recent decades at the central-bank level. The instruments of bilateral or multilateral cooperation between central banks are highly varied and are matched to the problem being dealt with in any one case. The advantages of direct cooperation between central banks derive from the confidential climate maintained in cooperative initiatives, from the speed and reliability with which financial assistance is made available, and finally from the considerable amount of funds which can be mobilized.

This climate of cooperation between the central banks is supported by the BIS through its organization of periodic meetings of central-bank experts to examine matters such as the development of the gold, foreign exchange and Eurocurrency markets and to study and exchange information covering a series of other questions which are of interest to the central banks in the economic, monetary, technical and legal fields.

3. Monetary Cooperation in the European Communities

The starting point for monetary cooperation within the European Communities can be found in Arts. 104 to 109 of the Treaty Establishing the → European Economic Community (EEC). The general clause of Art. 104 states:

"Each Member State shall pursue the economic policy needed to ensure the equilibrium of its overall balance of payments and to maintain confidence in its currency, while taking care to ensure a high level of employment and a stable level of prices."

In order to achieve these objectives, the member States committed themselves in Art. 105 of the EEC Treaty to the necessary cooperation of their appropriate administrative departments and central banks as well as to the creation of a Monetary Committee. From a substantive legal point of view, it should be emphasized that Art. 106 authorizes: "any payments connected with the movement of goods, services or capital, and any transfers of capital and earnings, to the extent that the movement of goods, services, capital and persons between Member States has been liberalised pursuant to this Treaty". According to Art. 107, "[e]ach Member State shall treat its policy with regard to rates of exchange as a matter of common concern". Balance of payments difficulties which arise should be dealt with through the cooperation of the member States concerned and the Commission, through the mutual support of the member States and through protective measures anchored in community law.

Disturbances in the world monetary system increasingly worsened monetary problems within the Community and forced its members into intensified cooperation. As early as 1964, a "Committee of the Governors of the Central Banks" was formed to improve the coordination of monetary policies. In 1969 an attempt was begun to realize European economic and monetary union in a stage-by-stage plan, but this ambitious plan then failed, certainly in part because of its simultaneity with the world monetary crisis that culminated following the suspension of the gold-convertibility of the United States dollar (see description in → International Monetary Fund). The Community, however, successfully brought into being the European "Snake" Monetary Arrangement (the "snake-in-the-tunnel" scheme) in 1972 coupled with a joint float against the dollar from 1973. In 1973, it set up the European Monetary Cooperation Fund (EMCF), whose tasks lay in: fostering concerted action among the member States' central banks for the purpose of obtaining a reduction of the fluctuation margins of their currencies; making possible a multilateralization of settlements within Europe; using a common European Unit of Account (EUA); and administering short-term monetary support.

While the EMCF was retained, the European "Snake" Monetary Arrangement was replaced in 1979 by the European Monetary System (EMS) which increased the degree of monetary integration. A European Currency Unit (ECU) was introduced. It serves as the unit of account in the exchange-rate mechanism and lending system, as the basis for the divergence threshold in the intervention system, and as a means of payment or settlement between monetary authorities. Exchange rate adjustments are now only possible in the EMS with the agreement of the other partners.

D. CARREAU, P. JUILLARD and T. FLORY, Droit international économique (2nd ed. 1980).
H.J. HAHN and A. WEBER, Die OECD (1976).
H.J. HAHN (ed.), Integration und Kooperation im Europäischen Währungswesen (1980).
D.C. KRUSE, Monetary Integration in Western Europe, EMU, EMS and Beyond (1980).
F.A. MANN, The Legal Aspect of Money (4th ed. 1982).

FRANZ ZEHETNER

EUROPEAN NUCLEAR ENERGY AGENCY *see* Organisation for Economic Co-operation and Development, Nuclear Energy Agency

EUROPEAN ORGANIZATION FOR ASTRONOMICAL RESEARCH IN THE SOUTHERN HEMISPHERE (EUROPEAN SOUTHERN OBSERVATORY)

European Southern Observatory (ESO) is a European inter-governmental organization for

astronomical research. Its centres are in Europe and South America. It provides the means for European astronomers, working with a range of optical telescopes and associated instruments of advanced design, to study that part of the universe best seen from the southern hemisphere; that part remained relatively unexplored until the 1960s. The ESO observatory was finally constructed in Chile at La Silla in the Atacama desert 600 kilometres north of Santiago, near the northern border of the Chilean province of Coquimbo (Latitude 29° 15′ S, Longitude 70° 44′ W, Altitude 2400 metres).

Since before 1953, European astronomers have sought the support of their countries for the creation of a common astronomical observatory in the southern hemisphere, as the latitude is ideal for studying the southern skies; however good the optics and engineering of a telescope, there is an upper limit to the precision of astronomical observations which is determined ultimately by the "seeing" qualities of the site. Seeing is in turn a function of the atmospheric conditions along the line of observation. Although the great majority of astronomical observations have previously been made from the northern hemisphere, many of the most interesting stellar objects can be seen only from the southern hemisphere, whilst others, even if visible further north, can be studied better from southern latitudes. The centre of our own galaxy is high in the sky in the southern hemisphere and the galaxies closest to the Milky Way – the Magellanic Clouds – can be seen only from the south. No complete atlas exists for the southern skies and until recently the information available related only to the brighter objects. However, to build and operate an observatory in the southern hemisphere, equipped with the necessary large instruments, required the sort of resources that only an inter-governmental organization would be able to command.

First considerations were based on construction of the proposed observatory in South Africa. Thus, from 1955 to 1957 various regions of the country were investigated to find the most favourable site. The subsequent time gap between 1957 and 1961 was due to the uncertainties surrounding the whole project. Meanwhile in 1961/1962 results of investigations in Chile for AURA (Association of Universities for Research in Astronomy) were collected which led to the conclusion that – from the astronomical standpoint – the sites in South Africa were inferior to the Chilean areas on a number of essential grounds: The number of clear and photometrically useful nights is 40 per cent higher in Chile than in the Great Karoo, South Africa; in Chile there is a stronger tendency to longer periods of clear weather; during clear nights in Chile there occur only very small temperature/time gradients, so that temperature conditions there are especially favourable for large instruments. The centrepiece of the Observatory in Chile is the 3.6 metre telescope, a fully computer-controlled instrument (total cost, 70 million Deutschmarks). The 250-ton telescope is mounted in a 30 metre high building, covered by a 30 metre diameter dome. Meanwhile, it has also been decided to build a 3.5 metre New Technology Telescope and to give priority to the VLT (Very Large Telescope) studies.

The Convention establishing the European Southern Observatory was signed in Paris on October 5, 1962 by representatives of Belgium, France, the Federal Republic of Germany, the Netherlands and Sweden, and came into effect in accordance with Art. XIV(1) on January 17, 1964, following parliamentary ratification in the required majority of countries (UNTS, Vol. 502, p. 224). A Financial Protocol was annexed to the Convention. The basic agreement with the Chilean Government was signed on November 6, 1963 and was followed by other agreements which were designed to ensure not only the international status of the organization in that country but also the scientific integrity of the observatory site. In 1967 Denmark became a member. On March 25, 1969 President Eduardo Frei inaugurated the observatory. A Multilateral Protocol on Privileges and Immunities of ESO and its European member States (→ International Organizations, Privileges and Immunities) was concluded in Paris on August 13, 1974 and entered into force on July 25, 1975. In 1982 Italy and Switzerland decided to join; they completed the ratification procedures that year and deposited their respective instruments of accession with the Ministry of Foreign Affairs of the French Republic in accordance with Art. XIII of the ESO Convention. Also in 1982 the → European Space Agency decided to place

the European Coordinating Facility for the Space Telescope at ESO.

The present eight member States exercise control over the organization through a Council composed of two delegates per member State which is advised by a Finance Committee consisting of one delegate per member State. In addition, there are other advisory committees: the Scientific/Technical Committee, the Observing Programmes Committee and the Users Committee. The Scientific/Technical Committee is composed of ten members chosen for their scientific and technical eminence from the member countries; these members are appointed by the Council. The Committee advises the Council on scientific and instrumentation policy and participates actively in the definition of scientific and instrumental programmes. It further advises the Council and the Finance Committee on budgetary matters related to instrumentation. The Observing Programmes Committee is composed of one scientist from each member State and one ESO staff astronomer. It evaluates proposals for observing time on the basis of scientific merit. The Users Committee is composed of eight members, one from each of the member countries, which are appointed by the Director-General from among the recent visiting astronomers. This Committee advises the Director-General on matters pertaining to the functioning of the La Silla observatory from the point of view of the visiting astronomers. Within the framework agreed by the Council, complete responsibility for day-to-day operations is vested in the Director-General, appointed normally for a period of five years.

Member States have equal voting rights but contribute to the budget in proportion to their net national revenues. However, the maximum contribution from any one State is not to exceed one third of the total budget. The contributions for 1982 from the member States amount in total to 40 million Deutschmarks. With Italy and Switzerland as new members of ESO, the budget level for 1982 has been increased to more than 47 million Deutschmarks and the shares of the contribution of the various countries are as follows: Belgium 6.28 per cent; Denmark 3.35 per cent; France 26.75 per cent; Federal Republic of Germany 26.75 per cent; Italy 17.16 per cent; the Netherlands 8.33 per cent; Sweden 5.81 per cent; Switzerland 5.57 per cent. According to the ESO Convention (Art. VII(3)) new member States must pay a special contribution corresponding to their share in the investments made in the past. The external audit of ESO passed in 1979 from the French to the Belgian court of auditors.

Applications for observing time at ESO are made by individual professional astronomers or teams of astronomers; proposals are evaluated on the basis of their scientific merit. Telescope time is allocated for six month periods.

The European headquarters of the ESO organization was provisionally set up in Hamburg where work was started on the design of telescopes. In June 1970 however, the Council concluded an agreement with the → European Organization for Nuclear Research (CERN) by which, in return for payment against services rendered, the Telescope Project Division was installed at the CERN laboratories. The Sky Atlas Laboratory for the reproduction of photographs taken by the Schmidt telescope in La Silla was set up there. For many years ESO was located partly in Geneva and partly in Hamburg. In December 1975, the Council accepted the offer made by the German Government of a site and buildings situated at Garching some 15 kilometres north of Munich. A Headquarters Agreement between the Federal Republic and the ESO was concluded at Bonn on January 31, 1979. Since 1980 the European headquarters have been at Garching and all European activities are concentrated there. On May 5, 1981 the inauguration of the new headquarters took place.

ESO Basic Texts (Convention and Protocols, Agreements).

Convention (with Financial Protocol) for the Establishment of a European Organization for Astronomical Research, Paris, October 5, 1962, UNTS, Vol. 502 (1964) 125–285.

ESO, Annual Report[s].

DIETER C. UMBACH

EUROPEAN ORGANIZATION FOR NUCLEAR RESEARCH

The European Organization for Nuclear Research (Organisation européenne pour la recherche nucléaire) evolved from the Conseil européen pour la recherche nucléaire (CERN),

and the organization has retained the acronym CERN. This Council, founded following an initiative of European physicists (E. Amaldi, L. de Broglie) made within the framework of the → United Nations Educational, Scientific and Cultural Organization (UNESCO), prepared the Convention for the establishment of the Organization which was signed on July 1, 1953 by twelve European States (Belgium, Denmark, Federal Republic of Germany, France, Greece, Italy, Netherlands, Norway, Sweden, Switzerland, United Kingdom, Yugoslavia) together with a Financial Protocol which forms an integral part of the Convention. The Convention took effect on September 29, 1954 (UNTS, Vol. 200, p. 149). Austria joined in 1959, and Spain was a member from 1961 to the end of 1968 but had to withdraw, as also did Yugoslavia in 1962, for financial reasons. Yugoslavia, Turkey (1961), and Poland (1963) have the status of observers (→ International Organizations, Observer Status). Since Spain's withdrawal the number of members has remained unchanged.

The Organization deals exclusively with non-military → nuclear research (Art. II of the Convention), in particular with regard to purely scientific and basic research purposes. The results of its experimental and theoretical work are intended to be published or otherwise made generally available. CERN cooperates not just with its members, but also with other States; it pursues projects with the United States and the Soviet Union, as well as (since 1973) with mainland China. In accordance with Art. II of the Convention, collaboration takes two forms. Informal cooperation occurs devoid of any specific transactional arrangement as a legal basis, comparable to an exchange of scientific views and experience. Formal cooperation is carried out under agreements with a State or States setting forth the steps for implementation of specific projects.

The research centre of the organization lies outside Meyrin near Geneva and comprises territory on both sides of the Swiss-French frontier. Its facilities include laboratories for research into accelerated particles, including cosmic proton rays, a synchro-cyclotron for energies of up to 600 million electron volts and a proton synchrotron for energies above ten Giga electron volts (present maximum: 28 GeV). The putting into operation of the isotope separator (Isolde) in 1967 brought a sizable improvement in CERN's research capability. The 1965 decision of the Council to build intersecting storage rings linked to the proton synchrotron necessitated extending the research site. Agreements with France regarding to lease of the additional land and on the status of the Organization in France were signed on September 13, 1965. In order to implement the 300 GeV accelerator project – which exceeded the financial limitations of the Organization's resources set forth in the Convention of 1953 – that Convention was amended in 1967, as provided in its Art. X, in accordance with proposals by the Council. The amendment became effective on January 17, 1971. The 300 GeV programme, in which eleven European States (Austria, Belgium, Federal Republic of Germany, France, Italy, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom, and since 1972 Denmark) participated, required a new extension of the research site on French territory; the newly-revised agreements were signed by France and the Organization in December 1972. The 400 GeV super-proton synchrotron was put into operation in 1977, and its capacity was increased in 1978 to 500 GeV.

The Council is the decision-making organ of CERN. It consists of instructed representatives of the member States, who each year elect a president and two vice-presidents, on not more than two consecutive occasions. The Council, by a two-thirds majority vote of all the member States, appoints a Director General to head each of the eleven laboratories for a defined period. The directors are the chief executives of personnel. The Organization is financed by contributions of the member States in accordance with scales decided every three years by the Council.

CERN is an inter-governmental organization with functionally limited tasks. It has legal personality in the metropolitan territories of the member States and enjoys legal capacity under public international law (→ International Organizations, General Aspects). The Convention expressly attributes to CERN the powers necessary for the exercise of its tasks, thus endowing the entity with law-making faculties regarding its proper jurisdiction and it is, accordingly, exempt

from direct interference by member States.

Like the → United Nations Specialized Agencies and similar inter-governmental bodies, CERN is entitled to carry out such transactions under pertinent national private law and public international law as may be required for the implementation of its functions in the member States. CERN enjoys the privileges and immunities usually accorded to international organizations (→ International Organizations, Privileges and Immunities). As regards France and Switzerland in particular, these matters are determined in agreements between CERN and the two States. The members of its bodies and its staff enjoy a status comparable to those of other inter-governmental entities (cf. → Civil Service, International). CERN's power to conclude agreements under public international law (→ International Organizations, Treaty-Making Power) is demonstrated in the instruments entered into with Switzerland in 1955 on privileges and immunities. The Swiss Federal Council has stated that it does not regard the activity of the Organization on its territory as a violation of its neutrality (→ Permanent Neutrality of States). In 1956 CERN concluded an agreement with Denmark concerning the legal status of the Division for Theoretical Studies in Copenhagen and a convention with UNESCO on scientific collaboration.

Amendments to the Convention setting up CERN, such as the modification effective on January 17, 1971 (concerning the C 300 GeV acceleration), require ratification by member States. Disputes concerning the interpretation or application of the convention which are not settled by the → good offices of the Council are to be submitted to the → International Court of Justice, unless the member States concerned agree on some other mode of settlement (Art. XI).

Unlike most inter-governmental organizations established by treaty, CERN is not merely the centre of a multilateral association of States with coordinating functions, but rather primarily an inter-governmental public agency designed to perform specific categories of operations; it has therefore been quite appropriately termed an "international public service". The legal capacity of CERN *vis-à-vis* its member States under public international law is undisputed. As regards other States, it stands to reason that CERN's status is contingent upon their recognition, be it explicit or implicit in their conclusive conduct.

F. SCHMID and J.-M. DUFOUR, Le C.E.R.N., exemple de coopération scientifique européenne, Clunet, Vol. 103 (1976) 46–104.

HUGO J. HAHN

EUROPEAN ORGANIZATION FOR THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

1. *Historical Background*

During the European Regional Meeting of the → International Civil Aviation Organization (ICAO) in January 1958 at Geneva, several European States entered into discussion on the question of a common air navigation system. Growing traffic density and the introduction of jet → aircraft necessitated an air traffic control system extending beyond the national borders of the various States. In addition, the high cost of introducing new equipment and installations made the establishment of a common system desirable.

The three Benelux States and the Federal Republic of Germany soon agreed that an international organization providing for a common air navigation system in Europe should be set up. After the United Kingdom, France and Italy had joined in the discussions, the negotiations resulted in the drafting and approval of the International Convention relating to Co-operation for the Safety of Air Navigation, signed at Brussels on December 13, 1960. Italy, whose air traffic control system is administered by the military, refrained from signing.

A provisional organization was set up until the Convention entered into force on March 1, 1963 bringing into being the European Organization for the Safety of Air Navigation (Eurocontrol), an organization with its headquarters in Brussels. Ireland acceded to Eurocontrol in 1965. Additional Protocols to the Convention, exempting Eurocontrol from duties, taxes and charges (→ International Organizations, Privileges and Immunities), were signed at Brussels on July 6, 1970 and November 21, 1978. A Protocol revising

the 1960 Convention was signed by all member States at Brussels on February 12, 1981 (British Command Paper, Cmnd. 8662 (1982)), and has introduced some important changes into the structure of Eurocontrol. The Convention as amended (the 1981 Convention) is to enter into force in 1983, provided that all States parties to the 1960 Convention have ratified it by that date.

2. *Purposes, Structure and Financing*

Under the 1960 Convention, the main purpose of Eurocontrol has been to integrate the national air traffic control systems and to render "en route" air navigation services directly to users of the upper airspace (above 7500 metres). Consequently, a number of air traffic control centres have been operated by Eurocontrol directly. Air navigation services for users of the lower airspace (below 7500 metres) have remained under the responsibility of the member States. Since 1970, Eurocontrol has also collected charges from airspace users for air navigation services rendered.

Under the 1981 Convention, Eurocontrol is to primarily provide only indirect services, particularly in coordination of the national air navigation services, studies and planning, and research and development. The rendering of all air navigation services directly to users has reverted to the member States (→ Airports), although they may entrust this to Eurocontrol. Eurocontrol is to continue to collect user charges from airspace users, on behalf of member States and of certain participating non-member States.

The members of Eurocontrol are Belgium, the Federal Republic of Germany, France, Ireland, Luxembourg, the Netherlands, and the United Kingdom. Portugal, which had previously been an associated State, has signed the 1981 Protocol and will become the eighth member upon the Protocol's entry into force (Art. 36 of the Protocol). Under Art. 36 of the 1981 Convention, accession of any other State is subject to the unanimous consent of the Eurocontrol Commission and to the accession of that State to the additional Multilateral Agreement Relating to Route Charges, signed at Brussels on February 12, 1981 (→ Air Transport Agreements).

Eurocontrol comprises two organs, the Permanent Commission and the Agency (Art. 1(2); unless specified otherwise, Articles refer to the 1960 Convention as revised in 1981 (the 1981 Convention)). The Permanent Commission constitutes the main policy-making organ. It is composed of representatives of the member States, usually the ministers of transport or of defence. Each member State has in principle only one vote (Art. 5(1)). In matters relating to the user charges system, the Commission may be enlarged (Art. 5(2)). Under Art. 6, the Commission is empowered to develop and adopt common long-term objectives and to establish a common medium-term plan in respect of air traffic services and facilities (Arts. 6(1) (a) and 2(1)). The Commission approves the annual work programme, the medium-term investment and work programmes, and the budget, and it may give directives to the Agency (Art. 6(1) (b)). The Commission also maintains relations with non-member States and international organizations and concludes international agreements (Art. 11(1) and (2); → International Organizations, Treaty-Making Power).

The Agency is the executive organ of Eurocontrol. It fulfils the tasks mentioned in Art. 6(1) (b), concerning the elaboration of work and investment programmes, drafting the budget, and other duties entrusted to it. The Agency also provides and operates certain air traffic services and facilities on behalf of member States (Art. 15). It may give all necessary instructions to aircraft commanders (pilots), who are bound by them (Art. 16). Infringements of air navigation regulations are recorded by officers authorized by the Agency, and their records have the same effect in national courts as those drawn up by national officers (Art. 17). The Agency is directed by a Committee of Management, composed of representatives of member States (Agency Statute, Art. 3), and the Director-General, who represents the Organization in legal proceedings and for all related purposes (Agency Statute, Art. 15(2)). Eurocontrol has legal personality and the fullest legal capacity to which corporate bodies are entitled under national law (Convention, Art. 4). It also enjoys certain privileges and immunities (Arts. 18 to 21, 26), as does its staff (Art. 22).

Eurocontrol may be regarded as a truly → supranational organization, since it is empowered to make rules which are binding upon member States or on individual users directly.

The Commission may, under Arts. 6 and 7, issue decisions, directives, recommendations, or other measures. Decisions, which require unanimity, are in principle binding upon the member States (Art. 7(1), first sentence; cf. → International Legislation). Directives and other measures taken with regard to the Agency (Art. 6, Art. 7(1)) require a qualified majority of votes, subject to the special → weighted voting rules provided for in Art. 8, and are binding upon the Agency. Finally, recommendations under Art. 7(5), which require only a simple majority, are non-binding.

The expenses of Eurocontrol are borne by the member States' annual contributions, determined in accordance with Art. 19 of the Statute of the Agency. Thirty per cent of the individual contribution is based on the member State's gross national product, while 70 per cent is based on route-facility costs. However, no individual contribution may exceed 30 per cent of the total amount.

3. *Activities*

The air traffic control centres, formerly staffed and operated by Eurocontrol, are under the 1981 Convention to be handed back to the member States, with the Organization merely to coordinate their operation. Eurocontrol has been charged with the development and establishment of an international system for air traffic flow management and with the development and promotion of common policies among the member States, particularly with a view to coordination with the ICAO and other international organizations. Eurocontrol is continuing its work in the field of personnel training. Under the 1981 Agreement relating to route charges, Eurocontrol will continue to levy and collect charges from users of "en route" air navigation services (all airlines and aircraft flying on routes in the airspace of the member States), but it is to do so on behalf of the member States and for other States participating in the system (Austria, Portugal, Spain and Switzerland). The amounts collected from users by Eurocontrol are to be paid out to the participating States under a formula established by a special Committee of Management.

With respect to air traffic to and from non-member States, Eurocontrol also coordinates air navigation services with the competent authorities of non-member States. It has concluded cooperation agreements with a number of non-member States, in particular with Canada, Denmark, Greece, Italy, Norway, Sweden and the United States.

4. *Significance*

The 1960 Convention and certain provisions adopted under it have been a source of some contention. Issues in contention were, in particular, the exemption of Eurocontrol from national duties and charges (see the additional Protocols of 1970 and 1978), the control over air traffic control centres (certain member States retained *de facto* control of centres in their territories), the status of Eurocontrol personnel (see e.g. German Constitutional Court, Judgment of November 10, 1981, Entscheidungen des Bundesverfassungsgerichts, Vol. 59 (1982) p. 63) and the financial contributions of member States in relation to their investment in installations operated by Eurocontrol. Moreover, collection of route charges from users has been challenged by several airlines in various courts (e.g. European Court of Justice, Judgment in Case 29/76, LTU v. Eurocontrol (ECR (1976) p. 1541); Judgment in Joined Cases 9 and 10/77, Bavaria and Germanair v. Eurocontrol (ECR (1977) p. 1517); German Constitutional Court, Judgment of June 23, 1981, Entscheidungen des Bundesverfassungsgerichts, Vol. 58 (1982) p. 1), and has given rise to considerable procedural problems. Finally, the distinction of upper from lower airspace and the separation of competences have turned out to be unrealistic and impracticable concepts.

The new arrangements under the 1981 Convention and the 1981 Route Charges Agreement seem to be better tailored to the member States' real needs, particularly with the introduction of a scheme of mandatory and optional tasks (Art. 2), the new financing scheme and the provisions for the collection of route charges. To the extent that Eurocontrol renders air navigation services directly and collects route charges, it fulfils the functions of an international public utility with respect to the individual users. This is not an entirely new, but a relatively rare legal phenomenon (→ International Administrative Unions). In the field of air navigation services,

Eurocontrol counts as one of three such international bodies, the other two being the ASECNA (Agence pour la sécurité de la navigation aérienne en Afrique et à Madagascar, established in 1959), and COCESNA (Corporación Centroamericana de Servicios de Navigación Aérea, established in 1960). All three agencies respond to an increasing need for coordination and greater uniformity in air navigation services for civil aviation.

International Convention relating to Cooperation for the Safety of Air Navigation, signed at Brussels on 13 December 1960, UNTS, Vol. 523 (1965) 117–235.

A. GROS, L'organisation internationale de la sécurité de la navigation aérienne: Eurocontrol, Comunicazioni e Studi, Vol. 10 (1961) 1–12.

M. GUINCHARD, La coopération entre Etats pour le contrôle de la circulation aérienne, AFDI, Vol. 7 (1961) 450–463.

A. RUDOLF, Die außervertragliche Haftung der Europäischen Organisation zur Sicherung der Luftfahrt (EUROCONTROL), Zeitschrift für Luftrecht und Weltraumrechtsfragen, Vol. 14 (1965) 44–64.

R. BULIN, The European Organization for the Safety of Air Navigation, Eurocontrol, European Yearbook, Vol. 22 (1974) 137–160.

L. WEBER, The EUROCONTROL Route Charges Litigation before the Court of Justice of the European Communities, Annals of Air and Space Law, Vol. 3 (1978) 355–369.

A. BLECKMANN, Internationale Beamtenstreitigkeiten vor nationalen Gerichten, Materialien zum Recht der internationalen Organisationen und zur Immunität, Rechtsgutachten für die Union Syndicale, Section Eurocontrol (1981).

C. SCHREUER, Eurocontrol: Wechselwirkungen staatlicher und Internationaler Jurisdiktion, in: Aus Österreichs Rechtsleben in Geschichte und Gegenwart, Festschrift für Ernst C. Hellbing (1981) 371–382.

I. SEIDL-HOHENVELDERN, Die Immunität internationaler Organisationen in Dienstrechtsstreitfällen, Rechtsgutachten für Eurocontrol (1981).

J. MOUSSÉ, EUROCONTROL: The Changes Effected in the International Organization by the Instruments signed on 12 February 1981, Air Law, Vol. 7 (1982) 22–40.

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EUROPEAN PARLIAMENT *see* European Communities; Parliamentary Assemblies, International

EUROPEAN PATENT ORGANISATION

1. Introduction

The European Patent Organisation is an intergovernmental organization set up to grant European patents. In any contracting State European patents granted for that State have the same effect as the country's national patents. The legal basis is the Convention on the Grant of European Patents (European Patent Convention) of October 5, 1973. The Organisation's headquarters are in Munich.

The European Patent Organisation consists of the European Patent Office (EPO), which is the executive arm, and the Administrative Council, which supervises the operation of the European Patent Office. The contracting States are Austria, Belgium, the Federal Republic of Germany, France, Italy, Liechtenstein, Luxembourg, the Netherlands, Sweden, Switzerland and the United Kingdom. Other European States are expected to join.

2. Historical Background

The grant of patents – exclusive rights for a limited period over the use of an invention – has in the past been confined to the territory of the State concerned, beginning with the 1474 Venetian Statute on Inventors and continuing via the 1624 English Statute of Monopolies up to the Patents Acts of the 19th and 20th centuries. Even in the present day, all the national Patents Acts apply only to the sovereign territory of the relevant State and the patents granted are valid only for that territory (→ Territorial Sovereignty).

With the growing predominance of international trade, the search began early on for ways and means of cooperation to secure the international protection of industrial property (→ Industrial Property, International Protection). Especially after World War II, patent applicants as well as national patent offices became increasingly aware of the drawbacks of having parallel national grant proceedings for the same invention. As early as 1949, France advocated, in the → Council of Europe, the creation of a European Patent Office. This initiative resulted in the con-

clusion of three international conventions, which brought about important advances in certain areas of patent law and procedure (harmonization of the formal requirements to be met in making patent applications; creation of an International Patent Classification; and a partial harmonization of substantive patent law; → Unification and Harmonization of Laws). With the entry into force of the treaty of Rome, the negotiations were transferred to the → European Economic Community. At the suggestion of the Council of Ministers, two draft conventions were drawn up. The first of these was to provide for the creation of a European patent grant procedure and a European Patent Office. It was also to be open to non-EEC States. A second convention, based on the first, was to provide for the introduction of a unitary patent for the Common Market.

The first draft resulted in the European Patent Convention, which was adopted at a Diplomatic Conference in Munich (September 10 to October 5, 1973) and signed by 16 European States (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom in 1973; by Austria and Monaco in 1974). Implementing Regulations and a number of Protocols are annexed to the Convention. This Convention entered into force on October 7, 1977. On November 1, 1977, the EPO was established in Munich; it accepted the first patent applications on June 1, 1978.

3. Structure and Method of Operation

(a) Organization of the EPO

The EPO, under the direction of a President, is subdivided into five Directorates-General, each headed by a Vice-President. Directorate-General 1 (Search) includes the former International Patent Institute (Institut international des brevets: IIB) at The Hague, which was founded in 1947 by a number of European States to carry out novelty searches in respect of national patent applications. The IIB with all its staff was integrated into the EPO on January 1, 1978. The Directorate-General 1 also includes a suboffice in West-Berlin. Directorates-General 2 (Examination/Opposition), 3 (Appeals), 4 (Administration) and 5 (Legal/International Affairs) are located in Munich.

(b) The European patent grant procedure

Any person or legal entity, regardless of → nationality and place of business or residence, can apply for a European patent. The European patent application must be written in one of the three official EPO languages (English, French or German) and may be filed either with the EPO (Receiving Section at The Hague, or in Munich) or with the competent national offices of the contracting States. The procedure for obtaining a European patent is divided into two (possibly three) stages:

The first step takes place at The Hague. There the examination on filing and as to compliance with the formal requirements as well as the novelty search are done. The latter task is performed by a search examiner who is a science or engineering graduate: The object is to identify from among some 16 million systematically-classified technical documents those that delineate the state of the art relevant to assessing the patentability of the application being considered. The search report – which, like the application, is published – is sent to the applicant together with the documents discovered. The applicant has six months from publication to decide, in the light of the state of the art thus established, whether he or she wishes to proceed with the application.

The filing of the request for examination marks the beginning of the second stage of the procedure, which takes place in Munich: an Examining Division, in Directorate-General 2, comprising three technical examiners specializing in the field to which the application relates, carries out the substantive examination to ascertain whether the invention is new, involves an inventive step and is capable of industrial application. If necessary, the examiners are assisted by a lawyer. If the Examining Division concludes that the invention is patentable, it takes the decision to grant a European patent; this fact is published and a European patent specification is issued. The term of the patent is 20 years from the date of filing. If it is decided that the invention is not patentable, the application is refused.

If a third party gives notice of opposition to the granting of a patent within nine months after publication of the patent specification, the foregoing steps are supplemented by a third stage: an Opposition Division in Directorate-General 2 examines whether the patent can be maintained or has to be revoked.

At any of the foregoing stages, an appeal can be filed against decisions of the Receiving Section, the Examining Divisions, the Opposition Divisions and the Legal Division. The appeal is heard by the judicially-independent Boards of Appeal in Directorate-General 3 which, depending on the nature of the decision appealed against, are made up of legally qualified members or else have a mixed composition of legally and technically qualified members.

(c) Other tasks of the EPO

Under the world-wide Patent Cooperation Treaty (→ World Intellectual Property Organization), the EPO acts as an International Searching and Examining Authority. In addition to this, the branch at The Hague carries on the work of the former IIB and performes state-of-the-art searches for the national patent applications of some contracting States (France, the Netherlands, Switzerland).

(d) The Administrative Council

All the Office's operations are supervised by the Administrative Council, comprising representatives of the contracting States; its tasks include the adoption of the annual budget. The Council also has the power to amend certain Articles of the Convention and any provision of the Implementing Regulations to the Convention (cf. → International Legislation; → Treaties, Revision).

4. Relationship to National Patent Offices

The national patent grant procedures have not been superseded by the European procedure, but continue to operate, thus offering the applicant a choice. If he or she is only interested in patent protection in one or two States, the national procedure will usually be cheaper. On the other hand, if the applicant wants to obtain patents in three or more countries, then the European procedure is as a rule the more advantageous. Protection may be sought in as many contracting States as desired; the more States designated, the greater is the cost-advantage *vis-à-vis* the national patent procedures.

5. Outlook

The build-up of the EPO will take some years. In 1982 it had approximately 1700 employees carrying out 30 000 searches per year for national applications, and processing 27 000 European patent applications (roughly two-thirds of which originated in the contracting States). Some 30 000 European applications are expected per year once the build-up has been completed. There will be a corresponding drop in the number of searches requested for national applications. The Office will, after the build-up period, then have a staff of about 2000 – over 1000 in Munich, about 800 in The Hague and 100 in Berlin. The Office is already fully financed from the fees paid by applicants.

As mentioned above, the EEC member States have set their sights beyond the uniform patent grant procedure and intend also to harmonize the effects of European patents by introducing a "Community patent". This is provided for in the Convention for the European Patent for the Common Market, drawn up along with the European Patent Convention and signed on December 15, 1975 by the then nine member States of the EEC. The Convention provides for the setting up of special Community departments within the European Patent Office. It has not yet entered into force, however.

European Patent Office, Convention on the Grant of European Patents (European Patent Convention) (2nd ed. 1981).

Convention for the European Patent for the Common Market (Community Patent Convention), Official Journal of the European Communities, Vol. 19 (1976) No. L 17, 1–43.

E. REIMER, Europäisierung des Patentrechts (1955).

Die Münchner Diplomatische Konferenz über das europäische Patentrecht, Bericht der deutschen Delegation, Gewerblicher Rechtschutz und Urheberrecht (1974) 47–78.

M. VAN EMPEL, The Granting of European Patents (1975).

P. MATHÉLY, Le droit européen des brevets d'invention (1978).

R. SINGER, Das Neue Europäische Patentsystem (1979).

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EUROPEAN POLITICAL COMMUNITY

The European Political Community denotes the attempt between 1952 and 1954 to associate the six European countries (Belgium, France, Federal Republic of Germany, Italy, Luxembourg and the Netherlands) which in 1951 had formed the → European Coal and Steel Community (ECSC) – and were later to establish the → European Economic Community (EEC) and the → European Atomic Energy Community (Euratom) – in a quasi-federal supranational community. To this end, it was proposed to set up a "European constitution" by concluding an international treaty with due regard to existing or proposed communities in particular fields (the ECSC and the → European Defence Community (EDC); see also → European Integration; → Regional Cooperation and Organization: Western Europe). The European Political Community provided for certain common foreign and economic policies and was conceived to further integrate those and other fields of activity.

The idea of the European Political Community was born in a climate favourable to integration movements. After the worst damage of war in Europe had been repaired, political movements at the national level, such as those supporting the prohibition of war between European States and the abandonment of traditional hostility between → States by overcoming nationalist structures, as well as pressure from outside as a consequence of the increasingly sharp confrontation between East and West provided impetus for closer cooperation between Europeans. Initial positive results of European integration increased the enthusiasm of its supporters. In May 1949 the → Council of Europe was established and the project of a supranational organization of the coal and steel industries – the key war industries of the former antagonists – had largely taken shape. The Organisation for European Economic Co-operation (OEEC; → Organisation for Economic Co-operation and Development) had started work. In June 1950 North Korean troops invaded South Korea (→ Korea) and in the light of the alarming similiarity with the German situation and the fear of a similar communist attack in Europe it appeared necessary to implement preventive measures in the form of the EDC including German citizens within a political institution of a united Europe. Under Art. 38 of the draft EDC Statute, the Parliamentary Assembly of the EDC – which had yet to be created – was entrusted with the examination of the problems "arising from the co-existence of different agencies for European co-operation already established or which might be established, with a view to ensuring co-ordination within the framework of the federal or confederal structure". Encouraged by a resolution of the Consultative Assembly of the Council of Europe inviting States to work towards a supranational political community, the Council of Ministers finally invited the Common Assembly of the ECSC in the so-called Luxembourg Decision of September 10, 1952 to elaborate a draft treaty for the foundation of a European Political Community.

On March 10, 1953 the *Ad Hoc* Assembly which had been formed to this end consisting of 78 members of the Common Assembly of the ECSC and of 9 members of the Consultative Assembly of the Council of Europe adopted the "Draft Treaty embodying the Statute of the European Community" as prepared by the constitutional commission of the *Ad Hoc* Assembly (Documents of the Consultative Assembly, Doc. 111).

The European Political Community was designed not to be a particular community with specific functions, as were the ECSC and the EDC, but rather to provide the quasi-constitutional basis of a general supranational European Community merging the special communities (Statute, Art. 5). The constitutional character of the Statute was emphasized by the provision in Art. 1 that the European Political Community was indissoluble. The purposes of the European Political Community included the protection of → human rights and fundamental liberties, security against → aggression, coordination of foreign policy, the promotion of an expanding economy, an increase in employment, the raising of the standard of living (notably by the progressive establishment of a common market and promotion of the aims of the Council of Europe, the OEEC and the → North Atlantic Treaty Organization).

The Statute provided for five organs: the Parliament as legislative body and organ of control;

the European Executive Council, in charge of governmental functions; the Council of National Ministers, designed to coordinate the activities of the Executive Council and of national governments, and to possess important competences in the field of foreign, economic and budgetary affairs; the Court of Justice; and the Economic and Social Council, an advisory board designed in particular to enable the trade unions, the employers' organizations and other sectors of the economy to express their interests. The Community was intended to assume legislative and administrative functions and the responsibility of judicial decision-making. In particular, the Parliament was to have legislative power to adopt, and the Executive Council to pass regulations. The European Political Community was to be financed from its own resources – i.e. from its own tax receipts – and from contributions to be paid by the member States.

During further → negotiations on the draft statutes, differences and difficulties became apparent which could be eliminated neither by new proposals from the representatives of foreign ministers entrusted with the negotiations nor by the creation of committees and other diplomatic efforts. These obstacles also considerably dampened enthusiasm for integration. Resistance to the European Political Community became particularly strong in France where profound doubts concerning German rearmament and an even greater fear of an impairment of national → sovereignty were expressed even though France had originally been one of the main promoters of the project. At the Brussels Conference of August 19 to 22, 1954 a final attempt to reach agreement ended with the refusal to adopt French proposals to add a supplementary Protocol to the European Political Community treaty (which would have deprived the treaty almost entirely of its supranational character), and as a result of the French National Assembly's decision of August 31, 1954 to postpone the ratification of the EDC treaty indefinitely, the European Political Community treaty's fate was likewise sealed. As there existed fundamentally differing views concerning the two politically closely related projects for a supranational European organization, further government deliberations were also deferred for an indefinite period.

During the 1960s the Fouchet Plan – unsuccessfully – reconsidered the ideal of a political union which would embrace the ECSC and the EEC. In 1970, following the suggestions of the Davignon Committee, the idea was revived in the form of the institutionalized procedure designed to intensify cooperation in foreign affairs, known as → European Political Cooperation; it was further developed in 1973 (Copenhagen Report) and in 1981 (London Report). In the London Report the ministers of foreign affairs of the ten EEC member States emphasized their commitment "to consult partners before adopting final positions or launching national initiatives on all important questions of foreign policy which are of concern to the Ten as a whole". Although European Political Cooperation as a consulting mechanism is legally separate from the EEC, there exist relations on the organizational level through the institution of the European Council and through the common chairmanship. Apart from the unstable European Monetary System, no practical results have been produced by other initiatives to further develop the EEC towards political union (e.g. the Werner Report of October 8, 1970 on the gradual realization of economic and monetary union within the EEC (Bulletin of the European Communities (1970) Supp. 11); the Vedel Report of 1972 on the expansion of powers of the European Parliament (Bulletin of the European Communities (1972) Supp. 4); the Tindemans Report of 1975 on European union (Bulletin of the European Communities (1976) Supp. 1); the Spinelli Initiative in the European Parliament of 1980/81 towards European union by way of amendment to the EEC Treaty (European Parliament Doc. 1/305-82-A); the Memorandum of the French Government of October 8, 1981 (Europa-Archiv, Vol. 21 (1982) D 41-45); the Colombo-Genscher Plan of November 4, 1981 for a "European Act" on the further development of the EEC towards political union (Europa-Archiv, Vol. 21 (1982) D 50-55)).

Projet de Traité portant Statut de la Communauté Européenne, Informations et documents officiels de la Commission constitutionnelle, Mars-Avril 1953.

Council of Europe, Documents of the Consultative Assembly relating to the European Community (1953).

A.H. ROBERTSON, The European Political Community, BYIL, Vol. 29 (1952) 383–401.
W.E. GENZER, Die Satzung der Europäischen Gemeinschaft, Zum Entwurf einer europäischen Verfassung, Europa-Archiv, Vol. 8 (1953) 5653–5664.
H.K.J. RIDDER, Der Entwurf einer Satzung der Europäischen Gemeinschaft, Juristenzeitung, Vol. 8 (1953) 289–292, 332–334.
E. VON PUTTKAMER, Der Entwurf eines Vertrages über die Satzung der Europäischen Gemeinschaft, ZaöRV, Vol. 15 (1953/54) 103–128.
H.A. SCHWARZ-LIEBERMANN VON WAHLENDORF, Die Europäische Gemeinschaft, AVR, Vol. 4 (1953/54) 307–322, 436–450.
H.W. BRIGGS, The Proposed European Political Community, AJIL, Vol. 48 (1954) 110–122.
G. JAENICKE, Bundesstaat oder Staatenbund, in: Völkerrechtliche und Staatsrechtliche Abhandlungen, Carl Bilfinger zum 75. Geburstag (1954) 71–108.
H.J. VON MERKATZ, Der Entwurf eines Vertrages über die Satzung der Europäischen Gemeinschaft, in: Völkerrechtliche und Staatsrechtliche Abhandlungen, Carl Bilfinger zum 75. Geburtstag (1954) 223–241.
H. RIDDER, Zur Problematik der Europäischen Politischen Gemeinschaft, Internationales Jahrbuch der Politik, Vol. 1 (1954) 52–74.
A. ALBONETTI, Vorgeschichte der Vereinigten Staaten von Europa (1961).
N. LANG, Die Bemühungen um die politische Einigung Europas seit dem Scheitern der Europäischen Verteidigungsgemeinschaft, in: Zur Integration Europas, Festschrift für Carl Friedrich Ophüls (1965) 125–142.
H.-E. FOLZ, Das Modell der Europäischen Politischen Gemeinschaft von 1953/54, in: C. Zorgbibe (ed.), Rechtliche Probleme der Europäischen Einigung (1979) 95–105.

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EUROPEAN POLITICAL COOPERATION

1. Background and Development

The idea of creating an institutionalized system of political cooperation between the member States of the European Communities (EC) already existed at a very early stage (→ European Integration; → Regional Cooperation and Organization: Western Europe; → European Political Community). On November 23, 1959 the six foreign ministers agreed in Strasbourg to hold regular consultations every three months on problems of foreign policy. There followed a period of → negotiations concerning European political union on the basis of French proposals (the Fouchet Plan). Although two drafts were presented, no decisions were finally taken.

The first steps towards European Political Cooperation (EPC) alongside the European Communities were agreed at the Hague Conference of Heads of State and Government in December 1969. In the Conference Communiqué the foreign ministers were requested to study how progress could be achieved. On July 20, 1970 the foreign ministers produced a report which had been prepared under the presidency of the political director in the Belgian Foreign Ministry, Vicomte Davignon (Luxembourg Report; Bulletin des Communautés européennes (1970) No. 11, pp. 9–14). On the basis of this report, it was agreed that regular consultations should take place every six months and that they should be prepared by a Political Committee consisting of the political directors of the foreign ministries who should meet at least four times a year. All important questions of foreign policy were to be discussed. The Commission of the → European Communities was to be asked to comment in cases where the work of the ministers would have effects for the EC. The ministers and the members of the Political Committee would discuss matters of EPC with members of the Political Committee of the European Parliament twice a year. The system as described was frequently called the Davignon System.

In the second report of the foreign ministers of July 23, 1973 (the Copenhagen Report; Bulletin of the European Communities (1973) No. 9, pp. 14–21), the system of cooperation was further developed. The sessions of the foreign ministers were increased to four a year. The Political Committee was to prepare the sessions and take responsibility for the tasks delegated to it by the ministers. A special group of "*correspondants*" in the foreign ministries was formed to keep in touch on foreign policy matters. Specific working groups for important questions could be set up.

The embassies of the then nine EC countries were seen as important agents of EPC. They were to participate in consultations on specific subjects at the seat of the Presidency of EPC or in another capital if the Foreign Minister holding the Presidency so requested. One member of an embassy was to have the special task of maintaining the EPC contacts. In third countries the ambassadors

of the EC countries were to act in consultation with each other.

A new step in the development of EPC was taken in the third report by the foreign ministers of October 13, 1981 (the London Report; Bulletin of the European Communities (1981) Supp. 3, pp. 14–17). The general commitment to implement the undertakings in the Luxembourg and Copenhagen Reports was renewed and the "commitment to consult partners before adopting final positions or launching national initiatives on all important questions of foreign policy which are of concern to the Ten as a whole", was expressly underlined.

Two procedures for the meetings of the foreign ministers were agreed upon in the London Report. Formal meetings should be limited to very important matters. Declarations issued by the ministers or by the European Council (the "summit" of heads of government accompanied by foreign ministers) should in general include a list of third countries where the host government should be formally notified of such declarations by the representative of the EC member States. Completely informal and confidential meetings, known as Gymnich type meetings, are also possible.

The Political Committee is seen in the London Report as a central organ of EPC. The group of *correspondants* and the working groups are again expressly mentioned. Specific studies are proposed, to be prepared on a long-term basis. General contacts between the ambassadors of the Ten in third countries are agreed as a general rule.

The Presidency of EPC falls to the Foreign Minister of the State which holds the office of the Presidency of the Council of the European Communities. The office of Presidency of the Council rotates amongst the member States every six months in alphabetical order of member States. The Presidency of EPC is to be assisted by a small team of officials seconded by preceding and succeeding Presidencies to improve continuity. The officials remain in the service of their national ministries and should be on the staff of their embassy in the capital of the Presidency.

The London Report also strengthens the contacts between the European Parliament and the Presidency of EPC. Four colloquia with the Political Affairs Committee of the European Parliament, the answering of parliamentary questions concerning EPC, the annual report and the speeches at the beginning and the end of the Presidency are mentioned. The Ten agree expressly that, after meetings of the European Council, the President will make a statement to the European Parliament. The statement will include EPC matters discussed at the Council.

A special procedure in case of crisis is foreseen. A meeting of the Political Committee will be called within 48 hours at the request of three member States. The same procedure will be adopted in third countries by the Heads of Mission.

After some difficulties in the early period, it has now been established that the President of the Commission of the EC and the Commissioner responsible for external affairs participate regularly in the European Council and in the EPC Conference of Foreign Ministers, but do not vote (→ European Communities: External Relations). At the working level, the Commission staff has participated since 1975 without any restrictions in the meetings of the Political Committee.

2. *EPC in Practice*

The EPC process played a prominent role in the preparation of the → Helsinki Conference and Final Act on Security and Cooperation in Europe. Prior to and during many other international conferences EPC consultation took place, but was not always ultimately successful. In the case of the United Nations Conference on the Law of the Sea the EPC members could not achieve a common approach to the final draft. Members' activities within the → United Nations are generally prepared within the EPC framework. However, it is not always possible to reach agreement. The United Kingdom and France generally refuse to discuss within the EPC system matters concerning their power of → veto in the → United Nations Security Council. It is frequently observed that the procedure of foreign policy coordination developed by the member States of the EC has created a second area in which the European identity has become visible. In 1981 to 1982 important matters of coordinated sanctions were agreed in the EPC context (Iran, Afghanistan, Poland, and the → Falkland Islands).

3. Legal Problems

The EPC system is based on informal communiqués, reports, etc. It is not free from doubt whether international legal obligations arise from the EPC system. At the beginning only a very loose system of practical coordination was created. However, with the development of the system it seems now that the institutional structure is based on agreements which should be regarded as binding agreements under → international law. The EPC system is separate from the European Community system. However, matters discussed within EPC frequently also have Community aspects. Therefore, EPC coordination may influence decisions taken within the EC system. It is clear that the institutional structure of the EC should not be affected by the inter-governmental cooperation created by EPC. This, on occasion, has seemed a danger.

4. Evaluation

At a time when rapid development of the European Community towards a European Political Union for many reasons proved impossible, EPC has become a very important substitute for a delegation of competences in foreign policy to the EC. Although the goal of a European Political Union is being upheld by the members of the EC, EPC has proved to be the only workable form of unification in the field of foreign policy. It seems that the impact of EPC is clearly discernible by third countries in international organizations, at international conferences and in important areas of foreign policy. Thus, a form of European unification in foreign policy is being achieved through EPC.

Europäische Politische Zusammenarbeit (EPZ), Eine Dokumentation der Bundesregierung (5th ed. 1981).

W. WALLACE and D. ALLEN, Political Cooperation, in: H. Wallace (et al.), Policy Making in the European Communities (1977) 227–247.
H. KRAMER and R. RUMMEL, Gemeinschaftsbildung Westeuropas in der Außenpolitik, Zur Tragfähigkeit der Europäischen Politischen Zusammenarbeit (1978).
B. LINDEMANN, EG-Staaten und Vereinte Nationen, Die politische Zusammenarbeit der Neun in den UN-Hauptorganen (1978).
R. RUMMEL and W. WESSELS (eds.), Die europäische politische Zusammenarbeit (1978).
J. CHARPENTIER, La coopération politique entre les Etats Membres des Communautés européennes, AFDI, Vol. 25 (1979) 753–778.
O. VON DER GABLENTZ, Luxembourg Revisited or the Importance of European Political Cooperation, CMLRev, Vol. 16 (1979) 685–699.
H. DA FONSECA WOLLHEIM, Zehn Jahre Europäische Politische Zusammenarbeit (EPZ), Integration, Vol. 2 (1981) 47–66.
D. HURD, Political Co-operation, International Affairs, Vol. 57 (1981) 383–393.
P. DE SCHOUTHEETE, La coopération politique européenne (1981).
D. ALLEN, R. RUMMEL and W. WESSELS, European Political Cooperation (1982).
E. STEIN, European Political Cooperation (EPC) as a Component of the European Foreign Affairs System, ZaöRV, Vol. 43 (1983) 49–69.

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EUROPEAN SCHOOLS

1. History; Aims

After the establishment of the High Authority of the → European Coal and Steel Community (ECSC) in Luxembourg in 1953, the problem of the education of the officials' children arose. On the initiative of a group of officials, and with the support of the ECSC and the agreement of the Government of Luxembourg, a private school was founded in Luxembourg in the same year. When the school was extended to the secondary level, the question of recognition of diplomas and certificates was discussed. This led to the consensus of the member States of the ECSC to fix the status of the European School in a special agreement (cf. → Cultural Agreements; → Cultural and Intellectual Cooperation). The Statute is laid out in an agreement of April 12, 1957 which also includes an annex (amended on June 19, 1978) in which the contracting parties laid down regulations for the European Baccalaureate in order to assure equivalence with national secondary school certificates. The agreement entered into force on February 22, 1960, and is open to accession by other States (Art. 31).

After the foundation of the → European Economic Community (EEC) and the → European Atomic Energy Community (Euratom), the member States on April 13, 1962 signed a Protocol on the Setting-up of European Schools in order to create the framework for their es-

tablishment in other places. This Protocol entered into force on June 12, 1970. In a Supplementary Protocol of December 15, 1975, in force from February 28, 1980, the member States of the → European Communities (EC) founded another European school for the children of the officials of the → European Patent Organisation. The new members of the EC have acceded to the existing treaties. At present, there are nine European schools situated in Luxembourg, Brussels (two schools), Varese (Italy), Mol (Belgium), Bergen (Netherlands), Karlsruhe and Munich (Federal Republic of Germany), and Culham (Great Britain).

The aim of the European School is primarily to organize schooling for the children of Community officials, but under certain conditions other locally resident children are accepted. While the main subjects are still taught in the pupil's mother tongue, a particular effort is made to give them a thorough knowledge of other modern languages.

2. *Legal Character*

A distinction exists between the European School as organization (hereafter "the European School") and the individual schools established within the framework of the Statute in the different member States.

Under Art. 6 of the Statute, the European School must have the status of a public institution in the law of each of the contracting parties; it is to have legal personality to the extent requisite for the attainment of its objectives. Since the School as a whole, represented by the Board of Governors, also has the right to conclude agreements with the EC or any other inter-governmental organizations or institutions (Protocol, Art. 4), it has legal personality in international law to this extent (→ Subjects of International Law).

Art. 3, para. 2 of the Protocol gives the individual schools separate legal personality pursuant to Art. 6 of the Statute. Consequently, each school may act as an independent legal personality according to the national law of the contracting parties.

Although there have been close connections to the EC from the beginning, the European School is neither an organ of nor an institution dependent on the EC. The EC treaties do not include any authorization to found schools for the children of officials. Art. 9 of the Euratom Treaty envisages the foundation of schools for certain specialists and of a university, but does not give the power to found schools of the kind discussed here. Moreover, the European School has no connection to the European University Institute in Florence, which was founded on the basis of an independent treaty. (See also → International Schools and Universities.)

3. *Structure; Functioning*

While the Board of Governors and the two Boards of Inspectors are organs common to all European schools, each school has its own administrative board and headmaster (Protocol, Art. 3). The Board of Governors is an inter-governmental organ and consists of representatives of the contracting parties. It is responsible for the implementation of the Statute. For this purpose, it has wide competences in educational, administrative and budgetary matters (see Statute, Arts. 9 and 11 to 13). In budgetary matters, Art. 10 prescribes a unanimous decision, while administrative matters require a two-thirds majority. The Board of Governors is competent to appoint headmasters (Statute, Art. 12, para. 2), to decide unanimously on the setting-up of new European schools (Protocol, Art. 2), and, through its representative on the individual administrative boards, to represent the individual schools in law (Statute, Art. 12, para. 1(c), and Protocol, Art. 3, para. 1). It may also conclude any agreement concerning the European schools with the EC and with any other inter-governmental organizations or institutions, which, by reason of their location, are interested in the operation of particular schools. Such organizations receive voting seats on the Board of Governors and the relevant administrative board on matters regarding the school in question (Protocol, Art. 4, para. 1; see also Statute, Art. 27 and Supplementary Protocol, Art. 2).

The members of the two Boards of Inspectors (one for the nursery section and the primary school, the other for the secondary school) are appointed by the Board of Governors (Statute, Art. 16). They meet at regular intervals and decide, on a proposal of a headmaster, upon the

promotion of pupils to the next class (Statute, Art. 17).

The main task of each administrative board is to prepare the budget and to supervise its implementation (Statute, Art. 21, para. 1). The headmaster is responsible for the coordination of studies, the implementation of the instructions of the Board of Governors or of the Boards of Inspectors, and the administration of the school staff (Statute, Art. 22).

The budgets of the European schools are financed mainly by contributions paid by the member States, subsidies from EC institutions (in 1979, 30 million European Currency Units from the Commission) and school fees (Statute, Art. 26). Under an agreement with the EC, the Accounting Committee, and since 1977 the European Court of Accounting, audits the budget (cf. Protocol, Art. 7).

In contrast, the school established by the Supplementary Protocol is mainly financed by the European Patent Organisation (Supplementary Protocol, Art. 3). Its draft budget and the accounts are transmitted to that Organization (Supplementary Protocol, Art. 4).

The teaching staff of the European schools consists of teachers seconded or granted leave of absence by their national authorities. Their legal status is governed by the service rules laid down by the Board of Governors. For the resolution of disputes over the application of the rules, an arbitral tribunal has been established (→ Administrative Tribunals, Boards and Commissions in International Organizations). Whether the relationship of the personnel to the European School is governed by national or international law remains in dispute. According to the agreements of the European School with the States where the individual schools are located, the staff enjoys certain privileges, which are, however, not comparable to those of international civil servants in general (→ Civil Service, International).

Statute of the European School (with Annex), Luxembourg, April 12, 1957, UNTS, Vol. 443 (1962) 128–244.

Protocol concerning the Establishment of European Schools, drawn up in reference to the Statute of the European School, Luxembourg, April 13, 1962, UNTS, Vol. 752 (1970) 266–290.

Supplementary Protocol to the Protocol of 13 April 1962 on the setting-up of European Schools, British Command Paper, Cmnd. 8104, Treaty Series No. 3 (1981).

European Schools, EC Doc. EE/1621/80-EN, 25 May 1981.

S.G. VAROUXAKIS, L'Ecole européenne, étude juridique (1968).

C. HEINZE, Die Rechtsstellung der "Europäischen Schulen" und der an ihnen tätigen deutschen Lehrer, JIR, Vol. 14 (1969) 209–224.

M. HILF, Die Organisationsstruktur der Europäischen Gemeinschaften (1982) 218–221.

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EUROPEAN SPACE AGENCY

1. Establishment and Role

The European Space Agency (ESA) is the successor to the European Launcher Development Organisation (ELDO) and the European Space Research Organisation (ESRO), which were created under separate conventions concluded in 1962 as European bases for the execution of space activities and programmes (for ELDO and ESRO constituent instruments, see UNTS, Vol. 528, p. 33 and Vol. 507, p. 177, respectively). ESA was created by the Convention for the Establishment of a European Space Agency, which was opened for signature in Paris on May 30, 1975 (ILM, Vol. 15 (1975) 855–908). The Convention did not, however, enter into force until it obtained full ratification on October 30, 1980; before this time the legal basis for ESA's activities remained the ELDO and ESRO conventions. To provide for the intervening period, the Final Act adopted by the Conference of Plenipotentiaries to the 1975 Convention contained an innovative succession arrangement in the form of a mandate directing that the provisions of the ESA Convention were to be "taken into account to the greatest extent possible" until the new organization was clothed with full legal personality (see also → Treaties, Conclusion and Entry into Force; → International Organizations, Succession). This arrangement allowed ESA to function *de facto* prior to ratification.

ESA's member States are Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, the Netherlands, Spain, Sweden,

Switzerland and the United Kingdom. Austria and Norway have associate membership; Canada has concluded a cooperation agreement. The Agency has its seat in Paris and several establishments in member States.

ESA's objectives, as defined in Art. II, para. 1 of the Convention, are "to provide for and to promote, for exclusively peaceful purposes, cooperation among European States in space research and technology and their space applications, with a view to their being used for scientific purposes and for operational space applications systems". Art. II specifies that these objectives are to be attained by creating a long-term space policy, recommending space objectives to the member States, and carrying out space-related activities. ESA possesses a coordinating role with regard to European and national space programmes, to the extent of progressively integrating the latter into the former, and also with regard to the policies of other national and international bodies. The Agency is also charged with the formulation and implementation of the industrial policy appropriate to its programme.

The 1975 Convention represents a shift of approach from the ELDO/ESRO basic pattern of inclusive participation towards a more flexible system combining commitment to mandatory activities, consisting in particular of a scientific programme, with the possibility of participation in optional programmes such as the European launcher (Ariane), Spacelab, and communications satellites. In addition, at the request and expense of external users, ESA may conduct operational activities in the applications satellites fields.

Safeguards are provided in the Convention with the object of ensuring that the benefits of ESA activities and programmes may accrue to all members; provisions include those relating to the exchange of information and personnel, and those dealing with full participation in consultations and project evaluation, the placing of contracts, and access to inventions and products.

2. *Institutions and Finance*

(a) The Council

ESA's legislative organ, the Council, may meet either at the ministerial level or at the delegate level. Its functions include the approval of the mandatory programme and activities and the commitment of levels of resources therefor; the consideration of membership applications; the definition of policy and the making of recommendations to member governments; the approval of cooperative arrangements with non-member States and other organizations; and the approval of, and establishment of priorities among, new optional programmes, in accordance with special procedures which are laid down in the Convention.

The Council is assisted by subordinate bodies, i.e. a Science Programme Committee, an Administrative and Finance Committee, an Industrial Policy Committee and an International Relations Advisory Group. A number of "programme boards" have been established for the optional programmes, at which only participating States have voting rights. All these bodies operate at delegate level and possess advisory or decision-making powers.

(b) The Director General

The Director General, who is appointed by the Council, acts as ESA's chief executive officer and legal representative. He reports annually to the Council, attends its meetings and may make proposals, but has no vote. The administrative structure beneath the Director General consists of function oriented Directorates for Administration, Applications Programmes, Spacecraft Operations, Scientific Programmes, and Space Transportation Systems, as well as the Technical Directorate. A further functional division within the Directorates embraces the various projects as well as the establishments, which are the European Space Research and Technology Centre at Noordwijk, Netherlands, and the European Space Operations Centre at Darmstadt, Federal Republic of Germany. There is also an Information Retrieval Service and Earthnet Centre situated at Frascati, Italy, which is responsible directly to the Director General.

(c) Settlement of disputes

Provision is made in Art. XVII of the Convention for the appointment of an *ad hoc* arbitration tribunal for the settlement of disputes between member States, or between a member State and ESA, failing settlement through the agency of

the Council, and subject to other arrangements which the Council may make. States having a substantial interest in the dispute have a right of intervention. The jurisdiction of the tribunal extends to questions relating to interpretation or application of the Convention and to certain questions of ESA's non-contractual liability, as well as to certain personnel matters. To date, no cases have been submitted to arbitration.

(d) Financing arrangements

All member States are required by Art. XIII(1) of the Convention to contribute to the mandatory activities and programme costs, in accordance with a scale agreed on by the Council; contributions are computed, in principle, on the basis of national income. The basic scale is also applicable to optional programmes, unless another scale is unanimously adopted by the participating States (Art. XIII(2) and Annex II). ESA's overall resources are determined by the Council on a five-year plan basis, reviewed triennially, while a general budget and optional programmes budgets are adopted annually. In the early 1980s, ESA's budget (1981: *c.* $850 million) accounted for some two-thirds of total European space investment. The principal contributors to ESA are the Federal Republic of Germany, France and Great Britain; these countries also provide the largest contributions to the Spacelab, Ariane and Marecs optional programmes respectively.

3. Activities and Evaluation

Due to the degree of flexibility facilitated by the mandatory/optional programme system, ESA has benefitted from a level of investment by its members considerably higher than that provided to its predecessor organizations and has consequently been able to develop an expanded range of activities that accommodate both community and national ambitions. The Agency's principal activities may be grouped as follows: science programmes, earth observation satellites, communications satellites, launcher development, Spacelab, and technology programmes.

The satellites launched to carry out scientific programmes have provided valuable data in the fields of astronomy, solar and earth-magnetosphere research; ambitious new programmes (e.g. X-ray studies) are at present under active consideration. Other satellites have been launched to gather meteorological data (e.g. Meteosat 1 and 2) and their observations have contributed, *inter alia*, to the programmes of the → World Meteorological Organization. Further, the Earthnet remote-sensing system assembles important data on earth resources. A communications satellite launched in July 1982 inaugurated what is intended to become the European Communications Satellites system (→ European Conference of Postal and Telecommunications Administrations). The Marecs programme is contributing to the improvement of maritime radiotelephony, and the development of navigation satellite programmes is also being investigated. ESA's Large Satellite is designed to provide Europe with a pre-operational direct broadcasting system in the near future (see also → Space and Space Law; → Satellite Broadcasting).

The ESA launcher, known as Ariane, was declared operational during 1982. Numerous satellites are scheduled for launching in the period 1982 to 1985 and more powerful launchers are to be developed. A space laboratory (Spacelab), constructed by ESA in the context of cooperation within the framework of the space shuttle programme of the United States, is to be placed in orbit by a flight scheduled to take place before the end of 1983; this operation is pursued in accordance with provisions of a treaty signed in 1973 between the USA and the States participating in the ESA Spacelab 1 optional programme.

Further, to provide the necessary technological backup for all these projects, the technology research and development of ESA and the member States are coordinated through the Basic Technology Research and Support Programme.

ESA carries out its industrial policy in accordance with the terms of Art. VII and Annex V of the Convention. One of the objectives of this policy is to ensure that European industry meets the requirements of its own and national programmes in a cost-effective manner. ESA's role in this connection is intended to stimulate European industry; it achieves this, *inter alia*, by giving preference to contractors from member States in awarding contracts and by encouraging the formation of European consortia so as to secure greater economic rationalization. The Agency

however, must also ensure that member States receive a "fair return" in industrial contracts for ESA programmes, roughly proportionate to their contributions.

The Agency is empowered by Art. XIV of the Convention to cooperate with other international and national organizations and with non-member States, as well as to conclude agreements with these entities. ESA maintains relations with several States for the purpose of exchange of information, and of cooperation relating to facilities and projects. The Agency maintains contact with the → European Communities and with the → Council of Europe, and has close connections with → Inmarsat and → Intelsat.

Further, ESA is involved, as an observer, in the formulation of space law rules within the framework of the Committee on the Peaceful Uses of Outer Space of the → United Nations. The Agency also cooperates with the Outer Space Division of the Office of the → United Nations Secretary-General concerning, *inter alia*, launching notifications. Although ESA is not a party to the → Outer Space Treaty of 1967, or to the conventions supplementing it (as only States may be parties to these instruments), ESA has declared its acceptance of the obligations contained therein (→ Space Activities, Liability for).

In conclusion, ESA has proved to be a viable framework for the reconciliation of national ambitions with regard to a community space policy in Europe, and has thereby contributed to → European integration (→ Regional Cooperation and Organization: Western Europe). Science, industry and telecommunications have reaped benefits from the Agency's programmes, and the encouragement of transnational industrial structures has met with some success. Considerable scope still exists for further industrial rationalization, and for the development of financing structures designed to allow a greater proportion of development costs to be absorbed by private investment. While the funding of space programmes in Europe remains at a far lower level than in the United States, Europe, through ESA, has emerged as a strong force in the space applications and science fields.

H. KALTENECKER, The Reform of the European Space Research Organization (ESRO): Its New Legal Concept, Proceedings of the Sixteenth Colloquium on the Law of Outer Space (1973) 256–260.

A. MANIN, Le nouveau cadre de la coopération spatiale européenne, L'Agence spatiale européenne, Revue trimestrielle de droit européen, Vol. 10 (1974) 233–267.

M.-G. BOURÉLY, La naissance de l'Agence spatiale européenne, Revue française de droit aérien, Vol. 29 (1975) 259–264.

A. BUECKLING, Bemerkungen zur organisationsrechtlichen Struktur der Europäischen Weltraumorganisation (ESA), Zeitschrift für Luft- und Weltraumrecht, Vol. 24 (1975) 106–115.

G. GRANIER, L'Agence spatiale européenne: une analyse de l'intégration régionale dans le domaine spatial, Thesis, McGill University, Institute of Air and Space Law (1975).

M.-G. BOURÉLY, The Legal Framework of the Spacelab/Space Shuttle Programs in Comparison with the Apollo/Sayuz Test, Journal of Space Law, Vol. 4 (1976) 77–97.

W. VON KRIES, Europäische Nutzung des amerikanischen Raumtransportsystems Space Shuttle, Zeitschrift für Luft- und Weltraumrecht, Vol. 25 (1976) 15–27.

H. KALTENECKER, The New European Space Agency, Journal of Space Law, Vol. 5 (1977) 37–43.

G.P. SLOUP, A Guide for Space Lawyers to Understanding the NASA Space Shuttle and the ESA Spacelab, Zeitschrift für Luft- und Weltraumrecht, Vol. 26 (1977) 196–210.

R. VON PREUSCHEN, The European Space Agency, ICLQ, Vol. 27 (1978) 46–60.

M.-G. BOURÉLY, Settlement of Disputes under the Convention for the Establishment of a European Space Agency, in: K.-H. Böckstiegel (ed.), Settlement of Space Law Disputes (1980) 51–61.

M.-G. BOURÉLY, Organisations à Compétence Territoriale, Regionale: Organisations de l'espace, in: Juris-Classeur de Droit International, Fascicule 195 (1981) 1–31.

ESA, Europe's Place in Space (1981).

M.-G. BOURÉLY, Les relations extérieures de l'Agence spatiale européenne, in: L'Europe dans les relations internationales, Colloque de Nancy (21–23 mai 1981) (1982) 265–292.

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EUROPEAN UNIFICATION *see* European Communities; European Integration; Regional Cooperation and Organization: Western Europe

GERMAN CUSTOMS UNION *see* Zollverein (German Customs Union)

GERMANY, FEDERAL REPUBLIC OF, TREATIES WITH SOCIALIST STATES (1970–1974)

Between 1970 and 1974 the Federal Republic of Germany (FRG) concluded treaties with the Union of Socialist Soviet Republics (Soviet Union), the People's Republic of Poland, the German Democratic Republic (GDR) and the Czechoslovak Socialist Republic, which centered upon the non-use of force (→ Use of Force), particularly with respect to territorial and status questions. Closely linked to those treaties is the Quadripartite Agreement on → Berlin of September 3, 1971.

1. Historical Background

In the absence of a → peace treaty after World War II, each of the two German States had to normalize relations with the victorious Powers and to come to terms with each other. As far as non-socialist States were concerned, the FRG had achieved this by about 1958 (→ Peace Settlements after World War II; → Western European Union; → North Atlantic Treaty Organization; → European Communities). With respect to the Eastern European Socialist States, the existence of a second German State, the consequences of the → Potsdam Agreements on Germany (1945), and the question of Berlin were major political and legal problems (→ Germany, Occupation after World War II; → Germany, Legal Status after World War II). Effects to solve them, at least by means of a → *modus vivendi*, were the main contents of what came to be known as the German "*Ostpolitik*".

Ever since the reorganization of a democratically legitimized German State authority in the FRG (1949), the FRG had contested the GDR's legitimacy and had designed a policy of strict → non-recognition; → recognition of the GDR by third States was considered an → unfriendly act, to be answered normally by severance of → diplomatic relations (the so-called "Hallstein Doctrine", after 1955). The FRG claimed continuity under international law with respect to the German Reich and proclaimed reunification of the two German States as a principal national goal. For the socialist States, the two German States are successors to the Reich (→ State Succession) and, as totally separate → subjects of international law, would merge only under socialist auspices.

The incorporation of German territory eastwards of the → Oder-Neisse line by the Soviet Union and Poland had been recognized by the GDR; for the FRG these territories were, in accordance with the results of the Potsdam Conference (1945), only under the administration of the respective Powers and still belonged to Germany.

According to the FRG's Basic Law, the three Western Sectors of Berlin are part of the Federation. The incorporation of the Eastern Sector into the GDR is not recognized, all of Berlin being an occupied territory under Four-Power (United States, France, United Kingdom, Soviet Union) Status.

A first step towards closing the political gap between the FRG and the Soviet Union was the Adenauer-Bulganin Agreement of September 13, 1955 which provided for the release of German → prisoners of war, established diplomatic relations between the two States and, quite remarkably, included a clause on support for the reunification of Germany.

A second move in the West German *Ostpolitik* was the offer, made by Federal Chancellor Ludwig Erhard in 1966 and elaborated by his successors, to exchange declarations on the non-use of force with socialist States. Such deelarations were intended to set at rest those States who felt threatened by the FRG's policy of non-recognition. These States, however, wanted nothing short of full recognition of the → *status quo*. In subsequent diplomatic exchanges, the Soviet Union, for her part, discussed the → Enemy States Clause in the United Nations Charter (in Arts. 53 and 107), thereby causing the FRG alarm because of the Soviet Union's pretences to having a right of → intervention.

In 1969 a new West German Government (Chancellor Willy Brandt, Foreign Affairs Minister Walter Scheel) modified and intensified the *Ostpolitik*. The GDR was accepted as a State (having, however, a "special relationship" with the FRG, comparable to *inter se* relations within the → British Commonwealth, and being

reflected by surviving features of the former unity, among them most prominent being the Four-Power Status of Germany as a whole).

Negotiations were undertaken with the Soviet Union (see the "Bahr Paper" of May 1970, named after the German negotiator Egon Bahr, and containing decisive elements of the Treaty to be concluded with the Soviet Union as well as political statements on treaties with other socialist States, on membership in the → United Nations, etc.). These negotiations led to the Treaty concluded in Moscow on August 12, 1970. Treaties with Poland (Warsaw, December 7, 1970), the GDR (Treaty on Traffic, May 26, 1972; Basic Treaty, December 21, 1972), and Czechoslovakia (Prague, December 11, 1973) followed. Objects of great controversy (cf. the Joint Resolution of Bundestag and Bundesrat, May 17, 1972), the Treaties of Moscow and Warsaw, together with the Quadripartite Agreement on Berlin, entered into force on June 3, 1972 (→ Treaties). The Treaties with the GDR (Traffic, October 11, 1972; Basic Treaty, June 21, 1973) and Czechoslovakia (July 19, 1974) followed. The Basic Treaty and the Treaties of Moscow and Warsaw were reviewed and upheld, at some points with a restrictive interpretation, by the Constitutional Court of the FRG (Entscheidungen des Bundesverfassungsgerichts, Vol. 36, p. 1, Vol. 40, p. 141; Fontes, Series A, Sectio II, Vol. 7, pp. 348 and 455.

2. *Content of the Treaties*

(a) *Treaty of Moscow*

The → Preamble to the Treaty of Moscow explicitly refers to the Adenauer-Bulganin Agreement of 1955 and, together with Art. 4 (see *infra*), maintains that Agreement in force. Objectives of the new Treaty are peace, security and *détente* (Preamble, Art. 1). In pursuing these objectives, the parties "proceed from the actual situation" in Europe (Art. 1), a reference to factual circumstances including, however, rights and obligations, even those aiming at an eventual → peaceful change. Guided by the purposes and principles of the → United Nations Charter, the parties are to "settle their disputes exclusively by peaceful means" and "in any matters affecting security in Europe or international security, as well as in their mutual relations" undertake to refrain from the threat or use of force (Art. 2). This confinement "exclusively" to peaceful means set at rest German fears of Soviet pretences under Arts. 53 and 107 of the UN Charter. The language, moreover, covers the threat or use of force also against third States (→ Treaties, Effect on Third States); if it becomes relevant, for example, for the doctrine of → socialist internationalism, it leaves unaffected Chapter VII and Art. 51 of the UN Charter.

"In accordance with the foregoing purposes and principles", the parties agree to respect the territorial integrity and the present frontiers (→ Boundaries) of all States in Europe, and declare not to have nor to assert in future "territorial claims against anybody" (Art. 3; → Territorial Integrity and Political Independence). Peaceful change of territories or frontiers is hereby not excluded. "Territorial claims", however, can no longer be upheld by the FRG (or the Soviet Union), but the right of a reunited Germany to submit such claims may nevertheless be exercised to the extent that Germany will have a legal personality different from that of the FRG. This distinction was implicitly referred to in → notes (August 7, 1970) by which the FRG, after consultation with the Soviet Union, informed the Three Western Powers that, "since a peace settlement is still outstanding", the proposed treaty did not affect "the question of the rights of the Four Powers". As the notes quoted a German-Soviet understanding, they are relevant for the interpretation of the Treaty (Art. 31(2) (a) of the 1969 → Vienna Convention on the Law of Treaties; → Interpretation in International Law).

The Treaty is not to "affect any bilateral or multilateral treaties or arrangements previously concluded" by the parties (Art. 4); previous agreements, even if not easily reconcilable with the Treaty, are not superseded. This encompasses, for example, the Convention on the Relations between the FRG and the Three Western Powers of May 26, 1952/October 23, 1954 (→ Bonn and Paris Agreements on Germany), whose Art. 7 obligates the parties to strive in common for a unified Germany modelled after the FRG, and also the Potsdam Agreements on Germany (1945), on which the Soviet Union seeks to base much of her policy regarding Germany, and the Treaties between the Soviet Union and the GDR

of September 20, 1955, March 12, 1957 and June 12, 1964.

Similarly, a "Letter on German Unity" sent by the FRG in connection with the signature of the Treaty of Moscow and which, having been accepted by the Soviet Union, forms an instrument relating to the Treaty in accordance with Art. 31 (2) (b) of the Vienna Convention on the Law of Treaties, restates the relevant objectives of the FRG's policy. The Joint Resolution of May 17, 1972 (see section 1 *supra*) was upon ratification notified to the Soviet Union (→ Notification) in order to strengthen the German interpretation of the Treaty as a *modus vivendi.*

(b) Treaty of Warsaw

The Treaty of Warsaw stresses the "respect for the territorial integrity... of all States in Europe within their present frontiers" (Preamble). It states that the Oder-Neisse line "constitute[s] the western State frontier" of Poland and excludes territorial claims (Art. I). Although the Treaty deliberately avoids the term "recognition", the wording must be understood as in future barring the parties from disputing the quality or location of the Polish "western State frontier" and from asserting territorial claims. At the same time, the Treaty does not qualify the origin of that frontier. As with the Treaty of Moscow, German notes addressed to the Three Western Powers reported German statements made during the negotiations (but no Polish consent) regarding the rights of the Four Powers and the explicit limitation of any binding effect on the FRG. (This thereby left unaffected, here too, the position of a reunited Germany to the extent that Germany will have a legal personality different from that of the FRG.) These notes, upon their having been accepted by the Polish side, gained interpretative relevance (Art. 31 (2) (b) of the Vienna Convention on the Law of Treaties). The same was intended by the notification of the Joint Resolution of May 17, 1972 to the Polish Foreign Ministry.

The clause on the banning of any threat or use of force (Art. II) is modelled after Art. 2 of the Treaty of Moscow. Art. III envisages the development of mutual relations. The Treaty of Warsaw is furthermore not to affect international agreements previously concluded by either party "or concerning them" (Art. IV); this last phrase represents a remarkable extension of the similar article in the Treaty of Moscow and an acknowledgement of the will and the need to avoid discussions of any Three- or Four-Power arrangements. It was copied by the Basic Treaty (see section 2(d) *infra*).

In the Warsaw Treaty's context belongs a Polish "information" regarding the possibility of "some tens of thousands" of Poles of German origin emigrating to "one of the German States". Given the fact that some hundreds of thousands people of German origin still lived in the former German territory eastwards of the Oder-Neisse line and urgently wanted to leave, the "information" could not satisfy the German side and, in connection with the Helsinki Final Act (→ Helsinki Conference and Final Act on Security and Cooperation in Europe) and with two bilateral Agreements of October 9, 1975, had to be extended to some 125 000 more persons, a further extension of this number being envisaged even then. This "information" and the subsequent arrangements are far from having given the population concerned an → option of nationality or domicile, but the Treaty is equally far from having effected a "transfer" of any territory; to the contrary, it takes account of the "actual situation" (see section 2(a) *supra*).

(c) Treaty of Prague

The Treaty of Prague, the most recent, had to dispose of a special problem which had already been addressed, but not solved, in the "Bahr Paper". For legal and political reasons, Czechoslovakia wanted the → Munich Agreement of 1938 to be nullified *ex tunc*; for legal reasons (→ nationality, validity of transactions and claims), the FRG considered it to have become obsolete only later, possibly *ex nunc* (→ Nullity in International Law). The solution found was the common statement in the Treaty of Prague that the Munich Agreement "was imposed on the Czechoslovak Republic... under the threat of force" (Preamble) and that "[T]he Federal Republic of Germany and the Czechoslovak Socialist Republic, under the present Treaty, deem the Munich Agreement of 29 September 1938 void with regard to their mutual relations" (Art. I). Thus each party, even when dealing with the other, remains free to consider the Munich

Agreement void as from the time at which, in its opinion, international law was advanced enough to invalidate "imposed" treaties. Moreover, some specific "legal effects on natural or legal persons of the law as applied in the period between 30 September 1938 and 9 May 1945" remain unaffected by the Treaty (Art. II).

The clauses on the non-use of force (Art. III) and the respect for frontiers and territories (Art. IV) are copied from the Treaty of Warsaw (Arts. II and I(2) and (3); a clause on the development of mutual relations (Art. V) is drafted after that Treaty's Art. III. Since former treaties between the parties were, in fact, to be affected, especially the Munich Agreement, no article like Art. 4 of the Treaty of Moscow or Art. IV of the Treaty of Warsaw was included in the Treaty of Prague.

This Treaty (Exchange of Letters) provides for the extension of its applicable part (Art. II) to West Berlin. In a second Exchange of Letters, Czechoslovakia promises flexibility towards her nationals of German origin who wish to emigrate to the FRG, this promise being less concrete but more binding than the unilateral Polish "information" (see section 2(b) *supra*).

(d) *Treaties with the GDR*

In the framework of the Quadripartite Agreement on Berlin, an agreement was negotiated between the FRG and the GDR on the traffic to and from West Berlin. The subsequent "Treaty on Questions Relating to Traffic" regulated the remaining traffic between the two German States by rail (Arts. 10 to 16), waterways (Arts. 17 to 23), road (Arts. 24 to 28) and sea (Arts. 29 to 31). Air traffic was left to one side due to its implications for the status of Berlin. Given the narrow limits imposed by the GDR on traffic and travel, this Treaty gained importance through an Exchange of Letters which lifted some particularly onerous restrictions.

The Treaty on the Bases of Relations, the so-called "Basic Treaty", identifies, to be sure, a few areas of remaining disagreement, but registers agreement on many important bilateral and multilateral problems. To this Treaty belong a Supplementary Protocol, several side letters, agreed minutes, and → declarations.

The parties retain their "differing views... on fundamental questions, including the national question" (Preamble); this clause refers to the status of Germany as a whole, to reunification, and to the "special relationship" (see section 1 *supra*). The continuation of the FRG's reunification policy is, as in the Treaty of Moscow, expressly announced by the "Letter on German Unity" addressed to and accepted by the GDR. The parties furthermore reserve and thus protect their divergent views on questions of German "nationality" (declarations) and "property and assets" (agreed minute) which otherwise would have been prejudiced by the Treaty. Finally, the parties leave unaffected treaties and agreements "already concluded by them or relating to them" (Art. 9), which allows them, as in the Treaties of Moscow and Warsaw, to maintain orthodox positions to the extent that these are contained in earlier treaties, even if concluded with or among other parties. Expressly mentioned as unaffected are "the rights and responsibilities of the Four Powers" (Exchange of Letters which in turn were notified to the Four Powers) – a considerably clearer statement and procedure than those provided in the Treaties of Moscow and Warsaw.

Within these limits, however, the parties proclaimed their autonomy and equality in the light of the UN Charter (Art. 2) and their status as → neighbour States (Art. 1), the abandonment of the non-recognition policy (Arts. 4 and 6), and the exchange of permanent missions (Art. 8), which were given a character analogous to diplomatic missions by a later Protocol (March 14, 1974). The "frontier existing between the two States" was to be (and has meanwhile been) reviewed and marked by a Joint Commission (Supplementary Protocol, Section I).

By analogy to the Treaties with the other socialist States, "disputes" between the parties are to be settled "exclusively by peaceful means" (Art. 3, para. 1). The "inviolability now and in the future of the frontier" and the undertaking "fully to respect each other's territorial integrity" (Art. 3, para. 2) are confirmed. As in the other Treaties, these undertakings do not exclude peaceful change (see section 2(a) *supra*) and even reunification by peaceful means, but they do rule out questioning in any other way the common frontier and the respective territories (see section 2(b) *supra*).

A major part of the Treaty, which was crucial in ensuring ratification by the FRG, is devoted to "practical and humanitarian questions" (Art. 7). Agreements and cooperation in the fields of trade, science, law enforcement, post and communications, media, health, culture, sports, environmental protection and others are envisaged (Supplementary Protocol, Section II; Exchanges of Letters on Working Possibilities for Journalists, on the Opening of Four New Border Crossings, on the Reuniting of Families and Facilitation of Travel and Traffic in Goods; Declarations on Political Consultations, etc.). In the meanwhile, most have become operative.

Their extension to West Berlin in accordance with the right of the FRG to represent West Berlin as well as the right of the FRG's permanent mission to represent the interests of West Berlin *vis-à-vis* the GDR are equally agreed (Declarations). For the FRG, this is an important feature of the Treaty.

Addressing multilateral questions, the parties pledged their support to the Helsinki Conference (Art. 5, para. 1) which was then about to be convoked, to mutual balanced forces reduction in Europe (Art. 5, para. 2) on which negotiations began the following year in Vienna, and to → disarmament in general, "especially with regard to nuclear weapons and other weapons of mass destruction" (Art. 5, para. 3; → Nuclear Warfare and Weapons).

Having secured a "special relationship" with the GDR, the FRG gave up its opposition to a separate membership of the two German States in the → United Nations Specialized Agencies (Exchange of Letters on the → Universal Postal Union and on the → International Telecommunication Union) and in the United Nations itself (Exchange of Letters and Agreed Minute). In a widely circulated Joint Declaration (November 9, 1972), the Four Powers promised their support, confirming, however, that this membership was to "in no way affect" their rights and obligations. Thus, the two German States did not emancipate themselves from the Four-Power Status through the UN Charter. The FRG and the GDR were admitted to the UN on September 18, 1973.

3. Significance

As stated by the Constitutional Court of the FRG, the Treaties are of a "highly political nature". Each one of them brings into a complicated balance, as does a mobile in modern art, a number of agreements and reservations (→ Treaties, Reservations), assertions and denials, references and omissions. The balance reached in each Treaty tries to reconcile the opposing concepts of the two sides. The FRG (though to a lesser degree in the Treaty of Prague) desired pledges of non-use of force, allowing for peaceful changes in the *modus vivendi*, while her Treaty partners negotiated for formal recognition of the *status quo*. The evaluation and interpretation of the Treaties must take these aims into consideration.

Shifting the weight from legal doctrine more to the "actual situation" (see section 2(a) *supra*), the Treaties were bound to influence the views on → Germany's legal status after World War II. The Constitutional Court's judgment on the Basic Treaty has, for the FRG, set certain limits on this evolution.

The Treaties, together with the Quadripartite Agreement on Berlin, became a centerpiece of East-West *détente*. They provided the basis for the establishment of diplomatic relations between the FRG and her eastern neighbour States (*inter se* relations with the GDR) and, later on, with other socialist States, including China. They paved the way for the Helsinki Final Act and for the Vienna Mutual Balanced Forces Reductions (MBFR) negotiations. By removing the greatest obstacles to membership of the two German States in the UN, they brought this organization closer to universality, while at the same time rendering Arts. 53 and 107 of the UN Charter obsolete.

Treaty between the Federal Republic of Germany and the Union of Socialist Soviet Republics, Moscow, August 12, 1970, Bundesgesetzblatt 1972 II, 353–356; ILM, Vol. 9 (1970) 1026–1027.

Treaty concerning the Bases of the Normalization of the Relations between the Federal Republic of Germany and the People's Republic of Poland, Warsaw, December 7, 1970, Bundesgesetzblatt 1972 II, 362–368; ILM, Vol. 10 (1971) 127–129.

Treaty on Questions Relating to Traffic, concluded by the Federal Republic of Germany and the German Democratic Republic, Berlin, May 26, 1972, Bundesgesetzblatt 1972 II, 1449–1458; ILM, Vol. 11 (1972) 726–730.

Treaty concerning the Bases of the Relations between the Federal Republic of Germany and the German

Democratic Republic, Berlin, December 21, 1972, Bundesgesetzblatt 1973 II, 423–429; ILM, Vol. 12 (1973) 16–24.

Treaty concerning the Relations between the Federal Republic of Germany and the Czechoslovak Socialist Republic, Prague, December 11, 1973, Bundesgesetzblatt 1974 II, 990–997; ILM, Vol. 13 (1974) 19–20.

K. DOEHRING, W. KEWENIG and G. RESS, Staats- und völkerrechtliche Aspekte der Deutschland- und Ostpolitik (1971).
H. STEINBERGER, Völkerrechtliche Aspekte des deutsch-sowjetischen Vertragswerks vom 12. August 1970, ZaöRV, Vol. 31 (1971) 63–161.
O. KIMMINICH, Der Moskauer Vertrag (1972).
K. SKUBISZEWSKI, Poland's Western Frontier and the 1970 Treaties, AJIL, Vol. 67 (1973) 23–43.
J.A. FROWEIN, Legal Problems of the German Ostpolitik, ICLQ, Vol. 23 (1974) 105–126.
B. ZÜNDORF, Die Ostverträge (1979).

TONO EITEL

GUYANA-VENEZUELA BOUNDARY DISPUTE

1. Historical Background

The territory of Guyana, which was known as British Guiana in the pre-independence period, is bounded in the north by the Atlantic Ocean, in the east by Surinam, in the south and south-west by Brazil and in the west by Venezuela. Venezuela is bordered in the north by the Caribbean Sea and Atlantic Ocean, in the east by the Atlantic Ocean and Guyana, in the south by Brazil and in the west by Colombia. The territory under dispute by Guyana and Venezuela extends southward from the Atlantic coast to Mount Roraima, which is the tri-junction marker between Venezuela, Brazil and Guyana, continues along the continental divide, and is bounded on the east by the Essequibo River (which has its source in the highlands on the border between Guyana and Brazil). This area is crisscrossed by numerous streams, and consists of three distinct geographical regions: the coastal plain, scrub plain and forest lands. The coastal plain, varying in width from ten to fifty miles, is the most densely populated and intensely cultivated region. The scrub plain, with infertile and sandy soil, is believed to be rich in mineral resources including bauxite, gold, diamonds, manganese, iron, copper, oil and possibly uranium. The forest lands contain a variety of marketable timber. The size of the area in dispute is approximately 50 000 square miles.

The Venezuelan claim to the territory dates back to the Spanish discovery and occupation of the northeast coast of South America, which was recognized by other European Powers until the mid-17th century (→ Territory, Discovery; → Territory, Acquisition). It was only in 1648, pursuant to the Treaty of Münster, that the Spanish Government recognized the Dutch → colonies on the South American coast. The Treaty did not provide for delimitation of the → boundary, but each party agreed not to encroach upon the other's territory. Dutch traders, especially after the establishment of the Dutch West India Company, expanded their settlements and penetrated westward, occasionally even to the → Orinoco River. Their attempts to settle the area west of the Essequibo were repelled by the Spanish.

In the early 19th century, after her declaration of independence, Venezuela succeeded to the territory held by Spain (→ Boundaries in Latin America; uti possidetis Doctrine). In the aftermath of the Napoleonic wars, pursuant to the Peace Agreement (→ Vienna Congress (1815)). Great Britain occupied the Dutch territory ceded to her in South America. Again there was no specific provision defining the boundary.

2. Territorial Claim

Venezuela and Britain inherited the boundary problem which had been the bone of contention between the Spaniards and the Dutch. Venezuela maintained that the Essequibo was the western boundary of Guyana, but the English consistently pushed farther westward and established new settlements. In November 1840, Britain appointed Sir Robert Herman Schomburgk to survey and mark out the boundaries of British Guiana. After surveying the disputed area, Schomburgk mapped and in part set up boundary marks and posts in the jungle reaching as far as Point Barima at the mouth of Orinoco (→ Maps). When Venezuela protested (→ Protest) and insisted on the removal of those boundary marks, Lord Aberdeen, on January 31, 1842, publicly disavowed any border markings, posts, and so forth. While ordering

their removal, however, he stated that Great Britain was not abandoning any of its rights over the territory. Subsequently, unsuccessful attempts were made by Alejo Fortique, Venezuelan Minister to Great Britain, and Lord Aberdeen to negotiate a boundary treaty.

Since neither party was prepared to make further concessions, both the British and Venezuelan governments exchanged → notes in 1850 agreeing not to occupy the disputed area. The next 30 years were uneventful ones. In the 1880s, with the discovery of gold in the area west of Essequibo, both Venezuela and Britain asserted their claims and encouraged settlers to gain physical control over the area. The charges and counter-charges made by the respective governments resulted in the rupture of diplomatic relations between the two countries in 1887 (→ Diplomatic Relations, Establishment and Severance). Subsequently, as a result of United States mediation, the British and Venezuelan governments signed a Treaty of Arbitration known as the Washington Treaty of Arbitration on February 1, 1897.

3. Arbitration

The Washington Treaty provided for the appointment of an Arbitration Tribunal consisting of two Englishmen, two Americans and a Russian, F. de Martens, who served as president (→ Arbitration; → Arbitration and Conciliation Treaties). The Tribunal was asked to investigate and ascertain the extent of the territories belonging to each party and to determine the boundary line. On October 3, 1899, the Tribunal delivered its unanimous award (Martens, NRG2, Vol. 29, p. 582). In brief, the award granted Britain almost 90 per cent of the territory in dispute, but the mouth of the Orinoco River and a region of about 5000 square miles on the southeastern headwaters of the Orinoco went to Venezuela.

The first dissatisfied reaction to the award was expressed by the Government of Venezuela before the → Permanent Court of Arbitration at The Hague in 1903 during the European Claims controversy (→ Preferential Claims against Venezuela Arbitration). For the next three decades, there was no serious discussion on the matter. The real post-mortem examination, however, began in the 1940s. While signing the → United Nations Charter in 1945, the Venezuelan Ambassador denounced the 1899 award and demanded a friendly → reparation for the injustice committed by the Tribunal. At the Ninth Inter-American Conference held in Bogotá in 1948, the Venezuelan delegate presented the first official claim to the Guyana-Essequibo area.

In the meantime, Severo Mallet-Prevost was one of the four United States counsels who intervened in the arbitration on behalf of Venezuela. A memorandum which he dictated on February 8, 1944 and which was posthumously published in July 1949 added bitterness to the frontier controversy (for text see Schoenrich, p. 528). According to Venezuela, the memorandum disclosed that the award had been "a political deal in which Venezuela's legitimate rights had been sacrificed" (Explanatory Memorandum submitted by Venezuela, para. 10, see Preiswerk, p. 706), and that the boundary had been drawn arbitrarily without regard either to the rules of the Treaty of Arbitration or to the applicable principles of international law. On the other hand, Guyana replied that it was only on "this flimsiest pretext of an old and disappointed man's posthumous memoirs" that Venezuela had mounted a campaign of international propaganda against her, and dismissed the memorandum as "posthumous libel" (UN address by S.S. Ramphal, UN GA Official Records, 23rd session, 1680th meeting, October 3, 1968).

In the 1960s, Venezuela intensified her efforts, expressing the indignation she felt over the award and bringing the issue before the → United Nations General Assembly at its 17th session in 1962 (UN GA Official Records, 17th session, Annexes, Agenda item 88).

4. The Geneva Agreement of 1966

On February 17, 1966, on the eve of Guyana's independence (→ Decolonization: British Territories), the Government of the United Kingdom and Venezuela, with the concurrence of the Government of British Guiana, concluded the Geneva Agreement (British Command Paper, Cmnd. 2925). Under the Agreement, a → Mixed Commission composed of two representatives each appointed by the Governments of British Guiana and Venezuela, was constituted to resolve the dispute within four years.

In accordance with Art. 5 of the Agreement,

existing claims were frozen. By para. 1 of Art. 5, the Agreement did not affect the right or claims to → territorial sovereignty of any of the parties. Para. 2 provided that (a) no acts taking place while the Agreement was in force could constitute a basis for making a territorial claim except in so far as such acts resulted from an agreement reached by the Commission; (b) no new claim or enlargement of an existing territorial claim could be asserted while the Agreement was in force, nor could any claim whatsoever be asserted otherwise than in the Mixed Commission.

5. The Port-of-Spain Protocol

The Mixed Commission was not a success. However, on June 18, 1970, two days after submission of the Commission's final report, a new agreement was concluded in Port-of-Spain as a result of the → good offices of Prime Minister Eric Williams of Trinidad and Tobago. The Agreement, known as the Port-of-Spain Protocol, was signed by Guyana and Venezuela (British Command Paper, Cmnd. 4446). In the communiqué accompanying the Protocol, the foreign ministers of both countries reiterated "that the peaceful settlement of international disputes is the most constructive means for the maintenance of international harmony and good relations". By Art. V the Protocol was to remain in force for an initial period of twelve years and was renewable by agreement of the parties for successive twelve-year periods. It expired on June 19, 1982. Since Venezuela was not agreeable to the renewal of the Protocol, the dispute has now become a source of tension in the region. On July 1, 1982 the Venezuelan Foreign Ministry proposed that Guyana opt for direct negotiations between the two parties, which is the first means of peaceful settlement of dispute provided for in Art. 33 of the UN Charter. However, Guyana has proposed that the controversy be settled through judicial means in the → International Court of Justice (ICJ).

6. Special Legal Problems

Immediately after the arbitral award in 1899, Venezuela's reaction was one of satisfaction; in recent years, however, she has been questioning the validity of the award and calling for a renegotiation of the boundary. Guyana maintains that the award is a "full, perfect and final settlement".

In the main, the Venezuelan allegations are based on arguments that (a) the tribunal was not impartial; (b) the boundary was traced in an arbitrary way; (c) the award was a political deal; (d) the decision was a compromise of a political nature and not based on the rules of the Treaty of Arbitration or on the application of principles of international law; (e) the award was given without any reasoning in the text. These allegations have been refuted by Guyana time and again. In general, it must be pointed out that the rules regarding the validity of arbitral decisions so far remain unsettled. The ICJ pronounced some guidelines in its 1960 judgment regarding the → Honduras-Nicaragua Boundary Dispute (→ Arbitral Award of 1906 Case (Honduras v. Nicaragua)). For a general discussion, see → Judicial and Arbitral Decisions: Validity and Nullity.

R.H. SCHOMBURGK, A Description of British Guiana, Geographical and Statistical (1840).

G. CLEVELAND, The Venezuelan Boundary Controversy (1913).

O. SCHOENRICH, The Venezuela-British Guiana Boundary Dispute, AJIL, Vol. 43 (1949) 523–530.

C.J. CHILD, The Venezuela-British Guiana Boundary Arbitration of 1899, AJIL, Vol. 44 (1950) 682–693.

W.C. DENNIS, The Venezuela-British Guiana Arbitration of 1899, AJIL, Vol. 44 (1950) 720–727.

G. IRELAND, Boundaries, Possessions and Conflicts in South America (1971).

R. PREISWERK, Documents on International Relations in the Caribbean (1971).

P.K. MENON, Guyana-Venezuela Boundary Dispute, Revue de droit international, de sciences diplomatiques et politiques, Vol. 57 (1979) 166–187.

J.G. WETTER, The International Arbitral Process: Public and Private, Vol. 3 (1979) 3-352.

P.K. MENON

INDUS WATER DISPUTE

Starting in the mid-1800s a vast irrigation system was developed under British rule in India's Indus river basin, which at the time extended through numerous Provinces and princely States. The Indus became an → international river when India and Pakistan emerged as independent States (→ Decolonization: British Territories) after the British Indian Independence Act of 1947. The

dividing line between the new Dominions cut across the Indus basin and gave Pakistan, in the main, highly irrigated land. Out of 13 canal systems in Punjab ten passed to Pakistan, two to India, and the Upper Bari Doab Canal system was divided (→ Canals). The headworks of this canal at Madhopur as well as the headworks of the Depalpur Canal at Ferozepur were situated in India, and the water for all the canals originated in the Himalayas, mostly coming from or crossing India.

In December 1947 the chief engineers of both Punjabs signed "stand-still agreements", which were in force until the end of March 1948. In the absence of a new agreement, East Punjab stopped the water supply to West Punjab for the two canals mentioned. The chief engineers signed new agreements at Simla providing for the delivery of a definite amount of water against payments including interest on capital value and seigniorage charges. Because of these provisions the agreements were not approved by West Punjab.

After Pakistan had accepted the proposal for an inter-Dominion Conference, the water supply was restored provisionally. At the Delhi Conference an agreement was signed on May 4, 1948 (UNTS, Vol. 54, p. 46). Notwithstanding their different legal opinions the parties agreed on a practical solution that East Punjab would be "progressively diminishing its supply to these canals in order to give reasonable time to enable the West Punjab Government to tap alternative sources". West Punjab had to make payments to be specified by the Prime Minister of India.

The continuing dispute is documented by Pakistan's → notes to the → United Nations Secretary-General stating that the registered agreement "if ever binding upon Pakistan, had... ceased to be effective" (UNTS, Vol. 85, p. 356). On the one side East Punjab contended that the proprietory rights in the waters of the rivers were vested wholly in the East Punjab Government and that West Punjab could not claim any share as a right; and India rejected Pakistan's view that the above agreement was ineffective (UNTS, Vol. 128, p. 300). On the other side West Punjab and Pakistan held the position that "the withholding of water essential in an arid region to the survival of millions of its inhabitants is ... an international wrong and a peculiarly compelling use of force contrary to the obligations of membership in the United Nations. Any concession obtained by such means cannot confer upon the offender any enforceable rights." (→ Internationally Wrongful Acts; → Use of Force.)

Following a private proposal of Lilienthal, the former president of the United States Tennessee Valley Authority, the president of the → International Bank for Reconstruction and Development (World Bank), Black, proposed a basis for discussion to the Prime Ministers of both Dominions. Basic principles were to be that (a) the Indus basin water resources were sufficient to the needs of both countries, (b) the basin should be viewed as a unit and developed cooperatively and (c) the problems of development and use should be solved on a functional and not on a political plane. → Negotiations following a World Bank invitation in 1952/53 failed to produce a common position. In view of this deadlook the World Bank put forward a proposal for the consideration of both sides. Since it had proven impossible to reach an agreement by a common effort to develop the basin as a unit, the Bank proposed in 1954 that the waters of the western rivers should be reserved to Pakistan and the waters of the eastern rivers, subject to a relatively short transition period, should be used exclusively by India. The Bank was prepared to provide financial help and technical assistance for the works necessary to supply water from other sources to the canals in Pakistan, which had hitherto depended on waters from the eastern rivers.

After some years of negotiations mediated by the Bank (→ Conciliation and Mediation), the Indus Water Treaty was signed on September 19, 1960 by India, Pakistan and the World Bank (UNTS, Vol. 419, p. 125). According to Art. II all the waters of the eastern rivers, i.e. the Sutlej, the Beas and the Ravi, were to be available for the unrestricted use of India. Pakistan was placed under the obligation, except for domestic and non-consumptive use, to let the waters of the Sutlej main stream and Ravi main stream flow where these rivers briefly enter Pakistan before finally crossing over; Pakistan was not to impede the flow – with some exceptions – of the waters of the tributaries joining the main rivers before the final crossing points. Pakistan could use the waters of the tribu-

taries coming from India and joining the main rivers downstream of the final crossing points, but she had no claim or right to any releases by India. During a transition period of 10-13 years Pakistan was to receive waters from the eastern rivers, the amount being fixed and decreasing according to the terms of the very elaborate Annex H of the treaty.

Art. III provided that India was obliged to let all the waters of the western rivers, i.e. the Indus, the Jhelum and the Chenab, flow unimpeded, permitting only domestic and non-consumptive uses and other uses specified in Annexes C and D. According to Art. IV Pakistan undertook to construct and bring into operation a system of works to accomplish the replacement of water supplies by more effectively using the western rivers and other sources for irrigation. India agreed to make a contribution of £62 million sterling towards the costs of these works, to be paid in ten instalments to the World Bank to the credit of the Indus Basin Development Fund. The Treaty contains further provisions for co-operation, a declaration of intention to prevent undue → water pollution and an article on the settlement of differences and disputes. In Annex A the parties agreed that the inter-Dominion Agreement of 1948 would be without effect after April 1, 1960.

Together with the Indus Water Treaty, the Loan Agreement (Indus Basin Project) between Pakistan and the World Bank (UNTS, Vol. 444, p. 207) and the Indus Basin Development Fund Agreement between the World Bank and Australia, Canada, West Germany, New Zealand, Pakistan, Great Britain and the United States (UNTS, Vol. 444, p. 259) were also signed (→ Loans, International) on the same date. These treaties concern the provision and administration of funds for the works necessary in Pakistan to divert waters from the western rivers to the canals fed formerly by the eastern rivers.

The history and settlement of this dispute were highly important for the development of rules on the international regulation of use of water (→ Water, International Regulation of the Use of). Even though Art. XI of the Indus Water Treaty states expressly that the parties did not intend to establish any → general principle of law or any precedent, the acts of the parties can be seen as State practice governed by legal convictions. East Punjab and India had to abandon their argument that → sovereignty entitles the State upstream to use the water according to its unfettered discretion. One might regret that it was not possible to reach agreement on the treatment of the Indus basin as a unit; the settlement is nevertheless an example for the application of the principle of equitable apportionment (→ Equity in International Law) of the beneficial use of waters of a drainage basin. This principle was formulated as a result of extensive deliberations within the framework of the Committee on the Uses of the Waters of International Rivers of the → International Law Association (see Reports of the ILA conferences 1954–1966); it is also included in the ILA's Helsinki Rules on the Uses of the Waters of International Rivers (ILA, Report of the 52nd Conference (1966) 484). The Indus water dispute was in fact a major impetus to the work of the ILA Committee, and this work had – especially after the Dubrovnik Conference of 1956 – considerable influence on the negotiations.

The Indus water dispute constitutes an example of the → peaceful settlement of disputes. The differences were settled only after the World Bank took the initiative and served for years as a mediator. The Bank offered more than → good offices: it continuously invited the parties to negotiations, took an active part in them and made proposals for settlement. By these endeavours and, last but not least, by offering financial help and technical assistance, it made a solution possible.

The Indus Water Treaty 1960 Between the Government of India, the Government of Pakistan and the International Bank for Reconstruction and Development, UNTS, Vol. 419 (1962) 125–293.

F.J. BERBER, The Indus Water Dispute, Indian Year Book of International Affairs, Vol. 6 (1957) 46–62.

J.G. LAYLIN, Principles of Law Governing the Uses of International Rivers, Contributions from the Indus Basin, ProcASIL (1957) 20–36.

J.G. LAYLIN, Indus River System, Comments, ProcASIL (1960) 144–150.

R.R. BAXTER, The Indus Basin, in: A.H. Garretson, R.D. Hayton and C.J. Olmstead (eds.), The Law of International Drainage Basins (1967) 443–485.

J. DRÄGER, Die Wasserentnahme aus internationalen Binnengewässern (1970).

DIETRICH RAUSCHNING

INTER – AMERICAN DEVELOPMENT BANK *see* Regional Development Banks

INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE OF RIO DE JANEIRO (1947)

1. *Historical Background*

The concept of inter-American solidarity is an essential element of the system of → collective security which is a keystone of the inter-American system. Introduced first at the Panama Congress of 1826, the concept of inter-American solidarity gradually matured as the result of several inter-American conferences which nurtured the concept by enacting resolutions which prohibited and condemned → conquest and → aggression as → crimes against humanity.

With the outbreak of World War II, the concept of inter-American solidarity acquired the utmost importance. In 1940, the Second Meeting of Consultation of Ministers of Foreign Affairs convening in Havana enacted Resolution XV, entitled "Reciprocal Assistance and Cooperation for the Defense of the Nations of the Americas", which represented a significant step towards inter-American solidarity. Five years later, in Mexico City, the Inter-American Conference on Problems of War and Peace adopted the Act of Chapultepec which approved for the first time the "use of armed force to prevent or repel aggression". The Act of Chapultepec laid the groundwork for the adoption of the Inter-American Treaty of Reciprocal Assistance (The Rio Treaty), which was approved at a special conference held in Brazil between August 15 and September 2, 1947 (UNTS, Vol. 21, p. 77).

Other developments during the first half of the 20th century promoted the concept of inter-American solidarity: These included the 1928 Havana Conference which adopted a resolution on aggression; the 1936 Inter-American Conference for the Maintenance of Peace held in Buenos Aires, which approved principles of solidarity and a consultation procedure; the 1938 Lima Conference; and the 1942 Third Meeting of Consultation, held in Rio de Janeiro.

2. *The Rio Treaty*

The Rio Treaty contains a → preamble and 26 articles. Although it is a treaty of indefinite duration, any contracting party may denounce it by notifying the General Secretariat of the → Organization of American States (OAS) in writing. A State that denounces the Treaty ceases to be bound by it upon the expiration of a two year term which runs from the day the OAS receives such → notification (→ Treaties, Termination). In the event of a denouncement, the non-denouncing contracting parties remain bound by the Treaty's terms.

The Treaty authorizes the Organ of Consultation to determine those measures of a collective character deemed advisable to meet aggression or the threat of aggression. The Organ of Consultation is a meeting of ministers of foreign affairs, or their special delegates, of those OAS member States that have ratified the Treaty. To ensure timely action, the Treaty empowers the Permanent Council of the OAS to act provisionally as the Organ of Consultation until convocation of the meeting of ministers of foreign affairs.

Art. 8 of the Treaty establishes the measures that the Organ of Consultation may apply. These are: recall of chiefs of diplomatic missions; breaking of diplomatic relations; breaking of consular relations; partial or complete interruption of economic relations or of rail, sea, air, postal, telephonic, and radiotelephonic or radiotelegraphic communications; and use of armed force (→ Diplomatic Relations, Establishment and Severance; → Consular Relations; → Sanctions; → Use of Force).

Under Art. 20 of the Treaty, all decisions to apply any of the Art. 8 measures (approved by a two-thirds vote of the Organ of Consultation, as required under Art. 17), except for decisions to apply armed force, are binding upon all the contracting parties. No State may be required to use armed force without its consent.

Art. 3(1) provides that an armed attack by any State against an American State shall be considered as an attack against all the American States and obligates each of the contracting parties to assist in meeting such an attack "in the exercise of the inherent right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations" (→ Self-Defence; → Collective Self-Defence; → Regional Arrangements and the UN Charter). Under Art. 3(2), each contracting party may individually determine the measure it may take in fulfilment of its obligation under Art. 3(2) in response to a

request by a State or States directly attacked until the Organ of Consultation reaches a decision. The Organ of Consultation must convene without delay to review those measures and to determine which collective measures, if any, are appropriate. The provisions of Art. 3(1) and 3(2) apply to any armed attack within the territory of an American State or the hemispheric defence region described in Art. 4. That region embraces both North and South America, including Canada, Alaska, Greenland, and regions of the → Arctic and → Antarctica.

Art. 6 applies to any armed attack outside the region delineated in Art. 4. It also applies if the territorial integrity, inviolability, → sovereignty, or political independence of any American State is affected by "an aggression which is not an armed attack or by an extracontinental or intra-continental conflict, or by any other fact or situation that might endanger the peace of America" (→ Territorial Integrity and Political Independence; → Armed Conflict). Art. 6 requires the Organ of Consultation to meet at once to agree on the measures necessary to assist victims of aggression, or if appropriate, measures for the common defence and maintenance of peace and security of the continent.

Where there is a conflict between two or more American States, Art. 7 requires the Organ of Consultation to ask the adversaries, without prejudice to the right of self-defence consistent with Art. 51 of the → United Nations Charter, to suspend hostilities and restore the *status quo ante bellum*. It further requires the Organ of Consultation to take all the measures necessary for the restoration and maintenance of inter-American peace and security and for solution of the conflict through peaceful means (→ Peaceful Settlement of Disputes).

Art. 9 defines as aggression all acts the Organ of Consultation may characterize as such, including but not limited to:

"a. Unprovoked armed attack by a State against the territory, the people, or the land, sea or air forces of another State:

b. Invasion, by the armed forces of a State, of the territory of an American State, through the trespassing of boundaries demarcated in accordance with a treaty, judicial decision, or arbitral award, or, in the absence of frontiers thus demarcated, invasion affecting a region which is under the effective jurisdiction of another State" (→ Boundary Disputes in Latin America; → Boundaries in Latin America: uti possidetis Doctrine).

To date, the American States that have ratified the Rio Treaty are: Argentina, Bahamas, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, United States, Uruguay and Venezuela. The Treaty entered into force on December 3, 1948 when Costa Rica deposited the 14th instrument of ratification (→ Treaties, Conclusion and Entry into Force).

3. *The Protocol of Amendment*

In July 1975, a conference of plenipotentiaries convoked by the General Assembly of the OAS adopted the Protocol of Amendment to the Rio Treaty in San José, Costa Rica (ILM, Vol. 14 (1975) p. 1117; → Congresses and Conferences, International). The preamble of the Protocol reaffirms the desire of the contracting parties "to remain united in an Inter-American System consistent with the purposes and principles of the United Nations" and reiterates their firm commitment to the maintenance of "regional peace and security through the prevention and settlement of conflicts and disputes that could endanger them".

The Protocol makes significant amendments to Arts. 3 and 6 of the Rio Treaty. Art. 3 of the Protocol provides that the use of force by one State against an American State cannot be considered an armed attack against all the contracting parties unless the American State attacked is a "State party" (i.e. contracting party). The basis of solidarity in the amended Treaty, therefore, is → reciprocity of obligations.

Art. 5 of the Protocol, which is to be substituted for Art. 6 of the Rio Treaty, contains two paragraphs. The first empowers the Organ of Consultation to agree to take measures to assist a State party if the latter is affected by an act of aggression as defined in Art. 9 of the Protocol. In contrast, the second paragraph limits the role of the Organ of Consultation to one of agreeing on

what steps and measures should be taken for the common defence and maintenance of hemispheric peace and security if an American State which is not a State party falls victim to such acts of aggression. Unlike Art. 6 of the Rio Treaty, Art. 5 of the Protocol omits the expression "aggression which is not an armed attack".

The Protocol substantially amends Arts. 4 and 9 of the Rio Treaty. The definition of aggression in Art. 9 of the Protocol is the definition approved by the → United Nations General Assembly in Resolution 3314 (XXIX). The hemispheric defence region as described in Art. 4 of the Protocol has been narrowed and excludes the territory of Greenland.

Another significant modification introduced by the Protocol is the mention in its Art. 20 of "decisions and recommendations" which may be adopted by the Organ of Consultation. Art. 17 of the Rio Treaty, which Art. 20 replaces, speaks only of "decisions", that have to be taken by a vote of two-thirds of the States parties. No mention is made in Art. 17 of recommendations. Under Art. 20 of the Protocol, a vote of two-thirds of the States parties is also necessary for the adoption of either a recommendation or a decision. Art. 23 of the Protocol, however, underscores a fundamental difference between a recommendation and a decision. A decision to apply a measure under Art. 8 of the Rio Treaty is binding on the States parties; a recommendation to apply such a measure is not. Another distinction between Art. 20 of the Protocol and Art. 17 of the Rio Treaty is that Art. 20 requires an absolute majority vote of the States parties for the rescission of a measure imposed under Art. 8. In contrast, Art. 17 requires a two-thirds majority for rescission of such a measure.

The Protocol remains open for signature by the contracting parties to the Rio Treaty and by member States of the OAS that are not parties to that treaty. An OAS member State which signs and ratifies the Protocol but is not a party to the Rio Treaty is deemed to have signed and ratified the non-amended sections of the Rio Treaty. The Protocol will not enter into force among the ratifying States until two-thirds of the signatory States have deposited their instruments of ratification. To date, the Protocol has been ratified by: Brazil, Costa Rica, Dominican Republic, Guatemala, Haiti, Mexico and the United States.

4. *Application of the Treaty*

(*a*) *Request of Costa Rica, 1948*

On December 11, 1948, Costa Rica requested convocation of the Organ of Consultation under the Rio Treaty to take action with regard to the invasion of her territory by armed forces based in Nicaragua. In her request, Costa Rica claimed that the invasion constituted an armed conflict which violated her territorial integrity and threatened her sovereignty and political independence. She also accused Nicaragua of instigating a conspiracy to overthrow the Costa Rican Government by armed force. Nicaragua denied Costa Rica's allegations and assured that she had faithfully satisfied her international obligations regarding the situation in Costa Rica.

Upon receipt of the request, the Permanent Council of the OAS resolved: to call a meeting of ministers of foreign affairs of the contracting parties; to act as a provisional Organ of Consultation pursuant to its prerogatives under Art. 12 of the Rio Treaty; and to appoint a committee to investigate and report on the facts contained in Costa Rica's allegations (→ Fact-Finding and Inquiry). In a series of subsequent meetings, the Permanent Council, acting as the provisional Organ of Consultation, received information and took other actions intended to reconcile the parties. At the Permanent Council's urging, the parties finally entered into a Pact of Amity by which they agreed to abstain from any hostile acts towards each other and to avoid repetition of "events of this nature". The parties further agreed under the Pact of Amity to observe the principles and rules of → non-intervention and solidarity contained in the various inter-American instruments to which they had subscribed, to recognize their obligations under the Rio Treaty and OAS Charter, and to acknowledge and apply the American Treaty on Pacific Settlement (→ Bogotá Pact (1948)) for the resolution of their disputes.

(*b*) *Request of Honduras, 1957*

Invocation of the Rio Treaty in 1957 facilitated the resolution of armed conflict involving a border dispute between Honduras and Nicaragua in that

year. Through the Rio Treaty's mechanisms, both Governments were able to agree on a cease-fire and the groundwork for a final settlement of their differences. In this instance, the Permanent Council of the OAS again served as the provisional Organ of Consultation. Pursuant to the Permanent Council's recommendations the Parties agreed to submit their boundary dispute to the → International Court of Justice in accordance with Art. XXXI of the Bogotá Pact. The Court pronounced its judgment on November 18, 1960 (→ Arbitral Award of 1906 Case (Honduras v. Nicaragua)).

(c) *Request of Venezuela, 1960*

Venezuela requested convocation of the Organ of Consultation under Art. 6 of the Rio Treaty in 1960 to take action with regard to acts of aggression and → intervention committed by the Dominican Republic against Venezuela, including an attempt upon the life of Venezuela's president. The Dominican Republic rejected Venezuela's charges.

In response to Venezuela's request, the Permanent Council of the OAS immediately convened and resolved to convoke the Organ of Consultation. The Meeting of Consultation of Foreign Ministers held in San José, Costa Rica, in August, 1960, condemned the Dominican Republic for acts of aggression and intervention against Venezuela. Moreover, pursuant to Arts. 6 and 8 of the Rio Treaty, it resolved to apply the following measures to the Dominican Republic: the breaking of diplomatic relations and the partial interruption of economic relations with the contracting parties. However, in the same resolution, the Meeting also authorized the Permanent Council of the OAS to discontinue those measures "at such time as the Government of the Dominican Republic should cease to constitute a danger to the peace and security of the hemisphere". On January 4, 1962 the Council decided to lift the measures adopted in the Meeting of Consultation.

(d) *Request of Panama, 1964*

In 1964, Panama requested a meeting of the Organ of Consultation; pursuant to Arts. 6 and 9 of the Rio Treaty, to consider acts of aggression allegedly perpetrated by the United States on Panama and to determine the appropriate measures to be taken. The United States, in a statement before the Permanent Council of the OAS, denied Panama's charges, but acknowledged the existence of problems with Panama and the need to resolve them.

The Permanent Council, acting as the provisional Organ of Consultation, urged both governments to abstain from acts that might disturb the peace in Panama and proposed procedures for a peaceful and equitable resolution of the conflict. Due to these efforts, Panama and the United States issued a joint declaration in which they agreed to re-establish diplomatic relations and to initiate procedures for reaching a fair and just settlement of their differences.

(e) *Conflict between El Salvador and Honduras, 1969*

In 1969, both the Permanent Council of the OAS, acting provisionally as the Organ of Consultation, and, subsequently, the Meeting of Consultation of Foreign Ministers, facilitated a cease-fire in the armed conflict between Honduras and El Salvador. The mechanisms implemented by the Meeting of Consultation enabled both governments to resolve their dispute without resort to further hostilities, and following protracted negotiations, they signed the General Treaty of Peace on October 30, 1980.

(f) *Request of Argentina, 1982*

The Meeting of Consultation of Foreign Ministers was convened on April 20, 1982, at the request of Argentina, to take appropriate measures as the Organ of Consultation in relation to the armed conflict between Argentina and the United Kingdom in the South Atlantic (→ Falkland Islands). The Organ of Consultation approved two resolutions. In the first resolution it resolved, *inter alia*, to urge the United Kingdom to desist from further bellicose action; to request Argentina to abstain from actions that might aggravate the situation; to urge the conflicting parties to seek a peaceful settlement of their dispute; and to support all regional and United Nations initiatives agreeable to the conflicting parties to bring about a peaceful resolution of the dispute. The second resolved, *inter alia*, to condemn the armed attack by the United Kingdom; to exhort the United States both to lift the sanctions it had imposed upon Argentina and to ab-

stain from providing assistance to the United Kingdom; to urge the members of the → European Economic Community and other States to lift immediately the coercive economic or political measures taken against Argentina; and to request the States parties of the Rio Treaty to give Argentina the support that each judged appropriate to assist her in this serious situation.

5. Evaluation

The Rio Treaty has been applied to a broad range of international incidents, which, in the estimation of the contracting parties, have posed a danger to the peace and security of the American hemisphere. A general appraisal of the role of the OAS in the application of the Treaty demonstrates that this regional organization has been successful with respect to the peaceful settlement of conflicts or controversies arising among some of its member States. Thus, to a large extent it has fulfilled its task of maintaining the peace and security in the continent.

Pan-American Union, Inter-American Conference for the Maintenance of Continental Peace and Security, Rio de Janeiro, August 15 – September 2, 1947, Report by the Director General on the Results of the Conference (1949).

Inter-American Treaty of Reciprocal Assistance, Rio de Janeiro, September 2, 1947, UNTS, Vol. 21 (1948) 77–115.

Organization of American States, General Secretariat, Inter-American Treaty of Reciprocal Assistance, Applications, Vol. 1, 1948–1959 (1973), Vol. 2, 1960–1972 (1973), Vol. 3 [I], 1973–1976 (1977), Vol. 3 [II], 1977–1981 (1982).

Conference of Plenipotentiaries for the Amendment of the Inter-American Treaty of Reciprocal Assistance, Documents, July 26, 1975, ILM, Vol. 14 (1975) 1117–1132.

J.J. CAICEDO-CASTILLA, La Conferencia de Petrópolis y el Tratado Inter-Americano de asistencia recíproca firmado en Río de Janeiro en 1947 (1949).

E.V. COROMINAS, Paz y Seguridad Americanas (1950).

E.S. FURNIS, JR., The Inter-American System and Recent Caribbean Disputes, International Organization, Vol. 4 (1950) 585–597.

A. D'ANGELO EVANS, Los Conflictos del Caribe y el Sistema Interamericano de Paz, Revista de Derecho Internacional y Ciencias Diplomáticas, Vol. 6 (1954) 133–149.

R.-J. DUPUY, L'application du Traité d'assistance réciproque de Rio de Janeiro dans l'affaire Costa-Rica-Nicaragua, AFDI, Vol. 1 (1955) 99–110.

M. GARCÍA MORA, The Law of the Inter-American Treaty of Reciprocal Assistance, Fordham Law Review, Vol. 20 (1957) 1–22.

A. GOMEZ ROBLEDO, La Seguridad Colectiva en el Continente Americano (1960).

A. COCCA, Defensa Colectiva en América y Europa, El Tratado de Río y el Pacto del Atlántico (1961).

P.F. SALAS ELGART, El Tratado Interamericano de Asistencia Recíproca de Rio de Janeiro (1947) (1962).

Foreign Policy Association, The Cuba Crisis: A Documentary Record (1963).

E. JIMÉNEZ DE ARÉCHAGA, La coordination des systèmes de l'ONU et de l'OEA pour le règlement pacifique des différends et de la sécurité collective, RdC, Vol. 111 (1964 I) 419–526.

C. OLIVIER et al., The Inter-American Security System and the Cuban Crisis, Background Papers and Proceedings of the Third Hammarskjold Forum (1964).

J. SLATER, A Revaluation of Collective Security: The OAS in Action (1965).

B. SEPÚLVEDA, Las Naciones Unidas y el Tratado de Río y la OEA, Foro Internacional, Vol. 7 (1966) 68–98.

G.A. SESSION, The Multilateralization of the Monroe Doctrine: The Rio Treaty of 1947, World Affairs, Vol. 136 (1973/1974) 259–274.

D. FADDA, Le règlement des conflits interaméricains, Thesis, University of Paris (1975).

R.M. CATTANEO, Las Reformas al Tratado Interamericano de Asistencia Recíproca (Protocolo de San José), Revista de Derecho Internacional y Ciencias Diplomáticas, Vols. 25/26 (1977–1978) 71–82.

R. DE LA COLINA, El Protocolo de Reformas al Tratado Interamericano de Asistencia Recíproca: Participación de México (1977).

F. ORREGO VICUÑA, El Sistema Interamericano de Seguridad Colectiva, in: R. Diaz Albónico (ed.), Antecedentes, Balance y Perspectivas del Sistema Interamericano (1977) 108–148.

C.C. WILSON, The Settlement of Conflicts within the Framework of Relations Between Regional Organizations and the United Nations: The Case of Cuba, 1962–1964, NILR, Vol. 22 (1977) 282–318.

T.J. FARER, Limiting Intraregional Violence: The Cost of Regional Peacekeeping, in: T.J. Farer (ed.), The Future of the Inter-American System (1979) 195–203.

H. GROS ESPIELL, La Seguridad Colectiva en América Latina y el Tratado de Tlatelolco, in: Seminario Latinoamericano de Derecho Internacional, Caracas (1979) 221–235.

E. JIMÉNEZ DE ARÉCHAGA, La Seguridad Colectiva en América Latina, in: Primeras Jornadas Latinoamericanas de Derecho Internacional, Caracas, 1978 (1979) 181–203.

G. LEORO FRANCO, La Reforma del Tratado Americano de Soluciones Pacíficas o Pacto de Bogotá, Anuario Jurídico Interamericano (1981) 30–79.

W. GRABENDORFF, Interstate Conflict Behavior and Regional Potential for Conflict in Latin America, Journal of Inter-American Studies and World Affairs, Vol. 24 (1982) 267–294.

R. PERL, The Falkland Islands Dispute in International Law and Politics: A Documentary Sourcebook (1983).

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INTERNATIONAL LAW, AMERICAN

1. Origin

The notion of American international law appeared in the first years after the emancipation of the American countries from their colonizers. Two fundamental ideas inspired the leaders of the liberation campaigns in Latin America, particularly Bolívar and San Martín: the creation of a great confederation or association of nations of the Americas and the establishment of a new set of legal principles which would be in force specifically between these new countries. However, this second idea concerning the drafting of peculiarly American legal principles was conceived in the first years following American emancipation as a consequence of the envisioned union or political association of new nations. This scheme was perhaps too idealistic considering the political structure of these new countries at that time and the internal struggle for power in which some of them were involved. In practice, these early designs came to naught.

In this period, an article providing for the conclusion of an agreement concerning the rules and principles which were to obtain in times of war and peace was inserted in the Treaty of Perpetual Union, League and Confederation signed at the Congress of Panama in 1826. This provision was included on the initiative of the Peruvian delegate, who sponsored the drafting of principles of an "American international law." But the treaty never entered into force (→ Treaties, Conclusion and Entry into Force). In 1831, 1838 and 1840, Mexico took the initiative of convening another American congress which, *inter alia*, was to have concluded a treaty of union (→ Confederations and Other Unions of States) between the Latin American republics and to have drafted a code of international law (→ Codification of International Law). Despite these efforts, the Congress never took place.

A period characterized by European → interventions and the war between Mexico and the United States followed thereafter (→ American-Mexican Boundary Disputes and Cooperation). In 1846–1847, Spain prepared a military expedition to recover Ecuador and other regions of the Pacific, and in 1861 she actually took Santo Domingo. The French intervention in Mexico took place in the following year, and in 1864 Spain occupied Peru's Chinchas Islands. These events drove Latin American republics to conclude various treaties of → alliance amongst themselves, but there was no further initiative taken to elaborate an "American international law".

After this first phase – during which the idea of working out a great confederation of nations governed by legal principles which would become a code was pursued but never attained – another phase began in the last quarter of the 19th century. This was less ambitious, but more practical. The States gave up the idea of a confederation and instead organized congresses in order to codify the aspects of international law in which they had an immediate interest. Thus, the Conference of Lima in 1877 started the codification of → private international law, which was complemented later by the Treaties of Montevideo in 1889.

Together with the conclusion of → treaties, certain usages and practices relating to frequently-occurring matters in the relations between the new nations emerged in the Americas, and often this led to the development of customary law (cf. → Customary International Law; → Regional International Law). Thus, for instance, questions concerning → civil wars, liability for damage inflicted on foreigners (→ Aliens, Property), the delimitation of boundaries (→ Boundary Disputes in Latin America; → Boundaries in Latin America: uti possidetis Doctrine), diplomatic asylum (→ Asylum, Diplomatic), and freedom of river navigation (→ Navigation, Freedom of) presented features peculiar to the Americas.

In 1889, the First Inter-American Conference setting up the International Union of American Republics took place in Washington, D.C. This was the origin of the Pan American Union and of the present → Organization of American States (OAS). As from then, these organizations have undertaken the codification of "American international law".

2. Concept

The notion of "American international law" gave rise to heated polemics at the end of the 19th century and at the beginning of the 20th century, and a great many books and articles were published on this subject. After a serene and objective analysis of this controversy – doubtless made

easier by the passing of several decades and by new studies in the philosophy of language – it is possible to observe that, to a great extent, the disagreements were not based on diametrically opposed theses. Each party refuted the arguments of the thesis that it considered contradictory, without first making clear which proposals had really been made by the opponent. Furthermore, the concept of "American international law" was given very different definitions, which introduced an element of great confusion.

Well-known jurists such as Alcorta, Calvo, Alvarez, Sá Vianna and Antokoletz, among others, took part in the controversy. Alvarez, for example, wrote "Le droit international américain" (1910), followed shortly thereafter by a work in refutation of his analysis by Sá Vianna, entitled "De la non-existence d'un droit international américain" (1912). Likewise, almost all of the region's publicists of the period dealt with the subject and took a stance in the controversy.

Although the controversy appears to relate to a single question in the books and articles, in fact four main themes were debated, namely the concept of "American international law", the theoretical possibility of its existence, its actual existence at that time and the relationship between "American international law" and general → international law.

With regard to the definition of this notion, Alvarez listed in his book seven different concepts which jurists have ascribed to "American international law". Nevertheless, it is possible to distinguish two main currents in this regard, respectively characterized by including and excluding extra-normative elements from the concept. On the one hand, some authors have introduced extra-normative elements into the definition of "American international law". Thus, at the First Scientific Panamerican Congress gathered at Santiago de Chile (1908–1909), Alvarez proposed a motion in which he affimed the following propositions: There are problems or situations which occur frequently in Europe but not on the American continents, and at Panamerican Conferences the States of this hemisphere have regulated themes which are of interest to them only, or if these topics were of universal interest, they had not yet been the object of an agreement at the universal level. Alvarez concluded that the complex of these subject-matters constituted what could be called "American international law". According to the conception of this Chilean jurist, "American international law" would then include certain complexes of problems, situations, principles and legal norms, that is to say, as many factual questions as legal rules.

A definition similar to Alvarez's is given by Yepes. It propounds that "no one doubts... now that there are in America problems, doctrines and situations which are specifically American, and that, in order to solve them, one often reverts to principles of American origin". He then went on to say: "The complex of these problems, doctrines and situations constitutes what is generally called 'American international law'" (Yepes, p. 11). In the same connection, it is necessary to mention the definition contained in the draft of the General Declarations that the American Institute of International Law submitted to the Executive Council of the Pan American Union in March 1925. It reads as follows: "By American International Law is understood all of the institutions, principles, rules, doctrines, conventions, customs, and practices which, in the domain of international relations, are proper to the republics of the New World." This definition is highlighted in Alvarez's Dissenting Opinion in the Asylum Case (→ Haya de la Torre Cases, ICJ Reports (1950), p. 290, at p. 293).

By contrast, the second current eradicates all extra-normative elements from the concept of "American international law" and defines it as the complex of specific legal norms which govern the relations between American States. This is the opinion of Fauchille, Strupp, Cereti and Verdross, among others. Other authors, such as Moreno Quintana and Puig, define "American international law" in the same manner, but they use the expression "American international system" to qualify all those extra-normative elements which the first current includes in its definition.

3. The American Contribution to International Law

One of the themes debated at the end of the 19th and at the beginning of the 20th centuries was whether or not international law could have norms regulating the American sphere only. This question is entirely solved nowadays, as practice shows that there can be truly regional legal

norms–created both by treaty and by custom–within the framework of international law.

Another question which was debated at the time was whether or not there existed a complex of legal norms specifically governing inter-American relations. In case specifically American legal norms did exist, the subsidiary question of whether or not their scope and importance were sufficient to justify the denomination of "American international law" also arose. In order to decide whether there are specifically American legal norms, it is necessary to make a comparative study between general international law and the law in force in the Americas. If a difference appears between both, the answer to the question posed will be in the affirmative. It is necessary to point out here that the conclusion of this comparative study can vary according to the moment when it is made in history. No doubt the comparisons between general international law and the law in force in the Americas made in 1910 by Alvarez, or the comparisons which could have been made in 1939, would be very different from those that can be made in the 1980s. With regard to the question of whether a certain norm complex has sufficient scope and importance to justify the denomination of "American international law", or to be simply "norms peculiar to America", or to fall within any other similar designation, is a terminological matter and remains something entrusted to the judgment and prudence of each scholar.

Two centuries have elapsed since the independence of the United States, and more than 170 years since the beginning of the emancipation of Latin America. During this period, legal norms governing in the first place the relations between all or some of the new countries were created in the American hemisphere, and they became afterwards part of general international law. Furthermore, although their American origin was not as such recognized, some norms were initially determined and codified in this region. Of course, in this case one cannot speak of peculiar American legal norms, but it remains true nevertheless that they were also an American contribution to the law of nations.

One of the first American contributions to international law relates to the confiscation and the seizure of private property in → war (→ War, Laws of; → Sequestration). In 1835, that is to say 21 years before the Paris Declaration (1856) (→ Prize Law), Peru and Chile had already concluded an agreement stipulating that a neutral flag covers enemy trade and that an enemy flag does not impart its character to trade (→ Neutral Trading), except in the case of war → contraband (→ Neutrality, Concept and General Rules). Furthermore, from 1828 to 1856, American States concluded dozens of treaties regulating private property, and from 1836 onwards, they began to include such principles in their treaties with European States. Therefore, the rules of the Paris Declaration constituted for America the recognition of rules which they had been practising for decades (→ War, Laws of, History).

Among the main examples of American contributions to international law, the rule of non-intervention should also be mentioned (→ Non-Intervention, Principle of). The American continent was subjected to numerous interventions by European countries, sometimes for serious reasons but often for causes which were hardly justifiable. When this danger passed, the United States began her interventions in Central America and in the northern part of South America. The attitudes of the intervening powers contributed to provoke unilateral acts and → declarations from many Latin American States, doctrines took shape (see → Saavedra Lamas Treaty (1933)), and eventually the rule of non-intervention was enshrined in Art. 8 of the Convention on Rights and Duties of States (→ States, Fundamental Rights and Duties), approved at the Seventh American International Conference (Montevideo, 1933). Afterwards, an Additional Protocol on non-intervention was signed in Buenos Aires (1936). This principle was enshrined in Art. 15 (now Art. 18) of the Charter of the OAS (1948). These norms were included in the → United Nations Charter (Art. 2(7)) in particular, as well as in Resolutions 375(IV) of November 21, 1947 (Draft Declaration on Rights and Duties of States), 2131(XX) of December 21, 1965 (Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty) and 2625(XXV) of October 24, 1970 (→ Friendly Relations Resolution) of the → United Nations General Assembly.

The prohibition of the compulsory recovery of public debts constitutes a special case regarding non-intervention (→ State Debts). It has its origin

in the Drago doctrine, expounded due to the European intervention in Venezuela (1902) (→ Preferential Claims against Venezuela Arbitration; → Blockade, Pacific). The Third American International Conference (Rio de Janeiro, 1906) decided to recommend that governments submit the doctrine to the consideration of the Second Hague Conference (1907), which approved it with an amendment proposed by Porter (→ Drago-Porter Convention (1907); → Hague Peace Conferences of 1899 and 1907). The Fourth American International Conference (1910) approved a convention establishing → arbitration in the case of financial claims, and the Conference for the Maintenance, Preservation and Reestablishment of Peace (Buenos Aires, 1936) declared the compulsory recovery of financial obligations to be illicit.

There is another theme in which the American contribution is important: → civil war and, in particular, belligerency. The institution of the → recognition of belligerency is a practice which started in the first decades of the 19th century and which developed mainly in the Americas, where revolutions and seditious movements were not scarce. Although there were a few cases of such recognition in Europe (for instance in Greece, 1821), it is beyond doubt that the customary rules in force nowadays fundamentally owe their existence to American practice. These norms were adequately embodied in the text approved by the → Institut de droit international at its Neuchâtel session (1900).

Norms relating to reservations to multilateral treaties are another American contribution to the law of nations (→ Treaties, Reservations). The advisory opinion of the → International Court of Justice of May 28, 1951 on Reservations to the Convention on Genocide (→ Genocide Convention (Advisory Opinion)) and Arts. 19 to 23 of the → Vienna Convention on the Law of Treaties (1969) recognize that reservations originated in inter-American norms and practices. Art. 6 of the Havana Convention on Treaties (1928), Resolution XXIX of the Eighth International American Conference (1938), Resolution X of the Sixth Session of the Inter-American Council of Jurists and the practice observed by the Pan American Union and its successor, the OAS, should also be noted in the matter of reservations.

A further example of an American contribution to international law lies in the American initiative in reinforcing the emerging rules prohibiting the → use of force in settling disputes made in the signing of the Saavedra Lamas Treaty (1933).

Although arbitration as a system of settlement of disputes has always been known, its establishment as a compulsory form was due to an American initiative. From 1823 onwards, American States concluded hundreds of arbitration treaties (→ Arbitration and Conciliation Treaties), and this practice was consistently extended to their relations with third States. Well before the First Hague Peace Conference (1899), compulsory arbitration was common practice in America. Furthermore, all disputes were subject to arbitration, with the sole exception of matters governed by a State's constitution. During the same period in Europe, all questions concerning the honour, dignity and independence of States were excluded from arbitration – exceptions which allowed ample room for exclusion and sometimes capricious interpretations.

There are other subjects in which the American contribution appeared not in the creation of the norms but rather in their codification or systematization. Thus, though proposals concerning the codification of diplomatic law (→ Diplomacy) made by the → League of Nations failed through non-acceptance by the League Assembly in 1927, the following year saw the approval of a treaty on diplomatic agents by the Sixth International American Conference, which was effectively tantamount to a codification and which was used in the preparation of the → Vienna Convention on Diplomatic Relations (1961) (→ Diplomatic Agents and Missions). The same can be said about many articles of the Havana Convention on Treaties (1928) with respect to the Vienna Convention (1969) on the same subject.

An analysis of the law of the sea also reveals the American contribution. The doctrine of historical → bays (→ Historic Rights), recognized by the Geneva Convention on the Territorial Sea (1958), finds its first precedents in Drago's vote in the → North Atlantic Coast Fisheries Arbitration (1910), and in the award made by the → Central American Court of Justice concerning the Gulf of Fonseca (1917) (→ Fonseca, Gulf of; → Territorial Waters). The régime of the → continental shelf was also preceded by the Truman Pro-

clamation (September 28, 1945) and the proclamations made by Argentina, Panama and Mexico in 1946, Chile and Peru in 1947, Costa Rica and Nicaragua in 1948, Guatemala in 1949, Brazil and San Salvador in 1950 and Honduras in 1951. The establishment of the 200-mile → exclusive economic zone also owes its existence to a great extent to efforts made by American countries, from the Declaration of Santiago (August 18, 1950) to the Third United Nations Conference on the Law of the Sea (→ Law of the Sea, History; → Conferences on the Law of the Sea).

4. Present-Day American International Law

The examples given above show how present-day international law contains norms originating in the Americas or first codified there. At the beginning of the 19th century, a real community of interests prevailed in the Americas. This created a continental solidarity which later gradually disappeared. The situation existing then made possible and indeed facilitated the birth of rules and customs in the continental sphere which were subsequently passed on to general international law.

This state of affairs disappeared owing to various circumstances. In the first place, the Americas are no longer seen as consisting of the Ibero-American republics and the United States only, as new nations with different origins have attained an independent life (→ Decolonization). The majority of these new countries are very different from the other nations from the viewpoints of culture, history, customs and race (for instance Surinam, Santa Lucia, Barbados, Grenada, Guyana, Jamaica, etc.).

Another reason for the disappearance of continental solidarity is that the American republics today have different interests and belong to separate blocs, groups and organizations in the international community. The United States has become a super-power and the basis of the → North Atlantic Treaty Organization. Cuba, meanwhile, maintains close links with the Soviet Union. There are also sub-regional groups having disparate interests, such as the → Latin American Integration Association, the Andean Pact (→ Andean Common Market) and the → La Plata Basin system; some countries belong to the → Organization of Petroleum Exporting Countries, while others play an important part in commodity agreements, such as those governing wheat, coffee and tin (→ Commodities, International Regulation of Production and Trade).

Finally, it must also be said that the codification process of the law of nations has become universal, as shown by the work which has been going on in the → International Law Commission of the → United Nations since 1949.

These facts, among others, explain why the American community lost the impetus it formerly had as regards international legal matters. The creative process that produced American international law seems to have come to an end.

Consequently, it is difficult to find, in the present legal order, rules obtaining in the Americas alone. The clearest examples refer to Latin America only. For instance, diplomatic asylum: the State granting diplomatic asylum unilaterally and definitively qualifies the character of the presumed offence committed for which asylum is granted (→ Asylum, Diplomatic). In the present practice, this principle is fully in force throughout Latin America without any exception whatsoever. The Caracas Convention on Diplomatic Asylum (1954) also recognized this principle. Another rule in force is the one which states the non-existence of territories which are *res nullius* in America (→ Territory, Acquisition). In boundary conflicts between American countries, no State according to local, established custom invokes acquisition of disputed territory by occupation.

R.F. SEIJAS, El derecho internacional Hispano-Americano (1884–85).

R. SAENZ PEÑA, Derecho público americano (1905).

A. ALVAREZ, Le droit international américain (1910).

E. CATELLANI, Il Diritto internazionale americano, Atti del Reale istituto Veneto di scienze, lettere ed arti, Vol. 71 II (1911–12) 1671–1708.

M.A. DE S. SA VIANNA, De la non-existence d'un droit international américain (1912).

F.W. VON RAUCHHAUPT, Völkerrechtliche Eigentümlichkeiten Amerikas, insbesondere Hispano-Amerikas (1924).

L.M. MORENO QUINTANA, El sistema internacional americano (1925–26).

O. VON GOTTBERG, Die Entwicklung eines amerikanischen Völkerrechts (1928).

F.J. URRUTIA, La codification du droit international en Amérique, RdC, Vol. 22 (1928 II) 81–236.

J.C. BAAK, Le droit international américain et le droit international universel, Revue de droit international et de législation comparée, Vol. 59 (1932) 367–397.

J.M. YEPES, Les problèmes fondamentaux du droit des

gens en Amérique, RdC, Vol. 47 (1934 I) 1–143.
C. SAAVEDRA LAMAS, Por la paz de las Américas (1937).
A. ALVAREZ, Le continent américain et la codification du droit international (1938).
C. CERETI, Panamericanesimo e diritto internazionale (1939).
F.V. GARCÍA AMADOR, El desenvolvimiento del derecho internacional público en América, Revista de derecho internacional (La Habana), Vol. 44 (1943) 43–115.
C.A. SANCHEZ I SANCHEZ, Curso de derecho internacional público americano (1943).
M.M.L. SAVELBERG, Le problème du droit international américain (1946).
A. COCK ARANGO, Derecho internacional americano (1948).
I.A. RUEDA VILLARREAL, La no intervención en el derecho internacional americano (1948).
J.C. PUIG, Les principes du droit international américain (1954).
M. MACKENZIE, los ideales de Bolívar en el derecho internacional americano (1955).
R.-J. DUPUY, Le nouveau panaméricanisme (1956).
I. ARANA BUSTILLOS, Estudio sobre los principios del derecho internacional americano (1957).
G. CONNELL-SMITH, The Inter-American System (1966).
E. PERERA MENA, Una estructura jurídica panamericana y su efectividad (1966).
R. GAETE JAIME, América Latina frente al derecho internacional público (1968).
C. SEPÚLVEDA, Las fuentes del derecho internacional americano (1969).
J.J. CAICEDO CASTILLA, El derecho internacional en el sistema interamericano (1970).
C. SEPÚLVEDA, El sistema interamericano, Mudanza y transición (1973).
E. VARGAS CARREÑO, América y el derecho del mar (1973).
M.W. GORDON, International Law in the Western Hemisphere (1977).
A. MARIN IGLESIAS, El sistema interamericano: modalidades del derecho internacional público americano (1977).
J.C. PUIG, Derecho internacional americano, nacionalismo latinoamericano y régimen internacional, Revista de estudios latinoamericanos, Vol. 1 (1978) 83–109.
A. BORRAS RODRIGUEZ, Perspectivas actuales de los llamados "derechos regionales", Anuario hispano-luso-americano de derecho internacional, Vol. 5 (1979) 205–224.

JULIO A. BARBERIS

INTERNATIONAL LAW, ISLAMIC

1. Theories

Like Christendom, Islam developed a public order with a universal outlook for the regulation of its domestic as well as its external relationships. The law governing its external relations, called the *Siyar*, is the international law of Islam. Islam is not merely a religion but also a political community (*umma*) endowed with a system of law designed both to protect the collective interests of its subjects and to regulate their relations with the outside world. The basic assumption underlying Islam's public order is the principle that only the community of believers is the subject of that order, whereas all other communities are its object. The ultimate objective of Islam was to establish peace within the territory brought under the pale of its public order, and to expand that order to include the whole world.

Before Islam could achieve that objective, it had to enter into relations with communities that remained outside its control, in accordance with certain rules and practices. Conformity to Islamic law was required not only of the believers who had become subjects of Islamic → sovereignty, but also of believers whose territory had not yet been brought under Islam.

In Islamic legal theory, the world was divided into two divisions: the *dar al-Islam* (the territory of Islam), comprising Islamic and non-Islamic territories held under Islamic sovereignty, and the rest of the world, called the *dar al-harb*, or the territory of war. The first included the community of believers as well as those who entered into an → alliance with Islam. The inhabitants of those territories were either Muslims, who formed the community of believers (the *umma*), or non-Muslims of the tolerated religious communities collectively called the *Dhimmis* (Christians, Jews and others known to have possessed scriptures), who preferred to adhere to their own religion at the price of paying a poll tax (*jizya*) to the Muslim authorities. The *Dhimmis* enjoyed only partial civil rights; but all enjoyed full status as subjects of the Imam, the head of State, in their claim of internal security and protection from threat or attack. The Imam, in the discharge of his responsibilities in foreign relations, spoke in the name of all subjects, regardless of religious affiliation. The relations between the Islamic and non-Islamic communities within the Islamic State were regulated in accordance with special charters, recognizing the canon law of each religious community bearing on matters of personal status. But any member of these communities, in con-

trast with contemporary practice elsewhere, could join the Islamic community at any moment by merely pronouncing the Islamic formula for the profession of the faith.

The *dar al-harb* was regarded as the object of Islam and it was the duty of the Imam to bring it under Islamic control whenever he had the power to do so by → war or → diplomacy. The territory of war was regarded as in a "state of nature", lacking legal competence to enter into relations with Islam on the basis of equality and → reciprocity because its people failed to conform to Islamic religious and legal standards. However, not all Muslim jurists held that the world was divided into two divisions. A minority devised a third temporary division, called the *dar al-sulh* (territory of peaceful arrangement), granting qualified recognition to non-Islamic communities if they entered into treaty relations with Islam.

In theory, the *dar al-Islam* was in a state of war with the *dar al-harb.* If the *dar al-harb* were reduced by Islam, the public order of Islam would supersede all others, and the non-Muslim communities would either become part of the Islamic community or submit to its sovereignty as *Dhimmis* or as autonomous entities in treaty relationship with it. But the *dar al-harb* was not regarded as a no-man's land, even though it remained outside the pale of Islamic public order. It was entitled to conduct its hostile relations with Islam in accordance with the rules set forth in the *Siyar.* Thus the Muslim was under obligation to respect the rights of non-Muslims, both → combatants and civilians, while fighting was in progress. Moreover, during intervals of peace Islam took cognizance of the existence of other authorities in countries that had not yet been brought under Islamic sovereignty. This cognizance of the existence of an authority in the *dar al-harb* did not constitute → recognition, in the modern sense of the term, because recognition would have implied the acceptance of non-Muslim States as equal to the Islamic State under the Islamic legal system. Islam's cognizance of non-Islamic sovereignties merely meant that authority was, by nature, necessary for the survival of political communities, even those in the *dar al-harb.*

The state of war between the *dar al-Islam* and the *dar al-harb* need not always take the form of actual hostilities. Whenever fighting came to an end, the state of war was reduced to that known in modern international law as a state of → non-recognition. Strictly speaking, it meant that the *dar al-harb* was denied legal status under the Islamic public order so long as it failed to conform to that order or to attain the status of *Dhimmis* for its subjects. This state of non-recognition did not, however, imply that direct → negotiations could not be conducted or that treaties could not be concluded. Perhaps the nearest equivalent relationship known to modern international law is → recognition of insurgency. Such recognition does not preclude later *de facto* or *de jure* recognition, nor does it represent approval of the régime's conduct under insurgency. It merely meant that authority to enforce law and order in a particular territory was deemed necessary in certain circumstances.

The instrument by which the *dar al-harb* is transformed into the *dar al-Islam* is called the *jihad,* popularly known as "holy war". The *jihad* is not only a duty to be fulfilled by each individual, but also a political obligation imposed upon the subjects of the State in order to achieve the establishment of the sovereignty of God over the world and the supremacy of Islam's public order over other legal systems. But the *jihad,* which literally means exertion of one's own power, does not necessarily call for violence or fighting, even though a state of war existed between Islamic and non-Islamic territories, since the ends of the Islamic State could be achieved by peaceful as well as by violent means. By participation in the *jihad,* the believers would be rewarded by a share in the spoils of war or with Paradise if they were killed in the battle (Qur'an, LXC, 10-13).

Because of its ultimate religious purpose, the *jihad* was a form of just war (*bellum justum*); all other forms of war were prohibited.

Only the Imam could declare when the *jihad* should commence or stop. Not all the believers were required to fulfil the duty of fighting, but only those who could take to the field.

2. *Conditions of Peace*

In Islamic legal theory the state of war between the *dar al-Islam* and the *dar al-harb* would come to an end when the latter is absorbed by the former. At that stage there would be permanent peace, which is the ultimate objective of the

Islamic State. Thus in theory, the *jihad* was a temporary legal obligation until the *dar al-harb* disappeared. In practice, however, the two *dars* proved more permanent than the Islamic jurists had envisaged, and Muslims became accustomed more to a dormant *jihad* than to a state of open hostility. Meanwhile, contacts between the Islamic State and non-Islamic States, on the official and unofficial levels, were conducted by peaceful means, although a state of war continued to exist in theory. In early modern times, before peace was accepted by Islam as a permanent condition, the temporary peaceful arrangements between Islamic and non-Islamic countries took the following forms: the granting of an *aman* (a pledge of → safe-conduct); the signing of → peace treaties (not exceeding ten years); diplomacy and the exchange of temporary missions (→ Diplomatic Agents and Missions); and → arbitration.

(*a*) *The* aman (*safe conduct*)

The *aman* is a pledge of security by virtue of which non-Muslims were entitled to enter the *dar al-Islam* for a period not exceeding a year. Such a pledge of security was either granted by the authorities or by an individual Muslim. The first type, called the official *aman*, must be granted by the Imam (or his representative) to a few persons or to the entire population of a territory whose ruler had entered into an agreement with Muslim authorities. The other type, the unofficial *aman*, could be given, upon request, by any adult individual. The procedure was indeed very simple: once the non-Muslim's request to enter the *dar al-Islam* was known, regardless of the language he spoke, a word or a sign of approval would be satisfactory to constitute its grant.

Should the non-Muslim enter the *dar al-Islam* without obtaining an *aman*, or despite being unable to obtain one, he would be liable for punishment. Some jurists argued in favour of giving him a grace period of four months, at the end of which he had either to leave (conducted safely to the frontiers), pay a poll tax and acquire the status of *Dhimmi*, or become a Muslim. Others held that he should be expelled, provided he was given protection until he reached the frontier of *dar al-harb*. If the non-Muslim claimed that he was on a mission, i.e. carrying a message to the Imam, he was permitted to proceed without an *aman*, but if he were found to lack the letters of credence or had no message to deliver, he was liable to be killed. If the non-Muslim entered the *dar al-Islam* by mistake, or as a result of an accident (shipwreck, etc.), whereby he found himself among Muslims without an *aman*, the authorities would act according to the merits of the case – either by setting him free, releasing him on ransom, or ordering his execution.

The *musta'min* (i.e. the person granted an *aman*) had the privilege of bringing his family with him, and could visit any city (except the holy cities of Mecca and Medina) and reside permanently if he became a *Dhimmi* or adopted Islam. While in residence, he had the right to conduct his business (except any purchase of → war materials), to visit places of interest and to perform any other function, provided he observed public order and respected the traditions of Islam. If he turned out to be a spy (→ Espionage), he would be liable to be executed. If the *musta'min* failed to observe the law and committed a crime, his *aman* would remain valid, but he would be liable for punishment in accordance with Islamic law (cf. → Aliens).

The *aman* was normally terminated when its period (not exceeding a year) expired or when the *musta'min* left the *dar al-Islam*. If he wanted to return, he had to obtain another *aman*. The *aman* might be cancelled and its holder expelled, if his conduct proved harmful to Muslim interests. Were the *musta'min* to leave his property in the *dar al-Islam* after he had returned to *dar al-harb*, and he suddenly died, his property could not be recovered by his heirs and would be liable for confiscation by the State. But if he died while he was in the *dar al-Islam*, the *aman* granted to him would still be valid for his property and for his heirs who could therefore take it out of the *dar al-Islam*.

The *aman* served the useful purpose of permitting Muslims and non-Muslims to cross frontiers and travel in each other's countries on the basis of reciprocity. The Imam would not grant an *aman* to non-Muslims whose authorities denied permits to Muslims wishing to enter the *dar al-harb*. The *aman* was like the modern → passport, and without it travel abroad and trade between the *dar al-Islam* and the *dar al-harb* would have been impossible.

Muslims entering the *dar al-harb*, presumably by a permit similar to *aman*, were obliged to

abstain from doing any harm to non-Muslims for so long as they enjoyed the benefits of the permit. Moreover, they were under the obligation to observe their own Islamic law in such matters as prayer, the prohibition of usury and the sale of wine and pork, even if these were permitted under the laws of the host country, because Islamic law is binding on Muslims regardless of the country in which they reside. They were also under the obligation to fulfil all business transactions even after they had returned to the *dar al-Islam*. For instance, if a Muslim were to borrow or steal property, he had to return it before or after he left the *dar al-harb*. If, however, he entered the *dar al-harb* without the equivalent of a permit, he would be under no obligation to observe the laws of that territory. If he was captured, he could expect to be treated as a captive of war. In accordance with Islamic law, he was liable to be executed or set free by ransom, provided that the Muslim authorities were prepared to fulfil an agreement for setting him free.

(*b*) *Treaties*

Second only to the *aman*, the conclusion of a treaty would establish peaceful relations between the *dar al-Islam* and the *dar al-harb*. Because of the state of war between Islam and other States, the duration of the treaty would necessarily have to be limited. On the strength of the precedent set by the Prophet Muhammad in a treaty which he had concluded with the enemy for a period of ten years (text: Khadduri, p. 206), the rule was set that the duration of peace treaties should not exceed ten years. This treaty became a precedent to which the Prophet's successors adhered not only for the duration of peace, but also with regard to form, methods of negotiation, implementation and termination.

The treaty-making power rested in the hands of the Imam, but this power was often delegated to the commanders in the field or to provincial governors. Once the treaty was signed, the Muslim authorities were under obligation to observe its terms strictly. In the Qur'an, Muslims were urged "not to break oaths after making them" (Qur'an XVI, 91), and if the non-Muslims did not break them, to "fulfil their agreement to the end of their terms" (Qur'an IX, 4; III, 75–76). To ensure the execution of a treaty, → hostages were often given or exchanged. The Muslims considered the persons of the hostages as inviolable; they were sent back if war were declared, but if the treaty was violated and war was not declared the hostages were either kept or sent back home (Mawardi, pp. 84–85). Before termination by expiry, the treaty might be declared terminated by mutual consent.

The general characteristics of treaties may be summed up as follows: (a) The treaties were on the whole brief and general, the phraseology being simple and even vague. No attempt was made to provide details concerning the application of their provisions. (b) The preamble of the treaty opened with the name of God and was followed by the names of the parties concerned. It ended with the names of witnesses who testified to the authenticity of the text and attended the signing of the treaty. (c) The duration of the treaty had to be specified; if the period were not specified, it could not last more than ten years. Some jurists held that since the treaty which the Prophet concluded was violated within three or four years, a treaty with an enemy should not last more than three or four years. But most jurists held that the precedent set by the Prophet should be followed.

(*c*) *Diplomacy*

The practice of diplomacy was known from very ancient times. Its adoption by Islam was not necessarily for peaceful purposes; it was often used as an auxiliary to war, but when the *jihad* came to a standstill, it became increasingly important to conduct official relations between Islam and other States. Diplomacy was understood in the broad sense of statecraft and was used to achieve certain specific objectives. The exercise of the right of legation, however, was not intended to secure permanent representation, but to dispatch temporary missions to deliver messages, negotiate treaties and obtain immediate objectives.

The emissaries were normally chosen for their reliability and knowledge of public affairs. To ensure the discharge of their duties with competence, they were also often chosen for their physical attributes and other qualities such as charm, courage and presence of mind. As to foreign emissaries, they were supplied with letters of credence, and could normally enter the *dar al-Islam* without an *aman* and enjoyed diploma-

tic immunity from the moment they declared themselves to be on an official mission (→ Diplomatic Agents and Missions, Privileges and Immunities). Although diplomatic immunity was not always strictly respected, both Muslim and non-Muslim rulers found it mutually advantageous to observe it on the grounds of reciprocity. Upon accomplishing their mission, the emissaries ordinarily requested leave and they were often accorded ceremonies similar to ones arranged at their reception. If the mission, however, proved to be a failure, the emissaries were dismissed with obvious coolness. Should hostilities have broken out when the emissaries were still in the capital of Islam, they were often abused, imprisoned or even killed, although such actions would have been taken at the risk of retaliation.

(*d*) *Arbitration*

In the broad sense of a settlement between two parties without resort to a court, arbitration is an old custom which goes back to antiquity. It was used by individuals as well as by groups and political communities. The main objective was to settle disputes and conflict of interests by peaceful means (→ Peaceful Settlement of Disputes). The institution was more in the nature of → conciliation, as it attempted to bring the disputing parties to an agreement on a settlement through compromise, but not necessarily on the basis of the determination of the specific legal rights of each party. In ancient Arabia, the tribal chiefs acted as arbiters in inter-tribal disputes and persons of good reputation also acted as arbiters between individuals as well as between tribes.

Islam recognized the practice of arbitration and it was used to settle disputes between Muslims and non-Muslims. The Qur'an and the traditions of the Prophet support this practice. The Imam is advised to submit the dispute to an arbiter who must be a man of wisdom and experience, known for his just character and whose reputation is beyond reproach. His award must be accepted by both parties, provided he is chosen freely by them (Shaybani, pp. 363–364; Hamidullah, pp. 141–144). The classic case of arbitration is the dispute between the Caliph Ali (d. 661) and Mu'awiya, the Governor of Syria (d. 681) who, having resorted to war, agreed to settle the dispute by arbitration. Although the arbiters had to deal with a complex political question, the war was brought under control and the dispute was settled by political and not by military action (see Khadduri, pp. 234–238). The complications that followed the arbitration, however, discouraged the Imams from submitting complex political questions to arbitration. As a result, most cases submitted to arbitration were purely technical in nature, such as the payment of blood-money in inter-tribal feuds.

3. *Changes in the Concept of the* Siyar

The classical concepts, especially the doctrine of the *jihad*, underwent important modification to conform to changing circumstances. After the tenth century, Islam could no longer continue to expand, and it often concluded peace with the enemy, not always on its own terms. In such circumstances, jurists began to question the validity of the principle that the *jihad* was a duty permanently imposed upon the community to fight the unbelievers. Ibn Taymiya (d. 1327), a jurist who lived at a time when Islam was threatened by Mongol invasions from the East and was already at war with crusaders in → Palestine, began to re-interpret the *jihad* to mean a defensive rather than an offensive war against unbelievers. According to his interpretation, unbelievers who did not encroach or attack the *dar al-Islam* should not be forced to adopt Islam; "if the unbeliever were to be killed unless he become a Muslim", said Ibn Taymiya, "such an action would constitute the greatest compulsion in religion", and would thus run contrary to the Quranic rule that "no compulsion is prescribed by religion" (Qur'an II, 257). But unbelievers who attacked Islam, he said, were in an entirely different position (Ibn Taymiya, Qa'ida fi Qital al-Kuffar (A Principle Governing the Fighting with the Unbelievers), in: Majmu'at Rasa'il, ed. by al-Fiqqi (1949) pp. 115–146).

Not only did altered circumstances affect the conduct of the Islamic State towards other States, but they also affected its internal structure, which began to change from a unitary to a decentralized one and thereafter to a set of separate political communities. The break-up of the *dar al-Islam* into independent States at the opening of the 16th century marked a new development in Islam. The *dar al-Islam*, based on the concept of a universal State, gradually began to disintegrate after a long

process of decentralization, just as Western Christendom changed from a universal into a European nation-State system during the Renaissance and the Reformation.

The transformation of the *dar al-Islam* into a set of sovereign States brought in its train changes in the concept of the *Siyar* in order to conform to the new circumstances. The acceptance of a secular principle that the conduct of the State *vis-à-vis* other States should be separated from religious doctrine was perhaps the most important change. This principle, which relegated religion to the domestic level, was the product of internal doctrinal controversy between the two major divisions – the Sunnite and Shi'ite sects. At the opening of the 16th century, two rival dynasties – the Ottoman and the Persian – were compelled to separate doctrinal differences from the conduct of the State in external relations because each advocated a different creed and thus found it more convenient to regulate their external relations on a non-sectarian basis. The consequences of this separation between religion and the conduct of the State's foreign relations, led to the recognition of one Muslim State by another, and the acceptance of the principles of equality and reciprocity in their inter-relationships (→ States, Sovereign Equality).

Perhaps an even more important change was the adoption of the principle of peaceful relations, replacing the classical principle of the permanent state of war between Islamic and non-Islamic States. The *jihad* became merely a defensive instrument of the State. Peace treaties extending beyond the ten-year period replaced the state of war as a normal relationship between Islam and other States. The most important treaty that recognized peace as the normal relationship between Islamic and non-Islamic States was the treaty of 1535, concluded between Sultan Sulayman the Magnificent with Francis I, King of France (Text in J.C. Hurewitz (ed.), The Middle East and North Africa in World Politics: A Documentary Record, Vol. 1 (2nd ed. 1975) p. 2). In that treaty, the King of France was on an equal footing with Sultan Sulayman. The treaty also provided for the establishment of "valid and certain peace" (Art. 1) between the Sultan and the King during their lives and granted the subjects of each sovereign reciprocal rights in the country of the other. The French were to enjoy exemption from payment of the poll tax, the right to practice their religion, and the right of trial in their own consulates by their own law (a clause that subsequently became the basis of foreign capitulatory privileges in the Ottoman empire; → Consular Jurisdiction; → Unequal Treaties). In accordance with Art. 15, the treaty was left open to other Christian princes to adhere to, and it thereby set the precedent for other non-Islamic States to establish peaceful relationships on the basis of equality and reciprocity. In the mid-19th century, the Ottoman empire, under the → Paris Peace Treaty of March 30, 1856, was admitted "to participate in the public law and concert of Europe" and in time, though not necessarily by virtue of that treaty, not only the Ottoman empire but most other Muslim States began to participate in European councils and became subject to modern → international law. Finally, the adoption by Muslim States of the principle of → territorial sovereignty led eventually to the transformation of the concept of the *Siyar* from a law regulating the conduct of a universal State to that of a law recognizing territorial segregation. This gave rise to a set of complex problems stemming from the concept of territorial sovereignty, such as frontier and boundary (→ Boundaries) questions, the movement of nationals and others. Since these modern territorial concepts have no basis in the *Siyar*, Muslim jurists began to draw on the experience of Western nations to resolve these problems.

4. *Conclusion*

Twentieth-century Islam has found itself completely reconciled to the Western secular system – a system which itself has undergone radical changes in comparison with its medieval Christian background. Even the jurists who objected to the secularization of Islamic law governing domestic affairs have accepted marked departures from the law and practices governing external relations. Some have called for a complete separation between religion and the State, while others have advocated the establishment of an Islamic subsystem within the community of nations. For the exponents of the principle of separation between

State and religion, see A. Abd al-Raziq, al-Islam wa Usul al-Hukm (1925), and for the exponents of Islam as a sub-system, see A. al-Sanhuri, Le Califat, Son évolution vers une société des nations orientale (1926). However, no one seems today to be calling for the reinstatement of the traditional system of the *Siyar* without modification. This attitude is consistent with the trend towards a world-wide community of nations that has developed over a long period and with the active participation of Muslim States in international organizations – first at the → League of Nations and later at the → United Nations. These developments have committed Islam to the cause of peace and international security through adherence to treaties and the rule of law.

Primary Texts

ABU YUSUF, Kitab al-Kharaj (Cairo ed. of 1936): French translation: Le livre de l'impôt foncier (1921).

ABU YUSUF, Book in Response to the Siyar of Awza'i, ed. by A. al-Afghani (Cairo ed. of 1938) [in Arabic].

IBN TAYMIYA, Majmu'at Rasa'il (Collected Papers), ed. by al-Fiqqi (Cairo ed. of 1949) [in Arabic].

ABU AL-HASAN AL MAWARDI, Kitab al-Ahkam al-Sultaniya, ed. by M. Enger (Bonn ed. of 1853); French translation by E. Fagnan: Les status gouvernementaux, ou règles de droit public et administratif (1915).

SARAKHSI, Commentary on the Great "Siyar" [of Shaybani], 4 vols. (Hyderabad ed. of 1916–1917); new ed. by S. Munajjid (Cairo ed. of 1957) [in Arabic].

SHAFI'I, Collected Works (Cairo ed. of 1904–1908), Vol. 7 [in Arabic].

MUHAMMAD IBN AL-HASAN AL-SHAYBANI, Early Works [in Arabic]; English translation of section on Siyar by M. Khadduri: The Islamic Law of Nations (1966).

MUHAMMAD IBN JARIR AL-TABARI, Kitab al-Jihad wa Kitab al-Jizya wa Ahkam al-Muharibin (Treatise on *Jihad* (War) and Poll-Tax and the Rules concerning Combatants), ed. by J. Schacht (Leiden ed. of 1933).

Secondary Works

J. HATSCHEK, Der Musta'min, Ein Beitrag zum internationalen Privat- und Völkerrecht des islamischen Gesetzes (1919).

N. ARMANAZI, Les principes islamiques et les rapports internationaux en temps de paix et de guerre (1929).

A. RECHID, L'Islam et le droit des gens, RdC, Vol. 60 (1937 II) 371–506.

E. RABBATH, Pour une théorie du droit international musulman, RevEgypt, Vol. 6 (1950) 1–23.

M. KHADDURI, War and Peace in the Law of Islam (2nd ed. 1955, Repr. 1962).

M.T. AL GHUNAIMI, The Muslim Concept of International Law and the Western Approach (1968).

M. HAMIDULLAH, Muslim Conduct of State (5th ed. 1968).

H. KRUSE, Islamische Völkerrechtslehre (2nd ed. 1979).

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INTERNATIONAL LAW, REGIONAL *see* Regional International Law

ISLAND DISPUTES IN THE FAR EAST

1. *Introduction*

Current island disputes in the Far East include those over: Chenpao Island (Damansky in Russian) in the Ussuri River (→ Boundary Disputes between China and USSR); the Islands of Kunashir, Iturup, Urup and Simushir between the Soviet Union and Japan (→ Kurile Islands); the islands in the → Spratly Archipelago; the islands in the → Paracel Archipelago; the Tok Do (Dok Do or Takeshima in Japanese) between Japan and the Republic of → Korea (ROK); and the T'iaoyu tai (Senkaku Gunto in Japanese) between the People's Republic of → China (PRC), the Republic of China (ROC) on → Taiwan, and Japan. The last two disputes are discussed here.

2. *Tok Do*

(*a*) *Description and origin of the dispute*

Tok Do consists of two tiny islets and scattered shore reefs lying in the Sea of Japan about 30 kilometres east of the ROK's Ullung Do and about 50 kilometres northwest of Japanese Dogo. Tok Do was surveyed by French and British ships and was given the name of Liancourt Rocks. In 1905, the Governor of Japan's Shimane Prefecture announced the inclusion of Tok Do within the jurisdiction of the Prefecture and renamed it Takeshima.

Tok Do is not habitable and is therefore of little economic value, except that it may serve as a basis for claiming the surrounding territorial sea for fishing (→ Fishery Zones and Limits). It has been under Allied and, later, ROK occupation since 1946.

(b) Claims of the ROK and Japan

According to the ROK, a Korean discovered Tok Do in the 15th century, at which time it was attached to Ulgin County in the Kang Won Province of Korea. In the 17th century, the Korean Government began to dispatch inspectors to nearby Ullung Do every three years and Koreans had earlier begun to visit or use Tok Do. The Koreans gave the islets their earliest name. Japan asserts that Tok Do was actually used by the Japanese and that even if a Korean did discover the islets, no effective occupation by the Korean Government can be proven (→ Effectiveness). Therefore, in 1905, Japan asserted that she was able to acquire title over the islets in accordance with the principle of occupying *res nullius* (→ Territory, Acquisition).

The ROK considers the putative Japanese incorporation of Tok Do on February 22, 1905 to be invalid on the grounds that no public announcement of incorporation was made by the Japanese Central Government and that no notice was sent to any foreign government concerned. Japan, however, maintains that there is no rule of international law that requires → notification of the acquisition of territory.

Japan also maintains that Korea's silence after the 1905 Japanese incorporation of Tok Do constitutes implied recognition of Japan's → sovereignty over the islets (→ Acquiescence). The ROK, however, points out that at that time Korea was under Japanese domination pursuant to an agreement of August 1904 and therefore was not in a position to protest against the Japanese → annexation. Thereafter, Korea was compelled in November 1905 to accept a → protectorate treaty imposed by Japan under which Japan exercised the → foreign relations power for Korea. In 1910, Japan annexed Korea and thus precluded all possibility of Korean → protest.

The ROK also invokes the principle of contiguity to support its claim because Tok Do is closer to the nearby Korean Ullung Do than it is to the nearest Japanese island of Dogo. Japan, however, considers geographical propinquity as relatively insignificant in international law.

Finally, the ROK points out that memorandum No. 677 of the Supreme Commander for the Allied Powers of January 29, 1946 designated that some outer territories were to be seceded (→ Secession) governmentally and administratively from Japan, and Tok Do was included among them. Later on, in Art. 2(a) of the → Peace Treaty with Japan (1951) Japan, "recognizing the independence of Korea, renounce[d] all right, title and claim to Korea, including the islands of Qualpart [Cheju Do], Port Hamilton [Kumundo] and Dagelet [Ullung Do]". The ROK asserts that these documents confirm the Korean title to Tok Do. Japan, however, maintains that the Peace Treaty does not specifically provide for Japanese renunciation of title over Tok Do. To this, the ROK replies that the enumeration of three major islands in the Peace Treaty was not intended to exclude Tok Do from Korean possession, as many other islands, that are indisputably Korean, are not mentioned by name in the Treaty.

(c) Development of the dispute

After the signing of the Japanese Peace Treaty on September 8, 1951, but before its entry into force on April 28, 1952 (→ Treaties, Conclusion and Entry into Force), the ROK on January 18, 1952 established the Syngman Rhee Line Zone in the sea area around Korea; this Zone includes Tok Do within its limits. On January 28, 1952, Japan protested to the ROK. On December 18, 1965, the Japan-ROK Basic Treaty of June 22, 1965 and related agreements entered into force and → diplomatic relations between the two countries were established. Nevertheless, the Treaty and the agreements did not settle the dispute, and the ROK has since then refused to discuss the dispute with Japan.

3. T'iaoyu tai or Senkaku Gunto

(a) Origin and description of the dispute

The T'iaoyu tai Islets (in Chinese) or Senkaku Gunto (in Japanese) consist of five uninhabited islets and three rocks in the East China Sea northeast of Taiwan. T'iaoyu, the largest of the group, is about 4.319 square kilometres in size, Huangwei about 1.08 square kilometres, and the remaining three islets each measure less than one square kilometre. They are all situated at the edge of the East China Sea → continental shelf as it extends from the Chinese mainland and Taiwan;

they are geographically separated from the continental shelf of Japan and the Ryukyu Islands by the Okinawa Trough, which is more than 1000 metres deep. The islets have had little economic value except as a base for fishing.

In 1968, a study by the United Nations Economic Commission for Asia and the Far East revealed that the → sea-bed of the East China Sea could be one of the richest oil-deposit areas in the world. Thus, ownership of the islets became important because the country that owned them could lay claim to the adjacent territorial sea and continental shelf. This is especially important for Japan because the islets would serve as the only basis for her claim to a share of the East China Sea continental shelf. When it was announced that the United States planned to return the United States administered Ryukyu Islands (cf. → United States: Dependent Territories) to Japan in 1972 and that the Senkaku or T'iaoyu tai, which had been administered as part of the Ryukyus, would also revert to Japan, the dispute between the PRC, the ROC and Japan over the ownership of the islets became apparent.

(b) Claims of Japan and China

The Japanese position is that after 1885 she conducted several surveys of the Senkaku Islands and found no trace of Chinese control. Therefore, she asserts, a valid cabinet decision was made on January 14, 1895 to incorporate these islands into the Japanese territory of Nansei Shoto within the Ryukyu Island group. Consequently, it is argued that these islands were not included in the island territories of Taiwan and the Pescadores, which were ceded to Japan under Art. 2 of the Sino-Japanese Peace Treaty of Shimonoseki, signed on April 17, 1895 which entered into force on May 8, 1895 (→ Peace Treaties).

Japan maintains that the Senkaku Islands were not renounced by Japan under Art. 2 of the Japanese Peace Treaty, but were placed under United States administration together with other islands of Nansei Shoto within the Ryukyu Island group in accordance with Art. 3. Under the United States-Japan Agreement Concerning the Ryukyu Islands (signed on June 17, 1971 and in force on May 15, 1972), administration over the Senkaku Islands was to be returned to Japan.

Finally, Japan points out that since the entry into force of the 1951 Peace Treaty with Japan, both the PRC and the ROC have raised no objection to the fact that the Senkaku Islands were included in the area placed under United States administration in accordance with the provisions of Art. 3 of the Treaty.

Both the PRC and the ROC maintain that the T'iaoyu tai Islets were Chinese territory for centuries. According to both Chinese republics, the T'iaoyu tai Islets were first discovered by the Chinese and were recorded as early as 1532 in the Records of the Imperial Mission to Ryukyu, compiled by the Chinese official Chen Kan. The islets were also included within China's sea defence line in the 1561 Compilation of Maps on Managing the Sea, edited by the Chinese high official Hu Chung-hsien. Moreover, in the 1862 Unified Maps for the Imperial Dynasty, the T'iaoyu tai Islets were marked as Chinese territory. Furthermore, the Chinese point out that a → map in a well-known Japanese publication of 1785, entitled Communication between Three Countries (China, Japan and Korea), clearly marks the T'iaoyu tai Islets as part of China's Fukien Province.

With respect to the Japanese incorporation of the T'iaoyu tai Islets in 1895, the Chinese view is that the Japanese defeat of China in 1895 rendered China unable to resist the Japanese annexation. The 1895 Peace Treaty of Shimonoseki ceded to Japan "Taiwan, together with all islands appertaining to Taiwan", which included the T'iaoyu tai Islets. With the Japanese renunciation of its claim to Taiwan and the appertaining islands after World War II, the Chinese view is that the T'iaoyu tai Islets should revert to China.

(c) Development of the dispute

The dispute first surfaced in mid-1970 between the ROC and Japan. Later that year, when the ROC and Japan were considering shelving the dispute to engage in joint exploration for oil, the PRC entered the dispute. The ROC also pressed the United States not to return the Senkaku Islands to Japan in 1972, but the United States refused to accede to the ROC's wishes. Instead, the United States made it clear that she would remain neutral on the issue and stated that the return to Japan of administrative rights over Senkaku would not affect the sovereign claim of

any States toward the islands. In December 1971, the ROC Executive Yuan decided to include the T'iaoyu tai Islets within the administrative district of Ilan County of Taiwan Province.

In September 1972, Japan severed diplomatic relations with the ROC and established diplomatic relations with the PRC. Since then, the ROC has not been in a legal position to negotiate the dispute with Japan, although she has on several occasions issued statements reaffirming her claim to the islets.

At the time that diplomatic relations were established with Japan, the PRC did not officially raise the Senkaku issue. The PRC took a similar attitude when Japan signed a Treaty of Peace and Friendship with the PRC on August 12, 1978. Recent information indicates that the PRC has been considering shelving the issue in order to engage in joint exploration with Japan of the sea-bed resources around the T'iaoyu tai Islets (→ Sea-Bed and Subsoil).

The Okinawa Special Issue on Senkaku Islands, (in Japanese, except pp. 18–31 in English), Vol. 63 (Dec. 1972). This collection includes many important official documents on the issue.

K. TAIJUDO, The Dispute between Japan and Korea Respecting Sovereignty over Takeshima, Japanese Annual of International Law, Vol. 12 (1968) 1–17.

H. CHIU, A Study of the T'iaoyu tai Islets Problem [in Chinese], Chengchi Law Review, Vol. 6 (1972) 241–270.

K. INOUE, Senkaku Islands, Historical Study of the Diaoyutai Islets [in Japanese] (1972).

C.H. PARK, Oil Under Troubled Waters: The Northeast Asia Sea-Bed Controversy, Harvard ILJ, Vol. 14 (1973) 212–260 at pp. 248–258.

T. CHENG, The Sino-Japanese Dispute Over the Tiao-yu-tai (Senkaku) Islands and the Law of Territorial Acquisition, Virginia Journal of International Law, Vol. 14 (1974) 221–266.

J.A. COHEN and H. CHIU, People's China and International Law: A Documentary Study, Vol. 1 (1974) 346–353.

H. CHIU, Collection of Articles concerning Questions of International Law relating to the Territory of China [in Chinese] (1975) 40–135.

V.H. LI, China and Off-Shore Oil: The Tiao-yu Tai Dispute, Stanford Journal of International Law, Vol. 10 (1975) 143–162.

K.T. CHAO, East China Sea: Boundary Problems Relating to the T'iaoyu Tai Islands, Chinese Yearbook of International Law and Affairs, Vol. 2 (1982).

A.I. DAY (ed.), Border and Territorial Disputes (1982) 258–259, 276–282, 302–319, 329–331.

HUNGDAH CHIU

ISLANDS IN THE CARIBBEAN: STATEHOOD IN ASSOCIATION

A new status, that of Statehood in Association, was introduced for a number of → islands in the Caribbean in 1967 under the provisions of the West Indies Act, 1967 (c.4) enacted by the Parliament of the United Kingdom. The islands concerned were formerly part of the Leeward and Windward Islands groups and later of the Federation of the West Indies which was established in 1958 and dissolved in 1962 (→ Decolonization: British Territories). Statehood in Association (with the United Kingdom) applied under the Act to Antigua; Dominica; Grenada; St. Christopher, Nevis and Anguilla; St. Lucia; and St. Vincent. All of these "associated States" were granted new constitutions by United Kingdom Orders in Council in 1967 except for St. Vincent, which received its constitution in 1969. Each associated State was made responsible for its own internal affairs whilst the United Kingdom Government retained responsibility for defence, external affairs, nationality and citizenship (→ British Commonwealth, Subjects and Nationality Rules). Although associated with the United Kingdom the States concerned were not constitutionally associated with each other except to the extent that they subsequently agreed, under the Act, to share a common superior court structure. The separate legislatures of these associated States were entitled, at any time, by a law made in accordance with Schedule 2 of the Act, to terminate that status. Grenada was the first to do so, ceasing to be an associated State in February 1974, on obtaining full independence. Subsequently, the islands of Antigua, Dominica, St. Lucia and St. Vincent followed a similar course. Negotiations leading to the independence of St. Christopher, Nevis and Anguilla are currently under way.

In spite of the active assistance of the → United Nations, the transition from external control to almost total → self-determination throughout the Commonwealth Caribbean since 1962 has been beset with difficulties that have had external, as well as internal, repercussions. Constitutional problems over accession to, and membership of, the Caribbean Free Trade Association and, later, the Caribbean Economic Community (→ Caribbean Cooperation) have been aggravated by severe economic problems in the region attendant upon

British accession in 1973 to the → European Economic Community and the ending, in 1974, of the Commonwealth Sugar Agreement (→ Commodities, International Regulation of Production and Trade).

Earlier, the breakdown of constitutional rule caused by the unilateral → secession in 1969 of Anguilla from the associated State of St. Christopher, Nevis and Anguilla had caused severe embarrassment. The Anguillans, some 6000 people inhabiting an island of 35 square miles in size, felt that the sole consequence of associated Statehood for them would be to make them, for an indefinite period, into a "colony" of St. Christopher and Nevis. The resolution of the dispute was referred in May 1969 to an independent Commission of Inquiry (→ Fact-Finding and Inquiry), under the late Sir Hugh Wooding, Chief Justice of Trinidad and Tobago, as Chairman. That Commission did not apportion blame but endeavoured to explore the possible options that might exist for a very small territory which wished to maintain a substantial degree of responsibility for the conduct of its domestic affairs. The Commission's Report was rejected by the Anguillan Council but accepted as a basis for a negotiated settlement by the Government of the associated State in St. Christopher.

The ensuing deadlock could only be resolved under the terms of the association agreement between the Government of the United Kingdom and the Government of St. Christopher, Nevis and Anguilla of February 16, 1967. After full discussion between the parties to that agreement, and pursuant to s.7 of the West Indies Act, 1967, the Government of the United Kingdom enacted legislation in the Anguilla Act, 1971. This provided for the appointment of a British Commissioner with wide executive powers, but acting within the constitutional framework of what was still the "unitary" State of St. Christopher, Nevis and Anguilla, who was charged with the administration of Anguilla for an unspecified period of time. The restoration of law and order was entrusted to military and police detachments from the United Kingdom.

In spite of the acute problems – over the evolution of scattered plural societies existing within the framework of one political entity – that were revealed in the Wooding Commission's Report, the compromise settlement, resting effectively upon an intervention by the former colonial power, met with considerable resentment in the region, being regarded as demonstrating "constitutional regression". The arrangements were reviewed in 1974 and 1975; a greater degree of authority was devolved to the elected representatives of Anguilla but formal separation from St. Christopher and Nevis was carefully avoided. In practical terms, therefore, until the current negotiations for independence were opened on behalf of the entire "unitary" State of St. Christopher, Nevis and Anguilla, the island of Anguilla enjoyed a similar degree of separate administration, in a continuing relationship with the United Kingdom, as would have been the case if there had been a formal constitutional separation from St. Christopher and Nevis.

The underlying dangers of political fragmentation in a region notable for fiercely local separatist loyalties remain. The concept of "Statehood in Association", even though conceived as an interim step on the road to full independence, had many limitations. Practical cooperation through the institutions of regional economic integration may help to divert attention away from intra-regional tensions which are in large measure a legacy of the colonial history of the Commonwealth Caribbean.

K.R. SIMMONDS, Anguilla, An Interim Settlement, ICLQ, Vol. 21 (1972) 151–157.

K.R. SIMMONDS, Associated Statehood, A Caribbean Dilemma, in: Miscellanea W.J. Ganshof van der Meersch, Vol. 2 (1972) 435–454.

SIR FRED PHILLIPS, Freedom in the Caribbean: A Study in Constitutional Change (1977) [with bibliography and extensive documentary appendices].

K.R. SIMMONDS

LA PLATA BASIN

1. Background

The La Plata Basin (Cuenca del Plata) embraces the drainage basin of three principal rivers (Paraná, Paraguay and Uruguay) and of the La Plata River which represents the common terminus of the basin. The La Plata Basin takes in

more than 3 million square kilometres in the southern cone of South America. This river basin covers the following percentages of the entire territory of the five basin States: Paraguay (100 per cent). Uruguay (80 per cent), Argentina (32 per cent), Bolivia (19 per cent) and Brazil (17 per cent). The La Plata Basin is governed by a special basin treaty whereas some of the other rivers of the basin are regulated by mere river treaties. The La Plata Basin treaty not only covers the waters (as the river treaties do) but also deals with other issues in the basin (e.g. soil, woods, fauna, flora, etc.).

The La Plata Basin contains vast resources and is of eminent geopolitical and strategic importance. Attempts to reconcile conflicting interests in the Basin go back to an initiative made at the Inter-American Conference of Mexico City in 1898. At the Regional Conference of the La Plata Basin States, held in Montevideo from January 1 to February 6, 1941, a proposal to found a → customs union between the basin States failed to yield any results. The two land-locked States, Paraguay and Bolivia (→ Land-Locked and Geographically Disadvantaged States), desired an amelioration of their infrastructure and transport facilities, while Argentina was interested in an improvement of her inferior position as a downstream State. Brazil continued to rely on her favourable upstream position.

Due to an Argentine initiative in 1966, the foreign ministers of the five Basin States met in Buenos Aires and issued the Joint Declaration of February 27, 1967 in which they proposed "a balanced and harmonious development of the region" as well as the creation of an Inter-Governmental Coordination Committee (Comité Intergubernamental Coordinator: CIC). On May 20, 1968, the Conference of Santa Cruz de la Sierra, Bolivia, adopted the CIC Statute and the Act of Santa Cruz, which set forth the basic features of the La Plata Basin régime. These preparatory works paved the way for the five Basin States to sign the La Plata Basin Treaty (UNTS, Vol. 875, p. 3) on April 23, 1969 in Brasilia. The Treaty entered into force on August 14, 1970; its official languages are Portuguese and Spanish. On March 22, 1973, Argentina and the CIC signed a Headquarters Agreement by which the Inter-Governmental Coordinating Committee was formally installed in Buenos Aires, which had been its informal seat. The institutional structure was finally completed on June 12, 1974 with the foundation of the Development Fund of the La Plata Basin (FONPLATA).

2. *Aims; Structure*

The fundamental objective of the La Plata Basin Treaty is to make joint efforts for the purpose of "promoting the harmonious development and physical integration of the River Plate Basin, and of its areas of influence which are immediate and identifiable" (Art. I). To this end, the parties are to promote the identification of areas of common interest and the undertaking of surveys, programmes and works, as well as the drafting of operating agreements and other legal instruments. Of particular concern are: navigation, utilization of water resources and natural resources, conservation, transport and telecommunications, industrial development, "economic complementation in frontier areas", education, health, and acquisition of knowledge about the Basin (Art. I(a) to (i)). Thus the La Plata Basin Treaty tends to foster regional cooperation within the Basin rather than economic integration (→ Regional Cooperation and Organization: American States; cf. → Latin American Economic Cooperation).

The La Plata Basin Treaty creates as the principal directing organ the Meetings of the Foreign Ministers of the Basin States, which are empowered to draft basic directives of common policy, consult regarding the actions of governments within the scope of the integrated multinational development in the Basin, adopt measures necessary for the Treaty's observance, and assess the results attained (Art. II). Decisions must be unanimous (Art. II(3)). The ministers are to meet at least annually.

Art. III of the Treaty recognizes the Inter-Governmental Coordinating Committee (CIC) as the permanent organ "entrusted with promoting, coordinating and following the progress of the multilateral activities undertaken toward the objective of the integrated development" of the Basin and vests it with international legal personality. Composed of representatives of all the member States, the CIC may only take unanimous decisions (Statute, Art. 11). With a rotating

chairmanship (Art. 4), the CIC has its own Secretariat, and certain privileges and immunities are afforded (Arts. 6 and 9). The CIC may, *inter alia*, propose study and research plans, interchange information with the governments or national organs, negotiate (when explicitly authorized) with national and international organs for the provision of studies and technical and financial assistance, propose agenda for the foreign ministers' meetings, and issue its own rules of procedure (Art. 3). The CIC is also authorized to set up *ad hoc* technical commissions (now numbering eleven) and groups of experts as consultative bodies.

In order to harmonize the realization of policies agreed within the CIC in the member States, Art. IV of the Treaty requires the setting up of national commissions or secretariats which are to serve as the "cooperation and advisory organs" to the national governments. To complete the institutional structure, the Development Fund of the La Plata Basin, founded in 1974, is also vested with international legal personality (Statute of FONPLATA, Art. 1). Its headquarters are in Sucre, Bolivia. Its financial holdings are administered by a Board of Governors and an Executive Directorate.

3. *Legal Characteristics; Problems*

The La Plata Basin Treaty is a sub-regional agreement signed within the framework of the Latin American Free Trade Association (LAFTA), now superseded by the → Latin American Integration Association (LAIA), which is concerned with infrastructural development of transfrontier regions and with transboundary cooperation. The conceptual framework of the La Plata régime, however, was heavily debated. Whereas the proposals of the three minor basin States argued for the creation of an international organization with its own organs and international legal personality, Argentina and Brazil strictly opposed such a high degree of integration. Their opinion finally prevailed and the treaty adopted an intermediate position. The "system" (Preamble, para. 5) itself has no international legal personality, but one of its organs (the CIC) does. Intense controversy has persisted as to the legal nature of this system because of ambiguities in the treaty. A dilemma arises because the Treaty creates organs but does not vest them with explicit legal authority to be exercised independent of the member States; nor does it establish an international organization to which the organs' activities could be imputed. Therefore only a complex of common organs in charge of implementation of the Treaty without proper international personality and legal responsibility can be said in fact to exist. No new legal entity under international law has been created.

Two areas of application of the La Plata Basin Treaty raise special legal problems. The first is in regard to its territorial scope. With the exception of Paraguay, the Treaty only covers limited portions of the whole territories of the basin States (cf. Art. 29 of the → Vienna Convention on the Law of Treaties). On the one hand, it covers the La Plata Basin (for the definition of a river basin, see Art. II of the Helsinki Rules on the Uses of the Waters of International Rivers of August 20, 1966). On the other hand, the scope extends to the Basin's "areas of influence which are immediate and identifiable" (Art. I; Art. II of the → Treaty for Amazonian Cooperation). These provisions make exact determination of the territorial scope problematical.

Secondly, owing to the lack of congruency of each Basin State's political → boundaries with its area covered by the Treaty, establishment of régimes of preferential treatment or free movement of goods and services is not possible, since this would require creation of additional systems of customs duties within the member States. The provisions concerning "regional complementation through the promotion and installation of industries" and "economic complementation in frontier areas" as provided by Art. I(e) and (b) of the Treaty could be justified only as repercussions of the basic treaties of LAFTA/LAIA.

4. *Complementary Agreements*

Aside from the multilateral activities within the La Plata Basin Treaty régime (e.g. Resolutions of the Meetings of the Foreign Ministers, Res. 3(IV), 6(IV), 21(IV), 25(IV) of June 3, 1971; Declaration of Buenos Aires (1980), Arts. V and VI allow the member States to agree to further activities which do not contradict the pact's purposes. The agreements arrived at can be summarized as follows: restricted multilateral treaties among

several of the States parties (e.g. Statute of the URUPABOL of May 29, 1981 between Uruguay, Paraguay and Bolivia; agreement between Argentina, Brazil and Paraguay of October 19, 1979 on the conditions for the construction of the Corpus and Itaipú Dams); and bilateral agreements (e.g. agreements for the construction of various power stations). The last-named agreements created special bi-national entities of a "condominial nature", with their own legal personalities under national public law.

5. River Régimes within the La Plata Basin

In addition, the Basins's geography has led the States of the subregion to conclude various agreements on mere River régimes, some of which pre-date the creation of the La Plata Basin régime.

(a) La Plata River régime

The enormous extent of the La Plata River delta (→ River Deltas) in Argentina and Uruguay has raised a number of legal problems. After years of disagreement, the two States finally signed the Joint Declaration on the Outer Limit of the La Plata River on January 30, 1961, which termed the waterway a "river" (Para. 1) and defined its outer limit, which also constitutes the → baseline (Para. 2). The delimitation of this → maritime boundary was confirmed by the Treaty of the La Plata River and its Maritime Limits (ILM, Vol. 13 (1974) p. 251) of November 19, 1973 and by the Protocol of the La Plata River of January 14, 1964. The 1973 Treaty also defines the States' La Plata River boundary, deals with cooperation on a variety of topics, and establishes an Administrative Commission (Arts. 59 to 67) (with its seat on Martín García Island and its competence limited to the river itself) and a Mixed Technical Commission (Arts. 80 to 84) (whose seat is in Montevideo and with competences relating to the lateral maritime zone). Arts. 68 and 69 contain a special procedure for conciliation (→ Conciliation and Mediation). On the basis of earlier accords, far-reaching cooperation measures by Argentina and Uruguay have been elaborated through the basic Agreement on Economic Cooperation of August 20, 1974 and other agreements.

(b) Uruguay River régime

The Uruguay River, a contiguous river with Argentina, Brazil and Uruguay as co-riparians, is also the subject of special agreements. Having signed earlier bilateral treaties, the three States issued a Joint Resolution of September 23, 1960 in which they agreed "to prepare a joint regional plan for the utilization and reclamation of the entire basin of the Uruguay River and the regions adjacent thereto". Since then, a number of cooperation agreements, for example, regarding irrigation and hydroelectric power, have been signed. On February 26, 1975 a Statute on the Navigation and the Exploitation of the Natural Resources of the Uruguay River was agreed upon and an Administrative Commission has also been set up.

(c) Other transboundary cooperation

Transboundary cooperation efforts have also been put into operation in some of the other sub-basins of the La Plata Basin (e.g. Laguna Merín, Bermejo and Pilcomayo River).

6. Evaluation

Even within its limited scope, the system initiated by the La Plata Basin Treaty has not been extremely successful: of the 167 resolutions issued by the Meetings of the Foreign Ministers up to 1980, only 28 have been duly implemented (see Res. 120(X); 159(XI)).

Cuenca del Plata: Tratado, Derecho de la integración, Vol. 5 (1969) 129–131.

Treaty of the River Plate Basin, Brasilia, April 23, 1969, ILM, Vol. 8 (1969) 905–909; UNTS, Vol. 875 (1973) 3–16.

A. EISENBERG, El aprovechamiento del río Uruguay y el derecho internacional (1963).

R. HAYTON, The Plata Basin, in: A.H. Garretson, R.D. Hayton and C.J. Olmstead, The Law of International Drainage Basins (1967) 298–442.

J.A. BARBERIS and E.A. PIGRETTI, Régimen jurídico del Río de la Plata (1969).

Secretaría General de la OEA, Cuenca del Plata, Aspectos jurídicos e institucionales de un desarrollo multinacional (1969).

E. WHITE, Cuenca del Plata: Comentario, Derecho de la integración, Vol. 5 (1969) 131–136.

M. RAMA-MONTALDO, Institucionalización de cuencas hidrográficas internacionales e integración de la Cuenca del Plata, Revista Uruguaya de Derecho Internacional, Vol. 1 (1972) 115–138.

J.E. GREÑO VELASCO, La Comunidad fluvial del Río de la Plata, Revista española de derecho internacional, Vol. 26 (1973) 39–87.
Ministerio de Relaciones Exteriores y Culto de la República Argentina/INTAL, El sistema institucional de la Cuenca del Plata (1973).
W. HUMMER, La "cuenca hidrológica internacional" ("International drainage/river basin") como noción jurídica de Derecho internacional público y su aplicación a los usos distintos de la navegación de las aguas de la Cuenca del Plata, Symbolae García Arias, Temis (Zaragoza) (1973–1974) 287–319.
J.A. BARBERIS, El aprovechamiento industrial y agrícola de los ríos de la Cuenca del Plata y el derecho internacional, Derecho de la integración, Vol. 16 (1974) 47–84.
H. GROS ESPIELL, Le Traité relatif au "Rio de la Plata" et sa façade maritime, AFDI, Vol. 21 (1975) 241–249.
C. ARMAS BAREA et al., El Río de la Plata: Análisis del tratado sobre límites fluviales y frente marítimo en la perspectiva de Argentina y Uruguay (1976).
G.J. CANO, Argentina, Brazil and the de la Plata River Basin, A Summary of their Legal Relationship, Natural Resources Journal, Vol. 16 (1976) 863–882.
C.A. ZEBALLOS, El sistema de la Cuenca del Plata: Aspectos institucionales, Integración latinoamericana, Vol. 42 (1979) 70–87.

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LATIN AMERICAN ECONOMIC COOPERATION

1. Notion and Implications. – 2. Origins: (a) LAFTA. (b) OAS-related activities. (c) Mexico Agreement on payments. (d) Central America. – 3. Later Developments: (a) Andean Pact. (b) Changes in LAFTA. (c) La Plata River Basin régime. – 4. Recent Trends: (a) Creation of LAIA. (b) Subregional cooperation experiences. (c) "SELA" and "CARICOM". (d) Treaty for Amazonian Cooperation. (e) Joint ventures. (f) Other forms of cooperation. – 5. Conclusion.

1. Notion and Implications

Cooperation in its wider sense means working in common to attain mutually acceptable – though not necessarily identical – objectives. In the case of Latin American countries, economic cooperation implies international coordination of national efforts aimed at fostering development in a region which, particularly between 1950 and 1960, became conscious of its growing economic dependence upon the United States and of the continuously widening industrial and technological gap existing between Latin American countries on one side, and the United States and other developed countries on the other (→ International Economic Order). This problem is even more complex given the considerable differences in the respective degree of development existing among Latin American countries themselves, a fact which accounts for the emergence of more restricted cooperation efforts at subregional and bilateral levels (see also → Regional Cooperation and Organization: American States).

As a consequence of these factors, economic cooperation in Latin America inevitably has many political implications which are clearly reflected in the pace, the instruments and the institutions of cooperation and its implementation in the region. Also in this regard, economic integration – taken as an organizing scheme of originally national markets and economies, assuming their inevitable mutual → interdependence and the necessity of stressing such interdependence in order to achieve economic and political goals of mutual interest – is to be considered an example and expression of Latin American cooperation. As a matter of fact, integration, cooperation and development in Latin America have become closely related concepts of overlapping semantic and practical implications. It is not surprising, then, that the idea of the collective self-reliance of Latin American countries underlying these concepts has found expression through the most diverse mechanisms: bilateral and multilateral → treaties and agreements fostering trade and economic intercourse; joint binational and multinational projects and enterprises in the industrial, commercial and service sectors; binational and multinational projects concerning utilization of national resources and creation of basic infrastructure; the improvement and extension of means of transport and communication within the region; the facilitation of the free flow of technology (→ Technology Transfer), technical assistance (→ Economic and Technical Aid), capital and services among Latin American countries; the regulation of the flow of extra-regional investment and of the concentration of regional capital and enterprises; the conclusion of cooperation agreements in the banking, financing and monetary fields; the adoption of joint commercial,

productive and strategic policies in respect of third countries, and so forth.

2. *Origins*

(a) LAFTA

Many basic ideas concerning the furtherance of development in Latin American countries and orientation in the field of Latin American cooperation originated in the Economic Commission for Latin America, a → United Nations organ created in March 1948 (→ Regional Commissions of the United Nations). Ideals of cooperation fermented slowly. Finally in February 1960, they gave rise to the Latin American Free Trade Association (LAFTA), created by the Treaty of Montevideo, which was ratified by Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. LAFTA attempted to create a multilateral basis for the commercial intercourse among Latin American countries and to compensate for inequalities in bilateral economic relations through a coordinated and progressive reduction and elimination of tariffs barriers in intra-Latin American trade (→ Customs Law, International). The ultimate programmatic end was the establishment of a free trade zone (→ Free Trade Areas) allowing external tariffs only in respect of countries outside the region.

Among the reasons directly accounting for the creation of LAFTA, mention should be made of the need to originate new market possibilities for national economies within the region and to provide countervailing pressures against the restrictive policies *vis-à-vis* the introduction of Latin American agrarian products observed by countries belonging to the → European Economic Community (→ International Law of Development; → World Trade, Principles). By the 1970's, LAFTA was already responsible for 73 per cent of trade turnover in Latin America, and according to its original objectives, the free trade zone was to be created within twelve years of LAFTA's creation. Thus, by the beginning of 1973 all custom barriers among member countries were to have been eliminated.

(b) OAS-related activities

In a parallel effort, steps were taken at the political level and within the framework of the → Organization of American States aimed at the adoption of joint political action in Latin America on questions concerning tariffs and trade. These ideas were delineated at the 1962 meeting in Mexico of the Inter-American Economic and Social Council and were first carried into practice in its meeting in Alta Gracia, Argentina in 1964, where the Special Committee on Latin American Coordination was created. The documents drawn up by this Committee in 1969, known as the "Vina del Mar Consensus" and the "Manifesto of Latin America", clearly denoted the growing agreement gradually attained in the field of Latin American cooperation.

The Organization of American States, the Inter-American Development Bank (→ Regional Development Banks) and the Institute for Latin American Integration also began to play an important role in Latin American Cooperation, through their direct action, research projects, publications, seminars, educational programmes and training of experts. To give one example of the consequences of this direct action, the heads of government of Uruguay, Paraguay and Bolivia agreed at the Ordinary Meeting of the Inter-American Development Bank at Caracas in April 1963 on the creation of the Permanent Mixed Commission of Uruguay, Paraguay and Bolivia, aimed at the study of export financing of products of member countries and of means of increasing reciprocal trade among them, the promotion of the creation and development of industries favouring exporting possibilities, and the preparation of national or joint development projects.

(c) Mexico Agreement on payments

In a different field, mention can also be made of the Multilateral System of Reciprocal Credits and Payments created by the Mexico Agreement of September 22, 1965 within the framework of LAFTA, which came into force in May 1966, allowing a greater fluidity of international payments within the region with considerable saving of hard currencies and a greater level of maxi-

mization in their utilization (→ Monetary Law, International). This system is based upon the compensation of reciprocal accounts at the multilateral level and the network of reciprocal credit agreements concluded among central banks of governments in the region (→ Loans, International).

(d) Central America

In Central America, regional unification projects in the political and economic fields date back, as in other Latin American regions, to the 19th and early 20th centuries. But their more important modern-day concretization is embodied in the → Organization of Central American States created in San Salvador in 1951, which contemplates the creation of a federation among member countries and the fostering of economic, social and cultural development. Within its framework, a new Central American Court of Justice and an Economic Council were also established. Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua are members of the Organization of Central American States, which became involved at an early stage in common efforts destined to create a Latin American Common Market. This trend led to the General Treaty on Central American Economic Integration signed in Managua on December 13, 1960 by the above-mentioned countries (Costa Rica adhered later). This Treaty is currently deemed to act as the basic foundation in the integration process of the region. The General Treaty set out ambitious joint objectives: the development of national markets, the diversification of manufacturing, agrarian and production activities, the elaboration of a common goods nomenclature, the harmonization of custom and tariff policies and the creation of regional credit and financing institutions.

3. Later Developments

LAFTA could not live up to the ambitious objectives conceived by its creators. It could not achieve its trade liberalization programme which was scheduled to be completed by 1973 but which had to be postponed until 1980. Moreover, the system of automatic tariff reductions originally provided for was replaced by the method of talks on separate items (compare → General Agreement on Tariffs and Trade). LAFTA's failure was in good measure due to the considerable differences in levels of development among member countries, which left Argentina, Brazil and Mexico in the most advantageous positions to benefit from reciprocal trade concessions brought about by LAFTA.

(a) Andean Pact

Such growing differences led the less developed countries of Bolivia, Chile, Ecuador and Peru to sign the Cartagena Agreement in 1969, which was later adhered to in 1973 by Venezuela (and denounced by Chile in 1976). Thus the Andean Pact (→ Andean Common Market), a subregional agreement within LAFTA's framework, came into being. It included within its aims and scope the harmonization of monetary, financial, fiscal and social security policies within the subregion (→ Unification and Harmonization of Laws), the coordination in the development of vital industries of member countries, and the establishment of a → customs union and a common external tariff system. This was coupled with the subregional rationalization of production policies in the growth sectors of the chemical, petrochemical, steel and light engineering industries, and the recognition of differentiated, more favourable treatment in respect of relatively less developed countries within the subregion. The Andean Development Corporation, with an initial capital of US$100 million, was the financing institution created to infuse resources into subregional projects. The institutional structure of the Andean Pact is headed by the Commission, composed of representatives from the member countries. It is endowed with centralizing powers and is also entitled to take political decisions. There is also a Board concerned with the making of technical proposals for the integration process. This structure clearly shows that the Cartagena Agreement initiated an unprecedented effort in economic cooperation in Latin America. Commission Decisions No. 24, concerning external investment in the subregion (→ Foreign Investments), and No. 46, regarding multinational enterprises (→ Transnational Enterprises), clearly reveal the aim of concentrating and increasing

subregional capital combined with a defensive attitude towards the penetration of extra-regional economic influence, not only from the United States, but also from other LAFTA countries.

(b) Changes in LAFTA

LAFTA itself could not ignore the realities evoked by the presence of the Andean Pact and by LAFTA's own failure in achieving its aims at an adequate pace. This was reflected by the Caracas Protocol, which was signed on December 12, 1969 and entered into force in 1973. It extended the liberalization period established in the Treaty of Montevideo until 1980, called for a search for more extensive means of integration within LAFTA's framework and took into account the situation of relatively less developed countries.

(c) La Plata River Basin régime

By that time, the tendency to enter into subregional agreements found new expression in the Treaty of the La Plata River Basin countries (→ La Plata Basin) signed in Brasilia on April 23, 1969 by Argentina, Bolivia, Brazil, Paraguay and Uruguay. The purpose of this treaty was to join efforts in order to promote the harmonious development and physical integration of the La Plata River Basin and other areas significantly and directly affected by it. Intended thereby are: the facilitation of navigation and the rational, multiple and equitable utilization of water resources; the preservation and fostering of adequate ecological conditions (→ Environment, International Protection); the improvement of transportation and communications within the region; regional advancement through the promotion of industries of common interest for the development of the region; and the promotion of other projects of common interest, especially those concerning the utilization of water resources within the region (→ Water, International Regulation of the Use of). The executive organ created by this treaty is the Inter-Governmental Coordination Committee, and its political decisions are taken by the Meeting of Foreign Ministers, which takes place every year. There also is the Basin's Financing Fund, dating back to 1974, which is to finance projects and activities destined to achieve the treaty s objectives, and which amounts to US $100 million contributed by the member countries.

4. Recent Trends

(a) Creation of LAIA

LAFTA's final failure to achieve its ends even by the expiration of the new period ending in 1980 led to its replacement by the → Latin American Integration Association (LAIA), created by the treaty signed in Montevideo on August 12, 1980 by all LAFTA countries. LAIA seeks to attain a common direction through various types of agreements in diverse fields which, through the agreements' gradual multilateralization, will progressively enlarge their sphere of influence. Flexibility and multiplicity are other tenets set out in the Treaty, which leaves the way open for all multilateral and bilateral mechanisms to promote the harmonious and balanced social and economic development of the region. In spite of the possibility member countries have to → veto resolutions on vital issues and the revealing absence of precise terms for achieving the Treaty's objectives, it is felt that it offers a realistic and appropriate framework for channeling integration and cooperation projects in Latin America during the coming years. LAIA also contemplates cooperation with → developing States outside Latin America and preferential treatment to relatively less developed countries of the region. Many hopes have been laid on the role to be played by LAIA's technical Secretariat in paving the way for regional cooperation and integration notwithstanding political and economic differences among member countries.

(b) Subregional cooperation experiences

Subregional cooperation experiences have also witnessed setbacks during the last few years. Important political and economic differences led to the separation of Chile from the Andean Pact in 1976 and to the relaxation of controls and restrictions provided for in Commission Decision No. 24 on investments of external origin in the subregion. Still more recently, tense situations arose out of the political situation in Bolivia, who then threatened to leave the Andean Pact.

Within the framework of the La Plata River Basin Régime, differences have also emerged in

respect of the exploitation of water resources. And in some cases, unilateral decisions have been taken without having recourse to consultation and to agreements with other affected countries as contemplated within the spirit of the Treaty. For instance, Argentina was not consulted when Brazil and Paraguay decided to build the Itaipú Dam, in spite of the fact that its construction affected the flow and water level of the Paraná River, which also crosses Argentine territory.

In Central America, in its turn, the "soccer war" of June 1969 between Honduras and El Salvador delayed and seriously disturbed the processes of cooperation and integration. Much more recently, changes in the political régime in Nicaragua, → civil war in El Salvador, and the rumours of foreign military → intervention in the area on account of these developments have plunged the region into an atmosphere of insecurity and distrust, which also frustrates the ideals of cooperation and integration.

(c) "SELA" and "CARICOM"

Nevertheless, cooperation and integration in Latin America are so much identified with the history, needs and visceral aspirations of the region that they cannot be stopped in the long run and show a tendency of gaining wider and wider acceptance. For instance, Latin America's growing consciousness of the need of fostering cooperation and integration as a means to create an economically independent Latin America led 25 countries of the region to sign, on October 17, 1975 in Panama, the treaty creating the Latin American Economic System (Sistema Económico Latinoamericano: SELA). The seat of the new organ is in Caracas, Venezuela, and Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela are its member countries. As can be noted, not only Latin American countries are members of SELA.

SELA is a regional organ of mutual economic and social consultation, coordination, cooperation and promotion among its member countries, aimed at establishing united strategies which are to rebound in the independent and self-sufficient development of Latin America. Among its ends are the creation and promotion of Latin American multinational enterprises and the submission of external transnational enterprises to the national interests and → domestic jurisdiction of member countries. The highest SELA body is the Latin American Council, composed of a representative for each member country, which by → consensus can adopt SELA general policies and common strategies of member countries in international fora and organs, as well as policies towards third countries or groupings of countries.

Some of the non-Latin American members of SELA were also members of the Caribbean Free Trade Association (CARIFTA), established in 1968 by Antigua, Barbados, Dominica, Grenada, Guyana, Jamaica, Monserrat, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, and Trinidad and Tobago. On May 1, 1974, as a result of the Chaguaramas Treaty, CARIFTA was transformed into the Caribbean Community (CARICOM), which purports to create the Caribbean Common Market (→ Caribbean Cooperation) and has undertaken a series of promising economic and social projects, including the establishment of close links with integration processes going on in the Andean subregion and in Central America.

(d) Treaty for Amazonian Cooperation

At the subregional level, mention should be made of the → Treaty for Amazonian Cooperation signed in July 1978 in Brasilia by Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Surinam and Venezuela. The aims of this Treaty are the integration and full incorporation of the member countries' areas of the Amazon into their respective national economies, and the development of the region while maintaining an adequate balance between economic growth and preservation of the environment. Furthermore, member countries undertake joint actions and efforts to promote harmonious development in their respective Amazonian Basin territories and guarantee, on a basis of reciprocal treatment, the free navigation on the Amazon River and other international Amazonian rivers (→ International Rivers). The utilization and exploitation of → natural resources in their respective territories are to be considered inherent rights of national → sovereignty, with the only restrictions

being those admitted by international law. Member countries are also to employ their best efforts in creating an adequate infrastructure in communication and transportation matters and in the rational utilization of hydrological resources, including navigation. In general terms, they undertake to cooperate in technological and scientific fields to accelerate the social and economic development of the region. Common policy on these matters is to be fixed by periodic meetings of the Ministers of Foreign Affairs of member countries. Diplomatic representatives of the latter are also to constitute the Amazonian Cooperation Council that is to meet once a year and is to control the accomplishment and implementation of the objectives of the Treaty and of the decisions taken by the meetings of Foreign Ministers.

(e) Joint ventures

It would be a mistake to believe, however, that economic cooperation efforts are limited to action taken at the diplomatic level through international treaties. In Latin America, the formation of joint Latin American enterprises (→ Joint Undertakings) established by investors and capital coming wholly or in a preponderent proportion from Latin American countries and organs has become a growing phenomenon. This phenomenon is explained by the wish to improve competition with extra-regional enterprises and the aim of maximizing production and capital resources, as well as by the purpose of having access to enlarged markets and of improving export possibilities within and outside Latin America. To give some examples of this recent development, mention can be made of the Latin American Agro-Chemical Company, formed with the participation of Bolivia, Argentina, Colombia and the Andean Development Company, which is to develop products manufactured for sale in the Latin American market to fight crop blights. This is also the purpose of the Latin American Multinational Enterprise for Commercialization of Fertilizers, created within the framework of SELA by ten countries: Bolivia, Costa Rica, Cuba, El Salvador, Guatemala, Guyana, Mexico, Peru, Trinidad and Tobago, and Venezuela.

(f) Other forms of cooperation

Countries from Central America and the Caribbean have also created the Caribbean Multinational Shipping Company and the West Indies Shipping Corporation. Caribbean countries have reached an agreement within the framework of CARICOM establishing a common régime for CARICOM multinational enterprises, which in almost all cases are wholly-owned by member States. Countries exporting bananas have created in their turn the Multinational Enterprise for the Commercialization of Bananas, S.A. within the framework of the Union of Banana Exporting Countries and having its seat in Panama City (see also → Commodities, International Regulation of Production and Trade).

In certain fields, however, direct State presence is necessary and inevitable. This applies to activities where State interests are very directly affected, as occurs in matters concerning natural resources and energy. Thus, State oil companies have created the Mutual Assistance Agency for Latin American State Oil Companies. On November 2, 1973, 22 Latin American countries (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay and Venezuela) created the Latin American Energy Organization, which is the highest-ranking Latin American coordination organ in this field. Having as its main bodies the Meeting of Ministers, the Experts Assembly and the Permanent Secretariat, its main end is to frame, coordinate and plan energy policies at the level of member countries as well as at the regional level.

In other matters, bilateral agreements are usual, as is the case of the Argentine National Commission on Atomic Energy, which has signed agreements with Bolivia, Uruguay and Peru. In other cases, bilateral cooperation is channelled through the creation of binational enterprises, such as the ones created by Argentina and Paraguay (Yaciretá-Apipé), and Argentina and Uruguay (Salto Grande) to build important dams.

5. Conclusion

Latin American cooperation represents a

vigorous effort by Latin American countries to march firmly into the modern era of technology and accelerated development. As such, its success can only depend on the firmness with which cooperation efforts are maintained, a factor which is clearly related to democratic stability in Latin American countries and the ability of cooperation instruments and mechanisms to adapt to changing circumstances. Obstacles to and delays in the development of Latin American cooperation can almost inevitably be traced back to failures to duly ensure the presence and permanence of these factors.

Inter-American Institute of International Legal Studies, Instruments of Economic Integration, Latin America and the Caribbean, 2 vols. (1975).

Latin American Economic Integration, Lawyer of the Americas, Vol. 1 (1969) to date [regular reports].

F. ORREGO VICUNA, Contemporary International Law in the Economic Integration of Latin America, RdC, Colloque 1971 (1972) 101–186.

E.S. MILENKY, The Politics of Regional Organization in Latin America, The Latin American Free Trade Association (1973).

B. KADAR, Regional Cooperation in Latin America (1975).

H. ALVEZ CATALÁN, Cooperación e integración en América latina (1976).

E. WHITE, J. CAMPOS and G. ONDARTS, Las empresas conjuntas latinamericanas (1977).

R.D. BOND, Regionalism in Latin America: Prospects for the Latin American Economic System (SELA), International Organization, Vol. 32 (1978) 401–423.

R. ALMEIDA, Reflexiones sobre la integración latinoamericana, Estudios internacionales, Vol. 13 (1980) 417–459.

V.K. BAWA, Latin American Integration (1980).

E. CEREXHE and N. ELKIN, Nouvelles perspectives de l'intégration latino-américaine (1980).

H.A. GRIGERA NAON, Transnational Enterprises under the Pacta Andina and National Laws of Latin America, in: N. Horn (ed.), Legal Problems of Codes of Conduct for Multinational Enterprises (1980) 237–273.

M. MOLS (ed.), Integration und Kooperation in Lateinamerika (1981).

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LATIN AMERICAN INTEGRATION ASSOCIATION

1. Historical Background and Establishment

The first firm step towards economic integration in Latin America was the Treaty of Montevideo of 1960, creating the Latin American Free Trade Association (LAFTA). Signed by Argentina, Bolivia, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela, its main purpose was the establishment of a free trade zone in Latin America by December 31, 1980. Because of its broad objectives and the wide differences in the political and economic structures of member countries, the Treaty remained programmatic, and most of its objectives – including the creation of a free trade zone – could not be attained. Indicative of these shortcomings was the appearance within LAFTA's framework of the Andean Pact (→ Andean Common Market), created by the Cartagena Agreement of May 26, 1969, by which less developed LAFTA countries assumed a far more ambitious economic integration process with defensive attitudes towards third countries and towards Argentina, Mexico and Brazil (→ Latin American Economic Cooperation).

LAFTA's failure led to its replacement by a new international institution, the Latin American Integration Association (LAIA), which was established by a new *traité cadre.* The LAIA whose seat is in Montevideo, Uruguay, inherited LAFTA's juridical personality (→ International Organizations, Succession). This Treaty was signed by the eleven LAFTA countries, and by November 1981 it had been ratified by Argentina, Uruguay, Paraguay, Colombia, Bolivia, Chile and Mexico. No ratifications with reservations are allowed under the Treaty (→ Tréaties, Reservations).

2. General Outline

The LAIA Treaty is based on a flexible pattern which contemplates not only multilateral action through agreements of regional scope (regional agreements) signed by all member countries, but also agreements of partial scope (partial scope agreements) signed by some member countries but open to the adherence of all. Partial scope agreements stand for the principles of pluralism, convergence, flexibility, differential treatment and multiplicity defined in Art. 3, purporting to respect the independent will of member countries in choosing diverse ways towards integration by offering them flexible mechanisms facilitating total or partial accord and the easy multi-

lateralization of the latter. Partial scope agreements can touch upon basic issues such as commerce, economic development, agriculture, trade promotion, scientific and technological cooperation, preservation of the environment, etc. Clearly, the mere reduction of tariffs and custom duties on intra-regional trade (→ Customs Law, International) is intended to be exceeded by measures pursuant to agreements under the Treaty, which explicitly aims at the promotion of the harmonious and balanced economic and social development of the region (→ International Law of Development). However, the achievement of such ends and of such a crucial question as the establishment of the announced Latin American Common Market is not scheduled for any specific date. This lax approach allows member countries to conduct their integration policies freely, and to accelerate or slow down the integration process at will. On the other hand, the Treaty creates an area of economic preferences, a notion implying only that member countries will confer on each other certain economic advantages and privileges, including a regional tariff preference (→ Economic Law, International). This notion cannot be compared with the full liberalization of the substantial sectors of economic intercourse sought by LAFTA's Free Trade Zone (→ Free Trade Areas; compare → European Free Trade Association).

Among the essential questions covered by the Treaty, the following should be mentioned: Firstly, the Treaty accepts the categories of "relatively less economically developed countries" (Bolivia, Ecuador, Paraguay) which benefit from preferential treatment from other member countries under the principles of non-reciprocity and communitarian cooperation, and of "countries of intermediate development" (Colombia, Chile, Peru, Uruguay and Venezuela), which have access to certain tariff and commercial advantages (LAIA Resolution 6). Secondly, member countries can conclude partial scope agreements or establish systems of association with non-member Latin American countries or involving other Latin American integration areas (→ Economic Communities and Groups). Concessions thereby granted to third countries can be superior to those conceded for the same products to member countries and will be extended automatically only to the relatively less developed member countries. Thirdly, member countries are also to develop cooperation links outside Latin America under the principles of the New → International Economic Order and the → Charter of Economic Rights and Duties of States. To this end, they can conclude partial scope agreements with → developing States and their organizations, but concessions so granted will also benefit the relatively less developed member countries; and if the concessions concern products which fall under partial scope agreements among member countries, the concessions' more advantageous terms are to be automatically extended to these countries. Fourthly, the Treaty incorporates the → most-favoured-nation clause, subject to several restrictions: (a) It cannot be invoked to benefit from concessions conceded reciprocally among the parties to the Andean Pact or to partial scope agreements, or derived from frontier traffic; (b) Through LAIA Resolution No. 6, Uruguay enjoys a specially privileged treatment partially derogating from the most-favoured-nation clause; and (c) Benefits under agreements between member countries and a non-Latin American developed country are automatically extended to all member countries, but in other cases, as illustrated in the second and third points above, the treatment of member countries is more complex. Fifthly, investment capital originating in member countries is to enjoy no less favourable a treatment than that granted to investments originating in non-member countries (→ Foreign Investments).

3. Structure

The LAIA has three policy organs, and a new technical organ which was unknown to LAFTA: the Secretariat (cf. → International Secretariat). The LAIA policy organs are the Council of Foreign Ministers (the Council), the Conference of Evaluation and Convergence (the Conference), and the Committee of Representatives (the Committee). The Council is the LAIA's highest body and issues resolutions and general norms, which are mandatory on the other organs and are addressed to the achievement of the LAIA's objectives. It also accepts the adherence of new member countries and decides on modifications of the Treaty (→ Treaties, Revision). It also designates the LAIA's Secretary-General. The Council is composed of foreign ministers from member countries, and meets when convoked by the

Committee. The Conference is composed of plenipotentiaries from member countries; it meets once every three years and is convoked by the Committee. It evaluates the functioning of the integration process and the common direction and multilateralization of partial scope agreements, and it promotes the extension and deepening of the integration process. The Committee promotes the signing of regional agreements, oversees the enforcement of the Treaty and complementary provisions, and governs the implementation of the Treaty. All three bodies may take decisions approved by two-thirds of its members. However, as set out in Art. 43, vital decisions will only be passed provided there is no negative vote (→ Veto; → Voting Rules in International Conferences and Organizations).

The Secretariat is to play an important role in smoothing the path towards integration in spite of differences which might arise at the level of the policy-making organs. The Secretary-General is elected for three years, and must remain completely independent from national governments or international bodies (→ Civil Service, International); he may submit proposals aimed at the fulfilment of the LAIA's objectives. The Secretariat also assumes administrative, technical and representative functions, such as the preparation of the LAIA's budget and of special studies, programmes and research. It also arranges the LAIA's representation at meetings of international economic organs (e.g. the → United Nations Conference on Trade and Development).

4. Evaluation

It has been said that the Treaty is more of a set-back than a step towards progress in the Latin American integration process, as it does not impose obligations on member countries to fulfil a substantial schedule aimed at the progressive achievement of precise objectives. This weakness would seem to be emphasized by the preponderant role of policy organs, where the right of veto can be exercised abusively. However, the present political and economic realities of Latin American countries and their prospects for the coming years probably argue against more ambitious objectives; LAFTA's failure bears witness to this. Thus, the Treaty affords a realistic and flexible pattern allowing actions necessary to accelerate the integration process to be undertaken under more favourable circumstances. On the other hand, it is hoped that the presence of the Secretariat will create the necessary basis for the approximation of differing views and approaches and that, through its expertise and knowledge of factual data, it will be able to strike the balance among opposing national interests.

Texto del Tratado de ALADI, Tratado de Montevideo 1980, Integración latinoamericana, No. 47 (1980) 4–14; Treaty of Montevideo establishing the Latin American Integration Association, ILM, Vol. 20 (1981) 672–688.

R. BARROS, Análisis comparativo de los Tratados de Montevideo 1960 y 1980, Integración Latinoamericana, No. 50 (1980) 30–48.

O. CHAPARRO ALFONZO, ALADI o un nuevo orden de integración regional (1980).

W. HUMMER, Die "Lateinamerikanische Integrationsassoziation" (ALADI) als Rechtsnachfolger der "Lateinamerikanischen Freihandelsassoziation" (ANALC), Verfassung und Recht in Übersee, Vol. 13 (1980) 361–370.

M.S. WIONCZEK, La evaluación del Tratado de Montevideo 1980 y las perspectivas de las acciones de álcance parcial de la ALADI, Integración Latinoamericana, No. 50 (1980) 4–29.

J.L. ORIA, La cláusula de la nación más favorecida en el Tratado de Montevideo 1980, Integración Latinoamericana, No. 62 (1981) 44–53; No. 63 (1981) 41–50.

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LEAGUE OF ARAB STATES *see* Arab States, League of

LOMÉ CONVENTIONS

1. Historical Background

The Lomé Conventions of 1975 and 1980, concluded in Togo, West Africa, between the member States of the → European Economic Community (EEC) and a number of → developing States in Africa, the Caribbean, and the Pacific, evolved from the modest beginnings of an "association policy" contained in Arts. 131 to 136 of the Treaty of Rome (1958) establishing the EEC (→ European Economic Community, Association Agreements). These Articles provided for a form of "association of the overseas countries and territories in order to increase trade and to promote

jointly economic and social development" (Art. 3(k)) and extended only to the non-European countries and territories which had special (i.e. colonial) relationships with Belgium, France, Italy and the Netherlands (→ Colonies and Colonial Régime). The countries and territories concerned were listed in Annex IV of the Treaty; for an initial period of five years, from 1958 until 1963, the details of and the procedure for this association were determined by an Implementing Convention, concluded only between the EEC member States, and annexed to the Treaty. As it happened, the independence of the majority of the francophone African countires, largely achieved in 1960, and the subsequent attainment of independence by many of the other former colonial territories made both the Treaty provisions and the Implementing Convention of doubtful utility (→ Decolonization).

The Implementing Convention was succeeded by a Convention of Association between the EEC and the 18 African and Malagasy States associated with the Community. This, the first Yaoundé Convention, was signed on July 20, 1963, and entered into force on June 1, 1964 (ILM, Vol. 2 (1963) p. 971). A second Yaoundé Convention, very similar to the first, was signed on July 29, 1969, and entered into force on January 1, 1971 (ILM, Vol. 9 (1970) p. 484). The two Yaoundé Conventions were widely criticized as paternalistic and as establishing selective preferential treatment. They extended to the associated States the right of the reciprocal import of goods free of duty or quantitative restrictions and provided funds for development aid which were administered by the European Development Fund (EDF) and the → European Investment Bank (EIB) (→ Economic and Technical Aid). The original six EEC member States signed an abortive Association Agreement with Nigeria in 1966 and two Association Agreements, the first Arusha Convention (of 1968) and the second Arusha Convention (of 1969), with the three member States of the → East African Community – Kenya, Tanzania and Uganda.

2. The First Lomé Convention

The Lomé Convention, signed on February 28, 1975, replaced both the second Yaoundé Convention and the second Arusha Convention. It was concluded, after some 18 months of negotiations, between the nine member States of the enlarged EEC and 46 developing States in Africa, the Caribbean and the Pacific (the ACP States). The ACP States included (a) those countries formerly associated with the EEC under the second Yaoundé Convention (Burundi, Cameroon, the Central African Republic, Chad, Congo, Dahomey, Gabon, Ivory Coast, Mali, Mauritania, Mauritius, Niger, Senegal, Somalia, Rwanda, Togo, Upper Volta, Zaire and the Malagasy Republic – the AASM States); (b) a group of countries belonging to the → British Commonwealth, who entered into the Convention as a result of the offer made in Protocol 22 of the Act of Accession signed by the United Kingdom, Denmark and Ireland with the six original member States of the EEC in 1972; these countries were (in Africa) Botswana, Gambia, Ghana, Kenya, Lesotho, Malawi, Nigeria, Sierra Leone, Swaziland, Tanzania, Uganda and Zambia, (in the Caribbean) the Bahamas, Barbados, Grenada, Guyana, Jamaica, Trinidad and Tobago, (in the Pacific) Fiji, Western Samoa and Tonga; and (c) a group of formerly non-associated and non-Commonwealth African countries (Ethiopia, Guinea, Guinea-Bissau, Liberia and the Sudan).

The new Convention came into force on April 4, 1976 when ratified by the nine member States of the EEC and by two-thirds of the ACP signatories (Art. 87). The Convention anticipated the possibility of accession on the part of any other developing State that had an economic and productive structure comparable to that of the ACP States, with the reservation that such accession had the consent both of the member States of the EEC and of the ACP States (Arts. 89 and 90).

The agreement was designed to produce a structure within which the economic progress and the social development of the ACP States could be accelerated; it emphatically broke with the "association" tradition established under the two Yaoundé Conventions. The provisions on trade and commercial cooperation (Title I) laid stress on free access to the EEC for almost all products from the ACP States and on the non-reciprocity (→ Reciprocity) of trade obligations. Almost all ACP products were admitted to the EEC member States free of customs duties (or charges having

similar effect) and without being subject to quantitative restrictions (→ Customs Law, International). The EEC considerably relaxed the "rules of origin" *vis-à-vis* the ACP States; in Protocol 1 there was provision for the treatment of the ACP group as a single customs territory (cf. → Customs Union) and for the treatment of the ACP group exports as originating from ACP States (and thus qualifying for duty-free entry to the EEC) if the value added, for example, by processing, in the ACP States amounted to more than the low percentage of 50 per cent. The absence of any requirement of reverse preference in favour of the EEC was one of the most important features of the entire Convention. The only obligation imposed upon the ACP signatories was to accord EEC member States → most-favoured-nation treatment; the relations between ACP States and other developing countries were excepted from this.

A very important system of stabilization of export earnings was introduced by the Convention in order to protect the exporters of twelve primary products from the ACP States to the EEC. This system was in fact originally proposed by the EEC in 1973 by way of fulfilling the undertaking contained in Protocol 22 of the Act of Accession referred to above, to safeguard "the interests of all the countries [concerned] whose economies depend to a considerable extent on the export of primary products, and particularly of sugar". For the first time, therefore, in the Lomé Convention, industrialized and developing countries which exported raw materials jointly established a system which guaranteed to the latter a certain level of income by protecting them from price fluctuations due to market forces or the uncertainties of production (→ Commodities, International Regulation of Production and Trade). The list of products falling within the Stabilization of Export Earnings ("Stabex") scheme was drawn up in the light of (a) the importance of the product for the level of employment in the exporting country, the deterioration in the terms of trade between the EEC and the ACP State in question, and the level of development of the ACP States in general, and (b) the traditionally unstable character of income from the product concerned due to fluctuation in prices or in quantities produced. The twelve principal products initially covered by the scheme were groundnuts, cocoa, coffee, cotton, coconuts, palm and palm kernel products, hides and skins, wood products, bananas, tea, raw sisal, iron ore, together with a number of by-products. "Stabex" was a system of commodity-tied compensatory finance which did not directly interfere with the market in the product concerned. Financial transfers from the "Stabex" fund to ACP States were made when the actual earnings from the product concerned dropped by an agreed percentage in a given year as compared with the moving average of earnings from exports of the same product during the four preceding years. This "activation threshold" was lower in the case of the least developed, land-locked or island ACP States (→ Land-Locked and Geographically Disadvantaged States), as was the "dependence threshold" – the minimum percentage earnings of the total exports of a product in the year preceding the year of application of the scheme.

The first Lomé Convention contained special arrangements for sugar (in Protocol 3) that were almost as novel as the provisions which established the price stabilization scheme for primary exports. The sugar arrangements involved the EEC member States in an undertaking to purchase and import at guaranteed prices cane sugar from certain ACP States. The producing countries were allocated quotas to a maximum of 1.4 million tons annually. A guaranteed minimum price was negotiated annually and was linked to the EEC sugar price; the EEC accordingly consulted with the ACP States before making its own proposals on Community prices.

The chapters of the Convention concerned with industrial, technical and financial cooperation indicated that the signatories agreed upon a greater financial effort and greater responsibility for the partner States in the management of aid. The provisions on industrial cooperation covered the whole industrial field, including industrial infrastructure, the creation of new manufacturing enterprises, research and industrial studies, the transfer and adaptation of technology (→ Technology Transfer), special action programmes for small and medium-sized enterprises, and programmes for the exchange of information on industrial promotion. A Committee of Industrial Co-operation and a Centre for Industrial

Development were established. The provisions on financial cooperation were based on the dual premises that the AASM States must be assured of keeping advantages already acquired, and that equal treatment was assured for all new signatories. For the period 1975–1980 the EEC provided 3390 million European Units of Account (EUA) for the ACP States (3.7 times the amount involved in the operation of the Second Yaoundé Convention), which was distributed through the European Development Fund as grants, soft loans, risk capital and through the "Stabex" scheme, and also through the European Investment Bank as ordinary loans (→ Loans, International). The funds distributed by the European Development Fund were financed, according to a proportionate scale, from a non-budgetary appropriation by contributions from the member States of the EEC.

As with the aid provided under the Yaoundé Conventions, the development aims of the Lomé Convention were concerned with strengthening economic and social infrastructures in the ACP States, with rural development and training programmes, and with industrial development, market and sales promotion schemes. Particular emphasis was placed upon EEC support for ACP regional and inter-regional cooperation schemes, for specific aid to small and medium-sized firms, for small-scale development schemes (especially in the rural sector), and for special aid to the least developed countries. In this last respect, the Convention adopted a non-definitive list of the 24 least developed States. The ACP States were given a much larger share in the management of this financial cooperation than was the case under the Yaoundé Conventions. They were free to define their own development programmes and were fully responsible for formulating their requests for financing. What the Convention did was to institute a framework within which a running dialogue between EEC and ACP representatives could take place throughout the various stages of planning the aid, drawing up and appraising projects, preparing financing decisions, implementing the agreed projects and making a final evaluation of their results.

In its institutional structure (Title VI) the Convention showed that the need for flexible arrangements to ensure a permanent dialogue between the EEC and ACP signatories was understood. There was a Council of Ministers, composed of members of the Council of Ministers of the EEC and members of the governments of the ACP States. This Council was assisted by a Committee of Ambassadors, and there was also a Consultative Assembly, composed, on a basis of parity of representation, of members of the European Parliament and of representatives designated by the ACP States (→ Parliamentary Assemblies, International).

Overall, the first Lomé Convention represented a radically new EEC approach to the developing ACP States and an ambitious attempt to organize, systematically and on a basis of equal cooperation and partnership, economic → interdependence between the EEC and a most important group of developing countries.

3. The Second Lomé Convention

The First ACP-EEC Convention of Lomé expired on March 1, 1980, five years after its signature, and the signatories were bound to enter into negotiations 18 months before that date "in order to examine what provisions shall subsequently govern relations between the Community and the Member States and the ACP States" (Art. 91). Those → negotiations opened formally in Brussels on July 24, 1978, and detailed discussions began at the end of September of that year.

The Second ACP-EEC Convention was signed in Lomé on October 31, 1979, after the conclusion of long and arduous negotiations. The new Convention entered into force on the first day of the second month following the date of deposit of the instruments of deposit of the member States, and of those of at least two-thirds of the ACP States, and of the act of → notification of the conclusion of the Convention by the Community (January 1, 1981; see Lomé II, Art. 183). This Convention will expire on February 28, 1985 (see Lomé II, Art. 188(1); cf. Lomé I, Art. 87). Lomé II was signed between fifty-eight developing African, Caribbean and Pacific countries (the ACP States) and the nine EEC member States. Twelve ACP States which were not original signatories to Lomé I entered into the global negotiations for Lomé II for the first time and became signatories to it (the Comoros Islands, Djibouti, Dominica,

Kiribati, Papua New Guinea, St. Lucia, Sao Tomé and Principe, the Seychelles, the Solomon Islands, Surinam and Tuvalu). The accession of third States is permitted either to countries or territories to which Part Four of the EEC Treaty (Association of the Overseas Countries and Territories) refers, and which become independent, or to States "whose economic structure and production are comparable with those of the ACP States" (Lomé II, Arts. 184 to 186; cf. Lomé I, Arts. 88 to 90). It is noteworthy that the new Convention devotes a special section (Title VIII) to the needs of the least-developed, island and land-locked countries and contains specific provisions designed to afford some priority of treatment for them (for a list of these States, see Lomé II, Art. 155(3)).

(*a*) *Institutional structure*

The principal institutions established in Lomé I remain unchanged in essentials – the ACP-EEC Council of Ministers (Lomé II, Arts. 164 to 169, cf. Lomé I, Arts. 70 to 75), the ACP-EEC Committee of Ambassadors (Lomé II, Arts. 170 to 172, cf. Lomé I, Arts. 76 to 78) and the ACP-EEC Consultative Assembly (Lomé II, Art. 175, cf. Lomé I, Art. 80) – but a number of measures designed to strengthen consultative mechanisms have been introduced. The Council of Ministers may now make arrangements for frequent consultation and exchanges of views between its regular meetings. The Committee of Ambassadors may establish new specialized committees, notably one on the administration of financial and technical cooperation. The Consultative Assembly may establish, on an *ad hoc* basis, its own contacts with "economic and social circles" (e.g. with both management and labour) and is encouraged to submit to the Council of Ministers "any conclusions and make any recommendations it considers appropriate".

(*b*) *Trade cooperation*

The free access to EEC markets for almost all products originating in the ACP countries, which was guaranteed under Lomé I without reciprocal reverse preferences (Lomé I, Arts. 1 to 15) has been maintained in the new Convention with some additional advantages for certain products which are of especial importance for a number of ACP exporting countries (Lomé II, Arts. 1 to 22). The provisions of the new Convention generally preserve the *status quo* although the trade promotion facility provided for in Lomé I is extended in the new Convention (Lomé II, Arts. 20 to 22; cf. Lomé I, Arts. 12 to 15). Other parts of the Convention, such as the extension of Stabex to additional agricultural products, the new title on agricultural cooperation and the new insurance system for mineral products, evidence a more positive and imaginative approach to the fundamental problems posed by the fragility of the ACP countries' present economic structures and prospects.

(*c*) *Stabex*

The Stabilization of Export Earnings system of commodity-tied compensatory finance for primary products from the ACP States has recently been subject to criticism as to its adequacy and as to its restrictive effect upon ACP States' efforts to diversify their economies. The scheme has now been extended, so that the number of products and by-products comprehended has been increased from 34 to 44 (Lomé II, Arts. 23 to 47).

The operation of the scheme has now been made more flexible and more generous by a lowering of the "dependence" and "activation" thresholds and by the EEC's offering more attractive conditions for the least-developed, land-locked and island countries (Lomé II, Arts. 29, 37, 39, 46 and 47). The funding for the scheme has also been increased to 550 million EUA, in comparison with 382 million EUA for Lomé I (Lomé II, Arts. 31 to 35).

Specific improvements in the scheme that are worthy of attention include (i) the reduction of the "dependence" threshold (the percentage of export earnings from the product or by-product concerned in relation to total export earnings for the preceding year) from 7.5 per cent to 6.5 per cent (5 per cent for sisal); (ii) the reduction of the "activation" threshold (the drop in export earnings from the product or by-product concerned in relation to the average earnings from the same product or by-product over the preceding four years) from 7.5 per cent to 6.5 per cent; (iii) the reduction of both the "dependence" and the "activation" thresholds in respect of the least-developed, land-locked and island States from 2.5

per cent to 2 per cent; (iv) the right of ACP States to choose between two alternative statistical methods for the calculation of the relevant figures; (v) the right of ACP States to decide whether to treat Stabex-listed products or by-products individually in their applications or to group similar products and by-products; and (vi) the possibility of applying the Stabex scheme, which relates essentially to losses in earnings on exports to the Community, to exports of the products in question between ACP States.

(*d*) *Minerals: insurance and development*

The new Convention introduces for the first time a special system of protection for ACP mineral-producing countries and a programme of encouragement of investment in mining and energy in ACP countries. "Sysmin" or "minex", as the minerals "accident insurance" scheme is known, will go some way to protect the major mineral-producing and exporting ACP countries against unpredictable variations in prices and in production. It covers copper, cobalt and phosphates, manganese, bauxite, tin and iron ore (Lomé II, Arts. 49 to 59, especially Art. 50), and the list may be extended should other products be affected by serious economic disturbances.

No automatic financial transfers are possible under the Sysmin scheme. The EEC instead undertakes to provide aid (from an earmarked 280 million EUA) towards the financing of projects or programmes put forward by the ACP countries to restore their potential as regards exports of the product affected to the Community. The aid may be invoked only if a "dependence threshold" in the product concerned is triggered and the financing made available is in the form of special loans repayable over forty years with a ten-year grace period and at an interest rate of one per cent. Pre-financing of projects is possible in order to allow the Community to react swiftly and flexibly to "accidents" arising either from local or international economic, natural or political circumstances (see Lomé II, Arts. 52 to 54).

The "dependence threshold" is, in general, 15 per cent of export earnings (to all destinations) of the country concerned; 10 per cent in the case of the least-developed, land-locked and island ACP countries. The "risk" covered by the scheme is that run by a country which finds that it is prevented from restoring at a normal rate or maintaining its "production plant or export capacity" by circumstances beyond its control in cases where an "otherwise viable and economic line of production" is involved. In addition the new Convention contains significant provisions which are designed to step up external flows of technology and capital, and to restore interest in investment by European companies in minerals, especially in Africa. Provision is also made for the Community with the member States to enter into mining and energy investment protection and promotion agreements with individual ACP countries relating to products "where the Community and possible European undertakings contribute towards their financing" (Lomé II, Arts. 58 and 59, and Annex VIII, Joint Declaration on the Encouragement of Mining Investment).

(*e*) *Industrial cooperation*

The industrial cooperation provisions of Lomé I (Arts. 26 to 39) were less than successful in their operation. In the new Convention the articles devoted to this subject (Lomé II, Arts. 65 to 82, and Annexes X and XI) include provision for the establishment of sector-by-sector consultative mechanisms and strengthens the role of the Centre for Industrial Development (CID) (Lomé I, Art. 36; Lomé II, Arts. 66(h), 78, 80 and 81(5)). There is also a special place in the new Convention for industrial cooperation in the field of energy, with the Community offering assistance, under the financial and technical cooperation provisions, in preparing inventories on energy resources and demand, in implementing a wide range of energy policies and programmes (including alternative energy strategies), in the promotion of research and adaptation of technology, and in the production in the ACP countries of equipment for the production and distribution of energy (Lomé II, Arts. 72 and 76; see also the Joint Declaration on Complementary Financing of Industrial Co-operation, annexed to the new Convention).

(*f*) *Agricultural cooperation*

This is the subject of an entirely new and separate Title in the Second ACP-EEC Convention of Lomé (Arts. 83 to 90). The Title stresses the importance of better technical assistance

for the ACP countries. A Technical Centre for Agricultural and Rural Co-operation is to be established (Art. 88), and the funding of rural micro-projects of local interests is strengthened (Arts. 145 to 149). Some 40 per cent of the fourth European Development Fund (EDF), established for the purposes of this Convention, will be devoted to the improvement of agricultural structures in the ACP countries.

(g) Financial and technical cooperation

Under the new Convention the funds made availabe by the Community amount to 5227 million EUA, including 4542 million EUA from the fourth EDF (Lomé II, Art. 95). In addition, outside the Convention itself, another 380 million EUA has been provided for (i) energy and mining in the form of standard loans without interest rebates (200 million EUA form the EIB), and (ii) the administrative costs of the Commission delegations in charge of cooperation at the local level in the ACP countries (180 million EUA to be drawn from the Community budget in the future; previously, under Lomé I, these costs were met from the EDF).

The new package represents an increase in funding under the Convention of 62 per cent expressed in EUA (3466 million EUA under Lomé I). Four major sectors share most of the financing: rural development, industrialization, economic infrastructure and social development. One of the specific features of the new arrangement is the emphasis on special treatment, both as to the volume of the financial aid and the favourable terms of financing, to be accorded to the least-developed ACP countries. The new Convention has interesting new provisions on the administration and programming of financial aid (Arts. 108 to 118); these are generally much more sensitive to the development policies and objectives of the ACP countries than were the comparable provisions of Lomé I.

(h) The Sugar Protocol

The Sugar Protocol (Lomé I, Protocol No. 3; reproduced in Lomé II in Protocol No. 7) has, from the outset, proved a source of considerable dissension between the signatories, and the annual price-fixing rounds have proven extremely difficult. This Protocol was not renegotiated (since it was originally negotiated for an indefinite period), may not be amended until 1981, and may not be denounced until 1982, subject to two years' notice (Lomé I, Protocol No. 3, Arts. 1(1), 2(1) and 10; see also Declaration No. 3 attached to the text of this Protocol reprinted in Protocol No. 7 of Lomé II).

(i) Future cooperation

Three of the declarations annexed to the new Convention indicate directions of future cooperation: on workers who are nationals of one of the contracting parties and are residing legally in the territory of a member State or an ACP State (Annex XV; → Migrant Workers); on sea fishing (Annex XVIII; → Fisheries, International Regulation); and on shipping (Annex XIX). There is a reciprocal undertaking between the parties to accord to nationals of member States of the Community and to nationals of ACP States equal treatment to that accorded to their own nationals (→ Aliens), free of discrimination as to → nationality as regards working conditions and pay, and social security benefits linked to employment for themselves and their families. The Joint Declaration on Sea Fishing envisages further bilateral regional fishery agreements similar to that signed with Senegal on June 12, 1979 (Official Journal, 1979, L 154, p. 25), based not upon reciprocity of access to fishing zones but on financial compensation to the coastal State. The Joint Declaration on Shipping recognizes that the ACP countries wish to participate actively, possibly through ACP-EEC joint ventures (→ Joint Undertakings), in bulk cargo shipping and expresses the willingness of the Community to assist in improving ACP shipping services through the financial and technical cooperation instruments of the Convention. A further Annex (Annex I) calls for bilateral inter-governmental investment agreements to ensure the effective non-discriminatory treatment of investments coming from Community member States into ACP States (→ Foreign Investments).

4. Evaluation

The Lomé Conventions are of course essentially contributions to the overall North-South dialogue (cf. → International Economic Order). They are concerned with the balance in the dis-

tribution of the world's wealth and are not oriented primarily, as was the earlier association policy under the Yaoundé formula, towards the idea of a discharge of responsibilities towards former colonial territories suffering from the chronic economic imbalance and the economic dependence that is generally a feature of post-colonial independence. Their impact, and the policy directions which they reveal, must be assessed in the context of the entire development policies of the EEC. The system of generalized preferences, introduced first in July 1971 in order to encourage the trade of developing countries, has been substantially remodelled for the 1980s. The Community is now participating fully in the Integrated Programme on commodity agreements of the → United Nations Conference on Trade and Development, with the Multifibre Arrangement (MFA) to be renegotiated late in 1982. A new food aid agreement has been negotiated. Important new agreements on economic and commercial cooperation with non-associated developing countries have been concluded, notably with Brazil and with India. In addition, of course, the Community is very actively monitoring the implementation of the various measures agreed upon as a result of the multilateral trade negotiations agreed upon at the outcome of the (1976–1980) "Tokyo Round" of the → General Agreement on Tariffs and Trade (GATT).

ACP-EEC Convention of Lomé of February 28, 1975, Official Journal of the European Communities, 1976, L 25, 1-143; ILM, Vol. 14 (1975) 595–640.

The Second ACP-EEC Convention of Lomé of October 31, 1979, Official Journal of the European Communities, 1980, L 347, 2-182; ILM, Vol. 19 (1980) 327–385.

M.-P. ROY, La Convention de Lomé (CEE – Pays d'Afrique, des Caraïbes et du Pacifique), Amorce d'un nouvel ordre économique international, Notes et études documentaires, Nos. 4313-4314-4315 (1976).

K.R. SIMMONDS, The Lomé Convention and the New International Economic Order, CMLRev, Vol. 13 (1976) 315–334.

G. WHITE, The Lomé Convention, A Lawyer's View, European Law Review, Vol. 1 (1976) 197–212.

F.A.M. ALTING VON GEUSAU (ed.), The Lomé Convention and a New International Economic Order (1977).

R. YAKEMTCHOUK, La Convention de Lomé, Nouvelles formes de la coopération entre la C.E.E. et les Etats d'Afrique, des Caraïbes et du Pacifique (1977).

D. BAUMGARTNER, Institutionelle Aspekte des AKP-EWG-Abkommens von Lomé, Europarecht, Vol. 13 (1978) 105–121.

M.B. DOLAN, The Lomé Convention and Europe's Relationship with the Third World, Revue d'intégration européenne, Vol. 1 (1978) 369–394.

J. BECKER, Die Partnerschaft von Lomé, Thesis, University of Freiburg (1979).

H. GERTH-WELLMANN, Das AKP-EG-Abkommen von Lomé (1979).

K.R. SIMMONDS, The Evolution of the External Relations Law of the European Economic Community, ICLQ, Vol. 28 (1979) 644–668.

K.R. SIMMONDS, The Lomé Convention: Implementation and Renegotiation, CMLRev, Vol. 16 (1979) 425–452.

P. BOUVIER, L'Europe et la coopération au développement, Un bilan: La Convention de Lomé (1980).

E. FREY-WOUTERS, The European Community and the Third World, The Lomé Convention and its Impact (1980).

J.-C. GAUTRON, De Lomé I à Lomé II, La Convention ACP-CEE du 31 octobre 1979, Cahiers de droit européen, Vol. 16 (1980) 383–437.

K.R. SIMMONDS, The Second Lomé Convention: The Innovative Features, CMLRev, Vol. 17 (1980) 415–435.

R.J.H. SMITS, The Second Lomé Convention, An Assessment with Special Reference to Human Rights, Legal Issues of European Integration (1980) 47–74.

K. YELPAALA, The Lomé Conventions and the Political Economy of the African-Caribbean-Pacific Countries: A Critical Analysis of the Trade Provisions, New York University Journal of International Law and Politics, Vol. 13 (1981) 807–880.

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MARSHALL PLAN *see* European Recovery Program

NORDIC COOPERATION

1. Background; General Framework

Nordic cooperation denotes the cooperative activities and institutions of the States of the north European region, i.e. Denmark (including the → Faeroe Islands and → Greenland), Finland (including the → Aaland Islands), Iceland, Norway, and Sweden. The background to Nordic cooperation is formed by the close ties which link these States as a result of their geographical proximity, common history, related cultures and languages, and their similar social and legal systems.

Cooperation in its modern form began in the

middle of the 19th century with meetings of Nordic scientists (1839), economists (1862) and jurists (1872). In 1874 a postal union was created, and one year later a currency union between Denmark, Norway and Sweden came into force. In 1880 these States adopted their first set of uniform laws, on → bills of exchange (→ Unification and Harmonization of Laws).

At the beginning of the 20th century important changes in the situation of the Nordic countries occurred. Norway left the union with Sweden (1905), Finland became a sovereign State (1917), and Iceland gained independence (1918), although remaining in union with Denmark until 1944.

Cooperation intensified on this new basis of sovereign equality. In 1907 the Nordic Inter-Parliamentary Union, a regional suborganization of the → Inter-Parliamentary Union, was founded by Danish, Norwegian and Swedish representatives, and was later joined by Finland and Iceland. During World War I the Scandinavian States pursued a common policy of neutrality; in their foreign relations after the war this common policy was continued within the → League of Nations and other international organizations. In World War II, however, the Nordic States failed to retain their neutrality and unity. Following the war, cooperation resumed and increased, although not all ideas and projects proposed since that time have been successfully implemented.

For a long time, Nordic cooperation had a very informal basis. Only in a few areas were treaties or conventions concluded (e.g. labour market, passport union, social security). Many joint projects have been carried out by non-binding agreements or simply by national acts.

By far the most important institutions in Nordic cooperation are the → Nordic Council and the Nordic Council of Ministers established in 1952 and 1971 respectively.

The basic Agreement of Cooperation between Denmark, Finland, Iceland, Norway and Sweden was signed on March 23, 1962 and came into force in the same year (UNTS, Vol. 434, p. 145). This so-called Helsinki Treaty deals with cooperation in the juridical, cultural, social and economic fields as well as with transport and communications. By a revision in 1971, the Statutes of the Nordic Council and the Nordic Council of Ministers became an integral part of the Treaty. When the Treaty was revised for a second time in 1974, provisions concerning the protection of the environment as well as an article providing for greatest possible publicity for Nordic cooperation were introduced.

There exists in the public sector a great number of permanent committees, associations and institutions dealing with special questions of Nordic cooperation. They have been established either by international treaty, by inter-governmental agreement, by formal decision of the ministers concerned or even without any of these foundations.

2. *Areas of Cooperation*

(a) *Cooperation in transport and communications*

The Treaty of 1972 concerning Cooperation in the Field of Transport and Communications deals with transport by land, sea and air as well as postal and telecommunications services (Art. 1). Its object is to strengthen and develop cooperation with the aim of establishing rationally organized and efficient systems of transport and communications (Art. 2). Practical cooperation within the area of road traffic deals with joint planning and construction of traffic routes, safety questions, harmonization of national laws on road traffic and scientific research. In the sphere of air traffic, the airline company SAS (Scandinavian Airlines System) was founded in 1946 and is owned partly by private interests and partly by the Scandinavian States. In the field of railway traffic, a unified Nordic rail tariff has been established for cargo between certain countries (→ Traffic and Transport, International Regulation; → Railway Transport, International Regulation).

In 1952 passport restrictions for Nordic nationals were eased. In 1958 a passport union was established, although an increase since 1979 of illegal immigration, especially into Sweden, may result in the reintroduction of controls.

Most postal items including telegrammes travel at domestic rates to another Nordic country; there is a special tariff for intra-regional telex and telephone communications (→ Postal Communications, International Regulation).

The important question of the permanent link

across the Sound between Sealand in Denmark and Scania in Sweden remains under discussion.

(b) Labour market and social services

Since 1954 more than one million workers have moved from one Nordic country to another (→ Migrant Workers), taking advantage of the Common Nordic Labour Market which is considered to be the most important arrangement amongst the Nordic States. The market was created by an agreement of that year which removed the requirement of work permits for Nordic subjects working in another Nordic country. National central labour authorities are requested to collaborate particularly through information sharing regarding current developments and trends within national labour markets. On March 6, 1982 an amended agreement was signed, this time including the participation of Iceland. Nevertheless, freedom of movement may be restricted for reasons of regional balance, employment policy and social and economic security.

The principle of equality between Nordic citizens also applies in the social field. Nordic citizens resident in another Nordic country receive the same social benefits as nationals of the host country. In 1954 existing provisions in several bilateral treaties and agreements concerning, for example, medical costs and unemployment or retirement benefit were collated in the Nordic Convention on Social Security; the convention was wholly revised in 1981 but its fundamental principles were retained unchanged. Cooperation in the social sector also involves the national health services, a Nordic pharmaceutical market, common training of health personnel in the Nordic School of Public Health and collaboration in organ transplantation.

(c) Legal cooperation

Harmonization of national laws is one of the oldest and most successful fields of Nordic cooperation. A great number of legal principles are common to all the Nordic countries, although each State has its own legal system. For historic reasons similarities exist especially between the systems of Denmark, Iceland, and Norway on the one hand and those of Sweden and Finland on the other.

According to the Treaty of Helsinki (Arts. 2 to 7), the principal goals of juridical cooperation between the Nordic countries are: juridical equality amongst Nordic nationals; the greatest possible uniformity in private and criminal law, as well as mutual coordination of legislation in any fields where this proves to be appropriate; and mutual recognition and enforcement of national judgments.

The procedure for harmonized legislation normally runs as follows. The preparation of a common text is undertaken by direct negotiations between representatives of the ministries concerned, or by national expert committees, representatives of which meet regularly or by joint Nordic committees which may consist of members of the relevant parliamentary committees. The States may then either conclude a → treaty on the matter in question, the provisions of which are later adopted into municipal law, or they may unilaterally adopt national acts upon the basis of the preparatory work. In the latter case, each State, not being bound by any conventional obligation under international law, is free to alter the act or to repeal it totally.

Harmonized legislation is found in almost every legal field: matrimony, adoption, law of succession, statutes of limitation, law of sale, law of commercial agents and travellers, law of commercial register, liability for the operation of atomic reactors, maritime law, air law, protection against marine pollution, company law, industrial property, law of procedure, extradition, criminal law and execution of sentences, and telecommunications. In 1950 Denmark, Norway and Sweden adopted similar citizenship acts which, *inter alia*, facilitate the acquisition of citizenship by nationals of another Nordic country – later one of the goals of the Helsinki Treaty. Since the late 1970s, Nordic nationals resident for at least three years in another Nordic country have the right to vote and the right to stand in the municipal elections of their host State. Legal cooperation has also taken place by means of multilateral conventions, for example, on questions of international private law, bankruptcy, mutual judicial assistance or concerning the recognition and enforcement of judgments and civil trials.

(d) Cooperation in international relations

Although each of the Nordic States pursues an

independent foreign policy, cooperative activities can be found even in their relations with third countries. This is especially true of the cooperation in the area of development aid (→ Economic and Technical Aid). Here the Nordic States either carry out common projects in the → developing States or, at the least, harmonize their bilateral activities with them (Art. 35 of the Helsinki Treaty; agreement of 1981 on Nordic cooperation in development aid).

The Nordic States are members of a great number of international organizations, within which they also cooperate. In the → United Nations, for example, the permanent missions of the Nordic States maintain regular contacts in order to prepare and coordinate their points of view. In the organs of some international organizations one seat is reserved for the Nordic countries and is filled by them in rotation. Following a series of negotiations in 1964, Denmark, Finland, Norway and Sweden enacted legislation to establish a common Nordic stand-by force at the service of the UN (→ United Nations Forces).

According to Art. 34 of the Helsinki Treaty, members of the foreign service of a contracting party who are on assignment outside the Nordic countries shall, when compatible with their duties and with their country's interests, assist nationals of another Nordic country if that country is without diplomatic representation. Although the establishment of joint embassies was rejected by the national administrations, there exists in some west African States an embassy of only one Nordic country which represents the interests of all the Nordic countries.

The scope for a common policy of the Nordic States in → international relations is, however, limited, in particular in questions of national defence and security policy. Since Denmark, Iceland and Norway are members of the → North Atlantic Treaty Organization and Finland and Sweden pursue a policy of neutrality, joint projects in this field can hardly be envisaged.

(e) Cultural cooperation

The improvement of the already close cultural ties in the Nordic region is seen separately from other fields of cooperation. While prior to World War II cultural cooperation was based primarily upon private initiatives and contacts, the promotion of a joint Nordic cultural policy has since become a prominent public policy (→ Cultural Agreements; → Cultural and Intellectual Cooperation).

In 1971 the Nordic States concluded a Treaty on Cultural Cooperation which contained a detailed list of activities to which joint efforts shall be directed, including research, education and such activities as art, music, theatre, radio and television.

The recognition of studies and examinations undertaken in Nordic countries is an important aspect of cultural cooperation. National scholarships are tenable for study in all Nordic countries. Nordic States endeavour to coordinate occupational and professional education. The teaching of the languages, cultures and social structures of the other Nordic countries is a part of the national curriculum in each country. Further cooperative activities include discussions towards a joint Nordic television satellite, a common book market; harmonization of the Scandinavian languages; and exchanges of exhibitions, musicians and theatre performances.

Other than the Council of Ministers, the organs of cultural cooperation are the Committee of Officials and the Secretariat for Nordic Cultural Cooperation, as well as other special committees and working groups. Every year a specialized cultural budget is passed.

(f) Frontier cooperation

Cooperation amongst Nordic States is especially concerned with the economic and structural development of the border regions, in particular those north of the → Arctic circle. Activities at the State level are supplemented by → transfrontier cooperation of municipalities, which exists even in very developed areas such as the Öresund region. In 1977 these activities obtained a legal basis when the Nordic States (except Iceland) concluded the Convention on the Cooperation of the Local Authorities Across the Nordic Borders.

(g) Environmental protection

Although environmental protection is a relatively new field of Nordic cooperation, it has achieved very considerable results. The most important of these is the Convention on the Protec-

tion of Environment of February 9, 1974. The main principle is laid down in Art. 2 which reads:

"In considering the permissibility of environmentally harmful activities, the nuisance which such activities entail or may entail in another Contracting State shall be equated with a nuisance in the State where the activities are carried out."

Thus a person in one Nordic State may take legal action in that State to remedy a nuisance emanating from another State (→ Environment, International Protection).

(h) Economic cooperation

Economic cooperation amongst the Nordic countries has not been as successful as other fields of cooperation. Several attempts to establish a → customs union or a Nordic common market have failed. Instead, the Nordic States are divided amongst the → European Communities (Denmark) and the → European Free Trade Association (EFTA) (Iceland, Norway, Sweden). Owing to its special relations with the Soviet Union, Finland has only associate status with EFTA – both forming a special → free trade area, the FINEFTA. Nevertheless, with an average volume of more than 20 per cent intra-Nordic trade still plays a most important role in each country.

According to Arts. 18 to 25 of the Helsinki Treaty the general principles of Nordic economic cooperation are: consultation and coordination in questions of economic policy; direct cooperation between enterprises in two or more countries; appropriate division of labour; freedom of capital movement; removal of trade barriers; cooperation in international trade policy; coordination of technical and administrative customs regulations; and facilitation of border trade, together with regional cooperation.

Many efforts have been made to remove nontariff or hidden impediments to trade. Particular importance is attached to the creation of a Nordic building market. Several joint organs and institutes have been founded, such as Inter-Nordic Standardization and NORDTEST, or the Nordic Fund for Technology and Industrial Development. In 1976 the Nordic Investment Bank was founded.

Based upon bilateral contracts, the national power generating groups, excluding Iceland, are linked together in the so-called Nordic Power Exchange which is coordinated by the Organization for Nordic Electricity Group, NORDEL. Other questions concerning the supply of energy such as nuclear power or oil and gas production in the continental shelves of Denmark and Norway are also deliberated jointly. One bilateral result is the 1981 agreement between Norway and Sweden on economic cooperation, which deals with long-term supplies of oil for Sweden and electrical energy for Norway.

3. Evaluation

In many areas Nordic cooperation is unique and more advanced than in any other part of the world. It should be stressed, however, that there exists neither much hope for nor even efforts towards the creation of a "Nordic Union" or a "United States of Scandinavia". As has been noted, some important areas are totally excluded from Nordic cooperation, for example, defence and security policy; others cannot be solved in a comprehensive manner, for example, economic or customs union. However, the diverging orientations of the Nordic States in these respects have affected only slightly their traditional relations in the other fields of cooperation. From a legal viewpoint, it is remarkable that no common system of judicial settlement of disputes has been introduced so far.

Nordic cooperation has been characterized as a cobweb integration, a fine-meshed net of small interdependencies lacking a central authoritative basis, in which the significance and strength of a single thread is very small, but the total result in many fields may be recognized as considerable. This is true even today, when the Nordic Council of Ministers, for example, has come to play an important and guiding role in the total system.

Cooperation Agreements between the Nordic Countries (2nd ed. 1978).

Nordiska samarbetsorgan (1982).

Litteratur om nordiskt samarbete (1975).

N. ANDRÉN, Nordic Integration, Aspects and Problems, Cooperation and Conflict, Vol. 2 (1967) 1–25.

G. PETRÉN, Nordic Cooperation in the Legal Field, NordTIR, Vol. 41, Tillaeg (1971) 55–78.

N. ANDRÉN, Desintegration in Skandinavien?, Europa-Archiv, Vol. 30 (1975) 547–554.
T. MILJAN, Problems of Nordic Integration, International Journal, Vol. 30 (1975) 707–731.
C. WIKLUND and B. SUNDELIUS, Nordic Cooperation in the Seventies: Trends and Patterns, Scandinavian Political Studies, New Series, Vol. 2 (1979) 99–120.
F. WENDT, Cooperation in the Nordic Countries (1981) (A slightly abridged translation of F. Wendt, Nordisk Råd 1952–1978, Struktur, arbejde, resultater (1979)).
B. TURNER, The Other European Community, Integration and Co-operation in Nordic Europe (1982).

See also individual titles in the series "Nordisk utredningserie" (since 1960).

AXEL BERG

NORDIC COUNCIL AND NORDIC COUNCIL OF MINISTERS

1. The Nordic Council

(a) Origin; Statute

The Nordic Council was established on August 20, 1952 as an organ for deliberation between the parliaments of Denmark, Iceland, Norway and Sweden. Finland initially declined to join the Council for political reasons, but became a member in 1955. The initiative which led to the creation of the Nordic Council was taken at the 1951 session of the Nordic Inter-Parliamentary Union which was a regional grouping of the → Inter-Parliamentary Union and a predecessor to the Council.

Due to some reservations, especially on the part of Norway, the establishment of the Council was not based on an international treaty. Instead, each parliament adopted the Council's Statute in the national language either through legislation (Denmark, Finland and Sweden) or by parliamentary resolution (Iceland and Norway). The first Statute entered into force on August 20, 1952, after its adoption by the Danish, Norwegian and Swedish parliaments. The first session of the Council was held in February 1953. On July 1, 1971 a revised Statute became part of an international treaty by a revision of the Helsinki Treaty on Cooperation between Denmark, Finland, Iceland, Norway and Sweden of March 23, 1962 (Arts. 44 to 59).

(b) Aims; competence

The general aim of the Nordic Council is to develop → Nordic cooperation with due regard to the provisions of the Helsinki Treaty and other agreements of the Nordic States. To this end the Council may take initiatives and deliberate on all questions concerning two or more of the Nordic countries (Helsinki Treaty, Arts. 39, 40 and 44). The Council has no supranational or legislative powers. It adopts recommendations or statements directed to the Nordic Council of Ministers or the governments concerned. Since 1975 the Council also participates in drawing up the budgets adopted by the Nordic Council of Ministers. The Council is the only permanent Nordic body in which members of the national parliaments as well as representatives of the governments come together.

The Nordic States, for their part, are obliged to give the Council an opportunity of stating its views, before final decisions on matters of major importance are taken. Since the Statute does not restrict the work of the Council to any special fields of cooperation, it may deal with all matters explicitly mentioned in the Helsinki Treaty or other agreements, including legal, cultural, social, economic, ecological and traffic questions. Despite repeated declarations that the Nordic Council may not deal with problems concerning defence or foreign policy, discussions on these subjects have taken place on several occasions without, however, resulting in any decisions.

(c) Structure; functions

The principal organs of the Nordic Council are the Plenary Assembly, the Presidium and the committees (Art. 50).

The powers of the Council are exercised by the Plenary Assembly which consists of 78 elected members and a variable number of government representatives. The elected members are members of the national parliaments which appoint them according to national regulations and in proportion to the party groups within the parliaments. Each State is represented by 18 members, except Iceland which sends six members (Art. 47). The representatives of governments attend the Plenary Assembly on an equal footing with the elected members, but have no voting rights. Normally all Prime Ministers and Ministers of

Foreign Affairs as well as other competent ministers who are concerned with the matters in question are present.

The autonomous regions of the → Aaland Islands and the → Faeroe Islands are granted obligatory representation within the Finnish and Danish delegations respectively. Sessions of the Assembly are normally held annually in the capitals of the member States in rotation.

The Council's current affairs are handled by the Presidium which consists of five elected members designated every year by the Assembly, having regard, as far as possible, to the various political standpoints (Art. 52).

Each elected member of the Plenary Assembly belongs to one of the five committees: currently the Legal, Cultural, Social and Environmental, Traffic, and Economic Committees. The committees, which are concerned in particular with preparatory work, consist of 13 to 22 members and meet during and between the annual sessions of the Assembly (Art. 53; Working Procedure of the Nordic Council, Sections 24 to 30).

The Nordic Council obtained its own secretariat in 1971; known as the Presidential Secretariat, it is located in Stockholm (Art. 54; → International Secretariat).

The expenses of the Council are financed by the member States in proportion to their gross national products. The expenses of the national delegations are defrayed by the individual States.

Every elected member, each government, or the Council of Ministers is entitled to make a proposal which is referred to one of the five committees (Art. 55). The committee submits its conclusions to the Plenary Assembly. The Assembly may vote in favour of a proposal either in the form of a recommendation or a statement, which is forwarded to the Council of Ministers or to the governments concerned. The Council's decisions are adopted by a simple majority of the elected members present; only members from the States concerned may vote. Statements and recommendations of the Council have no compulsory effect: a statement is simply an expression of opinion; a recommendation, however, obliges the Council of Ministers or the governments to inform the Council of measures taken, in so-called "communications" reviewed by the relevant committees. The number of recommendations adopted each year varies between 15 and more than 30; five statements are usually made annually.

The Council receives an annual report from the Council of Ministers on the results of and proposals for Nordic cooperation; the report is also considered by the five committees.

In matters of great urgency the Presidium alone is empowered to make a recommendation, which in these circumstances is then called a representation. A statement may also be made.

(d) Evaluation

The importance of the Nordic Council has steadily increased. The Council has developed from an organ with vague competences and an informal constitutional basis to become a central institutional component of Nordic cooperation. At the same time the bureaucracy not only of the Nordic Council but of Nordic cooperation in general has been kept down to rather modest proportions. Most achievements in Nordic cooperation can be traced back to initiatives taken within the Council or to recommendations of the Plenary Assembly.

2. The Nordic Council of Ministers

(a) Establishment; purpose

The creation of the Council of Ministers was motivated by the wish of the Nordic Council for more effective collaboration between governments as well as by the need for an appropriate executive institution within a Nordic Economic Union, which was proposed as early as 1968 but failed in 1970. However, the idea of a cooperative organ of Nordic governments survived. The Nordic Council of Ministers was established on July 1, 1971 when the revised Helsinki Treaty containing its Statute (Arts. 60 to 67) entered into force.

Like the Nordic Council, the Council of Ministers is charged with developing cooperation within the community of Nordic States. It is particularly concerned with cooperation between governments and between govern-

ments and the Nordic Council. The Council of Ministers performs its duties within the context of the Helsinki Treaty and many other agreements in the field of Nordic cooperation.

(b) Functions; structure; activities

The duties of the Council of Ministers range from general implementation of the aims of cooperation agreements to concrete organizational tasks. The decisions of the Council of Ministers have binding effect, except where the approval of a national parliament is required first. Decisions require the participation of all the member States concerned. Procedural questions may be decided by simple majority; for all other decisions unanimity is necessary.

Without taking binding decisions, the Council of Ministers may also deal with all other questions of importance for Nordic cooperation in the legal, cultural, environmental, economic and traffic fields. Defence and foreign policy are not explicitly excluded, but are not normally handled by the Council of Ministers.

Important specific functions of the Council of Ministers include: drawing up and adopting the Nordic budget and the Nordic budget for cultural affairs, under which numerous projects and institutions as well as the Council of Ministers itself are financed; the presentation of action programmes in the various fields of cooperation; and the submission of the annual reports on Nordic cooperation and of the communications on the Nordic Council's recommendations.

Each State is represented in the Council of Ministers by one member of its government. The exact composition of the Council of Ministers varies according to the matters dealt with. Ministers of Cooperation have to be appointed by each government, with special responsibility for the expansion, organization and coordination of Nordic cooperation.

Meetings of the Council of Ministers are convoked on the request of any member. There are two secretariats of the Nordic Council of Ministers: the one dealing with cultural affairs is located in Stockholm (the Secretariat for Nordic Cultural Cooperation); the other in Oslo is responsible for all other fields of cooperation (the Secretariat of the Nordic Council of Ministers). The Council of Ministers is serviced by committees of officials. Currently, some 17 committees exist, concerned with agriculture and forestry, labour market, social policy, working environment, development aid, commerce, industry and energy, consumer protection, legislation, environmental protection, regional policy, cooperation in the building sector, monetary and financial questions, radio and television and cultural affairs.

Prior to the establishment of the Nordic Council of Ministers the only general organ responsible for the common interests of the Nordic States was the Nordic Council, a parliamentary organ. With the creation of the Council of Ministers, Nordic cooperation has changed considerably. A centralized executive organization covering all fields of cooperation now exists. Many initiatives have been made, and numerous decisions have been taken by the Council of Ministers, which is well equipped to handle preparatory tasks. At the same time, the Nordic Council has been preserved and integrated into the new system, while retaining its initiatory and controlling functions.

Cooperation Agreements between the Nordic Countries (2nd ed. 1978).
Nordisk Råd/Nordiska Rådet [reports of sessions].
Nordiska samarbetsorgan (1982).
Litteratur om nordiskt samarbete (1975).

H. NAGEL, Der Nordische Rat, seine Organe, seine Funktionen und seine juristische Natur, JIR, Vol. 6 (1955) 199–214.
M. SØRENSEN, Le Conseil nordique, RGDIP, Vol. 59 (1955) 63–84.
G. PETRÉN, The Nordic Council: A Unique Factor in International Law, NordTIR, Vol. 29 (1959) 346–362.
N. HERLITZ, Nordiska rådet tillkomst, Nordisk Kontakt (1962) Supp.
O. WALLMÉN, Nordiska rådet och nordiska samarbete (1966).
S.V. ANDERSON, The Nordic Council (1967).
E. SOLEM, The Nordic Council and Scandinavian Integration (1977).
R. MILAS, Les institutions de la coopération nordique: Les pouvoirs du Conseil nordique et du Conseil des Ministres (1978).
F. WENDT, Cooperation in the Nordic Countries (1981); (A slightly abridged translation of: F. Wendt, Nordiska Råd 1952–1978, Struktur, arbejde, resultater (1979)).

AXEL BERG

NORTH ATLANTIC TREATY ORGANIZATION

1. Origins and Aims

The hopes that the wartime → alliance formed in enmity to National-Socialist Germany would endure beyond the end of hostilities proved increasingly unfounded in the initial years of peace. Unresolved inter-allied differences during the war (e.g. see → Yalta Conference) later proved incapable of resolution under the neophyte → United Nations Charter, signed on June 26, 1945.

When, in March 1947, the Foreign Ministers Conference held in Moscow was unable to reach agreement on Germany's future status (→ Germany, Legal Status after World War II), cooperation between the Soviet Union and the Western allies became, to all intents and purposes a dead letter.

By 1948, with Europe "a heap of rubble", in grave economic difficulties and the armies of the Western allies demobilized to a fraction of their wartime levels, the Soviet Union had consolidated her wartime gains throughout Eastern Europe and the eastern part of Germany. In addition, concern was felt in Western capitals at the manifestations of Soviet influence in France and Italy and its role in the Greek uprising, in Turkey and elsewhere.

The ensuing post-war response to the new realities in Europe was conditioned both by the actions of the Soviet Union and by memories of the evident failure of the peace settlement after World War I (→ Peace Treaties after World War I), which had culminated in World War II. Neither world-wide economic protectionism nor the isolationist policies adopted by the United States after 1919 had resounded in success, and the trends in post-war western European development were to favour greater economic, military and political cooperation and integration (→ European Integration).

The initial steps in response to new security needs came with the Brussels Treaty of 1948, which was essentially a defensive European alliance formed so as to accord with the Charter of the United Nations, leading ultimately to the formation of the → Western European Union. In the United States, the Truman doctrine declaring the willingness of the United States to help the free countries of Europe to protect themselves, marked the new trend in American peacetime → diplomacy (cf. → European Recovery Program). The so-called Vandenberg Resolution (Res. 239, 80th Congress, 2nd Session) of June 11, 1948 gave the Senate's approval to the United States' association with regional arrangements based on self-help and mutual aid, thus removing constitutional impediments to United States participation in a peacetime military alliance with Western Europe.

Movement towards a North Atlantic alliance culminated in the North Atlantic Treaty, signed on April 4, 1949 (UNTS, Vol. 34, p. 243). The Treaty's → preamble reaffirms the parties' faith in the purposes and principles of the UN Charter, their desire to live in peace, their determination "to safeguard the freedom, common heritage and civilization of their peoples, founded on the principles of democracy, individual liberty and the rule of law", and their resolution to unite their efforts for → collective self-defence (→ Collective Security).

Under Art. 5, an attack against one or more of the parties in Europe or North America is to be considered an attack against them all (→ Aggression), and Art. 6 expressly defines the Treaty's area of operation to include the territory of the parties in North America and Europe (implicitly including West → Berlin by referring to their occupation forces in Europe), islands under the jurisdiction of any Party in the North Atlantic area north of the Tropic of Cancer (30 degrees latitude north), and vessels and → aircraft of the parties in this area (→ Merchant Ships; → Warships). Art. II of the Greece/Turkey Accession Protocol (see *infra*) extends this area to include all of Turkey, the Mediterranean Sea and forces, vessels or aircraft when in or over the areas mentioned above.

Express → guarantees of the security of West Berlin were given on October 3, 1954 in Part V, Art. 5 of the London Nine Power Conference's Declaration. The Final Communiqués of the North Atlantic Council over the years reflect and reaffirm these guarantees.

1955 saw the founding of the → Warsaw Treaty Organization which was described as a counter-

balance to the North Atlantic Treaty Organization (NATO) and the Western European Union.

2. *Membership*

The original 12 parties to the North Atlantic Treaty were Belgium, Canada, Denmark, France, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, the United Kingdom and the United States. Art. 10 allows the parties by unanimous agreement to invite "any other European State" to accede to the Treaty. The original signatories have been joined by Turkey and Greece (London Protocol of Accession, signed October 26, 1951, entered into force February 18, 1952; UNTS, Vol. 126, p. 350), the Federal Republic of Germany (Paris Protocol of Accession signed October 23, 1954, entered into force May 5, 1955; UNTS, Vol. 243, p. 308) and finally by Spain (Brussels Protocol of Accession, signed December 10/11, 1981, entered into force May 30, 1982; British Command Paper, Cmnd. 8473, p. 82). France and Iceland do not participate in the North Atlantic Treaty Organization's integrated military structure (see sections 3(b) and 8(a) *infra*), and the position of Spain has yet to be established.

3. *Structure*

Art. 9 of the Treaty established the Organization's Council and laconically charged it with the capacity to meet promptly at any time and to set up "such subsidiary bodies as may be necessary". In its early years, NATO was mainly a planning agency having a Council (where the member States' foreign ministers met), a Defence Committee (defence ministers), a Defence and Economic Committee (finance ministers), and a Military Committee (chiefs of staff). The increasing severity of the cold war and the inflexibility inherent in this structure led to wide-ranging organizational and institutional changes, although NATO's pre-eminent tasks in peacetime remain the planning and coordination of the western defence effort on an inter-governmental level. Impetus was given towards an integrated military structure with a centralized command; force goals were adopted; the Council was institutionalized so that members were constantly represented by permanent representatives of ambassadorial rank backed up by national delegations; and an international staff was set up. Given the modest original framework, the modern structure of NATO has undergone considerable elaboration and expansion since 1949, not least in the aftermath of France's withdrawal from the integrated military structure and the transfer of the Organization's headquarters from Paris to Brussels which then became necessary.

The structure of NATO can be divided into two parts, civil and military.

(*a*) *Civil*

The North Atlantic Council is NATO's supreme body. Although it may take the form of a meeting of heads of State, a ministerial session or a session of the permanent representatives, all decisions reached are of equal standing. Decisions are reached by → consensus and, apart from very general communiqués, the discussions in the Council are confidential so as to encourage the free exchange of views.

The Defence Planning Committee is, in practical terms, the North Atlantic Council minus the members who do not participate in the integrated military structure; it deals with the area of defence only. Both bodies are chaired by the Secretary General who is charged with the direction of the → international secretariat and who from the outset was conceived of as an international civil servant (→ Civil Service, International).

A large number of committees have been set up under the authority of the Council either to prepare its and the Defence Planning Committee's work or to implement their directives. The principle committees deal with issues ranging from the broadly political to the narrowly specialized (e.g. logistics, communications or airspace coordination). Some of the more senior committees, like the Nuclear Planning Group and the Committee on the Challenges of Modern Society are chaired by the Secretary General himself. The NATO International Staff is organized into five divisions (Political; Defence Planning and Policy; Defence Support; Infrastructure, Logistics and Council Operations; Scientific Affairs), each headed by an Assistant Secretary General who assist the Secretary General and his deputy in the work of liaising with national delegations and of servicing the Council and the Organization's committees.

(b) Military

Subordinate to the Council and to the Defence Planning Committee, the Military Committee is NATO's highest purely military authority. It is made up of each member State's Chief of Staff or a permanent military representative (with the exceptions of France, who maintains a military mission to the Committee and Iceland who, lacking military forces, may be represented by a civilian). The chairman, who is elected for a two-year term by the Committee, is assisted by a deputy and by the director of the International Military Staff, which, as the Committee's military support staff and executive agent, is organized into six functional divisions and a secretariat.

In peacetime, with the exceptions of 15 small specialized military agencies (such as the Military Agency for Standardisation), essentially only the NATO commanders and command structures are organized directly under the authority of the Military Committee. These are the Supreme Allied Commander Europe (SACEUR), the Supreme Allied Commander Atlantic (SACLANT) and the Allied Commander in Chief Channel (CINCHAN). In addition to these commands, the Canada-U.S. Regional Planning Group is responsible to the Military Committee for defence plans for North America.

Although the command structures and their responsibilities in time of war are worked out in no little detail, the overwhelming majority of military manpower earmarked or available to NATO remains under national command and control in peacetime.

4. Additional Treaties

The absence of detailed organizational provisions in the North Atlantic Treaty has to a certain extent been compensated for by a number of treaties which regulate the status of the Organization and members' forces (→ Military Forces Abroad, Military Bases on Foreign Territory).

The Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces of June 19, 1951 (SOFA) (UNTS, Vol. 199, p. 67) is the basic multilateral treaty governing the tax and excise privileges and civil and criminal liability of the members' forces when stationed abroad in the metropolitan territory of other members. The status of NATO forces stationed in Germany are governed by the supplementary agreement signed on August 3, 1959 (UNTS, Vol. 481, p. 262) as revised on October 21, 1971 (British Command Paper, Cmnd. 5927 (1975)).

The Organization's legal personality and competence in international and national law as well as its privileges and immunities are established by the Agreement on the Status of the North Atlantic Treaty Organization, National Representatives and International Staff of September 20, 1951 (UNTS, Vol. 200, p. 3). A further Protocol on the Status of International Military Headquarters set up pursuant to the North Atlantic Treaty of August 28, 1952 (UNTS, Vol. 200, p. 340) modifies and extends the SOFA to each of the Supreme Headquarters and gives these legal personality to conclude business both with and within the receiving State (→ International Organizations, Privileges and Immunities).

5. Finances

The mixture of national, inter-governmental and international organizational elements which altogether make up the Western defence effort are reflected in NATO's financial arrangements (→ International Organizations, Financing and Budgeting). For the costs of running the Organization, the Council, after receiving budget estimates from the Civil and Military Committees, approves an annual budget on the basis of an agreed cost-sharing formula. The Council is also responsible for laying down the NATO financial regulations. Financial controllers supervise the day to day financial operations of the International Staff, the International Military Staff and the Supreme Commands.

NATO's infrastructure projects (e.g. airfields, pipelines, air defence and missile sites) are funded in a different way, according to the reasoning that a host State should not have to bear the full costs of common installations used by the forces of other member countries of the alliance. A complicated, variable cost-sharing system is used for these sorts of projects, which is based on each member's ability to pay, the advantage accruing to user countries and the economic benefits conferred on host countries. Funds allocated for in-

frastructure are paid directly to the host State by the other members.

The financial accounts of all the arrangements above are audited by the International Board of Auditors, which is made up of high audit officials from member countries appointed by the Council but selected and remunerated by their respective governments.

NATO's role in the coordination of each member country's defence budget in relation to the NATO force goals is considered later (see 6(b) *infra*).

6. *Activities*

(*a*) *Political*

NATO is an institutional expression of the unparalleled → interdependence of the Western world in the years following World War II. Although primarily a military alliance, the Organization ensures that member States are able to consult with each other and coordinate their actions both in relation to one another and to the outside world. Thus, in recent years, the allies have been able to coordinate their responses to issues such as the → Helsinki Conference and Final Act on Security and Cooperation in Europe and follow-up meetings, to the Vienna → negotiations on the mutual balanced force reductions (MBFR; → Arms Control) and to the Soviet → intervention in Afghanistan. The Organization, through its Secretary General, has also been able to act as a broker in bilateral disputes between member States.

A limited amount has been accomplished in the area of non-military cooperation (under Art. 2 of the Treaty) in, for example, the environmental and economic fields. Attempts to expand NATO's concerns over and beyond the military and strategic areas have not, however, been notably successful, partly no doubt because of the duplication this entails with other international organizations (e.g. the → European Economic Community and the → Organisation for Economic Co-operation and Development).

Above all else, the machinery of the NATO alliance ensures that the preoccupations and difficulties of individual members are known to the other members and understood as far as they affect the common undertaking.

(*b*) *Military*

NATO's military activities cover an extremely broad spectrum; some of them are highly political in nature, others more narrowly technical. Only a few can be mentioned here.

One of the most important examples of the former is the force planning process whereby the member States fix their contributions to the NATO effort. Under the Defence Planning Committee, a five-year force proposal is prepared and ultimately adopted as the NATO force goals which members are to use as the basis for their five-year defence plans. Each year thereafter, the defence plans of members are compared against the force goals set for them by NATO. Before setting its annual national defence budget, each member State engages in close → consultation with NATO. Thus, the NATO five-year force plan in practice is defined by the sum of each member's national defence budget applied or committed to NATO.

At the policy level, NATO also evolves the strategic posture of the alliance and, through its Nuclear Planning Group (NPG), develops the nuclear weapons policy of the alliance. Recently on December 12, 1979, after examination in the NPG, the NATO defence ministers resolved to modernize the NATO theatre nuclear forces and, at the same time, to seek in talks between the United States and the Soviet Union limitations in Intermediate Range Nuclear Forces (INF) in Europe. A high level consultative body known as the Special Consultative Group was formed in support of the United States negotiating effort.

NATO activities at the operational and technical levels cover a wide variety. In addition to its command structures and contingency plans, NATO maintains: standing naval forces in the Atlantic and the Channel: a multinational force of land and air units for rapid responses: and installations and early warning/air defence systems. It also conducts joint military exercises on land, sea and air. In the sensitive issues of weapons production and standardization NATO takes the lead by encouraging joint ventures and consultations between member States, and seeking to reduce the logistical difficulties inherent in an alliance comprising so many national forces.

7. *The North Atlantic Assembly*

The North Atlantic Assembly, before 1966 known as the NATO Parliamentarians Conference, is a body of 172 parliamentarians drawn from the parliaments of the member States, none of whom may be ministers or members of a government (cf. → Parliamentary Assemblies, International). It owes its existence to the initiative of parliamentarians in the member States, rather than their governments. The first meeting of the Parliamentarians Conference was held in 1955 and was characterized by marked lack of formality; the Conferences' Rules of Procedure were first adopted in 1961.

The Assembly considers and debates problems affecting the alliance, and forms committees and sub-committees to work and report in greater depth. One example of the latter is the special committee appointed in Novemver 1980 to study arms control and nuclear weapons in Europe (→ Nuclear Warfare and Weapons). The Assembly's recommendations are directed to the North Atlantic Council and its resolutions go to member governments and the respective parliaments and international organizations. The NATO Secretary General, after consulting with the Council, then comments upon these documents.

The Assembly has no law- or rule-making role in the Organization, but serves to promote cooperation and debate in NATO and underpin the idea of the Atlantic community.

8. *Special Legal Issues*

One of the characteristics of NATO is undoubtedly "the propensity on the part of the member States to gloss over the basic issues concerning the legal nature of the Organization because of their potentially divisive impact" (Stein and Carreau, p. 606). This in part is an attempt to compensate for the traditional instability of military alliances, but a further important factor is the absence of a charter or treaty laying down the legal order governing what is, by any standards, a large organization. Disputes or uncertainties between member States have to be resolved at a political level, either bilaterally, multilaterally or through the established channel of the North Atlantic Council. Thus, the "subsequent conduct" and → "acquiescence" of member States to decisions and developments within NATO are important determinants of law binding the parties. The "binding effect" of North Atlantic Council decisions appears to be highly dependent on these factors, whenever the Council purports to go beyond the laying down of internal rules for the Organization (→ International Organizations, Resolutions; → International Organizations, Internal Law and Rules).

(*a*) *Withdrawal of members*

On March 10/11, 1966 France unilaterally announced in messages to the other member States in the Organization that, although she remained bound by the North Atlantic Treaty, she intended to withdraw from the integrated commands within NATO and would require the relocation of the Organization's headquarters and installations outside French territory. Only implicit in the French decision was the *rebus sic stantibus* doctrine, that circumstances surrounding the North Atlantic Treaty had changed so fundamentally that France was justified in taking unilateral action (→ Clausula rebus sic stantibus; → Treaties, Revision). Explicitly France preferred to justify her decision using political rather than legal grounds. Art. 13 of the Treaty governs the right of denunciation of the Treaty by any of the parties. An original term of 20 years was laid down. Thereafter (i.e. in 1969) one year's notice of withdrawal was required. Art. 12 states "... the Parties shall, if any of them so requests, consult together for the purposes of reviewing the Treaty". Although France neither engaged in consultation within NATO nor denounced the Treaty, a half-way house was created for her within the alliance as being in the common interest. France's failure to consult was followed by Greece in 1974 when the latter similarly withdrew from the integrated military structure. In 1980, under a proposal sponsored by SACEUR, Greece returned to the integrated military structure.

(*b*) *Duty to consult*

Apart from Art. 12, the only explicit duty to consult on members is "whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened" (Art. 4). However, a number of "obligatory norms" have developed, based on the

practice of the parties and → declarations within NATO (see Kirgis). Thus, where a member State's action may affect the alliance's defensive capabilities against outside attackers, e.g. through extraordinary force reductions or revised domestic defence budget policies, there is a duty to consult before a final decision is made by the member State in question. The desirability of prior consultation in general before domestic decisions are made has been repeatedly emphasized in NATO declarations (e.g. the 1974 Declaration on Atlantic Relations), but the duty to consult continues to govern a relatively narrow range of issues.

(c) Action in the face of armed attack

NATO's considerable integrative efforts in the maintenance of a standing military alliance remain subject to sovereign discretion. Although under Art. 5 an armed attack against one of the parties in Europe is to be considered an attack against all the parties, the action taken in this event remains a matter for the decision makers in the member States, for

> "if such an attack occurs, each of them, in exercise of the right of individual or collective self-defence recognized by Art. 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."

(→ Use of Force). In terms of the doctrines of deterrence, this qualified provision compares unfavourably with the equivalent Art. V of the modified Brussels Treaty (concluded originally on March 17, 1948) governing the Western European Union.

9. Evaluation

Since 1949 NATO has gone a long way in support of the parties' aims laid down in the preamble to the North Atlantic Treaty ("to seek to promote the stability and well-being in the North Atlantic area" and "to unite their efforts for collective defence and for the preservation of peace and security"). Much has been written over the periodic troubles of the North Atlantic alliance, and comparatively little on those qualities of suppleness which have enabled NATO to accommodate the changes in Western political realities since 1949. NATO's more or less continuous process of consultation and re-evaluation has helped to stave off institutional rigidity and complacency and to forestall differences within the alliance.

North Atlantic Treaty, Washington, April 4, 1949, UNTS, Vol. 34 (1949) 243–255.
NATO Basic Documents (1981).
Texts of Final Communiqués 1949–1975.
Texts of Final Communiqués 1975–1980.
The North Atlantic Treaty Organisation: Facts and Figures (10th ed. 1981).

W.E. BECKETT, The North Atlantic Treaty, The Brussels Treaty and the Charter of the United Nations (1950).
LORD ISMAY, NATO, The First Five Years 1949–1954 (1955).
M.E. BATHURST and J.L. SIMPSON, Germany and the North Atlantic Community (1956).
H.A. KISSINGER, The Troubled Partnership (1965).
L. DELBEZ, L'O.T.A.N. et le droit des gens, Revue politique des idées et des institutions, Vol. 55 (1966) 239–251.
J.A. HOVEY, JR., The Superparliaments, Interparliamentary Consultation and Atlantic Cooperation (1966).
M. VINCINEAU, La crise de l'Alliance atlantique, Développements diplomatiques récents (février-décembre 1966), Revue de l'Institut de sociologie (1966) 699–750.
K. IPSEN, Rechtsgrundlagen und Institutionalisierung der atlantisch-westeuropäischen Verteidigung (1967).
R.S. JORDAN, The NATO International Staff/Secretariat 1952–1957 (1967).
J.W. HOLMES, Fearful Symmetry: The Dilemmas of Consultation and Coordination in the North Atlantic Organization, International Organization, Vol. 22 (1968) 821–840.
E. STEIN and D. CARREAU, Law and Peaceful Change in a Subsystem: "Withdrawal" of France from the North Atlantic Treaty Organization, AJIL, Vol. 62 (1968) 577–640.
F. BEER, Integration and Disintegration in NATO (1969).
S. LAZAREFF, Status of Military Forces under Current International Law (1971).
K. IPSEN, Die rechtliche Institutionalisierung der Verteidigung im atlantisch-westeuropäischen Raum, Jahrbuch des Öffentlichen Rechts, Vol. 21 (1972) 1–53.
E. SCHWENK, Jurisdiction of the Receiving State over Forces of the Sending State under the NATO Status of Forces Act, International Lawyer, Vol. 6 (1972) 525–540.
E.R. GOODMAN, The Fate of the Atlantic Community (1975).
P.C. LUDZ et al., Dilemmas of the Atlantic Alliance, Two Germanys, Scandinavia, Canada, NATO and the EEC (1975).

G. WILLIAMS, The Permanent Alliance: The European-American Partnership 1945–1984 (1977).
C. GORDON, The Atlantic Alliance, A Bibliography (1978).
K. IPSEN, Völkerrechtliche Probleme des Nordatlantikvertrages, Sicherheitspolitik (1978) 435–445.
L'Alliance atlantique, Annales d'études internationales, Vol. 10 (1979).
R.S. JORDAN, Political Leadership in NATO (1979).
F.L. KIRGIS, JR., NATO Consultations as a Component of National Decisionmaking, AJIL, Vol. 73 (1979) 372–406.
R.A. MYERS, NATO, The Next Thirty Years (1980).
L.S. KAPLAN and R.W. CLAWSON, NATO after Thirty Years (1981).

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ORGANIZATION OF AFRICAN UNITY

1. Background. – 2. Aims and Purposes. – 3. Membership; Finance. – 4. Organs: (a) Assembly of Heads of State and Government. (b) Council of Ministers. (c) General Secretariat. (d) Commission of Mediation, Conciliation and Arbitration. (e) Specialized Commissions. – 5. Special Questions: (a) The OAU and the UN Charter. (b) Difficulties experienced by the OAU. (c) Legal status of OAU resolutions.

1. Background

The first meeting of African States, the Conference of Independent African States, was held in Accra, Ghana, from April 15 to 22, 1958; Egypt, Ethiopia, Ghana, Liberia, Morocco. Sudan and Tunisia participated; no organizational structure for further cooperation was at that time envisaged. In the following year the Ghana-Guinea Union was declared (May 1, 1959) and an appeal was made to all independent African States to join it. Almost immediately Dr. Tubman, President of Liberia, initiated a meeting at Sanniquellie, attended by the Presidents of Ghana, Guinea and himself. The Sanniquellie Declaration of July 19, 1959 contained six principles considered necessary for the achievement of a community of independent African States and marked a turning point and a new approach in the direction of African unity. In 1960, 13 French territories in Africa achieved political independence and in October 1960, at a meeting at Abidjan, Ivory Coast, the Brazzaville Group of French-speaking States came into being.

The Congo crisis, which was gaining momentum at this time, and other unresolved problems in the continent gave rise to the creation of two new blocs of States – the Casablanca Group and the Monrovia Group. The Casablanca Group was formed at Morocco's instigation, originally to counter the Brazzaville Group's support for an independent Mauritania. On January 7, 1961, the Casablanca Conference approved the creation of an African Consultative Assembly, African committees to take care of political, economic and cultural matters and a Joint African High Command. A subsequent meeting of the foreign ministers of the Casablanca Group in Cairo, from April 30 to May 5, 1961, agreed to set up a Secretariat in Bamako, Mali. The Monrovia Group, which met in May 1961, was the result of the combined initiative of the Presidents of Senegal, Ivory Coast and Liberia. The Monrovia Conference was attended by twenty independent African States, including the twelve countries of the Brazzaville group. It represented a landmark as it was the first time that all the French-speaking African States had met with the majority of English-speaking countries. At the conclusion of the second conference of the Monrovia Group in Lagos on December 23, 1962, 17 of the participating States approved the Charter of the Organization of Inter-African and Malagasy States.

By now it had become apparent that a link between the two Groups was urgently needed, no matter how precarious. In August 1962, Dr. Nkrumah, President of Ghana had narrowly escaped an attempt on his life. In January 1963, President Sylvanus Olympio of Togo was assassinated in an army *coup d'état* which sent shock waves across Africa. These events persuaded most African leaders to accept invitations to attend a new conference in Addis Ababa in May 1963.

The preparatory meeting of the Council of Ministers from May 15 to 23, 1963 assumed the delicate task of working out a document that would reconcile a new Ethiopian draft Charter, the Casablanca Group's Charter, and the Lagos Charter of the Monrovia Group.

The Conference of the Heads of State and Government commenced on May 23, 1963 and on May 25 the text which gave birth to the Organization of African Unity (OAU) (UNTS,

Vol. 479, p. 39) was adopted and signed by 32 African leaders. The Charter of the OAU entered into force on September 13, 1963, following ratification by two-thirds of the member States of the Organization, in accordance with Art. XXV.

2. *Aims and Purposes*

The OAU Charter represented an amalgam of the experiences acquired by those who drafted it, as well as a compromise on the major objectives of the member States of the Organization. The → preamble reveals the conviction of the African leaders at the Addis Ababa Conference that they had assumed responsibility for the destiny of Africa following the period of confusion and past external domination. Prime emphasis was therefore placed on "the inalienable right of all peoples to control their own destiny" (→ Self-Determination). Close links between the human and natural resources of the African continent were recognized as vital if any advance in human endeavours was to be achieved. The preamble also encourages the members of the OAU to adhere to the → United Nations Charter and the Universal Declaration of Human Rights (→ Human Rights, Universal Declaration (1948)).

The purposes of the OAU are clearly enumerated in Art. II(1). The institutional motivation rests particularly on the promotion of unity and solidarity, which were painfully difficult to achieve. Allied to this is the need to improve the quality of life of the peoples of Africa by coordinated efforts. Understandably, OAU member States are urged to defend, without compromise, their independence, → sovereignty and → territorial integrity. Prominence was given to the eradication of colonialism from the continent (→ Colonies and Colonial Régime). Because of this principle, some writers have referred to the Charter as a "Liberation Charter". Important as this may be, that assumption is only partially correct.

Art. II(2) urged the member States to coordinate and harmonize their policies in various fields such as diplomacy, economic issues, transportation, communications, education and culture, health, sanitation, nutrition, science and technology, as well as defence and security.

Art. III formulates certain basic principles: the sovereign equality of all Member States; non-interference in the internal affairs of States; respect for the sovereignty and territorial integrity of each State and for its inalienable right to independent existence; peaceful settlement of disputes; unreserved condemnation of political assassination and subversive activities; absolute dedication to the total emancipation of the still dependent African territories and non-alignment with regard to all blocs. To emphasize these principles, Art. VI provides that each member should pledge to observe them scrupulously.

3. *Membership; Finance*

The primary condition of membership is that of being an "independent sovereign African State" (Art. IV). African States are those geographically located on the African continent, including "the Continental African States, Madagascar and other Islands surrounding Africa" (Art. I(2)). Although not explicitly specified, membership of the OAU may be denied any independent country in Africa ruled by a white minority government. The Charter makes no distinction between the original members who signed and ratified it as provided under Art. XXIV and those who join in accordance with Art. XXVIII, that is, by notification of its intention to adhere to the Charter followed by acceptance by a simple majority of the member States (→ International Organizations, Membership).

With the exception of South Africa, regarded by all Africans as operating a system of → apartheid, every independent African State is a member of the OAU. Cessation of membership becomes effective one year after the date of notification of renunciation (Art. XXXII). Liberation movements as well as territories still under colonial rule are excluded from membership.

The Charter makes no provision for → sanctions against member States which do not comply with its terms, nor is there any obligation in the Charter requiring members to respect or carry out the resolutions of the OAU (→ International Organizations, Resolutions). No organ is endowed with disciplinary powers: the accent is on cooperation. All member States have equal rights and duties (Art. V) and undertake to respect the responsibilities of the Administrative Secretary-General and his staff (Art. XVIII(2)).

Budgetary matters are dealt with in Art. XXIII of the Charter, which states that the OAU is financed by the contributions of its members in accordance with the scale of assessment of the United Nations, provided that the amount assessed for any one country does not exceed 20 per cent of the budget (→ International Organizations, Financing and Budgeting). The power to prepare the budget is conferred on the Administrative Secretary-General, and the budget is submitted to the Council of Ministers for approval. There is no provision in the Charter for penalty in respect of member States whose contributions are not regularly met, unlike the stipulation in Art. 19 of the UN Charter.

4. *Organs*

Art. VII of the Charter established four principal institutions of the OAU: the Assembly of Heads of State and Government; the Council of Ministers; the General Secretariat; and the Commission of Mediation, Conciliation and Arbitration.

(*a*) *Assembly of Heads of State and Government*

The Assembly is the supreme organ of the OAU (Art. VIII). Its members are the Heads of State and Government or their duly accredited representatives (Art. IX). The composition and competence of the Assembly reflect the importance of the functions attributed to it, including the discussion of matters of common concern to Africa with a view to coordinating and harmonizing the general policy of the organization. The Assembly also reviews the structure, functions and acts of all the organs of the OAU and specialized agencies which may be created pursuant to the Charter (Art. VIII). It is empowered to appoint the Administrative Secretary-General and his immediate assistants (Arts. XVI and XVII). Other functions of the Assembly are to take decisions on questions which concern the interpretation of the Charter (Art. XXVII) and on questions concerning adherences and accessions to the Charter by newly independent member States as provided for in Art. XVIII.

By Art. XI, the Assembly is given the power to determine its own rules of procedure. Ordinary or extraordinary sessions require a quorum of two-thirds of the total member States of the OAU. Each member has one vote (Art. X(1)) and a two-thirds majority is necessary for the adoption of resolutions (Art. X(2)).

(*b*) *Council of Ministers*

The Council of Ministers is composed of foreign ministers or such ministers as are designated by member States (Art. XII(1)). The Council must meet in ordinary session at least twice a year; extraordinary meetings at the request of a member State require approval by a two-thirds majority of all the members of the OAU. The Council of Ministers is responsible to the Assembly (Art. XIII(1)).

The functions of the Council include preparing conferences of the Assembly, and implementing its decisions (Art. XIII(1) and (2)). The Council takes cognizance of any matter referred to it by the Assembly. Another important function of the Council is the coordination of inter-African cooperation in accordance with the instructions of the Assembly, taking into account the provisions of Art. II(2) of the Charter which mentions six areas of cooperation. Each member is entitled to one vote in the Council (Art. XIV(1)); resolutions of the Council are approved by a simple majority only (Art. XIV(2)). To form a quorum, however, a two-thirds majority of the total member States is required (Art. XIV(3)). Power is conferred on the Council to determine its own rules of procedure (Art. XV). The Council of Ministers' involvement in matters relating to finance derives from the fact that it is authorized to approve the budget prepared by the Administrative Secretary-General in accordance with Art. XXIII. The Council is also required to approve the regulations governing the Specialized Commissions of the OAU (Art. XXII).

(*c*) *General Secretariat*

The General Secretariat ranks as the third principal institution of the OAU, after the Assembly and the Council. The Charter appears to give prominence to the person of the Administrative Secretary-General, who is appointed by the Assembly to direct the affairs of the Secretariat (Art. XVI). The influence and authority of the General Secretariat largely depends on the imprint, style, and approach of the Secretary-General in his duties. The

Secretary-General is assisted by one or more Assistant Secretaries-General who are also appointed by the Assembly (Art. XVII). In addition to the provisions of Art. XVIII in respect of the functions and conditions of servies of the Secretary-General, Assistant Secretaries-General, and other employees, the Assembly of the Heads of State and Government has approved regulations governing their services. The term of office of the Secretary-General and the Assistant Secretaries-General is for a period of four years; this may be renewed.

The chief functions of the Secretary-General are: to communicate a copy of the notifications of adhesion by any State to all members (Art. XXVIII); to receive written notification from any State desiring to renounce its membership (Art. XXXII); to receive a written request for the amendment or revision of the Charter and to notify the members accordingly (Art. XXXIII); to accept on behalf of the Organization gifts, benefits and other donations in accordance with Art. XXX; to call ordinary and extraordinary sessions of the Council and Assembly; to draw up the provisional agenda of the Council as laid down in Rule 14 of its Rules of Procedure; and to prepare and submit for the approval of the Council the annual Budget of the Organization.

(*d*) *Commission of Mediation, Conciliation and Arbitration*

Art. III(4) of the Charter enjoins all member States of the OAU to adhere to the principle of "peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration" (→ Arbitration; → Conciliation and Mediation; → Negotiation). Two categories of such disputes may be distinguished: those inherited, or arising as a consequence of the application of the doctrine of → State succession; and those resulting from developments in the post-independence period, mainly in economic and technical spheres.

The need for the peaceful settlement of disputes is reiterated in Art. XIX of the Charter, under which the Commission of Mediation, Conciliation and Arbitration is established.

The Protocol of the Commission, which defines its composition and terms of reference, was approved by the Assembly in July 1964 (ILM, Vol. 3 (1964) p. 1116). Under Art. XIX of the Protocol, the choice of methods of settling disputes is restricted to mediation, conciliation or arbitration.

The mediation procedure envisaged in the Protocol is informal and relatively frequently used by member States. In accordance with Art. XX of the Protocol, whenever a dispute is brought before the Commission for Mediation, the President appoints one or more of the members of the Commission to mediate with the consent of the parties involved. The mediator is required to submit written proposals to reconcile the views and claims of the parties as early as possible. If accepted, they form the basis of a protocol of arrangement between the parties involved.

Member States have not shown much interest in dispute settlement by conciliation. Art. XXII of the Protocol provides that any request for settlement of a disagreement in this manner requires that a petition be submitted to the Commission by either one or more parties to the dispute. A prior written notice to the other party to the dispute is obligatory if only one party submits a request to the Commission for settlement by conciliation. A summary of the grounds of the dispute is included in the petition so submitted. The procedure of reconciliation involves the appointment of a Board of Conciliators whose function is to clarify the issues in dispute and to endeavour to bring about an agreement between the parties.

The provisions for arbitration in the Protocol are dealt with under Arts. XXVII to XXXI. Arbitration proceedings are essentially judicial and only legally qualified individuals may be appointed to an arbitral tribunal. The conclusions of the tribunal are based on rules of international law, especially when there is no → *compromis* between the parties, and they are binding on all those concerned. Art. XXVII provides for the following arbitration procedure: each party designates one arbitrator from among the members of the Commission; the two arbitrators designate from among the members of the Commission a third person who acts as Chairman of the Tribunal; where the two arbitrators fail to agree, the Bureau designates the Chairman.

(*e*) *Specialized Commissions*

The Specialized Commissions which may be established under Art. XX of the Charter are also

referred to as "specialized agencies" (Art. VIII). Although attempts have been made to draw a distinction between the two terms, within the context of the Charter they mean one and the same thing. The Commissions are not to be regarded as autonomous bodies. They may be established, *inter alia*, in the following fields: economic and social; educational and cultural; health, sanitation and nutrition; defence; and scientific, technical and research.

5. *Special Questions*

(*a*) *The OAU and the UN Charter*

With noticeable variations, the language of the OAU Charter and certain aspects of the OAU structure, as well as its method of approach to regional arrangements, show how freely the Organization borrowed from the → United Nations. The OAU Charter reaffirmed the support, allegiance and adherence of the member States to the UN Charter and to the Universal Declaration of Human Rights. Art. II(1) of the OAU Charter indicates the need to pursue international cooperation in practical terms. The member States of the OAU saw their new organization as necessarily falling within the → regional arrangements in the UN Charter. Just as the UN Charter placed a strong accent on the legal equality of all members, so did the OAU Charter extend the same notion of equality to all African member States (→ States, Sovereign Equality).

The notion of non-interference in the internal affairs of States is expressed without ambiguity in Art. III(2) of the OAU Charter, in a formulation which bears all the marks of Art. 2(7) of the UN Charter.

From its conception, the United Nations has been interested in matters relating to apartheid and racialism (→ Racial and Religious Discrimination). The African States, directly concerned, have no less looked upon the UN as the appropriate forum in the fight against colonialism and racial discrimination.

(*b*) *Difficulties experienced by the OAU*

Many internal and external problems have contributed to disturb the equilibrium of the OAU and have caused divisions within the organization. Intrigue, bloody wars, and extreme climatic conditions coupled with "Acts of God" have devastated the heart of Africa, causing famine and hardship. Even the Olympic games made its impact on the OAU. Particular problems faced by the OAU include → boundary disputes in Africa, → decolonization, → Rhodesia/Zimbabwe, → Namibia, South Africa and apartheid, → human rights in Africa and problems of → refugees.

The undefined boundary-lines in the Sahara between Morocco and Algeria posed a challenge to the young OAU. It was able to bring about a ceasefire in the area but the special commission which it set up could not produce a permanent solution. The Somalia-Ethiopia and Somalia-Kenya border clashes posed further problems within the OAU, although the intervention of various individuals, the Council of Ministers and governments enabled a ceasefire to be obtained and the parties signed a memorandum of understanding in October 1967 at Arusha.

The most difficult task before the OAU today is the liberation of South Africa, where the degrading practice of apartheid remains unabated. From the beginning, this was one of the common denominators on which African unity was based. However, the right formula for fighting the system in South Africa has not been found and members of the OAU are not agreed on a single strategy.

The OAU Assembly Conference in Kinshasa, Zaire, adopted a Resolution on Apartheid and Racial Discrimination in 1967 urging OAU States to boycott South Africa diplomatically and in trade, but not all members were able to abide by it. The Lusaka Manifesto of 1969 which called for peaceful negotiation and compromise was adopted by the OAU Assembly in Addis Ababa in 1969. In October 1971 in Mogadishu, Somalia and the States of Eastern Africa that had signed the Lusaka Manifesto added a new dimension by declaring that the only way to the liberation of Southern Africa was through armed struggle. In April 1975 a declaration including the modalities for the liberation struggle in South Africa was made by the OAS Council of Ministers and confirmed by the Assembly in August of the same year. It thus remains clear that the member States of the OAU cannot now, and will not in future, back down in their endeavours to liberate Southern Africa.

It is important to mention that the future of the OAU was endangered in August and November 1982 when the Assembly of Heads of State and Government failed for the first time in its history to hold its annual Summit Conference (in accordance with Art. IX of the Charter of the OAU) in Tripoli, Libya.

The first unsuccessful attempt by the Assembly to meet in August 1982 was due to a dispute between the member States of the Organization over the admission of the Saharan Arab Democratic Republic (SADR) as its 51st member. The Assembly failed to meet again in November 1982 because of a disagreement between the OAU member States on the question of the two rival delegations from the Republic of Chad. Each delegation claimed it had the right to represent Chad at the Summit meeting in Tripoli. The Assembly was unable to decide on which of the two should enjoy the right to represent the Republic.

Concerning human rights in Africa, the Sixteenth Ordinary session of the OAU Conference of Heads of State and Government held in Monrovia, Liberia, from July 17 to 20, 1979 decided (Decision 115 (XVI)) on the preparation of "a preliminary draft of an African Charter on Human and Peoples Rights providing *inter alia*, for the establishment of bodies to promote and protect human and peoples' rights" (CAB/LEG/67/3 Rev. 5). The draft African Charter of Human Rights was approved by the Conference of Heads of State and Government during its Eighteenth Ordinary Session. The Charter, which contains 68 articles, had been ratified by 12 member States by July 1982, and would require a simple majority of 26 ratifications to enter into force (see → Human Rights, African Developments).

Concerning refugees, the OAU, the UN Economic Commission for Africa and the Dag Hammarskjöld Foundation jointly sponsored the Conference on the Legal, Economic and Social Aspects of African Refugee Problems in Addis Ababa in 1967. For the first time an international forum considered matters relating exclusively to African refugees, and the recommendations adopted by the Conference to a large extent formed the basis for the approach to the refugee situation in Africa in the late sixties and throughout the seventies. Two direct results of the 1967 Conference were the establishment by the OAU of the Bureau for the Placement and Education of African Refugees in May 1968, and the adoption on September 10, 1969 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (ILM, Vol. 8 (1969) p. 1288). This Convention entered into force in November 1973.

(c) Legal status of OAU resolutions

The OAU Charter does not state whether resolutions passed or adopted by the Assembly in accordance with Art. X(2) shall have the force of law, i.e. that members are under an obligation to abide by them, irrespective of the subject matter involved; nor does it state that such resolutions are merely recommendations which members are advised to carry out in good faith.

The resolution adopted in respect of the civil war in Nigeria, called upon members of the UN to refrain from any action detrimental to peace, and to the unity and territorial integrity of Nigeria. The question is, whether the UN is bound to act or comply or take legal notice of a regional organization whose resolutions are not legally binding on its own members. In this particular instance, the OAU resolution was not even adhered to by Tanzania and it would have been awkward for the UN to accept the resolution, only to find that the OAU members themselves had failed to comply.

As for the Council of Ministers, Art. XIV(2) of the Charter states that "[a]ll resolutions shall be determined by a simple majority of the Members of the Council of Ministers". In principle, members of the Council are bound by such resolutions, but they have no further legal significance in as much as the Assembly is concerned.

The Council resolution adopted with a quotation of the Charter preamble in Addis Ababa at its Sixth Extraordinary Session from December 3 to 5, 1965 on the report of the Committee for Action on Southern Rhodesia, required member States of the OAU to sever diplomatic relations with the United Kingdom on December 15, 1965, if she should have failed by that date to crush the rebellion in Southern Rhodesia (→ Diplomatic Relations, Establishment and Severance). The legal question arose, whether the Council of Ministers was competent to make such a decision

or whether it should simply have recommended it to the Assembly. Art. XIII of the Charter of the OAU shows that the Council of Ministers is subordinate and responsible to the Assembly and also takes instructions from it. The argument advanced was that even if the resolution of the Council was unanimously adopted, it must "still be subject to an approving resolution or decision of the Assembly of Heads of State and Government". Nevertheless, that particular resolution on the severance of diplomatic relations with Great Britain was not complied with by the majority of the OAU member States.

Charter of the Organization of African Unity, UNTS, Vol. 479 (1963) 39–89.

M. HESS, Die Organisation der afrikanischen Einheit, Thesis, University of Marburg (1967).
B. BOUTROS-GHALI, L'Organisation de l'unité africaine (1969).
Z. ČERVENKA, The Organization of African Unity and Its Charter (1969).
F. ANSPRENGER, Die Befreiungspolitik der Organisation für afrikanische Einheit (OAU) 1963 bis 1975 (1975).
Y. EL-AYOUTY (ed.), The Organization of African Unity after Ten Years (1975).
K. MORJANE, L'Organisation de l'unité africaine et le règlement pacifique des différends interafricains, RevEgypt, Vol. 31 (1975) 17–73.
B. ANDEMICAEL, The OAU and the UN (1976).
B.D. MEYERS, The OAU's Administrative Secretary-General, International Organization, Vol. 30 (1976) 509–520.
E.K. KOUASSI, Les rapports entre l'Organisation des Nations Unies et l'Organisation de l'unité africaine (1978).
Y. TANDON and K. MATTHEWS, Die Organisation der afrikanischen Einheit in der Phase der Konsolidierung, Europa-Archiv, Vol. 34 (1979) 113–122.
M. BENNOUNA, L'admission d'un nouveau membre à l'Organisation de l'unité africaine, AFDI, Vol. 26 (1980) 193–198.
O. ALUKO, The Organisation of African Unity and Human Rights, Round Table, No. 283 (1981) 234–242.
O. OJO, The Relationship between the Organization of African Unity and the League of Arab States, Africa Spectrum, Vol. 16 (1981) 131–141.
P. KUNIG, Die Organisation der afrikanischen Einheit und der Prozess des Nation Building, AVR, Vol. 20 (1982) 40–57.

EMMANUEL G. BELLO

ORGANIZATION OF AMERICAN STATES

As stated in Art. 1 of the Charter of the Organization of American States (OAS), the American States established by this constituent instrument an organization that they had developed "to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence". Actually, the present OAS is the institutional consecration of the oldest regional international organization of States, commonly known as the "Inter-American System", which provided the background not only for the institutional structure, but also for the principles of the OAS.

1. Origin and Evolution of the Inter-American System (1889/1890 to 1948)

This regional system emerged from the International Conference of American States, held in Washington, D.C., in 1889/1890 (→ Regional Cooperation and Organization: American States). The United States Government had invited the governments of the other American nations to consider, on the one hand, means to prevent → wars in the region, including a plan for → arbitration of all disputes (→ Peace, Means to Safeguard), and on the other hand, questions relating to the improvement of business intercourse, ways of direct communication between these countries, and the encouragement of reciprocal commercial relations.

This inter-American conference was the first of a series that were held at periodic intervals in different capitals. Special conferences met to consider specific problems, such as the Inter-American Conference for the Maintenance of Peace, held in Buenos Aires in 1936. In addition to the Conference, another high-level organ began to meet from 1939 to consider problems arising out of World War II, the Meeting of Consultation of Ministers of Foreign Affairs; three meetings were held during the war. A third inter-governmental organ was created by the Conference: the Governing Board, a permanent body in charge of the administration of the Pan American Union and of other non-political func-

tions. The Union itself was the technical and administrative secretariat, and had its seat in Washington, D.C., after its creation at the first Conference with the name of "The Commercial Bureau of the American Republics" (→ International Organizations, Headquarters). Although these were the main organs of the Inter-American System, a number of other regional specialized agencies and entities had also emerged by the time the OAS was created in 1948. The gradual and progressive institutional evolution that the System had achieved during a lapse of a little more than half a century could hardly be summarized here. But what should be noted is that, with the same or a similar nomenclature, most of the pre-existing organs, agencies, and entities were incorporated into the OAS Charter.

The basic principles of the OAS also originated in the pre-war regional system. The first of these principles was enunciated as early as the first Conference, and was a condemnation of the then so-called right of → conquest; in this respect, the sixth Conference (Havana, 1928) further resolved that "[a]ll aggression is considered illicit and as such is declared prohibited" (→ Aggression). A closely-related principle, that of → non-intervention in the internal and external affairs of a State, was eventually incorporated in a conventional instrument at the seventh Conference (Montevideo, 1933), the Convention on Rights and Duties of States; this instrument, as well as the Additional Protocol relative to Non-Intervention concluded in the aforementioned 1936 Buenos Aires special conference, was ratified by more than two-thirds of the American republics, including the United States. The principle of the legal equality of States was also incorporated in the Montevideo Convention (→ States, Sovereign Equality). The sixth Conference had declared the obligation of States to settle their disputes by peaceful means (→ Peaceful Settlement of Disputes). This set of principles, embodying the fundamental rights and duties of the States, as well as other principles, was reformulated towards the end of World War II in the special Conference on Problems of War and Peace, held in Mexico, shortly before the 1945 United Nations San Francisco Conference.

At the special Conference just mentioned, the "reorganization, consolidation and strengthening of the Inter-American System" was agreed upon and elaborate resolutions were approved to that effect. On the one hand, the conclusion of a treaty establishing procedures to meet threats and acts of aggression was recommended; this treaty is the → Inter-American Treaty of Reciprocal Assistance (the Rio Treaty) concluded at another special Conference held in Petropolis, Brazil, in 1947 (→ Collective Self-Defence). On the other hand, the conclusion of a constituent instrument for the new regional organization was contemplated and, with that in view, the basic components of its institutional framework were determined; this second instrument – the (original) Charter of the OAS – was signed at the ninth Conference, held in Bogotá in 1948. The original Charter was amended (→ Treaties, Revision) by the 1967 Buenos Aires Protocol, which entered into force in 1970.

2. *Institutional Framework of the OAS*

(a) Nature and purposes

The last sentence of the aforementioned Art. 1 of the OAS Charter provides that "[w]ithin the United Nations, the Organization of American States is a regional agency". Art. 2, in turn, refers to the "regional obligations" of the OAS under the → United Nations Charter (→ Regional Arrangements and the UN Charter). These provisions should not lead to an erroneous perception of the nature of the regional organization. As a matter of fact, the only "regional arrangements or agencies" that the UN Charter provides for are those "dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action" (Art. 52(1)). As will be shown, apart from this particular function, the OAS performs a number of other functions with respect to which the UN Charter imposes no restrictions whatsoever.

The purposes of the OAS, as enumerated in Art. 2 of its Charter, may be grouped in three broad categories. The first relates to the strengthening of peace and security in the continent; the Organization is to prevent possible causes of difficulties and to ensure the pacific settlement of disputes among the member States, and is obliged to provide, also, for common action on the part of the States in the event of aggression. The second concerns cooperation for development (cf.

→ Economic and Technical Aid); the Organization will promote, by cooperative action, the economic, social, and cultural development of member States. The third is the general purpose of seeking the solution of political, juridical, and economic problems that may arise among those States. The promotion and protection of → human rights at a regional level, in which the OAS has been so actively engaged during the last two decades, fall, *inter alia*, within the third category of purposes.

(b) Principles and fundamental rights and duties of States

In contrast to the UN Charter, which is rather restrained in this regard, the Charter of the OAS reaffirms several important principles of international law (Chapter II) and reformulates fundamental rights and duties of States (Chapter IV). This significant feature of the regional charter reflects an inter-American tradition – that of enunciating and reaffirming in conference after conference an aggregate of principles; as the above-mentioned 1945 Conference put it: "The American States have been incorporating in their international law, since 1890, by means of conventions, resolutions and declarations, the following principles . . ." (→ International Law, American;→ Regional International Law). These two chapters of the OAS Charter in particular constitute the most far-reaching stage of this process.

Outstanding among the principles reaffirmed by the Charter, and the rights and duties of States reformulated therein, is the principle of non-intervention: "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements." (Art. 18; → Use of Force.) The next article forbids one of the most typical forms of intervention, so-called "economic aggression" (→ Economic Coercion): "No State may use or encourage the use of coercive measures of an economic or political character in order to force the sovereign will of another State and obtain from it advantages of any kind." As will be noted, both principles were incorporated in United Nations General Assembly Resolution 2625 (XXV) (→ Friendly Relations Resolution), adopted in 1970.

Another principle, the obligation to settle disputes of an international character by peaceful means, is well established, and a special treaty to that effect was signed at the ninth Conference, the American Treaty on Pacific Settlement (→ Bogotá Pact (1948)). In connection with the related field of collective security, the Charter reaffirms the basic principle of solidarity: "An act of aggression against one American State is an act of aggression against all the other American States" (Art. 3(f)), a principle that had been enunciated in the Second Meeting of Consultation, in 1940. In the field of human rights, the OAS Charter not only proclaims human rights as one of the principles enumerated in Chapter II, but also imposes upon the States the duty to respect these rights in the free development of their cultural, political and economic lives.

(c) Membership

Membership in the OAS is open to all independent American States (→ International Organizations, Membership). The original members are those that were independent at the time of the signature of the Charter, that is the twenty Latin American republics and the United States that had been participating in the Inter-American System. Thereafter, and in accordance with the procedure provided for in the amended Charter, eight of the newly-independent English-speaking Caribbean States have joined the Organization (cf. → Caribbean Cooperation). The General Assembly, the supreme organ of the OAS, upon recommendation of the Permanent Council, determines whether it is appropriate that the Secretary-General be authorized to permit the applicant State to sign the Charter and to accept the deposit of the corresponding instrument of ratification (→ Depositary); in both organs the affirmative vote of two-thirds of the member States is required. However, no action will be taken by either organ with respect to a request for admission on the part of a political entity whose territory became subject, in whole or in part, prior to December 18, 1964, to litigation or claims between an extracontinental country and one or more member States until the dispute has been

ended by some peaceful procedure. Two newly-independent States are affected by this provision of the amended Charter: Guyana and Belize (→ Decolonization: British Territories; → Guyana-Venezuela Boundary Dispute; → Belize Dispute).

Despite the fact that the OAS Charter contemplates collaboration only with other international organizations, relations for such purpose have long been maintained with non-member States, whether American or not, through the participation of → observers from said States in meetings of organs of the regional organization. These relations were strengthened when the status of the "permanent observer" was created in 1971 by the General Assembly (→ International Organizations, Observer Status). The requirements and the procedure for the recognition of this status, as well as its *modus operandi*, were determined by the Permanent Council in the following years; non-American States must express their willingness to participate in the OAS programmes of cooperation for development (Res. CP/RES. 52 (61/72)). Recognition of permanent observers is subjected to some extent to the restrictions that Art. 8 imposes with respect to the admission of new members. So far, the following States have accredited permanent observers: Austria, Belgium, Canada, Egypt, the Federal Republic of Germany, France, Greece, Guyana, Israel, Italy, Japan, the → Holy See, Morocco, the Netherlands, Portugal, Saudi Arabia, Spain and Switzerland.

(d) The organs: functions and powers

As indicated above, the supreme organ of the OAS is the General Assembly. It decides the general action and policy of the organization, determines the structure and functions of its organs, and considers any matter relating to friendly relations among the American States. In addition, the Assembly has a number of other specific functions and powers (see Art. 52 of the Charter). The Assembly convenes annually, but meets in special session when convoked by the Permanent Council. A Preparatory Committee prepares the draft agenda of its sessions, reviews the programme-budget of the Organization and carries out such other functions as the General Assembly may assign to it.

The other high-level organ is the Meeting of Consultation of Ministers of Foreign Affairs. It may meet in either of the following capacities: in order either to consider problems of an urgent nature and of common interest to the American States, or to serve as the Organ of Consultation under the Charter provisions on collective security and those of the above-mentioned 1947 Rio Treaty. When the Meeting of Consultation is held for the first of these two purposes, its decisions have no binding effect; the same is true for the decisions of the General Assembly, except those concerning budgetary questions. When it is held for the second purpose, however, the Rio Treaty explicitly makes decisions requiring the application of measures on which the Organ of Consultation may have agreed binding. In this respect, a close parallel with the roles of the → United Nations General Assembly and the → United Nations Security Council can be drawn.

The amended OAS Charter provides for three Councils: the Permanent Council, the Inter-American Economic and Social Council and the Inter-American Council for Education, Science and Culture. The first, like the former Governing Board, has a number of varied functions, in addition to those relating to the operation of the General Secretariat; in particular, it is to keep vigilance over the maintenance of friendly relations among member States, and for that purpose is to assist them effectively in the peaceful settlement of their disputes. The Permanent Council is composed of representatives of all member States, at ambassador rank, and has the same seat as the General Secretariat, namely, Washington, D.C. The other two Councils share the responsibility for the various multilateral activities concerning inter-American cooperation for development. They meet at least once a year at ministerial level and each has a Permanent Executive Committee that performs the tasks assigned to it by the respective Council. These permanent committees today are also composed of representatives of each member State – a composition that seems to be somewhat incompatible with the Charter provisions, which provide for "equitable geographic representation" (Arts. 97 and 103). The three Councils are directly responsible to the General Assembly, but enjoy, on matters within their competence, a certain degree

of autonomy in taking initiatives and in carrying out actions with a view to securing the effective performance of their functions.

The OAS Charter contemplates as further organs the specialized conferences and the specialized organizations. The conferences are intergovernmental meetings to deal with special technical matters or to develop specific aspects of inter-American cooperation; they are held when either the General Assembly or the Meeting of Consultation so decides, on its own initiative or at the request of one of the Councils or specialized organizations. The latter, in turn, are the intergovernmental organizations established by multilateral agreements and having specific functions with respect to technical matters of common interest to the American States. They enjoy the fullest technical autonomy, but must take into account recommendations of the General Assembly; as in the UN system, relations between the specialized organizations and the OAS are defined by means of agreements concluded between each organization and the Secretary-General, with the authorization of the General Assembly (cf. → United Nations, Specialized Agencies).

The "central and permanent organ" of the OAS is the General Secretariat, the former and oldest entity of the Inter-American System. As to its functions and the character of its personnel, it shows the basic and typical features of the modern → international secretariat. Perhaps the only distinguishing feature of some significance is that in addition to the Secretary-General there is an Assistant Secretary-General, also elected by the General Assembly; the secretaries for the two specialized councils are appointed by the Secretary-General, with the approval of the respective Council.

(e) Other organs and activities of the OAS

In contrast with the inter-governmental nature of the above-mentioned organs, the Inter-American Juridical Committee and the → Inter-American Commission on Human Rights are composed of persons elected by the General Assembly in their private capacities. Both entities were raised to the rank of organs by the amended Charter. The Committee continues to be an advisory body on juridical matters, having the purpose of promoting the progressive development of international law and its → codification as well as other related purposes. In this particular field, the inter-American achievement finds no parallel in other international organizations, either general or regional. The process started as early as 1890 with the initiatives taken by the first Conferences. Since then numerous treaties and conventions on diverse subjects (arbitration and other means of peaceful settlement, asylum, → extradition, rights and duties of States, etc.) have emanated from this process. More recently, a series of specialized conferences on → private international law have been held, at which over a dozen conventions on specific topics have been adopted. A previous major undertaking was the adoption in 1928 by the sixth Conference of the "Bustamante Code", a convention on private international law that is still in force for 15 Latin American States.

Under the OAS Charter, the principal function of the Inter-American Commission on Human Rights is to promote the observance and protection of human rights and to serve as a consultative organ of the organization in those matters. The Charter provides for a regional convention to determine the structure, competence, and procedure of this Commission, as well as those of other organs responsible for these matters. Such an instrument – the → American Convention on Human Rights – was concluded in San José, Costa Rica, in 1969, and has been ratified by a substantial majority of the American States. The Convention follows, generally speaking, the system of the 1950 → European Convention on Human Rights as to the State obligations and the rights protected, as well as to the means of protection, in particular, the organs with competence in matters relating to the fulfilment of the States' commitments. These organs are the Commission and the → Inter-American Court of Human Rights. One of the leading features of the American Convention is that the Commission will perform its general function of "respect for and defense of human rights" with respect also to OAS members not yet parties to the Convention. This provision, among others, reflects the spirit inspiring this regional scheme for the promotion and protection of human rights. The same spirit has also made it possible for the former Inter-

American Commission, since its creation in 1960, and for the present body as well, to have rendered such effective service during the past two decades.

3. *Evaluation*

An overall evaluation of the OAS has to take into consideration the issues discussed in the article on → Regional Cooperation and Organization: American States. The marked departure of the United States from its traditional policies toward Latin America, on the one hand, and the emergence of a new attitude by Latin America toward the United States, on the other hand, are facts that cannot be overlooked in an attempt to evaluate the global regional organization. The new Latin American attitude involves a repudiation, implied when not explicit, of the so-called "special relationship" that traditionally had been at the very basis of the old Inter-American System and since 1948 of the OAS. Activities such as those described under the last heading of the present article fortunately are not affected by the realities discussed in the Regional Cooperation article referred to but such realities certainly do have a deteriorating impact upon the OAS's fulfilment of its regional responsibilities with regard to both collective security and cooperation for development.

Charter of the Organization of American States, Bogota, April 30, 1948, UNTS, Vol. 119 (1952) 3–97.
Protocol of Amendment to the Charter of the OAS, Buenos Aires, February 27, 1967, UNTS, Vol. 721 (1970) 266–389.
Charter of the Organization of American States, as amended by the Protocol of Buenos Aires in 1967, OAS Treaty Series No. 1-C (1970).
The Inter-American System, Treaties, Conventions and other Documents, Vol. 1 (in 2 parts): Legal-Political Affairs, A Compilation Annotated by F.V. García-Amador (1983) [also in Spanish].

C.G. FENWICK, The Organization of American States, The Inter-American System (1963).
A. VAN WYNEN THOMAS and A.J. THOMAS, JR., The Organization of American States (1963).
O.C. STOETZER, Panamerika, Idee und Wirklichkeit, Die Organisation der Amerikanischen Staaten (1964); English transl.: Organization of American States, An Introduction (1965).
M.M. BALL, The OAS in Transition (1969).
G. KUTZNER, Die Organisation der Amerikanischen Staaten (OAS) (1970).
F. JULIEN-LAFERRIÈRE, L'Organisation des Etats américains (1972).
B. WOOD, The Organisation of American States, Year Book of World Affairs, Vol. 33 (1979) 148–166.

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ORGANIZATION OF ARAB PETROLEUM EXPORTING COUNTRIES

1. *Establishment*

After the defeat of Egypt, Jordan and Syria in the Six Day War of June 1967, Egypt tried to enforce, at least on the part of the Arab oil-producing States, an oil → embargo against those States which had supported → Israel in the → war (→ Israel and the Arab States). This attempt foundered due to the diverging interests of the non-Arab members of the → Organization of Petroleum Exporting Countries (OPEC, founded in 1960). Thus, at the summit Conference of the Arab League (→ Arab States, League of) in Khartoum, Sudan, in August 1967 a plan for the foundation of an Arab petroleum organization, which had already been proposed in 1965, was discussed anew. This plan, however, also failed due to the different interests of the participating States. Subsequently, on January 9, 1968, the Kingdoms of Saudi Arabia and Libya, as well as the Emirate of Kuwait, signed an Agreement founding the Organization of Arab Petroleum Exporting Countries (OAPEC; UNTS, Vol. 681, p. 235), with its seat in Kuwait. The independent action taken by these States was based on the following reasons: On the one hand, they believed that the commodity oil and the foreign exchange receipts linked to it should be kept out of the continual political disputes which had arisen in the Arab League. On the other hand, they wanted to neutralize the apparent trend toward control of production and prices previously demanded by other States at the 14th OPEC Conference in Vienna in 1967.

The basic setting and structure of OAPEC underwent a significant change due to the overthrow of the Libyan monarchy and the installation of a "progressive" republic in September 1969. In 1970, OAPEC agreed to Algeria's accession to

membership, supported by Libya, and at the same time to the membership of Qatar, Abu Dhabi and Dubai (the latter two later merged into the United Arab Emirates) and of Bahrain, as a balance for the interests of Saudi Arabia. Iraq joined in 1972, when the accession of Egypt and Syria had also become possible due to the amendment of the constituent treaty (→ Treaties, Revision) adopted upon Saudi Arabian pressure; this amendment was necessary since, under the original text, petroleum had to "constitute the principal and basic source of the national income" (Art. 7(b) (1)). Tunisia's application for membership, after initial objections raised by Libya, was approved by a unanimous vote of the OAPEC Council of Ministers on March 6, 1982. As of that date, OAPEC thus had eleven members: Algeria, Bahrain, Egypt, Iraq, Kuwait, Libya, Qatar, Saudi Arabia, Syria, Tunisia, and the United Arab Emirates.

For the implementation of its tasks, OAPEC had at its disposal in 1979 an annual budget of some seven million dollars raised in equal shares from each member State (→ International Organizations, Financing and Budgeting); this sum is expected to increase.

OAPEC differs from OPEC in its composition, statute and in part in its goals. However, it also exhibits mutuality in the determination of aims, such as, for example, in the sphere of coordination of petroleum policies and harmonization of the legal regulations concerning matters relating to the petroleum economy, which does not preclude future conflicts involving competences. It may be concluded that OAPEC has so far left those decisions to OPEC that relate particularly to the setting of prices and of production levels, while OAPEC concerns itself above all with the utilization of "the member resources and common potentialities in establishing joint projects in various phases of [the] petroleum industry..." (Art. 2, para. 2(e)).

2. *Membership*

In accordance with the goals of OAPEC, there are four general prerequisites for membership:

- the status of being an Arab oil-exporting country;
- petroleum constituting a significant source of the country's national income;
- unconditional adherence to the provisions of the Agreement and amendments which may be made to it; and
- approval of the application by a majority of three-quarters of the votes of the Council of Ministers, provided the votes of all founding members are included therein (Art. 7).

The members of OAPEC are divided into two categories: founding members and subsequent members. In contrast to OPEC, associate membership is not countenanced in OAPEC. The admission of observers is, however, possible (→ International Organizations, Observer Status). The founding members hold a privileged position, including → weighted voting rights regarding the passing of resolutions and the taking of binding decisions on non-procedural questions, and even a right of → veto regarding the acceptance of new members.

The OAPEC Agreement contains no provisions regarding expulsion or suspension from membership. The suspension of Egypt from membership, decided by the Council of Ministers in 1978, nonetheless raised legal problems, because such a step can only come into consideration if a substantial violation of the Agreement, whose goals are of an economic nature, has been shown. This was, however, not the case. An offence had been committed by Egypt against political resolutions, which constituted an affront to obligations owed to the Arab League (breaking ranks with the Arab united front against Israel through signature of the Camp David Peace Accords).

3. *Organs*

Of the four OAPEC organs, two (the Council of Ministers and the Executive Bureau) are composed of representatives of the member States who are bound by their countries' instructions. The Secretariat and the Judicial Board, on the other hand, are integrated organs, that is, they are comprised of persons who exercise their functions without being bound by the instructions of the member States. In the exercise of official duties, OAPEC has diplomatic privileges and immunities (→ International Organizations, Privileges and Immunities) in the member States, on the basis of a 1969 protocol.

(a) Council of Ministers

The Council of Ministers is composed of one representative of each member State, as a rule the minister of petroleum; alternatively, the head of the department enjoying comparable responsibility may serve (Art. 9). The chairmanship of the Council rotates annually. The Council meets twice a year. Extraordinary sessions may be convened on the request of the Secretary-General or of one of the member countries (Art. 13).

The Council has broad responsibilities. They include in particular the determination of the general policy of the organization, the direction of its activities and the development of the rules which affect the organization. These responsibilities are modified by the powers of the other organs provided for in the Agreement (determination of the agenda, convening of extraordinary sessions with programmes of action) and by the practice of the Organization. On top of these general responsibilities come further concrete and exclusive responsibilities for matters which the "Agreement or the regulations did not expressly provide for to be within the competence of any other organ" (Art. 10(i)).

The legal decisions of the Council are taken in the form of statutes, resolutions, and recommendations. Only the statutes and resolutions are binding on all; in order to be transformed into municipal law, they are subject to the ratification by the competent authorities in the member countries according to the legal rules in force (Art. 12(e)) (→ International Law in Municipal Law: Law and Decisions of International Organizations and Courts).

For the determination of important questions, a quorum of three-quarters of the members, which must include at least two founding members, is necessary (Art. 11(b)). On the other hand, for a revision of the Agreement, three-quarters of the votes of all member countries are necessary, without the founding members having any special position reserved for them. Nevertheless, an abrogation of the privileges of the founders can be frustrated, as the presence of two of the founders is necessary for the making of decisions. For decisions on procedural questions and recommendations, only a simple majority of the members' votes is required. In practice, however, a tendency towards unanimity in decision-making is discernible (→ Consensus; → Voting Rules in International Conferences and Organizations).

(b) Executive Bureau

The Executive Bureau, composed of one representative of each member country (Art. 14), has primarily executive responsibilities, but in addition has the power to make proposals and to take administrative decisions (Art. 15). Among other things, it examines questions concerning the application of the Agreement and the Organization's activities. In addition, the Executive Bureau fulfils the tasks assigned to it by the Council; it submits recommendations and proposals to the latter regarding matters falling within the scope of the Agreement.

The chairmanship of the Bureau rotates according to the same rules as for the Council (Art. 14). On the chairman's invitation, the Bureau normally meets before every session of the Council to determine its agenda. The resolutions of the Bureau are carried by a two-thirds majority, without any privilege for the founding members' votes (Art. 16(d)).

(c) Secretariat

The Secretariat of OAPEC, in contrast to that of other organizations (→ International Secretariat), is not merely an administrative organ. It holds an important position in the structure of OAPEC on account of the powers of initiative assigned to the Secretary-General, which have expanded in practice.

The Secretary-General is named by the Council for a three-year term, and the Assistant Secretaries for four-year terms (Art. 18(c)). Prerequisites for nomination are → nationality of one of the member States (provided not more than two candidates are of the same nationality) and adequate experience in petroleum affairs (Art. 18(b)).

As of 1982, the Secretariat had a staff of over a hundred employees, divided into six departments: Law, Economics, Finance and Administration, Exploration and Production, Petroleum Industry, and Information and International Relations.

The powers of the Secretary-General extended over the internal control of the organization and

its external relations. In the framework of the Organization he has the position of executive head. In addition, further wide-ranging powers of initiative are assigned to him, such as the drawing up of the draft of the Organization's annual budget (Art. 26) and the convocation of extraordinary sessions of the Council and the Bureau. The Secretary-General is simultaneously the Secretary of the Council and of the Bureau and takes part in their meetings without having the right to vote.

Finally, the Secretariat is responsible for the many-faceted tasks which, with due regard to the statutes and resolutions of the Council, concern the administration, implementation and planning of OAPEC activities.

In the framework of external relations, the tasks of the Secretary-General include maintaining contacts with international organizations and fulfilling the role of official spokesman and legal representative of OAPEC. Since 1973 the third official Secretary-General, A. Attiqa of Libya, has added a political dimension to his competences. In connection with the energy crisis, which arose in the wake of the war in the Middle East in October 1973, he developed his own initiatives on the international level, especially in the formulation of the Arab position.

(d) Judicial Board

The Judicial Board is the standing judicial organ of this unique Third World regional organization. The relatively undetailed rules in the OAPEC Agreement (Arts. 21 to 25) were supplemented in the Protocol of May 9, 1978, which came into force on April 4, 1980. The rules set forth in the Agreement and the Protocol are inspired by the Statutes of the → International Court of Justice and of the → Court of Justice of the European Communities. However, the Board exhibits some special characteristics.

It is composed of an uneven number of judges, numbering at least seven and at most eleven; in order to take decisions, the Judicial Board needs the agreement of five, seven or nine members, depending on their total number. The judges must be from different Arab States. Their impartiality must be beyond doubt and they must fulfil the necessary conditions for holding the highest judicial positions in their own countries or be jurists of international repute (Art. 22). By a three-quarters majority vote of the Council, the judges are named for a term of six years from a proposed list on which no more than three names from each State may appear. They may only be re-elected once. In order to maintain continuity, half of them (that is, a "half" which is alternately more or less than half of the uneven total number) are elected every three years. A temporary rule is provided for to cover the period until this situation prevails.

The judges enjoy diplomatic privileges and immunities in all member States (Art. 25). With regard to their official duties, including their oral and written pronouncements, their judicial immunity continues after their resignation. The immunity of a judge can only be suspended by a three-quarters majority of the members of the Judicial Board. The judge affected does not take part in that decision. The judge can be suspended from his office only by a unanimous vote of the Judicial Board taken in his absence. The member States are under the obligation not to influence the official exercise of the judges' duties in any way and to respect their independence and impartiality.

From their number the judges elect the President and Vice-President for three-year terms. Re-election is permissible. The President is at the same time the highest administrative official of the Judicial Board, and designates the other employees. However, he has no special rights in relation to the other judges.

The Judicial Board issues its own procedural, financial and administrative regulations, as well as its budget, which is linked to the budget of the Organization. The regulations are at this point still to be issued by the Council of Ministers.

The competence of the Judicial Board is of a judicial decision-making and advisory nature. The judicial competence is divided into mandatory and optional responsibilities. The mandatory competence covers the following types of disputes:

"(a) Disputes relating to the interpretation and application of this Agreement and the implementation of the obligations arising from it.
(b) Disputes which arise between two or more members of the Organization in the field of petroleum operations.

(c) Disputes which the Council decides that the Board is competent to consider" (Art. 23(1)).

Regarding dispute type (a), the member States, OAPEC as an organization, as well as companies founded within its framework, are entitled to invoke the Judicial Board, as long as the matter deals with a dispute between two or more States; two or more companies created within the framework of the Organization; member States and these companies; or the Organization and a member State or one of the above-named companies.

Regarding questions of petroleum operations (dispute type (b)), only the member States are entitled to bring matters before the Judicial Board. For the third type of disputes a simple majority vote of the Council members is sufficient. In both situations the petitions may only be directed against the activities of the Organization in the area of petroleum operations. Questions of → territorial sovereignty, such as boundary disputes, are not admissible (→ Boundaries).

The optional (that is, on the basis of the parties' agreement) judicial competence of the Judicial Board is given for the following disputes between: (a) a member State and a non-member State's petroleum company which is active in the member State's territory; (b) a member State and a petroleum company belonging to another member State; and (c) two or more member States when the dispute does not fall under the mandatory competences (Art. 23(2)).

On the basis of the first above-mentioned optional competence, the Judicial Board will seldom be invoked following the successful transition from oil concession contracts to participation contracts, as these new contracts as a rule include → arbitration clauses. This situation will also prevail in most of the cases named in categories (b) and (c) *supra*.

Apart from this, the fact that not only State companies but also private oil corporations have the possibility of involving an international court is an important new development (cf. → International Courts and Tribunals).

The advisory competence of the Judicial Board arises upon approval of the Council of Ministers, which can also deny such competence from case to case. The advisory opinions have no binding effect (cf. → Advisory Opinions of International Courts).

In cases involving its obligatory jurisdiction, the Judicial Board has the applicable norms of Islamic law (cf. → International Law, Islamic) and → international law to draw upon; both legal systems are given equal weight. The following categories of sources of law are authoritative therefor:

- the founding treaty of OAPEC and the international treaties which are binding upon the parties;
- binding → customary international law;
- the → general principles of law recognized by the → international legal community;
- common principles in the legal systems of the member States;
- court decisions and the teachings of well-known publicists of public law in the member States as a subsidiary source.

The judges thus face the new task of creating a heavily Arab-influenced international law for this international organization, through consideration of the solutions to problems adopted by both legal régimes. In exercising its optional jurisdiction, the Judicial Board decides according to the law which it considers authoritative for the case. The equal reference to Islamic law by the Judicial Board has its basis in the fact that Islamic law has developed solutions with regard to international law which have been better able to take into account the circumstances in the Arab countries. In any case, the sources and the ranking order in Islamic law differ from those set forth in the Protocol. Regarding the sources of Islamic law the following order is valid: the Koran; the tradition arising from decisions of the Prophet Mohammed; the consensus of legal publicists; conclusions from analogy; and subsidiary and other sources, including custom. → Treaties do not rank among sources of law in this scheme. To what extent this will result in difficulties in the application of legal integration in practice cannot yet be judged.

The application of Islamic law may lead to unforeseen consequences. For example, according to the teachings of all Islamic law schools, natural resources which are located on land of the Islamic public treasury *(bait al-mal)* are possessions of the Islamic community. According to the Malekit school which dominates in some Gulf States and in North Africa, the same applies to natural

resources located on private land. According to the Hanbali school which dominates in Saudi Arabia and Qatar, liquid natural resources, which include petroleum, are subject to a shared use by Moslems, whose claims the private owners have to acknowledge. According to these teachings, national boundaries between States could no longer have any meaning for the distribution of revenues from the extraction of such natural resources. The consequence would be a considerably greater transfer of financial resources to the Islamic States having fewer natural resources. This transfer would be judged as fulfilment of the positive legal claims of the poorer Islamic States to receive their share.

4. *Goals and Activities*

(a) *Goals*

In its founding treaty, OAPEC set out its goals, which are as follows:

> "the cooperation of the members in various forms of economic activity in the petroleum industry, the realization of the closest ties among them in this field, the determination of ways and means of safeguarding the legitimate interests of its members in this industry, individually and collectively, the unification of efforts to ensure the flow of petroleum to its consumption markets on equitable and reasonable terms, and the creation of suitable climate for the capital and expertise invested in the petroleum industry in the member countries" (Art. 2).

In pursuit of such objectives, the Organization is, *inter alia*, to:

> "Take adequate measures for the harmonization of the legal systems in force in the member countries to the extent necessary to enable the Organization to carry out its activity" (Art. 2(b));

and to

> "Utilize the member resources and common potentialities in establishing joint projects in various phases of petroleum industry such as may be undertaken by all the members or those of them that may be interested in such projects" (Art. 2(e)).

In addition to the above named economic goals, the Organization has pursued political goals as well, as for example the declaration of the oil embargo against the United States and the Netherlands in 1973 and as well the decisions to suspend Egypt from membership and to declare a → boycott against her in OAPEC-related economic undertakings, following the signing of the Camp David Accords in 1979. It cannot be established beyond doubt whether the 1973 decision was taken as a matter of law by the Council of Ministers of OAPEC or by the petroleum ministers of the individual States.

(b) *Unifying oil policies*

With regard to the preparation of a common petroleum policy, a clear long-term concept has not yet become apparent. As a result of the declining influence of the multinational oil companies, a new situation was generated because not every oil-producing State could or wanted to develop an independent petroleum policy – above all concerning tasks such as exploration, test drilling and production at the national level.

To a certain extent, OAPEC stands in opposition to the policy of the → International Energy Agency of the → Organisation for Economic Co-operation and Development (OECD), which is striving for a long-term replacement of petroleum by other sources as the primary energy source.

(c) *Harmonization of laws and training*

The harmonization of the legal systems of the member States is not yet very advanced. Up to now, only one commission in the Secretary-General's office has been dealing with the question of the law governing the transport by sea of petroleum and its products.

In the meantime, the Secretariat has, however, gathered and published the member States' legal rules concerning petroleum. Also worth mentioning is OAPEC's role in the founding of → joint undertakings, since the respective constituent treaties are ratified by the member States and are thereby transformed as uniform law into each body of municipal law. The collection and the exchange of knowledge and experiences has been institutionalized insofar as the Arab Petroleum Training Institute was founded in Baghdad in 1980.

(d) Joint undertakings

In accordance with Art. 2(2) (e) of the constituent treaty, a number of undertakings have been established with the goal of executing common plans in the petroleum industry:

- The Arab Maritime Petroleum Transport Company, founded in 1973 with its seat in Kuwait; at the moment it has at its disposal the third largest Arab tanker fleet.
- The Arab Shipbuilding and Repair Yard Company, founded in 1974 with its seat in Bahrain; among other things, it operates the dry dock for repair of large tankers.
- The Arab Petroleum Investment Company, founded in 1973 with its seat in Saudi Arabia; it serves above all as a financial company for the construction of pipelines and petrochemical plants in the member States.
- The Arab Petroleum Services Company, founded in 1977 with its seat in Libya; through joint undertakings with foreign companies, it will, among other things, make "know-how" available to member States.
- The Arab Engineering Company, founded in 1981 with its seat in Abu Dhabi; it is to serve as a centre for the acquisition of patent licences (→ Industrial Property, International Protection) and of "know-how" in order to place them at the disposal of shareholders as well as of other interested Arab parties. National petroleum companies of the member States are taking part in this company for the first time.

Further undertakings are planned. It is important to note that such undertakings have, with the exception of the Arab Engineering Company, been founded not by OAPEC itself, as allowed by Art. 5 of the constituent treaty, but by some or all of the member States, with differing degrees of participation.

5. Evaluation

OAPEC is to be ranked overall as an intergovernmental organization which has international legal personality (→ Subjects of International Law). Functionally, OAPEC numbers among the associations of commodity producers (→ Commodities, International Regulation of Production and Trade), but also has goals resembling those of an organization for the furtherance of economic cooperation such as the OECD and the → Council for Mutual Economic Assistance (→ Economic Communities and Groups). OAPEC ranks among the few regional, international and specialized organizations outside the classical Western industrialized countries with supranational features (→ Supranational Organizations). From this viewpoint, it is to some extent comparable to the → European Coal and Steel Community (ECSC), because OAPEC deals analoguously with a union of Arab States which extract and process petroleum. To be sure, the supranational features of OAPEC are not as far developed as those of the ECSC. The Judicial Board demonstrates the most substantial supranational feature, but its influence cannot yet be judged due to the recency of its establishment. The important decisions of OAPEC have to be transformed into the law of the member States. Also, the trend perceived in practice of having unanimity for decisions, although a qualified majority would suffice, does not speak in favour of a supranational character. The heavy weight given individual States in OAPEC is manifested both by the dominant role of the Council of Ministers and by the Executive Bureau.

Agreement for the Establishment of an Arab Organization for the Petroleum Exporting Countries (OAPEC), Beirut, January 9, 1968, UNTS, Vol. 681 (1969) 235–271.

OAPEC, Protocol of Immunities and Privileges of the OAPEC and its Functionaries [in Arabic].

M.A. AL SAQQAF, Les entreprises communes créées au sein de L'O.P.A.E.P., AFDI, Vol. 23 (1977) 709–728.

T. BENSALAH, Note sur le protocole relatif à la création d'un organe juridique au sein de l'OAPEC, AFDI, Vol. 26 (1980) 293–310.

K. AL-SHAWI, The Judicial Board of OAPEC, al-Naft wa-l'tawun al-arabi (1981) 25–60 [in Arabic].

S. EL-GEBALI, Die OAPEC als Organisation zur Interessenvertretung der Arabischen Ölländer in den internationalen wirtschaftlichen Beziehungen (1981).

M.Y. ELWAN, The Judicial Board of OAPEC, The First Arab Specialized Court, Maggalat al-hukuk wa-'l-sharia (1981) 149–198 [in Arabic].

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ORGANIZATION OF CENTRAL AMERICAN STATES

The Organization of Central American States (Organización de Estados Centroamericanos

ODECA) was established between the five Central American Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua by the Charter of San Salvador which was adopted on October 14, 1951 (UNTS, Vol. 122, p. 3). This is essentially a regional organization within a regional organization since it was originally intended to provide for progressive economic, social and technical cooperation between the signatories without derogating from their rights and obligations deriving from membership of the → United Nations or the → Organization of American States (→ Regional Cooperation and Organization: American States). A revised version of the Charter was signed in Panama on December 12, 1962, and entered into force in 1965; this stated that the five Republics "... are an economic-political community which aspires to the integration of Central America" (Art. 1). It established a very ambitious institutional structure, with (i) a Meeting of Heads of State – the "Supreme Organ"; (ii) a Conference of Ministers of Foreign Affairs – the "Principal Organ"; (iii) an Executive Council – the "Permanent Organ"; (iv) a Central American Court of Justice – to be composed of "the Presidents of the judicial authorities" in each State (not to be confused with the → Central American Court of Justice which existed from 1908–1918); (v) a Central American Economic Council – composed of the respective Ministers of Economic Affairs; (vi) a Cultural and Educational Council – composed of the respective Ministers of Education or their representatives; and (vii) a Council for Central American Defence – composed of the Ministers of Defence or heads of equivalent departments. The ODECA headquarters are in San Salvador where both the Executive Council and the General Secretariat are located.

It should be noted that two of these organs – the Executive Council and the Central American Economic Council – were also provided for in the Treaty of Managua of 1960 by which the → Central American Common Market was established. The functions and powers conferred on these two organs by the two instruments were not identical and the Central American Common Market has its own Permanent Secretariat (Secretaria Permanente del Tratado General de Integración Económica Centroamericana, SIECA) which is located in Guatemala City. However, the coincidence of institutions, each preserving their own modalities, provided machinery for liaison between the parallel political and economic integration movements. This policy was strengthened when in 1965 the signatories agreed that the three major organs created by the Treaty of Managua of 1960 – the Central American Economic Council, the Executive Council of the General Treaty and the Permanent Secretariat – would retain the characteristics conferred upon them by that Treaty but would form part of ODECA without the necessity of a separate agreement. Their linkage with ODECA was essentially through the Central American Economic Council of ODECA and thus they were in theory subordinated to the final authority of the "Supreme Organ" of ODECA – the Meeting of Heads of State.

Progress toward the stated objectives of ODECA has been extremely slow and the Organization has been beset by acute political difficulties within the region in recent years. Long-standing hostility and animosity between Honduras and El Salvador found an excuse in the so-called "Football War" of 1969 for a period of belligerent activity; a Salvadorian invasion of Honduras was finally brought under control through joint intervention by the Council of the Organization of American States (under Art. 7 of the → Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro (1947)) and the ODECA authorities. With the help of the latter, at a meeting at San José, Costa Rica, in June 1970 a plan was agreed for the establishment of a zone of pacification on the border between the two countries. This plan was not put into effect until August 1976, when a ceasefire supervision unit took up position in the border area. Relations between the two countries were not, however, normalized until 1980.

ODECA has also been involved directly since 1975 in the Guatemalan claim to → sovereignty over areas of the territory of Belize (→ Belize Dispute). At a Meeting of the Heads of State in Guatemala City in October and November 1975 a declaration was issued in support of the Guatemalan position (→ Boundary Disputes in Latin America).

Charter of the Organization of Central American States (ODECA) (1962), in: Inter-American Institute of In-

ternational Legal Studies, Instruments of Economic Integration in Latin America and in the Caribbean, Vol. 2 (1975) 561–566.

Inter-American Institute of International Legal Studies, Derecho Comunitario Centroamericano (1968).

C.G. FENWICK, The Organisation of Central American States, AJIL, Vol. 46 (1952) 509–512.

S. ENGEL, The New Charter of the Organization of Central American States, AJIL, Vol. 58 (1964) 127–138.

M.S. WIONZCEK, Integración de América Latina (1964).

J.S. NYE, Central American Regional Integration, International Conciliation, No. 562 (1967).

M. FUENTES IRUROZQUI, Centro América y la Organización de Estados Centro Americanos (ODECA), Revista de política internacional, No. 146 (1976) 53–69.

K.R. SIMMONDS

REGIONAL ARRANGEMENTS AND THE UN CHARTER

A. Notion. – B. Historical Background. – C. Present Importance in International Law: 1. Regional Autonomy: (a) Matters appropriate for action. (b) The problem of priority. 2. The Limits of Regional Autonomy: (a) Enforcement action. (b) Authorization by the Security Council. (c) Utilization of regional arrangements or agencies by the Security Council under Art. 53(1) sentence 1. 3. Reporting Obligations under Arts. 54 and 51. – D. Special Legal Problems: 1. Enforcement Measures and Third States. 2. The Competence of Other UN Organs. – E. Evaluation.

A. Notion

In very general terms "regional arrangements" may be characterized as comprising all those arrangements whereby States of a particular region regulate their political, economic or other relations. Within modern international law, the notion of "regional arrangements" has acquired a more distinct legal meaning due to its use in Chapter VIII (Arts. 52 to 54) of the → United Nations Charter.

Within the framework of the → collective security system of the → United Nations, Art. 52(1) permits "regional arrangements or agencies" which are concerned with "such matters relating to the maintenance of international peace and security as are appropriate for regional action". Forms of regional cooperation in the economic, cultural or social fields are not ruled out, but they are not covered by the provisions of Chapter VIII.

According to a widely held view, the term "regional arrangements or agencies" signifies international organizations which have come into being as the result of the conclusion of international → treaties. However, "arrangements" to preserve peace and international security in the world are not necessarily found only within the framework of international organizations; the signatory States avoided adopting provisions which might have hindered further developments.

Concerning the term "regional", the Charter is silent. It is generally agreed that a regional arrangement will not exist in the absence of some geographical relationship. The equation made by some authors between regional and non-universal goes too far, but a requirement of direct geographical attachment, for example States in a continent or States sharing a common border, would be too narrow. Regional attachments based on common cultural, linguistic and historical relationships are not prerequisites. It must be noted in this context that the notion of "regional arrangements" as used in the Charter does not allow for a special definition with regard to the provisions dealing with enemy States contained in Art. 53 (→ Enemy States Clause in the United Nations Charter).

Within the security system existing under the UN Charter (→ United Nations Peacekeeping System), "regional arrangements" must be distinguished from organizations of → collective self-defence. Collective defence alliances (such as the → North Atlantic Treaty Organization or the → Warsaw Treaty Organization) have their legal basis not in Chapter VIII, but in the rules permitting → self-defence as expressed in Art. 51. Thus, the obligations and rights spelled out in Chapter VIII do not apply to such organizations, at least not directly. In practice, it appears that the deliberate choice of these organizational forms by the member States has also been made in the light of the reporting obligations under Art. 54 which do not exist under Art. 51. Notwithstanding these observations, it is today generally accepted that collective defensive alliances may carry out tasks within the framework of Chapter VIII.

B. Historical Background

International understandings concerning particular regions (e.g. the → Monroe Doctrine) were considered not incompatible with the idea of securing universal peace under the Convenant of the → League of Nations (Art. 21).

The present regional system of the United Nations is the result of the argument over the political order of the post-war period which took place during World War II until the San Francisco Conference which founded the United Nations. The compromissory nature of the system may be explained as the result of the clash between the views of the victorious powers, who had gone on to accept the idea of universal security, and those of States of the American continent where a movement towards political regionalism had been developing since 1933 (→ Regional Cooperation and Organization: American States). A number of medium and smaller States, including some outside the continent, associated themselves with this idea of regional development.

At the Moscow and → Tehran Conferences in October 1943 and November 1943 respectively, the → Great Powers agreed to found a general organization on the principle of the sovereign equality of all peace-loving States (→ States, Sovereign Equality) with the aim of maintaining world peace and international security. The universalist position prevailed over the plan of a world order divided into regions, each having its own regional security council, and determined the proposals of the four powers during their discussions at the → Dumbarton Oaks Conference of 1944. The decisive impulse leading to considerable modification of the universalist concept of collective security was given by the Inter-American Conference on Problems of War and Peace held in Mexico City early in 1945. At the time the result of the Conference, the Act of Chapultepec, which came into being with the support of the United States, constituted the most complete and far-reaching regional system of collective security in the world. The → Yalta Conference of February 1945 provided yet another impulse in favour of regional solutions. It was clear from the so-called Yalta formula, which later became Art. 27(3) of the UN Charter, that each Great Power as a permanent member of the → United Nations Security Council was able to prevent effective regional measures (→ Veto).

At the San Francisco Conference the Latin American States initially followed a strategy of seeking to prevent the inter-American security system from falling under the jurisdiction of the UN organs, but they failed to obtain acceptance for an amendment to Art. 53 which sought to remove the inter-American system from the requirement of obtaining Security Council authorization for any enforcement action taken. Too many States did not wish to sacrifice the complete ban on the → use of force with universal collective maintenance of peace through the Security Council. Nevertheless, in two respects, the regional autonomy of the inter-American system was secured: in the possibility of a collective resort to the right of self-defence in cases of armed attack "until the Security Council has taken measures necessary to maintain international peace and security" (Art. 51), and in the priority of regional arrangements in the peaceful settlement of disputes (Art. 52(2)).

In the first case, the guarantee of regional autonomy was ensured in that the right of veto under Art. 27(3) could not be used to prevent collective military self-defence, but could well be used to prevent the Security Council from adopting appropriate universal measures which were available to it. Although Art. 51 does not refer specifically to regional arrangements, there was no doubt at the San Francisco Conference "that the origin of the term collective self-defense is identified with the necessity of preserving regional systems like the Inter-American one" (Statement by Columbia, Documents of the United Nations Conference on International Organization (UNCIO Docs.), Vol. 12, p. 680). The very general language used in Art. 51 also benefits those regional arrangements or agencies which are outside the inter-American system, even if this was not the intention of the Latin American States.

The issue of priority was also resolved by compromise. The Latin American view here was that the Security Council should only be able to intervene upon request or where a conflict took on extra-regional dimensions. However, the issue only proved capable of resolution at the Conference by means of the compromise formula that

the members should "make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council" (Art. 52(2)).

C. Present Importance in International Law

The regional systems of the present day are based on multilateral inter-State treaties with institutionalized regional arrangements. It is possible to characterize these as regional organizations, but it is not a prerequisite under the UN Charter that they be regional organizations with personality in international law (→ Subjects of International Law). The international legal basis of a regional security system is the membership in the UN of the States members of a regional pact. The membership of States in both regional organizations and the UN rests on the Charter's conception of a decentralized collective securing of peace. Moreover, collective self-defence measures have not been entirely excluded from the system, since these may be taken "... until the Security Council has taken measures ...".

1. Regional Autonomy

(a) Matters appropriate for action

Under Art. 52(1), regional arrangements or agencies may deal "with such matters relating to the maintenance of international peace and security as are appropriate for regional action". The Charter does not supply a direct answer to the question as to when a regional measure is appropriate. The essential factor here is the priority of regional arrangements over the Security Council, dependant firstly on the existence of "a local dispute" and secondly on the choice of peaceful means to settle it (Art. 52(2)). Thus, within the framework of Chapter VIII a double yardstick always applies to the judging of the legality of regional actions: the nature of the dispute and use of peaceful means to settle it. Both criteria are of equal importance in deciding the question as to when regional measures are appropriate for a given situation, although a number of authors see only a single criterion, namely either the nature of the dispute or the nature of the means of settlement. This contradicts the compromissory character of Chapter VIII which is to facilitate decentralization in the form of regional measures without, however, sacrificing the final responsibility of the Security Council within the system of collective security.

Peaceful regional settlement of disputes is not only available to two or more member States involved in a local dispute, but also in cases of internal conflicts within a member State. Such an interpretation may be derived from the reference in Art. 52(4) to Arts. 34 and 35 which apply not only to "disputes" but also to "situations", and thus to internal conflicts which are a threat to international peace (→ Peace, Threat to).

(b) The problem of priority

The priority of the resort to regional arrangements has both jurisdictional and procedural aspects, which are not easily distinguishable from each other. The generally agreed solution to the problem of priority has been to derive from the obligations of member States under Art. 52(2) an exclusive competence on the part of regional arrangements as the forum of first instance in the peaceful settlement of regional disputes. It follows from this that only a right to investigate "whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security" (Arts. 52(4) and 34) is left to the Security Council or the obligation to encourage the use of regional procedures (Art. 52(3)). An opposing view sees the decision on priority as a matter for the member States, who at any time may choose for themselves whether to call on the regional forum or the Security Council, both fora having concurrent jurisdiction.

In practice, the priority of the regional arrangement in terms of the first view offered above is demonstrated most clearly within the framework of the → Organization of African Unity (OAU). Until now the " OAU first" principle has ultimately been observed by all African States (OAU Council of Ministers, ECM Res. 1(I) of November 18, 1963 and ECM Res. 5(III) of September 3, 1964). Also, within the League of Arab States, most member States have in effect at least declared agreement with a regional settlement of disputes (e.g. in the Lebanon Crisis of 1959 and the Lebanon conflict of 1975/76;→ Arab States, League of). This was respected by the UN even when one of the parties to a dispute had

turned to it at the same time (e.g. the Sudan 1968 and in the Lebanon crisis of 1958). Only in the practice of the → Organization of American States (OAS) may cases be found of parties to a dispute insisting on this being dealt with directly by the Security Council (Guatemala in 1954, Cuba in 1961 and the Dominican Republic in 1965) A majority of the States in the Security Council have always favoured a regional settlement of disputes, but resolutions to this effect addressed to the OAS have regularly been defeated by the Soviet veto. However, *de facto* the issue remained under the auspices of the OAS, since the Security Council then only decided not to address the matter until the report under Art. 54 had been received. In recent times, there has been a renewed tendency within the framework of the OAS to limit regional autonomy (e.g. in the disputes between Haiti and the Dominican Republic in 1963, between Panama and the United States in 1964 and in the Dominican Republic in 1965).

In the final analysis, it is not possible to ascertain concurrent competences of regional organizations and UN organs. However, a priority of regional procedures to the exclusion of the UN organs persists only as long as the dispute is subject to settlement through peaceful means. The Security Council remains entitled to investigate a case (Art. 34) or to encourage regional procedures towards the → peaceful settlement of disputes (Art. 52(3)). Similarly, it remains a matter for the parties to a dispute whether to call on the Security Council for such measures, which are not dispute settlement measures. The Security Council's own powers of peaceful settlement of local disputes only come into play when the regional procedures have proved ineffective. This follows from the fact that in the peaceful settlement of disputes within the framework of Chapter VIII, the Security Council does not have the rights it has under Chapter VI (Arts. 36 and 37) to influence procedures which are underway or to take action in the matter itself. Such rights are not mentioned in Art. 52(4) and are thus excluded from Chapter VIII as long as an effective peaceful settlement of a dispute is taking place. That this, in practice, is the way the Security Council proceeds was demonstrated by Lebanon's complaint against the United Arab Republic of 1958. It is thus clear that the framework of Chapter VIII does not provide for a double jurisdiction of regional and universal fora.

2. *The Limits of Regional Autonomy*

(*a*) *Enforcement action*

Art. 53(1) concerns two different types of enforcement actions: those initiated by regional arrangements or agencies and those initiated by the Security Council. According to Art. 53(1) sentence 2, regional arrangements cannot take enforcement action without the authorization of the Security Council. Under Art. 53(1) sentence 1 the Security Council is empowered "where appropriate, [to] utilize regional arrangements or agencies for enforcement action under its authority".

The division of powers between the Security Council and regional arrangements under Art. 53 depends on the existence of "enforcement action". Art. 53 does not define enforcement action, and other provisions of the Charter are equally unhelpful (e.g. Arts. 2(5), 5 and 50). The negotiations at the San Francisco Conference support the view that all measures under Chapter VII, without exception, are enforcement measures (see, for example UNCIO Docs. Vol. 11, pp. 20 and 24). Assuming the meaning of enforcement action under Arts. 41 and 42 (i.e. taken by the Security Council) and under Art. 53 (i.e. taken by regional organizations) is one and the same, even non-military → sanctions in terms of Art. 41 could only be applied at the regional level with the authorization of the Security Council. The socialist States, in particular, adhere to this view, whereas other member States frequently interpret enforcement action in a more restrictive way, which results in a greater freedom of action for the regional organizations. During the discussions in the Security Council on the complaints by the Dominican Republic in 1960 and Cuba in 1962, the majority of the member States assumed that both the imposition of economic sanctions on a State as well as its exclusion from a regional organization were not enforcement actions (UN SC Official Records, 15th Year, 893rd Meeting, September 8, 1960; 894th and 895th Meetings, September 9, 1960; 17th Year, 994th Meeting, March 16, 1962).

The need for a definition of enforcement action has been repeatedly demonstrated in connection with the setting up of regional peacekeeping forces (e.g. the Arab League in Kuwait in 1961 and Lebanon in 1976; the OAS in the Dominican

Republic in 1965; and the OAU in Chad in 1982). Although the regional organizations involved saw the measures as purely peacekeeping measures and not enforcement actions requiring authorization, they were the subject of heated debate within the United Nations. The → International Court of Justice in the → Certain Expenses of the United Nations Advisory Opinion did not consider that peacekeeping operations carried out on the basis of the consent of the host State were enforcement actions automatically requiring authorization. However, the decision of the ICJ concerned a UN peacekeeping operation. Nevertheless, the majority of States accept this point of view also with regard to regional actions.

No uniform opinion exists concerning the general criteria for determining when an enforcement action requiring authorization arises. The widespread approach of taking the nature of the means resorted to as a criterion would seem too narrow. The possibility States possess of consenting to military actions with a view to superintending a cease-fire or some other peacekeeping goal demonstrates that the authorization of the Security Council is only required for regional measures when peacekeeping actions are mounted against the will of the parties affected.

(b) Authorization by the Security Council

Like all collective security measures, the granting of authorization under Art. 53(1) sentence 2 depends legally on the existence of a threat to the peace, a breach of the peace or an act of → aggression. The Security Council is empowered to decide both on these prerequisites and on the granting of authorization. The resulting wide area of discretion allows a refusal of authorization both on legal grounds as well as on grounds of suitability. The initiative to plan and carry out such enforcement measures remains, however, in the hands of the regional fora.

A number of uncertainties have emerged in practice over whether Art. 53 always demands a clear and prior authorization by the Security Council. These uncertainties were prompted by the position adopted by the Soviet Union in 1960 in demanding that the measures taken by the OAS against the Dominican Republic had to be submitted to the Security Council for *ex post facto* authorization. In connection with the → Cuban quarantine situation the argument was then made that the Security Council was able to approve regional enforcement actions by regional organizations after the fact. This view, however, cannot be reconciled with the requirement of effective Security Council control over regional enforcement actions. Such control is only guaranteed by clear and prior authorization, since the mechanism of control consists of the possibility of preventing enforcement actions. This proposition has received wide-spread recognition.

(c) Utilization of regional arrangements or agencies by the Security Council under Art. 53(1) sentence 1

The Security Council may also initiate its own enforcement measures and under Art. 53(1) sentence 1 may utilize the regional arrangements or agencies to carry them out. In this area there is no longer any question of autonomous regional decision-making. Where the Security Council resorts to its own enforcement measures to settle disputes which threaten the peace, its legal basis for doing so is Chapter VII of the Charter. The regional character of a dispute is, in such cases, of no consequence. An authorization of enforcement actions sought by regional arrangements or agencies under Art. 53(1) sentence 2 may be refused so as not to hamper the Security Council's own enforcement measures. Unlike the situation concerning the peaceful settlement of disputes, there is no priority for regional procedures where enforcement action is concerned. Under Art. 39 the Security Council may adopt resolutions which are binding on all UN members, even in cases of regional disputes (see Art. 25; → South West Africa/Namibia (Advisory Opinions and Judgments)). It is a separate issue that the utilization of regional arrangements or agencies under Art. 53(1) sentence 1 may not extend beyond the rights laid down for the Security Council under Chapter VII. Whenever military measures are resorted to, the decisions of the Security Council remain subject to the restrictions contained in Art. 43.

3. Reporting Obligations under Arts. 54 and 51

The reporting obligations of members of the UN and regional arrangements or agencies are important elements in the exercise of Security Council control. They serve to integrate regional

arrangements into the collective security system of the UN and also facilitate the work of the Security Council whose main responsibility is the maintenance of world peace and international security. As opposed to Art. 51, which merely governs the measures already taken, Art. 54 contains a broader reporting obligation, namely that "[t]he Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security". In practice, only the OAS has regularly reported to the Security Council pursuant to Art. 54. The contents and limits of the reporting obligations remain to be clarified (→ Reporting Obligations in International Relations).

D. Special Legal Problems

1. *Enforcement Measures and Third States*

In a number of conflicts regional organizations have resorted to enforcement measures using the argument that "peace in the region" was being endangered by events in a third State (e.g. the Arab League in Palestine in 1948; the OAS during the Cuba crisis in 1962 and the OAU in the Shaba Conflict in 1977/78). Enforcement powers of regional arrangements or agencies over States which are not members of that given regional arrangement or agency can only be based on the UN Charter (or on general international law e.g. in case of collective self-defence). Several legal arguments have been suggested in justification of the application of such measures to third States. Kelsen assumes that, in initiating enforcement actions against third States, regional arrangements or agencies act as organs of the Security Council. A legal justification for such regional enforcement actions against third States is derived from Arts. 24 and 39 based upon the purpose "to maintain or restore international peace and security". However, the competences of regional arrangements or agencies as referred to in Chapter VIII, are expressly limited to "matters . . . as are appropriate for regional action" (Art. 52(1)). In such a context it then follows that the enforcement measures must also be limited to such matters.

A different argument has been made based on Art. 53(1) sentence 2: the authorization by the Security Council of enforcement actions of regional arrangements or agencies is interpreted as extending in individual cases also to enforcement actions against third States. However, in the general context of Arts. 52, 53 and 54, the provision for Security Council authorization must be seen as a restriction upon regional autonomy and not as an extension of the power of the regional arrangement or agency to initiate enforcement measures.

Finally, an argument has been raised based upon Art. 53(1) sentence 1. It is contended that if that provision permits the Security Council to utilize regional arrangements or agencies to carry out enforcement actions against third States, why should not such regional entities be able to carry out such actions on their own initiative with the authorization of the Security Council under Art. 53(1) sentence 2. In both cases, it is argued, the Security Council has given its approval. Here again, however, it is necessary to consider the character of the two provisions. Due to the different purposes underlying the two provisions, one cannot conclude that actions permitted under the one are automatically permitted under the other.

Thus, there is no legal basis for regional enforcement actions against third States who are not members of the particular regional arrangement or agency. Whether or not the third State belongs to a particular geographical region is not legally relevant since the basis for regional peacekeeping is not a "region" in the geographical sense but rather a regional arrangement or agency established between member States.

2. *The Competence of Other UN Organs*

In the process of the settlement of local disputes through peaceful means, the member States of regional arrangements or agencies can also turn to the → United Nations General Assembly (Arts. 52(4) and 35), which is generally responsible for all questions involving the maintenance of world peace which have not been brought before the Security Council (Arts. 11 and 12). Nevertheless, it is clear that an effective regional resolution of disputes as laid down in Art. 52(2) has priority.

The → Uniting for Peace Resolution has, *inter alia*, also been adduced as the basis of the General Assembly's responsibility for Art. 53 enforcement measures, which is subsidiary to that

of the Security Council. However, the General Assembly has never used this resolution as the legal basis for resorting to binding enforcement measures, and instead has always confined itself to passing recommendations. As is demonstrated by Art. 24(2), enforcement measures are only possible on the basis of "specific powers" which are solely vested in the Security Council.

A further subsidiary competence for the regional organizations is assumed by the analogous application of the principles to be found in the Uniting for Peace Resolution in cases where the UN organs are unable to act. However, regional organizations are not organs of the United Nations in international law, even if they are characterized as "UN organs" or "auxiliary organs" because of the function they carry out in the maintenance of world peace and international security. In the absence of an organizational amalgamation into the UN, it is impossible to justify any power under Art. 1 for any organization other than an organ of the United Nations.

E. Evaluation

The task of maintaining world peace and international security by decentralized means through regional arrangements or agencies serves as a permanent challenge to the member States of the United Nations. In terms of the legal and political problems involved it is a challenge which has yet to be overcome. There are a number of different and dissimilar reasons for this. One important factor, without doubt, is the compromise struck between universalism and regionalism as expressed in Chapter VIII. One of the reasons why the important regional organizations have been, in political practice, increasingly able to evade control by the Security Council is the absence of a clear dividing line between regional autonomy and decentralized peacekeeping within the framework of the system of collective security. This has enabled the super-powers to use States and institutions in their regions in the delineation of their → spheres of influence (→ Hegemony). Typically, the consequence has been a pragmatic mixing of individual and collective self-defence with autonomous collective measures at the regional level, which in turn has led to a weakening of the UN system for securing peace.

Documents of the United Nations Conference on International Organization, San Francisco, 1945, Commission III; Security Council, Committee 4, Regional Arrangements, Vol. 12 (1945) 661–866.

B. BOUTROS-GHALI, Contribution à l'étude des ententes régionales (1949).

E. JIMÉNEZ DE ARÉCHAGA, Relaciones de Cooperación con las Naciones Unidas y sus Organismos Especializados, Cursos Monográphicos de la Academia Interamericana de Derecho Comparado e Internacional, Vol. 8 (1960) 101–179.

J.W. HALDERMANN, Regional Enforcement Measures and the United Nations, Georgetown Law Journal, Vol. 52 (1963) 89–118.

L.C. MEEKER, Defensive Quarantine and the Law, AJIL, Vol. 57 (1963) 515–524.

I.L. CLAUDE, JR., The OAS, the UN and the United States, International Conciliation, No. 547 (1964).

E. JIMÉNEZ DE ARÉCHAGA, La coordination des systèmes de l'O.N.U. et de l'Organisation des Etats Américains pour le règlement pacifique des différends et la sécurité collective, RdC, Vol. 111 (1964 I) 419–526.

G.H. NUNN, An Analysis of Contemporary Theory and Practice of Regionalism in International Security Organizations (1964).

R.J. YALEM, Regionalism and World Order (1965).

M. AKEHURST, Enforcement Action by Regional Agencies with Special Reference to the Organization of American States, BYIL, Vol. 42 (1967) 175–227.

L.B. MILLER, World Order and Local Disorder (1967).

B. BOUTROS-GHALI, Régionalisme et Nations Unies, RevEgypt, Vol. 24 (1968) 5–18.

E. FREY-WOUTERS, The Prospects for Regionalism in World Affairs, in: R.A. Falk and C.E. Black (eds.), The Future of the International Legal Order, Vol. 1 (1969) 463–555.

L. MILLER, The Prospects for Regional Order through Regional Security, ibid., Vol. 1 (1969) 556–594.

J.N. MOORE, The Role of Regional Arrangements in the Maintenance of World Order, ibid., Vol. 3 (1971) 122–164.

R. PERNICE, Die Sicherung des Weltfriedens durch Regionalorganisationen und die Vereinten Nationen (1972).

R. AKINDELE, The Organisation and Promotion of World Peace, A Study of Universal-Regional Relationships (1976).

F. PRZETACZNIK, The Law-Making Process by Regional International Organizations, Revue de droit international des sciences diplomatiques et politiques, Vol. 54 (1976) 199–238.

E. KOURULA, Peace-Keeping and Regional Arrangements, in: A. Cassese (ed.), United Nations Peace-Keeping, Legal Essays (1978) 95–123.

B. ANDEMICAEL (ed.), Regionalism and the United Nations (1979).

W. LANG, Der internationale Regionalismus (1982).

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REGIONAL COMMISSIONS OF THE UNITED NATIONS

1. Historical Background; Establishment

Aiming at universality and sceptical of decentralization, the drafters of the → United Nations Charter did not provide for regional substructures within the → United Nations. Nevertheless, within the first few years of the Organization's existence, the → United Nations Economic and Social Council (ECOSOC), acting on the recommendation of the UN Preparatory Commission and in response to demands from States and of the → United Nations General Assembly, established under Art. 68 of the UN Charter three economic commissions as subsidiary organs (see also UN Charter, Art. 7(2)). The Commissions' competences, functions and membership were defined primarily in terms of regions, and they were granted a fair measure of autonomy and independence. Initially established only on a temporary basis to assist in post-war reconstruction (→ United Nations Relief and Rehabilitation Activities) or to deal with urgent economic problems arising out of World War II, these organs soon acquired permanence. Later, two more such entities, collectively known as Regional Economic Commissions or now just as UN Regional Commissions, were set up, so that their present number is five:

- Economic Commission for Europe (ECE); established in 1947, by ECOSOC Res. 36(IV), with headquarters in Geneva;
- Economic and Social Commission for Asia and the Pacific (ESCAP), formerly Economic Commission for Asia and the Far East (ECAFE); established by ECOSOC Res. 37(IV) in 1947 and renamed by Res. 1895(LVII) in 1974, with headquarters in Bangkok;
- Economic Commission for Latin America (ECLA); established in 1948 by ECOSOC Res. 106(V), with headquarters in Santiago;
- Economic Commission for Africa (ECA); established in 1958 by ECOSOC Res. 671(XXV), with headquarters in Addis Ababa;
- Economic Commission for Western Asia (ECWA); which in 1973, in accordance with ECOSOC Res. 1818(LV), replaced the former United Nations Economic and Social Office in Beirut (UNESOB), with headquarters in Baghdad (formerly in Beirut).

Over the years, the activities and significance of the Regional Commissions have gradually increased, reflecting other centrifugal tendencies in the United Nations. This has been especially true since the mid-1970s as, in the course of restructuring the economic and developmental activities of the United Nations, an increased emphasis has been placed on decentralization, including, for the Commissions, expanded responsibilities for programming, coordination and execution of operational activities (GA Res. 32/197 of December 12, 1977). At about the same time, the Commissions were requested by ECOSOC (Res. 1896(LVII), cf. also Res. 1952(LIX) and 2043(LXI)) to participate in the implementation of the Programme of Action on the Establishment of a New → International Economic Order, for which the Commissions have now become coordination centres and executing agencies.

2. Structure

Generally speaking, the structures of all of the Regional Commissions are similar. The following analysis will therefore first refer to their common elements, and then mention, as necessary, any special features of individual Commissions.

(a) Legal instruments

Each of the Regional Commissions was established by a resolution of ECOSOC that sets out its terms of reference. These instruments, each of which has been amended from time to time by subsequent resolutions of the Council, set out the respective functions and powers, define the geographical scope and membership, establish rules concerning contacts with other UN organs, as well as with specialized agencies (→ United Nations, Specialized Agencies) and with regional organizations, and specify the method of financing and staffing. They require the Commissions to operate under the "general supervision" of ECOSOC, to act "within the framework of the policies of the United Nations" and to refrain from taking any action in respect of any country without the express prior consent of its government; all, save ECE, are required to assist the Council in discharging its functions in their respective regions, especially in respect of technical assistance (→ Economic and Technical Aid).

The Commissions receive some general and sometimes individual guidance from resolutions

addressed to them by the General Assembly or ECOSOC (→ International Organization, Resolutions).

Each Regional Commission, as authorized by its terms of reference, has adopted a set of rules of procedure which also apply to certain of their subsidiary organs, while others may adopt their own (→ International Organizations, Internal Law and Rules). Otherwise, and especially in respect of their administration, they are subject to the general Staff and Financial Regulations and Rules of the United Nations. The substructure of subsidiary and treaty organs through which several of the Commissions carry out most of their tasks is governed by numerous resolutions adopted and international agreements sponsored by the respective Commission.

(*b*) *Membership and participation*

The basis of membership or of other types of participation in each Regional Commission is laid down in its terms of reference, which distinguish between (full) members, associate members and observers (→ International Organizations, Membership). Except as therein specifically provided, a Commission has no power to change its membership, but may only recommend suitable amendments to be made by ECOSOC.

As a rule, full membership in a Regional Commission is granted to UN member States in the region in question, though some non-UN members are also included. Members are either listed by name, or they are collectively defined by reference to an area (e.g. a continent). In addition, specified non-regional States may be entitled to full membership, either by reason of their economic activity in the region (e.g. the United States in ECE and ESCAP) or because they are (or were) responsible for → non-self-governing territories within the region (e.g. France, the Netherlands and the United Kingdom in ECLA and in ESCAP, albeit on the understanding not to use their votes in these Commissions against economic proposals "predominantly concerning the region"). Countries with territories in more than one region may be members of several Commissions for that reason (e.g. Soviet Union in ECE and ESCAP; Egypt in ECA and ECWA).

In ECWA, membership was originally restricted to those UN member States that in 1973 called on the services of UNESOB (thus excluding Israel, a UN member in the region); later Egypt, as well as the → Palestine Liberation Organization (which is not a State), were admitted.

South Africa, though formally still a full member of ECA, had its right of participation suspended by ECOSOC in 1963 (Res. 974D,IV (XXXVI)), pending a change in its racial policy (→ Apartheid).

The terms of reference of ESCAP, ECLA and ECA provide for the admission, as "associate members", of non-self-governing territories within the respective region that submit an application through the State internationally responsible for them. Associate members are entitled to the same rights as full members, save the right to vote; however, in the subsidiary bodies of ESCAP even associate members may vote (→ Voting Rules in International Conferences and Organizations).

The terms of reference of all Regional Commissions provide for observer status for various entities (→ International Organizations, Observer Status). States members of the United Nations but not of the particular Commission may enjoy a "consultative capacity" on matters of particular concern to them; usually such status is a matter of right, but in ECWA it is discretionary. UN Specialized Agencies are automatically entitled to such status, while other inter-governmental organizations (e.g. regional ones) may be invited. Non-governmental organizations may also be invited. In ECA, national → liberation movements recognized by the → Organization of African Unity enjoy such status automatically. Observers may be entitled to make formal proposals but not to vote.

(*c*) *Inter-governmental organs*

Each Regional Commission has a plenary inter-governmental body, in which governments are usually represented at the level of ministers and decisions are taken by a majority of those present and voting. They meet in annual sessions, except that ECLA does so biennially.

All Regional Commissions have subsidiary inter-governmental bodies of limited membership; with over a dozen, ECE has a particularly large number, including committees on agriculture, chemical industry, coal, electric power, housing, gas, inland transport, steel, timber, trade and water, as well as the Senior Economic Advisers to

ECE Governments, the Senior Advisers on Science and Technology, the Senior Advisers on Environmental Problems, the Conference of European Statisticians and the Working Party on Automation. Particular functions may be delegated to these subsidiary organs, which meet between Commission sessions, and they in turn may create further subordinate bodies.

In addition, several Commissions (and in particular ESCAP and ECLA) have sponsored the conclusion of treaties by which further organs are established, some of which (such as the Asian Industrial Development Council) work in close coordination with the Commission and may be serviced by its secretariat, while others constitute entirely separate entities (e.g. the Asian Development Bank; → Regional Development Banks).

(*d*) *Secretariats*

Each Regional Commission has a permanent secretariat at its headquarters (→ International Secretariat), headed by an Executive Secretary and employing a considerable number of staff (ECE: approximately 230; ESCAP: 690; ECLA: 680; ECA: 640; ECWA: 280). These constitute part of the UN Secretariat and are subject to the UN Staff Regulations and Rules, though in practice the → United Nations Secretary-General has delegated many aspects of staff administration to the Executive Secretaries.

Each secretariat services the plenary sessions of its Commission and the meetings of its subsidiary bodies; it also carries out the resolutions and implements the programmes adopted by these bodies. The secretariats of some of the Commissions include joint divisions with other UN organs (e.g. the ECLA/UNIDO industrial development division; → United Nations Industrial Development Organization) or with Specialized Agencies (e.g. the ECLA/FAO and ECA/FAO agricultural divisions; → Food and Agriculture Organization of the United Nations). On the other hand, some secretariat units, including seven ECLA offices and the five Multinational Programming and Operational Centres (MULPOCs) of ECA, are set up on sub-regional bases.

(*e*) *Finances*

All the administrative expenses of each Regional Commission, as well as the costs of many of their substantive programmes and activities, are financed by the regular budget of the United Nations, which is proposed by the Secretary-General, adopted by the General Assembly and assessed on all UN member States (→ International Organizations, Financing and Budgeting). Thus the cost of a substantial part of the activities of each Regional Commission is distributed among all UN members. Non-members of the Organization are assessed solely in respect of any Commission in which they participate. (For the 1982/1983 biennium, the total regular budget charge for the five Commissions is US$216 million (including apportioned costs), constituting about 14 per cent of the total UN budget.)

In addition, the Regional Commissions receive more and more extra-budgetary resources, from sources such as the → United Nations Development Programme (UNDP), the UN Fund for Population Activities (UNFPA), the → United Nations Children's Fund (UNICEF), the Fund for the → United Nations Environment Programme (UNEP), Specialized Agencies and governments. (For the 1982/1983 biennium, some US$107 million in such resources was expected.)

(*f*) *Reports and publications*

Each Regional Commission submits an annual report on its plenary session and on its activities to ECOSOC, which considers these and acts on any recommendations addressed to it.

As part of their substantive operations, a number of Commissions have important publication programmes, including periodicals such as ECE's Economic Bulletin for Europe and the Economic Survey of Europe, ESCAP's Economic and Social Survey of Asia and the Pacific, ECLA's Economic Survey of Latin America and the Statistical Yearbook of Latin America, and ECA's Survey of Economic and Social Conditions in Africa and its African Trader.

(*g*) *Relationships*

The Regional Commissions cooperate extensively with other UN entities, in particular with the → United Nations Conference on Trade and Development (UNCTAD), with UNIDO, UNDP, UNEP, as well as with a number of Specialized Agencies. From some of these they receive financial support and with others they operate joint programmes.

Horizontal cooperation between the several Regional Commissions, while somewhat limited in the past, is now rapidly expanding. Furthermore, some coordination results from overlapping membership and from a common interest in specific goals, such as implementation of the New International Economic Order. Commencing with the 1972 UN Conference on the Human Environment, it has become common practice for the Commissions to convene meetings prior to global conferences in order to formulate regional proposals and programmes on pertinent issues.

Those Commissions whose area of operation coincides with that of a regional agency, cooperate closely therewith: for example, ECA with the Organization of African Unity (OAU); ECLA originally with the → Organization of American States (OAS) and now rather with the Latin American Economic System (→ Latin American Economic Cooperation), and ECWA with the League of Arab States (→ Arab States, League of) and the Arab Fund for Economic and Social Development.

3. *Activities*

(*a*) *Purposes and functions*

Although there are slight differences in their respective terms of reference, the following are the principal functions and purposes common to all five Regional Commissions: to initiate and participate in measures for facilitating regional economic development, raise the level of economic activity in the respective region, and maintain and strengthen economic relationships among the States of the region and with other States; to investigate and study economic and technological problems and developments; to collect, evaluate and disseminate economic, technological and statistical information.

In addition, the four Commissions in the developing regions enjoy very broad competence to render any other advisory services a member State might request. The competences of these Commissions are also wider than those of ECE in that they have been charged to deal "with the social aspects of economic development and the interrelationship of economic and social factors" – though ESCAP is the only Commission whose name has been revised to reflect this extension. Generally, the Commissions' competences and functions are couched in language sufficiently elastic to enable them to engage in widely differing activities of their own choosing. The Regional Commissions are the only subsidiary bodies of ECOSOC to which it has delegated its authority under the UN Charter (Art. 62) to address recommendations directly to States and to Specialized Agencies.

For all their common purposes, functions, shared structural features and other similarities, the five Regional Commissions are by no means regional replicas of one another. In particular, there is a marked difference between ECE on the one hand, serving a region consisting virtually exclusively of developed industrialized countries and, on the other, ESCAP, ECLA and ECA, all of which serve mostly → developing States; ECWA, being the youngest Commission and functioning in the conflict-ridden Middle East, is in a special situation because its members do not fit neatly into the dichotomy of developed and developing countries.

(*b*) *ECE programmes*

Following the period of reconstruction after World War II, ECE became a major instrument for regional economic cooperation, in particular between Eastern European countries on the one hand and those of Western Europe and the United States on the other. Even when the participation of the former in most subsidiary bodies of the Commission was limited, they maintained their attendance at the annual plenary sessions, which during the cold war period constituted the only institutionalized body in which East and West met at the ministerial level. Later, since virtually all ECE members participated in the Conference on Security and Co-operation in Europe, the 1975 Helsinki Final Act extensively refers to ECE and charges it to implement certain of its provisions (→ Helsinki Conference and Final Act on Security and Cooperation in Europe).

By 1969 ECE was concentrating on the following interrelated areas of activity: development of trade; scientific and technological cooperation; long-term economic projections and planning; and environmental improvement. The list of its principal subsidiary bodies (see section 2(c) *supra*)

indicates the wide range of activities the Commission is engaged in.

A particular feature of the work of ECE has been the formulation of international agreements, such as some 30 instruments dealing with standardization and unification of rules in the field of inland transport, standard contracts for trade in several commodities and goods, over 50 standards for perishable produce and the harmonization of building and other regulations.

(c) *ESCAP, ECLA and ECA programmes*

The only UN bodies charged with responsibility for comprehensive economic and social development in their respective regions, these three Commissions have pioneered in promoting development planning. In compliance with various ECOSOC resolutions they are now seen as the main agents for implementing the New International Economic Order on a regional level. As a result, their activities have been re-oriented from collecting and analyzing economic and social data towards more practical and operational programmes. Thus ECLA, in cooperation with UNDP, established the Latin American Institute for Economic and Social Planning which has trained a great number of professionals and government officials; ECLA also initiated the Latin American Demographic Centre and stimulated the establishment of the → Central American Common Market and the Latin American Free Trade Association (later renamed the → Latin American Integration Association). Both the Asian and the African Development Banks were brought into existence on the initiative of the respective Regional Commissions, with a view to mobilizing capital for development. All three Commissions are promoting region-wide telecommunication networks and, in cooperation with UNFPA, substantial population programmes.

The three Commissions all have sub-regional programmes. ECLA has two main sub-regional offices, one for Central America and Panama, and one for the Caribbean. ECA has sub-regional organizational structures in the form of the MULPOCs (section 2(c) *supra*), responsible respectively for: the Eastern, Western, Northern, Central and the Great Lakes sub-regions of Africa. ESCAP has special projects for the Lower Mekong Basin, for South-East Asia and for the South Pacific Offshore Areas.

(d) *ECWA programmes*

This Commission continues the work of the former United Nations Economic and Social Office in Beirut (UNESOB), which had been established in 1963 as a joint office of the secretariats of the UN Department of Economic and Social Affairs, UNCTAD and UNIDO. ECWA's activities have been hampered by the → armed conflict within its region. It currently carries out a Development Planning, Projections and Policies Programme, a Development Finance and Administration Programme, a Regional Project for Public Finance and Administration, a Labour, Management and Employment Programme, joint programmes with UNIDO and FAO and studies of water resources.

4. *Special Legal Problems*

Although mainly a political issue, membership and rights of participation have at times given rise to legal questions in several of the Regional Commissions.

The fecundity of ECE in developing numerous legal instruments, some of a quite novel and ingenious nature, has required interesting legal innovations, both in relation to the structure and form of these instruments and to the methods of their formulation and promulgation.

Other types of legal questions, mostly relating to the internal administrative law of the UN, have arisen out of the substantial decentralization required for the effective operation of four of the Commissions away from the headquarters in New York and Geneva, and the even further distribution of functions to sub-regional centres. In addition, the extensive reliance on subsidiary and treaty organs or on entirely independent entities, which sometimes transmute from one form to another and are often difficult to distinguish in law and even more in practice, has in some ways greatly complicated the governance and administration of the Commissions.

5. *Evaluation*

On the whole, the Regional Commissions have been remarkably successful, due in no small measure to the outstanding guidance that some of them received from distinguished Executive Secretaries.

The restructuring of the economic and social

sectors of the United Nations during the 1970s, and in particular the trend to decentralization, coupled with the striving towards the New International Economic Order, has significantly enlarged the tasks and functions of the Commissions, especially those serving mainly developing regions. Being closer to national problems, more practical in approaching them and more specific in their solution, the UN Regional Commissions, with their strong roots in their respective regional international systems (see articles on Regional Cooperation and Organization) but benefitting at the same time from firm integration into the world organization and its system of Specialized Agencies, can be credited with a number of tangible achievements, in reconstruction, in the reconciliation of intra-regional differences and in development.

Annual Reports, published as Supplements to the Official Records of the Economic and Social Council.

R.W. GREGG, The UN Regional Economic Commissions, in: R.S. Jordan (ed.), Multinational Cooperation: Economic, Social and Scientific Development (1972) 50–109.
ECE, Three Decades of the United Nations Economic Commission for Europe (1978).
B.G. RAMCHARAN, Equality and Discrimination in International Economic Law, VIII: The United Nations Regional Economic Commissions, Year Book of World Affairs, Vol. 32 (1978) 268–285.
ESCAP, Handbook for Delegates (1982).

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REGIONAL COOPERATION AND ORGANIZATION: AFRICAN STATES

1. Introduction

By the time the Charter of the → Organization of African Unity (OAU) entered into force on September 13, 1963, African States had given serious thought to closer cooperation and integration. Regional cooperation was visualized as a way of harnessing the natural and human resources of the African continent. The OAU member States agreed to adhere to the guidelines contained in the seven principles enshrined in Art. III of their Charter, including the guarantee of the sovereign equality of every country and the principle of non-interference in the internal affairs of other States (→ States, Sovereign Equality; → Non-Intervention, Principle of).

2. Economic and Social Cooperation

Initial ideas on regional cooperation or integration, particularly in the economic fields, envisaged the establishment of preferential areas, → free trade areas, → customs unions, common markets and economic unions (→ Economic Communities and Groups).

(a) Cooperation between African States and international organizations

Following the instruction of the → United Nations General Assembly to the → United Nations Economic and Social Council, the latter adopted Resolutions 671 A and B (XXV) on April 29, 1958 establishing the Economic Commission for Africa (ECA), with headquarters in Addis Ababa in Ethiopia, as one of a number of regional commissions set up by the → United Nations to realize regional objectives within a universal framework (→ Regional Commissions of the United Nations). The institution was at once recognized as the most valuable organ of the UN for assisting economic development and social progress in Africa. Having run up against difficulties in its promotion of the idea of an African common market, the ECA passed Resolutions 142 (VII) and 145 (VII) in February 1965 recommending that member States of the Commission, consisting of independent African States, should establish inter-governmental machinery on a subregional basis in order to harmonize their economic and social development. This initiative was prompted by the relative success in the process of integration that had been attained in the eastern, northern and central subregions of Africa.

To familiarize foreign investors with the industrial development laws of African States and the legal problems that may be encountered in the protection and encouragement of → foreign investments in a period of rapid economic transition, the ECA also made a study and an analysis of the → investment codes and statutes of African States (see Brownlie, pp. 195–225; also Highet and O'Malley). The ECA report on Investment

Laws and Regulations in Africa was adopted on February 27, 1962 (UN Doc. E/CN.14/INR/28 of October 30, 1963).

Other instances of cooperation between international organizations and African States are, for example, the numerous assistance projects on the African continent carried on by various → United Nations Specialized Agencies and by other international governmental institutions, including the → European Economic Community (→ Lomé Conventions). In addition, various → non-governmental organizations work to promote humanitarian ideals and to combat hunger, poverty and lack of development in Africa.

(*b*) *Regional cooperation*

After independence, African States entered into a number of international conventions and arrangements *inter se*. Many of these were economic, technical and cultural in nature. The post-independence relations and collaboration between African States portray deep concern with the effects of integration and coordination on the industrialization and development of the African continent (→ Developing States). Even though the trend towards economic integration is common today on the African scene, trade relations between African countries are poor and underdeveloped. The aim of regional economic, social and technical cooperation among African countries has been, in essence, to lessen their vulnerability and dependence on the outside world by encouraging African trade to get better terms from the developed world. Competitive economics, transport problems and dependence on Europe provide, however, little freedom of action for African countries.

Art. XIII(2) of the OAU Charter entrusts the Council of Ministers with the function of coordinating inter-African cooperation "in accordance with the instructions of the Assembly and in conformity with Article II(2) of the present Charter". Among the provisions in the said article are the coordination and harmonization of economic cooperation, including transport and communications; educational and cultural cooperation; health, sanitation, and nutritional cooperation; scientific and technical cooperation; and cooperation for defence and security.

An important institution created by African States in the field of economic and social cooperation is the African Development Bank (AfDB), with headquarters at Abidjan in the Ivory Coast. It was initiated by the ECA to help finance development projects in Africa (→ Regional Development Banks). The AfDB was established by an Agreement signed in Khartoum, Sudan, in August 1963 by 30 independent African States. By 1982, its membership had arisen to a total of 50 independent African countries. In 1978 the Board of Governors of the AfDB decided to open up the capital stock of the Bank to non-African States. Nigeria opposed that decision until 1982, when it was reported that the Federal Government of Nigeria had changed its policy and had taken the position that the AfDB could expand in this manner if it wished.

The purpose of the Bank is to finance projects and specific investment programmes which foster regional cooperative and integrated development in African countries. AfDB provides its member States with technical assistance for studies, preparation and execution of projects and programmes. The Bank operates independently as well as jointly with other finance institutions. The AfDB grants loans to governments and private enterprises with government guarantees. It also grants lines of credit for on-lending to national and subregional development banks. Initially, AfDB's authorized capital stock was fixed at 250 million units of account (UA) which by August 1981 had arisen to over UA two thousand million. The Bank Group consists of AfDB, the African Development Fund and the Nigeria Trust Fund (established in 1976 by the Nigerian Government to assist the development effort of the poorer African members of the AfDB).

The basis for regional cooperation in conservation and natural resource matters was laid down at the fifth ordinary session of the OAU Assembly of Heads of State and Government, which was held in Algiers, Algeria from September 13 to 16, 1968, when the African Convention on the Conservation of Nature and Natural Resources was adopted and signed on September 15, 1968.

The most recent as well as the most ambitious economic programme designed to accelerate economic development and regional cooperation among all the African States is the Lagos Plan of

Action for the Economic Development of Africa, 1980–2000, which was agreed upon by the first Economic Summit of the Assembly of Heads of State and Government of the OAU in Lagos, Nigeria, in April 1980. This plan which observers have called the blueprint for real economic independence in Africa is supposed to implement the Monrovia Strategy for the Economic Development of Africa as recommended by the ECA Conference of ministers responsible for economic development at its sixth meeting at Addis Ababa from April 1 to 12, 1980. The Lagos Plan of Action is based on an integrated approach covering different economic and social activities.

(c) *Subregional cooperation*

On a subregional basis institutional arrangements also have been made in various parts of the African continent to encourage regional cooperation, collaboration, joint efforts and integration.

After dissatisfaction with post-colonial arrangements and studies on the needs of East Africa, the → East African Community (EAC) was established by a Treaty signed on December 1, 1967 in Kampala, providing for an East African Common Market and an East African Development Bank. The aim of the East African Community was to strengthen and regulate the industrial, economic and other relations of the partner States, but constant disagreements, jealousies among member States, unhealthy rivalries and personality clashes between the EAC Heads of State finally brought the Community to a standstill. In 1977 the unhappy partnership broke up.

The West African Common Market was envisaged by the Conference held in Accra, Ghana, from April 27 to May 4, 1967 when Ghana, Dahomey (now Benin), Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and Upper Volta agreed to create a subregional institution. However, it similarly does not appear to have been a viable or successful economic body. Since May 28, 1975, the Treaty of Lagos has established what is now known as the → Economic Community of West African States (ECOWAS, or CEDEAO for the francophone African States). Twelve years of chequered history culminated in this achievement and the original twelve countries which formed the unsuccessful West African Common Market are all included among the 16 West African States which created ECOWAS. As a subregional institution it comprises some 150 million people from nine French-speaking, five English-speaking and two Portuguese-speaking States. With the exception of Liberia, all the ECOWAS member States have had a common experience of colonialism. They form a bloc covering the whole of the economic region of West Africa.

An important area of activity for ECOWAS has been its efforts to develop proper communications and transport facilities within its areas. Two Conventions were signed at the fifth session of Heads of State of ECOWAS members in May 1982 on the establishment of Interstate Road Transport and Interstate Road Transit. The same Conventions relate to the free movement of persons and are "meant to remove the many administrative barriers between Member States and facilitate economic and social intercourse among the various people of the sub-region". Progress has also been made within ECOWAS in developing the telecommunications network and two Trans-West-African highways.

In general, however, the development of ECOWAS since 1975 has been slow. On January 17, 1983, the Community sustained a serious injury when Nigeria took action to expel a large number of illegal resident aliens many of whom were citizens of ECOWAS member States.

An important force harmonizing the cooperation among the French-speaking African States was their common language and cultural background, which provided strong links across territorial boundaries. Cooperation was also encouraged between the francophone States through the operation of French technical assistance.

The Conseil de l'Entente was created in May 1959 in Abidjan in the Ivory Coast, following the meeting of the Heads of State of the Ivory Coast, Dahomey (Benin), Niger and Upper Volta. Togo joined later in 1966. The aims of the Entente were the formation of a customs union, harmonization of tax laws and coordination of their finances, judicial systems, public services, labour forces, communications and public health projects. A solidarity and loan fund was guaranteed with a capital of US$5 million.

The Union africaine et malagache (UAM) was founded in September 1961 in Tananarive, Madagascar by twelve French-speaking African States, then known as the Brazzaville group. Three years later, in March 1964 the Union africaine et malagache de co-opération économique (UAMCE) was created and briefly took the place of UAM before it, in turn, was replaced by the Organisation commune africaine et malagache (OCAM). OCAM is a loose organization of 14 francophone countries created at Nouakchott in Mauritania on February 12, 1965 for purposes of joint consultation. It has arranged a common market for sugar for the benefit of Madagascar and Congo (Brazzaville) and is committed to making arrangements for meat (→ Commodities, International Regulation of Production and Trade). OCAM was active in the formation of the African and Malagasy Coffee Organization. Mauritania withdrew from membership on June 24, 1965.

A West African Monetary Union (WAMU) came into being on May 12, 1962 between seven francophone West African States: Dahomey, the Ivory Coast, Mali, Mauritania, Niger, Senegal and Upper Volta. The purpose of the Union was to retain the existing Franc Communauté Financière Africaine, known as the CFA franc. A second Agreement on Cooperation was signed between the member States of WAMU and the French Republic in Paris on May 12, 1962.

On June 3, 1966 a West African Customs Union (Union douanière des Etats d'Afrique occidentale (UDEAD)) was established. The Union started functioning in December 1966 with the following member States: Dahomey (Benin), Ivory Coast, Mali, Mauritania, Niger, Senegal and Upper Volta. The agreement provided, *inter alia*, for a common external tariff and preferential treatment for members of the Union.

The Mano River Union between Sierra Leone, Liberia and Guinea now in its ninth year, was established essentially as a customs union, but, as the union evolved, the institution developed economic cooperation in other areas. It has made telecommunications one of its top priorities.

The three mini-States, Swaziland, Botswana, and Lesotho have, with South Africa, close economic links dating back to 1889. There is a customs union agreement between these land-locked mini-States with their population of about 2.2 million and South Africa.

A Treaty for the Establishment of the Preferential Trade Area for Eastern and Southern African States was signed on December 21, 1981 by representatives of Comoros, Djibouti, Ethiopia, Kenya, Malawi, Mauritius, Somalia, Uganda and Zambia (ILM, Vol. 21 (1982) p. 479). Membership is open to States of the eastern and southern part of Africa and to their immediate neighbour States, but not to South Africa. The aims of the preferential trade area are to promote cooperation and development in the fields of trade, customs, industry, transport, communications, agriculture, natural resources and monetary affairs with a view to the establishment of an economic community for the subregion, and to contribute to the achievement of the African common market envisaged by the Lagos Plan of Action. The institutions established under the Treaty include the Authority of Heads of State and Government, the Council of Ministers, the secretariat, various technical commissions and a judicial organ known as the Tribunal of the Preferential Trade Area which is empowered to adjudicate upon disputes relating to the interpretation and application of the Treaty's provisions.

Several other subregional institutions have been established for various purposes on the African continent. Some have come into existence only to disappear as rapidly as they were created. Nevertheless, new organizations for economic cooperation continue to attract the attention of many African States.

3. *Political Cooperation*

Regional political cooperation includes any significant step towards collaboration, cooperation, harmonization of policies or joint action, either in the relations among African States themselves or in their dealings with the outside world. From around 1958, a programme of ideas was generated by the Pan-African political movement. Cooperation in Africa involved the total rejection of colonialism in all its forms, including white domination. The common slogan was "Africa for the Africans" and the call for complete independence of African territories (→ Self-Determination). Some regional groups

supported the notion of loose federations; others encouraged complete integration or political unions; harmonization policies, focusing more attention on the → peaceful settlement of disputes between African States, were vigorously promoted.

The first Conference of independent western and northern African States (i.e. Ethiopia, Ghana, Liberia, Libya, Morocco, the Sudan, Tunisia and the United Arab Republic) held in Accra, Ghana, on April 15, 1958 discussed many issues of common interest: the coordination of methods of accelerating mutual understanding; the safeguarding of the independence and sovereignty of participating States' territories; the assisting of dependent African territories to gain independence; and the planning of cultural exchange and mutual assistance schemes. A second Conference by a group of independent African States was held in June 1980.

The "Brazzaville group", consisting of twelve French-speaking African States, emerged in October 1960. Collectively, the group dealt with the Algerian independence question, the Congo crisis and the application of Mauritania for UN membership. The Brazzaville group also decided to pool their "air transport" into a single system called "Air Afrique", with its head office in Abidjan in the Ivory Coast. The African and Malagasy Union Tananarive Conference held in September 1961 decided on another area of cooperation by the Brazzaville group concerning the coordination of telecommunications between the twelve French-speaking African States. To this end, they created the Union africaine et malgache des postes et télécommunications, with headquarters in Brazzaville (→ Telecommunications, International Regulation). It is important to mention that cooperation and coordination was easy between French West and Equatorial Africa because under colonial rule a considerable degree of formal integration had been achieved, with the African States in the area organized into two large federations with a high level of common services.

At the invitation of King Mohammed of Morocco in January 1961, a summit meeting of the Presidents of Ghana, Guinea, Mali and the United Arab Republic and a Minister of Libya was held in Casablanca. The Casablanca group, *inter alia*, decided to cooperate on the Congo crisis in the formation of an African high military command, supported the Algerian provisional government, called for an economic boycott of South Africa, denounced the attempts of Belgium to divide Rouanda-Urundi, condemned Israel and strongly disapproved of the testing of nuclear weapons in the Sahara (→ Nuclear Tests). An economic conference was held by the Casablanca group in July 1961 in Conakry, Guinea, in which they agreed on cooperation and the harmonization of policies.

A group of 20 independent African Heads of State and Government assembled in Monrovia, Liberia, in May 1961 to consider various matters of common interest, including the need for cultural, technical and economic cooperation. This group of States, also regarded as moderate African States, adopted resolutions on the absolute equality of States, on non-interference in the internal affairs of States, on respect for the sovereign rights of States, condemning subversive action by or against neighbouring States, on cooperation on the regional level and on the need for unity without political integration. The name "Monrovia group" derived from this meeting.

Following complex negotiations to lay the foundations of a regional institution in Africa, consistent with Art. 52(1) of the → United Nations Charter and with developments throughout the continent, the → Organization of African Unity emerged as an amalgamation of several former subregional groupings of States such as the Monrovia group, the Casablanca bloc and the Brazzaville group.

The above general survey shows that African States have cooperated at different political levels both before and immediately after obtaining political independence; yet many of the groups discussed above had difficulties in staying together, in promoting the ideals that united them or in interpreting their unity in action. Of the many separate political organizations set up or established by African States only the OAU seems to have survived and flourished since 1963.

In times of difficulty, national crisis or political instability African States have, nevertheless, cooperated severally or jointly with one another. For example, during the → civil war in Nigeria the OAU strongly supported the unity and in-

tegrity of Nigeria, and during the years of war and civil disorder in Chad the OAU for the first time in its history requested member States to dispatch OAU forces to the territory – although they were not very successful in their mission.

4. Diplomatic and Military Cooperation

The newly independent African States have since independence made great efforts both on the international diplomatic scene and at the regional level to draw attention to their problems. The African caucus, whose work is facilitated by the small secretariat set up by the OAU at the UN, has become one of the principal factors in General Assembly politics together with the larger Afro-Asian caucus. The principal cornerstones of African politics call for an end to colonial ties (→ Decolonization), respect for the concept of self-determination and the eradication of both racial discrimination (→ Racial and Religious Discrimination) and → apartheid policies.

In the potentially troublesome area of border disputes, the OAU not only settled the first border dispute between Algeria and Morocco, it also established the Commission of Mediation, Conciliation and Arbitration as a machinery for the peaceful settlement of disputes between African States (→ Boundary Disputes in Africa). On the regional level the OAU urged its members to refrain from the → use of force in resolving any of their border disputes. A Resolution on Border Disputes Among African States was adopted by the first ordinary session of the OAU Assembly of Heads of State and Government held in Cairo in July 1964. A Protocol on Non-Aggression further exists among the member States of ECOWAS. Most African States regard it as a duty to give both material aid and diplomatic support to → liberation movements. To this end annual contributions are made to the OAU Liberation Committee Fund. Both Mozambique and Angola were assisted in their struggle against Portuguese colonialism. In 1964, detachments from African States were sent to Tanganyika (now Tanzania) to replace British troops there and quell an army mutiny that threatened the stability of the country.

Many African States have military agreements with each other or between themselves and foreign powers. Egypt has certain arrangements with the United States. Angola and the Cubans have an understanding in which the latter have stationed some thousands of troops in the former's territory. Most francophone African States have agreements with France (→ Military Aid). Ethiopia and the Soviet Union have an agreement since the revolutionary régime in Addis Ababa came to power. Senegal and Gambia, both before and after signing an accord to establish "Senegambia", have maintained a military agreement. The Governments of Libya, Ethiopia and the People's Democratic Republic of Yemen signed a treaty recently to cooperate on matters relating to economic development and national security.

Since the creation of the OAU there have been sporadic discussions about the establishment of an African Military High Command, but the idea has never received the blessing of the preponderance of OAU members. On the only occasion when a joint military operation by the OAU came into being, during the final phase of the civil war in Chad in 1982, the modest efforts of the OAU proved rather dismal.

Another area where the OAU has acted in support of regional cooperation was in its work to coordinate the African response at the Third United Nations Law of the Sea Conference (→ Conferences on the Law of the Sea). To present a united front at the Conference sessions, the 1970 Lusaka Statement on the Seabed by Non-Aligned Countries (Doc. NAC/CONF.3/Res.II) was adopted. Many African delegates, who were relative novices to law of the sea issues, had cause to welcome the support and concern of the OAU acting as a regional institution.

5. Human Rights

Allied to the notion of democracy is the very important principle of the rule of law. The idea that the rule of law would be the cornerstone of constitutional government and administration in post-independence Africa was embraced enthusiastically but events soon undid early hopes for → human rights in Africa.

Following conferences and seminars held throughout the 1960s and 1970s, *inter alia* by the → International Commission of Jurists, the Commission of African Jurists and the United Nations, and supporting the idea of undertaking further initiatives in aid of the rule of law and

human rights in Africa, the United Nations Seminar on the Establishment of Regional Commissions on Human Rights with special reference to Africa was held in Monrovia, Liberia, in September 1979. At the end, another call was made for the OAU to do something concrete and to create a Commission and establish a Convention on Human Rights. The final result was the OAU Banjul Charter on Human Rights and Peoples' Rights adopted at the 18th Assembly of Heads of State and Government of the OAU meeting in Nairobi, Kenya, June 24 to 27, 1981 (ILM, Vol. 21 (1982) p. 58). To enter into force, Art. 63(3) of the Charter requires that a simple majority of OAU member States ratify the Charter. At the time of writing, March 1983, that majority of 26 has not yet been achieved (→ Human Rights, African Developments). African States have cooperated in other ways to see that human rights are respected. A legal instrument on → refugees, the OAU Convention governing the Specific Aspects of Refugee Problems in Africa, was adopted in September 1969 and entered into force in November 1973 (ILM, Vol. 8 (1969) p. 1288). The OAU created a Bureau for the Placement and Education of African Refugees in May 1968. In April 1981 an International Conference on Assistance to Refugees in Africa was organized by the United Nations in Geneva.

6. *Rivers and Lake Basins*

A number of agreements have been concluded between African countries close to lake basins or with coastal States interested in the economic development of rivers and lakes for the purposes of navigation and transportation.

The Senegal River Basin Commission between Guinea, Mali, Mauritania and Senegal, known as the Organisation des Etats rivérains du Fleuve Sénégal, came into existence on March 24, 1968, aimed at the development of the river basin.

The Lake Chad Basin Commission was established on March 24, 1964 by the Convention et Statuts relatifs à la mise en valeur du Bassin du Tchad concluded by Cameroon, Chad, Niger and Nigeria. Its aim is to coordinate the research activities of member States, recommend plans for the execution of survey and works in the Chad Basin and maintain liaison between its member States (→ Lake Chad).

The River Niger Commission was created at a conference in October 1963 in Niamey, Niger, where an Act regarding Navigation and Economic Cooperation among the States of the Niger Basin was adopted (→ Niger River Régime). The nine member States of the Commission, which has its headquarters in Niamey, are Cameroon, Chad, Dahomey (Benin), Guinea, Ivory Coast, Mali, Niger, Nigeria and Upper Volta. The aim of the Commission is the exploitation of the economic aspects of navigation and transportation on the River Niger.

The Nile River Commission was established in response to the need for regional cooperation and coordination between the nine African territories that lie within the basin of the → Nile River; these are Egypt, Sudan, Ethiopia, Zaire, Uganda, Kenya, Tanzania, Burundi and Rwanda. Various projects have been planned in the Nile River region, particularly in respect of additional hydroelectric power for Egypt and for the supply of irrigation water to the Sudan and Egypt. An agreement was concluded on November 8, 1959 establishing the Permanent Joint Technical Commission for the Nile River. It was for the purpose of dealing effectively with the problems connected with Egypt's idea of building the Aswan High Dam on the Nile that the Commission was approved in July 1960. Cooperation and harmonization of development policies in the Nile River region has significantly contributed to the reduction of boundary disputes that would otherwise have caused frequent disagreements and hostilities.

I. BROWNLIE, Basic Documents on African Affairs (1971).
L.B. SOHN, Basic Documents of African Regional Organisations, 4 vols. (1971).

G.A. ALMOND and J.A. COLEMAN (eds.), The Politics of the Developing Areas (1960).
T.O. ELIAS, Government and Politics in Africa (1961).
International African Commission of Jurists, Conference on the Rule of Law, Lagos, Nigeria, Jan. 3–7, 1961 (1961).
C. LEGUM, Pan-Africanism: A Short Political Guide (1961).
K. NKRUMAH, Africa Must Unite (1963).
C. JOHNSON, Political and Regional Groupings in Africa, in: W.J. Hanna (ed.), Independent Black Africa (1964) 555–587.

J.H. SPENCER, Africa at the UN: Some Observations, in: W.J. Hanna (ed.), Independent Black Africa (1964) 542–554.
T.L. ROBERTS, Judicial Organisations and Institutions of Contemporary West Africa (1966).
C. HOSKYNS, Pan-Africanism and Integration, in: A. Hazlewood (ed.), African Integration and Disintegration (1967) 354–393.
Z. CERVENKA, The Organisation of African Unity and its Charter (2nd ed. 1969).
C. LEGUM (ed.), Africa Handbook (1969).
A. SEIDMAN, An Economics Textbook for Africa (1969).
C.G. WIDSTRAND (ed.), African Boundary Problems (1969).
J. WORONOFF, Organizing African Unity (1970).
T.O. ELIAS, Africa and the Development of International Law (1972).
K. HIGHET and C.K.H. O'MALLEY, Current Legal Aspects of Doing Business in Black Africa (1975).
E.C. DJAMSON, The Dynamics of Euro-African Cooperation (1976).
R. SYNGE (ed.), Africa Guide (1976).
S.A. AKINTAN, The Law of International Economic Institutions in Africa (1977).
C. CHIME, Integration and Politics Among African States (1977).
A.L. MABOGUNJE and A. FANIRAN, Regional Planning and National Development in Tropical Africa (1977).
M.N. ANDEM, International Economic Co-Operation in Developing Countries (1978).
E.A. BOATENG, A Political Geography of Africa (1978).
J. DUNN, West African States: Failure and Promise (1978).
E.G. BELLO, International Law and the Developing Nations: The Pursuit of Rights and Justice, Irish Jurist, New Series, Vol. 15 (1980) 263–288.
N.S. REMBE, Africa and the International Law of the Sea (1980).
E.G. BELLO, Human Rights: The Rule of Law in Africa, ICLQ, Vol. 30 (1981) 628–637.

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REGIONAL COOPERATION AND ORGANIZATION: AMERICAN STATES

A. Inter-American System: OAS and IDB. – B. Latin American Cooperation and Organization: 1. Institutions and Mechanisms for Cooperation and Coordination: (a) SELA. (b) Other institutions and mechanisms. 2. Regional and Subregional Economic Integration: (a) LAIA. (b) Subregional integration schemes. 3. Programmes for Joint Development of Geographical Areas. – C. The "New Dialogue". – D. An Overall Appraisal.

Given the broad context of the present article, an initial distinction must be made between regional cooperation and organization in a global sense and regional cooperation and organization in a limited sense. In connection with the latter, further distinctions can be made, in either the purpose or the geographical scope of cooperation and organization. Thus, while some of the institutions and mechanisms aim at the coordination of positions and actions, others constitute attempts at economic integration; while the geographical scope of some extends to the region as a whole, other institutions and mechanisms are subregional in character. Horizontal cooperation among Latin American and English-speaking Caribbean countries is also carried out by means of numerous bilateral agreements of technical cooperation and assistance in a number of fields; this particular aspect of cooperation among → developing states of the American Continent, however, is not dealt with herein.

A. Inter-American System: OAS and IDB

In the genesis and historical evolution of the "Inter-American System" – the global system of cooperation and of organization of the American States – a philosophical concept played a relevant role. Actually, the so-called "Western Hemisphere Idea", the political expression of which the late Professor Arthur P. Whitaker called the "American System", eventually developed into the Pan American movement, which found its first institutional expression in the Conference held in Washington in 1889/1890. It was at this Conference that the present Inter-American System came into being. The "Western Hemisphere Idea" survived for some time after the creation of the system and served, together with another closely related idea, that of the "special relationship' between Latin America and the United States, as the true *raison d'être* of the regional system and a crucial factor in its effectiveness.

The Inter American System is a rather complex system of regional cooperation and organization, and it has remained so even since the creation in 1948 of the → Organization of American States (OAS). Although the OAS consecrated the international organization that the American States had developed, as indicated in Art. 1 of its Charter, the fact is that this constituent instrument is

not the only conventional instrument governing inter-American cooperation, nor is the OAS the only inter-American organization of global scope. The OAS is the political organization and, as such, the one to which multiple functions have been assigned in accordance with the various purposes of the System. In addition to the OAS, however, there exists the Inter-American Development Bank (IDB), the financing agency of the System; the Bank is governed by its constituent agreement of 1959 and is, therefore, independent of the OAS, especially after the amendments introduced in that agreement with regard to the admission of new members. The IDB shares with the OAS the responsibility for inter-American cooperation for development programmes (see → Regional Development Banks; → International Law of Development).

In a different respect, it must be also brought out that some of the OAS organs and mechanisms, notwithstanding the pertinent Charter provisions, are also governed by other special instruments of the same conventional character. In the field of the → peaceful settlement of disputes the instrument is the 1948 American Treaty on Pacific Settlement (→ Bogotá Pact), and in the field of → collective security the instrument is the 1947 Rio Treaty (→ Inter-American Treaty of Reciprocal Assistance). In both fields, obviously, the pertinent provisions of Art. 51 and of Chapter VIII of the → United Nations Charter are also applicable (→ Collective Self-Defence).

Further illustrations are found in the treaties and conventions establishing the inter-American specialized organizations, which are OAS organs under its Charter, and also in the 1969 → American Convention on Human Rights with regard to the two organs provided for in that Convention, the Commission becoming an OAS organ when the amended Charter entered into force in 1970. The situation is similar in the legal and political areas of inter-American cooperation, as illustrated by the treaties and conventions on the status of → aliens, asylum, → extradition, etc. In matters of → private international law, mention should be made of the 1928 "Bustamante Code", a convention in force in 15 American States, and also of the more recent 13 conventions on selected topics, concluded at two specialized conferences held in 1975 and 1979.

B. Latin American Cooperation and Organization

Like the Inter-American System, Latin American cooperation and organization have very important antecedents in the 19th century. In fact although the nature and objectives of the current institutions are completely different, their historical roots are found in Simon Bolívar's ideal of political union and in the various initiatives and efforts of Latin American countries from the Congress of Panama (1826) to the second Congress of Lima (1864–1865). The common denominator that transcends the great persisting differences is the endeavours towards mutual cooperation and coordination of positions *vis-à-vis* the outside world (see also → International Law, American).

1. Institutions and Mechanisms for Cooperation and Coordination

In a sense it is significant that one of the first formal expressions in our times of such an attitude toward the outside world is found in an inter-American instrument, by means of which an ambitious scheme of inter-American cooperation for development was agreed: the Alliance for Progress, established by the Charter of Punta del Este 1961. In effect, in the title dealing with economic integration, the Charter stated that:

> "The Latin countries should coordinate their actions to meet the unfavorable treatment accorded to their foreign trade in world markets, particularly that resulting from certain restrictive and discriminatory policies of extra-continental countries and economic groups."

The Special Committee on Latin American Coordination (CECLA) was the first institution created for that purpose. The Committee was very active for a decade, beginning in 1963, in coordinating positions and actions towards the → European Economic Community, the → United Nation Conference on Trade and Development (UNCTAD), and also the United States. In 1969 CECLA prepared the so-called "Consensus of Vina del Mar", an elaborate document containing the Latin American aspirations and proposals for the purpose of providing, together with the United States, a new basis for inter-American economic and social cooperation.

(a) *SELA*

The Latin American Economic System (Sistema Económico Latinoamericano: SELA), an organization created by a convention concluded in 1975 (ILM, Vol. 15 (1976) p. 1081), took over the functions and responsibilities of CECLA (→ Latin American Economic Cooperation). SELA's fundamental purposes are "[to] promote intra-regional cooperation in order to accelerate the economic and social development of its members" and "to provide a permanent system of consultation and coordination for the adoption of common positions and strategies on economic and social matters in international bodies and forums as well as before third countries and groups of countries". SELA's institutional structure is not complex. The main organ is the Latin American Council, composed of the representatives of the member States, which meets regularly once a year; its functions include establishing the general policies of the organization and approving the common positions and strategies of the member States for the above-mentioned purposes. The Action Committees are the second organ of SELA, which are established to carry out specific studies, programmes and projects, and to adopt joint negotiating positions of interest to more than two members. The third and last organ is the Permanent Secretariat; it is the technical administrative organ, with headquarters in Caracas, Venezuela.

(b) *Other institutions and mechanisms*

As indicated above, SELA is not the only vehicle through which the Latin American and Caribbean countries cooperate among each other and coordinate their positions and actions. On the one hand, there are subregional mechanisms, such as URUPABOL, the Uruguay-Paraguay-Bolivia Permanent Mixed Commission, created in 1963 (→ Mixed Commissions). This Commission has, in addition to the coordinating function, the task of promoting development of the three countries and their economic integration. On the other hand, there are organizations and mechanisms concerned with cooperation and coordination only with regard to specific sectors of economic activity. The Latin American Energy Organization, created by the 1973 Agreement, is perhaps the most active of all. Another illustration is the Mutual Assistance Agency for Latin American State Oil Companies, created by eight oil-producing countries.

Still further illustrations are found in connection with basic commodities. Such is the case of the Union of Banana Exporting Countries, created by an agreement concluded in 1974 by five countries that export that commodity, and the Group of Latin American and Caribbean Sugar Exporting Countries, formally established in 1976. All these organizations also have a permanent institutional framework, and their principal aim is to coordinate national positions and policies in the respective sector (→ Commodities, International Regulation of Production and Trade).

2. *Regional and Subregional Economic Integration*

(a) *LAIA*

Turning to this other form of Latin American cooperation and organization, there is the → Latin American Integration Association (LAIA), created by the 1980 Montevideo Treaty (ILM, Vol. 20 (1981) p. 672). The new Association takes the place of the former Latin American Free Trade Association (LAFTA), which had been established in 1960 (→ International Organizations, Succession). The LAIA is composed of the same eleven member States (the Latin States of South America and Mexico). The gradual and progressive establishment of a Latin American common market is also the long-term objective of the integration process contemplated in the 1980 treaty; a formal commitment to establish such a common market by the same date had been made by the Latin American Presidents in 1967. Instead of the "free trade zone" mechanisms of the original Treaty (→ Free Trade Areas), an "area of economic preferences, consisting of a regional tariff preference, agreements of regional scope and agreements of partial scope" is now established. Thus, after 20 years of rather unsuccessful attempts, apparently this group of countries realized that a more advanced economic integration scheme is not viable, at least for the time being.

The changes introduced by the 1980 treaty in the institutional framework of the Association are

much less noticeable. In any event, three of the former organs have become the "political bodies": the Council of Foreign Ministers, which is the supreme body of the Association and has, among many other powers, that of adopting whatever decisions may correspond to the higher governing policy of the economic integration process; the Evaluation and Convergence Conference, which is composed of plenipotentiaries, and has, among others, the power to examine the operation of the integration process in all its aspects and the convergence of partial scope agreements through their progressive multilateralization, as well as to recommend to the Council the adoption of multilateral corrective measures; and the Committee of Representatives, which is the permanent political body, endowed with numerous powers and duties concerning various aspects of the functioning of the LAIA. The General Secretariat has become the technical body of the Association. In addition to this change in its character, it has been granted such powers as the analysis of compliance with agreed commitments, the periodic evaluation of the progress of the integration process, and the submission of proposals to the corresponding bodies of the Association, leading to better accomplishment of the objectives of the LAIA.

(b) Subregional integration schemes

In contrast with the LAIA, which is open to all Latin American countries, the other integration schemes are subregional in character. The oldest is the → Central American Common Market (CACM). It is created in 1960 and showed an effective performance until the outbreak of the El Salvador-Honduras conflict in 1969; since then its functioning has been precarious, particularly due to problems raised by the Nicaraguan situation. From the institutional standpoint, the CACM differs considerably from LAFTA and the present LAIA. In practice, at least, its organs have behaved as those of an "economic community" and, accordingly, have rendered decisions binding either upon States or individuals directly (→ Economic Communities and Groups). This explains why the institutional structure contemplated in the Draft Treaty Establishing the Central American Economic and Social Community, prepared by a high-level government-appointed Central American body, follows so closely the model of the treaties establishing the → European Communities.

The "community" features of the Andean Group (Bolivia, Colombia, Ecuador, Peru and Venezuela; Chile denounced the agreement in 1976) are far more noticeable, even in its written legal order (→ Andean Common Market). In effect, the Cartagena Agreement of 1969, which is the constituent instrument of this subregional scheme, confers upon the two principal organs competences and powers of a → supranational organization with respect to most important matters. In this regard, the acts (decisions) of the Commission (which is somewhat equivalent to the Council of the European Communities) relating to a few specified matters require subsequent national approval to become fully valid in the subregion; the other decisions, as well as some resolutions of the Board (which is equivalent to the European Commission), are attributed validity *erga omnes* (→ International Organizations, Resolutions); they are subregional acts which are, *ab initio*, fully binding. The Andean community law and organization have been further strengthened by the creation of the Court of Justice of the Cartagena Agreement (→ Andean Common Market, Court of Justice). When it enters into force, this will not only afford this subregional integration process a permanent judicial organ analogous to the → Court of Justice of the European Communities, but will establish expressly the binding character of the decisions of the Commission, their direct applicability in the member Countries, and the date of entry into force, and will determine when adoption by an express internal act is required; it will also regulate the entry into force of the resolutions of the Board.

The Caribbean Community and Common Market (CARICOM), created by the 1973 Chaguaramas (Trinidad and Tobago) treaty attempts to bring together and to institutionalize various areas of cooperation among Commonwealth Caribbean governments already in existence within the framework of the former Caribbean Free Trade Association (CARIFTA) and under the aegis of the Caribbean Regional Secretariat (→ Caribbean Cooperation). The so-called "Main Treaty" provides for foreign policy

coordination and 15 itemized areas of functional cooperation, and the Common Market Annex, which is an integral part of the Treaty, contains the provisions concerning the economic integration aspect of the Community. The institutional structure of this third subregional scheme is rather complex, which is due mainly to the heterogeneous membership of CARICOM, i.e., to the separate membership in the Community *stricto sensu* and in the Common Market. In any event, the two principal organs are the Heads of Government Conference and the Common Market Council. So far as the competences and powers of these organs are concerned, generally speaking they are not of the kind conferred upon a true "community" organization.

3. *Programmes for Joint Development of Geographical Areas*

The two main programmes for this purpose can also be briefly described. The oldest is the Rio de la Plata River Basin Régime (→ La Plata Basin), the main characteristics of which are similar to the Lower Mekong Basin project. Under Art. 1 of the 1969 Brasilia Treaty – the culmination of previous multilateral instruments in a convention – the high contracting parties "undertake to join their efforts with the view to promote the harmonious development and the physical integration of the River Plate Basin and of its zones under its direct and tangible influence". The programme is carried out through ordinary and special meetings of the foreign ministers of the area (Argentina, Bolivia, Brazil, Paraguay and Uruguay), and the Intergovernmental Coordinating Committee, its permanent organ, with its seat in Buenos Aires. By a separate agreement a Financing Fund was created.

In the 1978 → Treaty for Amazonian Cooperation, the contracting parties (Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Surinam and Venezuela) also have agreed "to undertake joint actions and efforts to promote the harmonious development of their respective Amazonian territories in such a way that these actions produce equitable and mutually beneficial results and achieve also the preservation of the environment, and the conservation and rational utilization of the natural resources" of those territories (Art. 1). The river system of the Amazon is the world's largest, covering an area of nearly 6 000 000 square kilometres, about 32 per cent of the American continent (→ International Rivers). Unlike the River Plate project, the Amazonian programme lacks a permanent institutional structure. However, meetings of foreign ministers will be held every time they consider it appropriate or timely to establish the basic guidelines of their common policy, to study and evaluate the general status of the process of cooperation, and to adopt decisions aimed at achieving the goals stated in the Treaty. Also, high-level diplomatic representatives of the contracting parties are to meet annually with the Amazonian Cooperation Council, with the secretarial functions being exercised *pro tempore* in the country where the next regular meeting of this Council is to be held.

C. The "New Dialogue"

Before attempting an overall appraisal of inter-American cooperation and organization, it will be useful briefly to refer to an experience that further illuminates the present stage of "North-South" relations among the American States. This experience took place in the early 1970s and is closely related to the initial steps taken, especially by the OAS General Assembly, with the view to restructuring the Inter-American System as a whole.

The experience becomes even more significant because it was generated by a United States initiative, namely, the suggestion of Secretary of State Henry Kissinger to initiate a "New Dialogue" between the United States and the countries of Latin America and the Caribbean, which was made shortly after the General Assembly had determined the further steps to be taken to restructure the Inter-American System.

The United States initiative was welcomed by the countries to the South, which met a month later (November, 1973) in the "Conference of Foreign Ministers of Latin America for Continental Cooperation", held in Bogotá, Colombia. The document that emanated from the Conference is very illustrative of the spirit prevailing at the time. On the one hand, it stated that "increasing and positive Latin American nationalism constitutes a substantial element in Latin American unity and implies the common will of strengthening its personality and jointly developing its historical destiny. . . ."

On the other hand, the document registered the declaration of the Ministers "that Latin America's constant purpose is to intensify its action within the context of the developing world so as to struggle against dependence . . . ." The document embodies a strong, even somewhat belligerent attitude, and it shows a noticeable departure from the traditional diplomatic language of the region.

The participants in the Bogotá Conference, which included the representatives of the OAS member States plus two English-speaking Caribbean countries, the Bahamas and Guyana, met with Secretary Kissinger in Mexico City in February 1974 for the purpose of initiating the "New Dialogue". The "Declaration of Tlatelolco" was the document emanating from this first meeting. The highlights of this document are found in the following passage:

> "Relations between the countries of the Americas must be placed in the context of today's world; a world characterized by interdependence, the emergence onto the world stage of the developing countries, and the need to overcome inequalities. The existence of a modern Inter-American system, the affirmation of the reality of Latin American unity, and the similarity of the problems of Latin America and those of other developing countries are the foundation for a dialogue and a frank and realistic relationship with the United States."

Through this and other relevant passages of the → declaration, the United States formally shared with the countries to the South a new approach to inter-American cooperation and organization.

There was a second meeting of the foreign ministers in Washington, D.C. in April 1974. Given the nature and purpose of the new mechanism, the OAS was again totally bypassed. In this next meeting of the "New Dialogue", the agenda items of the first were again discussed, with two working groups now being established for a more thorough consideration of two topics: → transnational enterprises and → technology transfer. While in the previous document "the Foreign Ministers expressed their confidence that the spirit of Tlatelolco will inspire a new creative effort on their relations", in the Washington communiqué they "reaffirmed the value and promise of the new dialogue in inter-American relations . . . ."

Nevertheless, the new mechanism did not last long enough to demonstrate its ability to fulfil the expectations of the American heads of State. A proposed third meeting, to be held in Buenos Aires early in 1975, had to be called off and it was never reconvened. The clause in the United States' 1974 Foreign Trade Act relating to the → Organization of Petroleum Exporting Countries (OPEC) had excluded two Latin American countries – Ecuador and Venezuela – from the benefits of the generalized system of preferences established by the Act (→ World Trade, Principles). The Latin American reaction of solidarity with these two countries, and the subsequent abrupt liquidation of the "New Dialogue", however, must not be interpreted as a change in the attitude toward the idea itself of introducing the dialogue procedure, whenever appropriate, in inter-American cooperation and organization. What really seems to have been repudiated was the mechanism of informal meetings inaugurated by the "New Dialogue". As it was explicitly admitted, the lack of an institutional framework, such as that of the OAS, prevented the countries of the South from exacting effective compliance with binding commitments stipulated in the OAS Charter and other inter-American instruments. In this respect, at least, there seems to be no doubt that the "New Dialogue" was an illuminating experience.

D. An Overall Appraisal

As has been noted, inter-American cooperation and organization are undergoing a process of profound transformation. This is due, perhaps primarily, to a marked departure of the United States from its traditional policies toward Latin America – which had been inspired by the so-called "special relationship" – not only in regard to the multilateral, cooperative action for development initiated with the Alliance for Progress programmes, but also in regard to the existing commitments for reciprocal assistance in the political and security fields. The other factor playing a very important role in the transformation that is taking place is the emergence of a new Latin American attitude towards the United States which also amounts to a departure from the " special relationship" – an attitude which is responsible for the efforts of the Latin American

(and the Caribbean) countries to coordinate positions and strategies as well as for the other attempts at horizontal cooperation and organization.

Regardless of where the original responsibility lies, the changed United States policies and the changed Latin American attitude are influencing one another and continuing to accentuate both attitudes. These changes are inevitably undermining the foundations of the Inter-American System – the global system of cooperation and organization among the American States – a system whose evolution and strengthening have historically relied primarily on the existence, as well as the acceptance, of a "special relationship" between the United States and the nations of Latin America. The evaluation of these changes must be based both on the facts that Latin American institutions remain fragile and that political security interests in the Americas have to be guarded in the future as in the past.

Inter-American Institute of International Legal Studies, Instruments of Economic Integration in Latin America and the Caribbean, 2 vols. (1975).

H.J. GEISER, P. ALLEYNE and C. GAJRAJ, Legal Problems of Caribbean Integration, A Study of the Legal Aspects of CARICOM (1976).

R. DIAZ ALBONICO (ed.), Antecedentes, balance y perspectivas del sistema interamericano (1977).

El Primer Año del Sistema Económico Latinoamericano, Publ. No. 1 de la Secretaría Permanente (1977).

F.V. GARCÍA-AMADOR, The Andean Legal Order, A New Community Law (1978).

T.J. FARER (ed.), The Future of the Inter-American System (1979).

See also bibliography in → Latin American Economic Cooperation.

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REGIONAL COOPERATION AND ORGANIZATION: ASIAN STATES

A. Introduction. – B. Sub-Regional Military Cooperation. – C. Sub-Regional General Organizations: 1. The Arab League. 2. ASEAN. 3. The Gulf Council. – D. Regional Economic Organizations: 1. ESCAP. 2. The Colombo Plan. 3. The Asian Development Bank. – E. Sub-Regional Economic Groupings. – F. The New International Economic Order. – G. Projections.

A. Introduction

The largest of the seven continents of the earth, Asia presents such socio-political diversities that it barely meets the definitional requirements of a region. The climatic conditions, the geographical features, the fauna and flora – the characteristics that must possess a certain commonality in order to qualify as a region – differ distinctly throughout Asia, as do the ethnic groups. Nonetheless, Asia has come to be regarded as a geographical entity separate from other continents and, as such, merits particular attention.

Regional cooperation in Europe and elsewhere was grounded on a certain historic identity and a measure of common socio-economic aspirations. Cultural roots and political institutions played their part. In contrast, none of these factors obtain, for instance, between Kampuchea and Kuwait or, for that matter, between the Philippines and Palestine. Language, religion and ethnic differences constitute real obstacles in bringing such peoples together. That explains the formation of sub-regional groupings amongst Asian States. The Arab peoples form their own groupings. The Pakistanis, the Turks and the Iranians establish separate sub-regional arrangements. South-East Asians, South-Asians and the Indo-Chinese seek distinct group identities.

Ideologies and the foreign policies of large powers play a significant role in generating the motivations in promoting or hindering regional cooperative units. In Asia, some States perceive their interests in helping to strengthen military pacts in which Western States play a leading role. In West Asia, perceptions of the power and threat of Israel determine Arab alliances (→ Israel and the Arab States). In South and South-East Asia, aspirations to regional primacy of the two giants, → China and India, dictate group formations. In Indo-China and the Far East, Japan vies with China and the Soviet Union for sub-regional preeminence.

Amidst these centrifugal or fissiparous tendencies one will discern a common element around which the Asian States can be – and have actually been – brought together, namely economic development. Having freed themselves from the colonial yoke, the peoples of Asia justifiably seek freedom from poverty (→ International

Economic Order). Economic and social cooperation has thus become the avowed strategy of all States towards development in the Asian region (→ Developing States). Significantly, even those groupings which started as military alliances have developed in non-military, developmental directions. Recent developments in Afghanistan and Kampuchea still indicate that forces from outside remain active and influential in Asia. On the other hand, States such as Burma and, more recently, Iran favour an approach aimed primarily at isolationist objectives. Nevertheless, on the whole a growing readiness to cooperate on the regional level may be observed in the field of socio-economic relations, intra-regional conflicts and rivalries notwithstanding.

B. Sub-Regional Military Cooperation

The Asian experience in military cooperation has been less than exemplary. The → South-East Asia Treaty Organization (SEATO), created in 1954 to resist attacks on South East Asian States by "communist aggressors", did not prove effective, and was dissolved in 1975. Despite its dissolution, exponents of the policy of blocs or containment of communism sought to replace it with the → Association of South-East Asian Nations (ASEAN), another organization involving extra-regional powers. ASEAN's best achievements, however, have been in the field of economic and social cooperation amongst member States.

Yet another organization, established in pursuance of the policy of containment was the → Central Treaty Organization (CENTO) – itself an institutional framework of the 1955 Baghdad Pact – which brought together Iran, Iraq, Turkey, Pakistan and Britain in what was then called "a northern tier of defence" against the Soviet Union. With the withdrawal of Iraq after her revolution in 1958 and the waning interest of Iran, Turkey formally asked for its dissolution. Iran, Turkey and Pakistan subsequently took steps to consolidate the remnant economic and social ingredients of CENTO to form, in July 1964, the Regional Co-operation for Development organization (RCD). Defence arrangements on a bilateral level have fared no better.

C. Sub-Regional General Organizations

Organized cooperation in Asia has followed the predictable pattern of mixed multilateralism. One finds general organizations, with both universal and limited membership, subsisting side by side, and defence arrangements co-existing with purely economic organizations. Sometimes both functions are combined in one organization. These organizations can roughly be placed under such categories as political, economic, social, or strategic, but only a few can be pigeon-holed neatly into one or the other of them. There is a good deal of overlapping. The classic cases of general organizations in Asia are the League of Arab States (→ Arab States, League of), ASEAN and the → Co-operation Council of the Arab Gulf States.

1. The Arab League

The League of Arab States has 22 members, including Palestine as a full member (→ Palestine; → Palestine Liberation Organization). The organization is designed to strengthen the close ties linking the members and to coordinate their policies and activities, and direct them towards the common good of all. It was founded in March 1945 and has its headquarters, after the suspension of Egypt in March 1979, at Tunis. The organization has a Council with 15 committees attached to it, and a Secretariat (→ International Secretariat). Since its establishment, numerous complementary agencies have sprung up under its aegis, such as the Arab Unified Military Command, the Economic Council, the Joint Defence Council, the Academy of Arab Music, the Centre for Industrial Development, and the Institute of Forestry. The organization also has specialized agencies: the Centre for the Study of Dry Regions and Arid Territories; the Educational, Cultural and Scientific Organization (→ Cultural and Intellectual Cooperation); the Institute of Petroleum Research: the Labour Organization; the Organization of Administrative Science; the Organization for Agricultural Development; the Organization for Standardization and Meteorology; the Postal Union (→ Postal Communications, International Regulation); the Broadcasting Union (→ Broadcasting, International Regulation); the Telecommunications

Union; the Civil Aviation Council (→ Air Law); the Organization for Social Defence Against Crime (→ Criminal Law, International); and the Joint Scientific Council for the Utilization of Atomic Energy (→ Nuclear Research). A separate body set up to coordinate oil-production and pricing levels for Arab oil-producing States is the → Organization of Arab Petroleum Exporting Countries.

2. *ASEAN*

ASEAN, established in August 1967 at Bangkok, has a membership of five States (Indonesia, Malaysia, the Philippines, Singapore and Thailand). The organizational structure consists of the Ministerial Conference, the Standing Committee and the Secretariat. The organization transacts business with the help of permanent committees dealing with such diverse subjects as trade and → tourism; industry, minerals and energy; food, agriculture and forestry; transportation and communication; financing and banking; science and technology; social development; cultural information; and budgetary questions.

ASEAN was established with the objects of accelerating economic growth, social progress and cultural development in the region through joint ventures; promoting regional peace and stability, mutual assistance, and the development of agriculture and industries, etc. The member States have time and again denied any intention of using the organization as a military grouping; still, doubts about its defence orientation are being voiced. Basically, its work consists more in promoting socio-economic cooperation than in serving as a military bulwark against communism.

3. *The Gulf Council*

The Gulf Co-operation Council was conceived at the Islamic summit held at Taif (Saudi Arabia) in January 1981. Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (UAE) constitute the membership of the Council which aims at providing a framework for the coordination of all government policies between the member countries with a view to safeguarding security and stability in the Gulf. The heads of the member States met at Abu Dhabi (UAE) on May 25/26, 1981 and brought the Council formally into existence. The aims of the Council, as stated in its constituent instrument, are:

> "to achieve co-ordination, integration and co-operation among the member states in all fields ... including economic and financial, trade, customs, and transport, educational and cultural, health and social, information and tourism, and judicial and administrative; and ... to promote scientific and technical progress in the fields of industry, minerals, agriculture, sea wealth and animal wealth and to establish scientific research centres and collective projects and to encourage the private sector's co-operation for the good of the peoples of the member states".

The Gulf Council consists of the Supreme Council, the Ministerial Council and the Secretariat. The Supreme Council comprises all member States, and the Ministerial Council comprises the foreign ministers of their States or their representatives. The Secretariat is headed by a Secretary-General, aided by employees appointed by him. The Secretary-General himself is appointed by the Supreme Council for a renewable three-year term.

The Council is essentially an organization of the oil-rich countries. It is too early to assess its work. The Council's effectiveness will to some extent depend upon the regional aspirations of two major powers – Iran and Iraq. Israel is another factor that will determine the Council's political posture.

D. Regional Economic Organizations

1. *ESCAP*

The Economic and Social Commission for Asia and the Pacific (ESCAP) was founded in 1947 to encourage economic and social development in Asia and the Far East (→ Regional Commissions of the United Nations). This United Nations Commission consists of 35 member States and eight associate members. The work of the Commission is conducted through its annual session, and conferences and meetings of its main committee. *Ad hoc* conferences and working groups of government representatives and experts assist ESCAP in promoting studies and devising action programmes in diverse fields. There are nine main committees, dealing with agricultural development; develop-

ment and planning; industry, technology, human settlements and the environment; natural resources; population; shipping, transport and communication; social development; and statistics and trade.

Although ESCAP does not itself provide capital aid, it has helped in setting up and in attracting funds for regional and sub-regional projects that in turn provide development assistance (→ Economic and Technical Aid). It is also fast becoming the executive agency for regional projects. At the 36th session in March 1980 some priority areas were identified for the attention of ESCAP, which demonstrates keen awareness for questions of environmental management, the integration of women in the development process, and the need for special assistance for the least-developed countries, among other areas. The ESCAP budget for 1980/1981 was US $23 million which did not include an amount – roughly equal in size – pledged by member States for the area's technical assistance programmes.

Under the auspices of ESCAP, several regional cooperative arrangements have been established, they include: the Asian Reinsurance Corporation; two committees for coordination of joint projects for mineral resources in the Asian and Pacific areas; the Regional Mineral Resources Development Centre; the South East Asia Tin Research and Development Centre; the Regional Centre for → Technology Transfer; and the Statistical Institute for Asia and the Pacific. ESCAP has also given birth to producers' associations, such as the Coconut Community, and the Pepper Community (→ Commodities, International Regulation of Production and Trade). The organization was also responsible for considerable advances in transport and communications. The panel on tropical cyclones and its efforts in setting up the Asian free trade zone are some other notable achievements of ESCAP.

2. The Colombo Plan

The → Colombo Plan for cooperation in economic and social development in Asia and the Pacific was founded by seven Commonwealth countries in 1950 and has at present a membership of 26 independent States including some outside powers, such as the United Kingdom and the United States. The Plan consists of the Consultative Committee (the highest deliberative body), the Council for Technical Co-operation and a Bureau. It provides for capital-aid flow in the form of grants and loans for national projects that mainly come from its developed countries and are distributed among the developing member countries. The capital aid covers almost all aspects of social and economic development. From 1950 to 1978, nearly US $53 billion was provided by the five major donor countries (Australia, Canada, Japan, New Zealand and the United States).

Under the technical cooperation programme of the Colombo Plan, assistance to the extent of US $775 million was provided between 1950 and 1978. The Plan's other activities include programmes aimed at eliminating drug abuse in member States, training of narcotics officials (→ Drug Control, International), and providing fellowships. A Staff College for Technical Education was established in Singapore in 1974 under the Colombo Plan.

3. The Asian Development Bank

The Asian Development Bank (ADB) (→ Regional Development Banks), which commenced operations in December 1966 has a membership that consists of 29 countries of the ESCAP region and 14 outsiders. The ADB, as with any other international bank (→ Financial Institutions, Inter-Governmental), consists of a board of governors, a board of directors, and an administrative wing. It raises funds from private and public sources for development purposes in the region and assists member States in coordinating their policies regarding development, trade and general economic affairs, and gives technical assistance in all phases of development. The bank borrows funds on the world capital markets. It has also established special funds, such as the Asian Development Fund, the Multipurpose Special Fund and the Agricultural Special Fund. The bank has proved a major source of finance for developing countries of the region.

E. Sub-Regional Economic Groupings

In addition to the above international organizations for promoting regional cooperation with full membership, there are some in Asia which have a limited membership but with the same objectives. Prominent among these is the

Regional Co-operation for Development organization (RCD). The RCD was established in 1964 as a tripartite arrangement between Iran, Pakistan and Turkey that aimed at closer economic, technical and cultural cooperation and promoting the economic advancement and welfare of the people of the region. The tripartite arrangement has a Ministerial Council (the highest decision-making body), a Regional Planning Council and a Secretariat. The RCD provides for collaboration in joint enterprises, in which material, skills and capital are pooled, national markets are shared, industrial specialization is encouraged, and long-term arrangements are negotiated between the partner countries for specific enterprises to provide an assured market for the products of the joint projects. Some of the projects that have emerged since the inception of the RCD relate to petroleum and petro-chemicals, trade, tourism, insurance, transport, communications, technical cooperation, cultural affairs, youth activities, information and agriculture.

Although the RCD started with high hopes, internal dissension in Turkey, the revolution in Iran and Pakistan's problems in the wake of the Soviet → intervention in Afghanistan seem to have adversely affected concrete cooperation among the three countries.

F. The New International Economic Order

Regional and sub-regional cooperation in Asia has gained further momentum with the Declaration on the Establishment of a New International Economic Order proclaimed by the → United Nations General Assembly in 1974 (Res. 3201 (S-VI); → International Economic Order). The Programme of Economic Co-operation among Developing Countries (ECDC), adopted in Mexico City by the Group of 77 and spelt out more clearly as being the components of collective self-reliance at the Fourth Ministerial Meeting held in Arusha, Tanzania, in February 1979, have given a new boost to efforts towards regional cooperation in Asia. The → United Nations Conference on Trade and Development, through its numerous resolutions and studies, has helped in shaping sub-regional cooperation among developing countries in general and more particularly those in Asia.

The above resolutions and programmes of action recognized the fact that a well-nurtured, concerted action in a number of inter-related areas serves as the best guarantee for the amelioration of the social and economic ills obtaining in developing countries. The newly-emerging complementarities in the field of trade among developing countries have stimulated the promotion of trade through such techniques as joint transport facilities, removal of tariffs and other trade barriers, and overcoming structural and other obstacles. These efforts have created among the developing countries a more equitable and efficient trading environment. There are moves afoot for the establishment of cooperative arrangements among State trading organizations, transnational transport corporations (→ Transnational Enterprises), multinational marketing enterprises and so on. Such cooperation, it is fully realized, cannot be a substitute for, and stand in lieu of, economic cooperation between the developing and the developed countries. As UNCTAD Resolution 92 (IV) recognized:

> "[W]hile efforts by the developing countries play a decisive role in achieving their development goals, however much the developing countries mobilize their own resources in the pursuit of their economic and social objectives it would not be possible for them to achieve such objectives without concomitant action on the part of developed countries and the institutions in the international community."

The Asian countries have therefore made substantial progress in forging sub-regional, regional and inter-regional economic cooperation amongst themselves. In addition to the institutions cited earlier, of the Council of Economic Unity, the Arab Common Market, the Asian Clearing Union, the Arab Monetary Fund, and the ASEAN SWAP Arrangement should also be mentioned in this context. Following the example of OAPEC, Asian States have either established new, and strengthened old, producers' associations, such as those dealing with natural rubber, coconut and pepper, or have taken an active part in universal producers' associations, such as the World Coffee Organization.

The existence of these regional arrangements provides a concrete base on which a wider pro-

gramme of economic cooperation and collective self-reliance could be built. Thus, mutually-supporting inter-relationships between the various elements of economic cooperation and existing sub-regional, regional and inter-regional integration schemes are considered worthy of encouragement. ESCAP has provided an institutional framework for promoting such cooperation. In the industrial field, ESCAP, it must be mentioned, deserves the credit for establishing the Asian Industrial Development Council (AIDC) which aims to achieve the progressive harmonization of industrial development plans of Asian States, to identify cooperative projects which will benefit member States, to assist members in preparing industrial feasibility studies, and to procure financial and technical assistance in implementing plans in the member countries. The AIDC has a membership of 31 Asian countries and includes pacific islands. Another major step taken by ESCAP is the setting-up of the Asian Centre for Development Administration (ACDA), with 13 participating governments and headquarters at Kuala Lumpur. Under the plan of operation, the ACDA is expected to provide practical aid to governments in improving their administrative and managerial capabilities so that they can better cope with development programmes.

G. Projections

Cooperative ventures have floundered on the rocks of intra-group rivalries and suspicions of domination by one over another or the rest. Evidence of this can be found not only in the existing but also in the proposed new groupings in Asia. One scheme, proposed by Bangladesh for the South-Asian region, has encountered these difficulties rather acutely from the outset. Careful preparations by way of intensive examination of areas of cooperation and a studied pace of progress seem to be helping in the reduction of suspicions that are born of historical legacies between countries of the subcontinent such as Pakistan, India, Bangladesh, Sri Lanka, Nepal, Bhutan and the Maldives.

Prediction on the future of sub-regional and regional cooperative ventures in Asia is a hazardous undertaking, but it cannot be questioned that there is no alternative to collective self-reliance in the economic and social fields. This is particularly true for a poverty-stricken region like Asia. As for international law, regional groupings have made a distinct contribution to the discipline. In the efforts made in Asia one can discern glimpses of an emerging Asian → regional international law, similar to the more-crystallized → European law.

M. HAAS (ed.), Basic Documents of Asian Regional Organizations, 8 vols. (1974–1980).

M. KHADDURI, The Arab League as a Regional Arrangement, AJIL, Vol. 40 (1946) 756–777.
N. PFEFFER, Regional Security in Southeast Asia, International Organization, Vol. 8 (1954) 311–315.
G. MODELSKI (ed.), SEATO: Six Studies (1962).
K. MUHAMMAD, Arab States and Arab League: A Documentary Record, 2 vols. (1962).
R.J. YALEM, Regionalism and World Order, International Affairs, Vol. 38 (1962) 460–471.
R.W. MACDONALD, The League of Arab States (1965).
M. DIAB, The Arab Common Market, Journal of Common Market Studies, Vol. 4 (1966) 238–250.
B.K. GORDON, Regionalism and Instability in Southeast Asia, Orbis, Vol. 10 (1966) 438–457.
F.N. TRAGER, Pax Asiatica?, Orbis, Vol. 10 (1966) 673–689.
E. KANOVSKY, Arab Economic Unity, The Middle East Journal, Vol. 21 (1967).
L.B. PEARSON, Partners in Development, Report of the Commission on International Development (1969).
B.K. GORDON, A Political Region of Southeast Asia, in: L.J. Cantori and S.L. Spiegel (eds.), The International Politics of Regions: A Comparative Approach (1970) 131–146.
Z. MIKDASHI, The Community of Oil Exporting Countries: A Study in Governmental Cooperation (1972).
P. ISOART, Le Régionalisme en Asie du Sud-Est, in: Régionalisme et universalisme dans le droit international contemporain (1977) 73–111.

RAHMATULLAH KHAN

REGIONAL COOPERATION AND ORGANIZATION: MIDDLE EAST *see* Arab States, League of

REGIONAL COOPERATION AND ORGANIZATION: PACIFIC REGION

1. The Pacific Region

The Pacific region is generally not regarded as encompassing all countries touched by the waters

of the Pacific Ocean. The Indonesian → archipelago, Japan and the Philippines, for example, are commonly thought of as belonging to Asia. By contrast, Australia and New Zealand, once considered as belonging only to their own geographical grouping may now be taken for some purposes as belonging to the region because of their increasing role in Pacific affairs. The region encompasses primarily the → Pacific Islands, which fall into three main divisions, more or less coinciding with the three major racial and cultural groupings: (a) the Micronesian group of the Northwest Pacific, consisting of the Mariana, Caroline, and Marshall Islands, Kiribati, Palau and Nauru; (b) the Melanesian group, consisting of the islands stretching from New Guinea in the west to Fiji in the east and including the Solomon Islands, New Caledonia, and Vanuatu; and (c) the Polynesian group to the east and north-east of Fiji, which includes the Hawaiian, Samoan, Tonga, Tuamotu, Marquesas and Society islands (including Tahiti), and Tuvalu. The term "Pacific region" may be taken as synonymous with Oceania.

The Pacific region is naturally sub-divided by the equator into the North and South Pacific, a distinction relevant to the constitution of the → South Pacific Commission. During the latter period of British colonial administration, the term "Western Pacific" had significance. Kiribati and Nauru sometimes refer to themselves as belonging to the "Central Pacific".

2. *Status of Governments in the Region*

The relatively recent advent of inter-governmental cooperation and organization in the region is in part due to the late attainment of full international personality (→ Subjects of International Law) by some of its constituent parts, and by the uncompleted progress towards full independence of others (→ Decolonization).

Apart from Australia, France, New Zealand, the United Kingdom and the United States, which all participate to some extent in regional institutions, the fully independent States of the region, in order of attainment of independence, are: Samoa (1962), which until 1977 was known as Western Samoa; Nauru (1968); Tonga (1970); Fiji (1970); Papua New Guinea (1975); the Solomon Islands (1978); Kiribati (1978) which is pronounced "Kiribass"; Tuvalu (1978); and Vanuatu (1980), which was formerly the Anglo-French → condominium of the → New Hebrides.

Several entities in the region have a special status. The Cook Islands are self-governing "in free association with New Zealand", the latter remaining responsible for external affairs and defence (→ Sovereignty; → Foreign Relations Power). The Cook Islands Constitution Act, 1964, however, states that these responsibilities may be exercised only "after consultation by the Prime Minister of New Zealand with the Premier of the Cook Islands". The Cook Islands became a party by her own signature to the Agreement establishing the South Pacific Bureau for Economic Cooperation. Niue achieved similar status in association with New Zealand in 1974. Both entities are now recognized by the → United Nations as having achieved the goal of → self-determination.

The Trust Territory of the Pacific Islands (→ Strategic Areas), administered by the United States, consists of four major political groups: the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia (Kosrae, Ponape, Truk and Yap), Palau (Western Caroline Islands), and the Marshall Islands. In respect of the Northern Mariana Islands, a Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States was signed on February 15, 1975 and entered into force on January 9, 1978. The Covenant provides that, upon termination of the Trusteeship Agreement, the Northern Marianas will become a "self-governing Commonwealth" which will be "in political union with and under the sovereignty of" the United States. The United States will retain responsibilities for foreign affairs and defence, but the Northern Mariana Islands may "participate in regional and other international organizations concerned with social, economic, educational, scientific, technical, and cultural matters when similar participation is authorized for any other territory or possession of the United States under comparable circumstances".

Representatives of the three other groups met with representatives of the United States at Hilo, Hawaii in April 1978 and produced a "Settlement of Agreed Principles of Free Association". These

so-called "Hilo Principles" have become the basis of → negotiation of compacts between the United States and the remaining Micronesian groups. The first such compact was initialled with the Marshall Islands in 1980 and represented an advance on the limited powers with respect to foreign affairs granted to the Northern Marianas. Power was devolved in respect of "the conduct of their commercial, diplomatic, consular, economic, trade, banking, postal, civil aviation, communications, and cultural relations, including negotiations for the receipt of development loans and grants and the conclusion of arrangements with other governments and international and inter-governmental organizations". Similar compacts were initialled with Palau (now called Belau) and the Federated States of Micronesia in 1981. The three "compact governments" have been admitted as associate members of the South Pacific Commission, and the Federated States of Micronesia have also been accorded observer status in the South Pacific Forum (cf. → International Organizations, Observer Status).

The region also contains dependent territories, but with internal self-government and elected legislatures: New Caledonia and French Polynesia are overseas territories of France (→ France: Overseas and Dependent Territories), and American Samoa and Guam are territories of the United States (→ United States: Dependent Territories). Norfolk Island is a territory of Australia with an elected legislature, moving towards full internal self-government. Dependencies without local self-government are Pitcairn Island (United Kingdom), Tokelau (New Zealand), Wallis and Futuna Islands (France), and the uninhabited Coral Sea Islands Territory (Australia).

Some 25 islands in the Pacific were claimed by the United States but formed part of the territory claimed by the Cook Islands, Kiribati, New Zealand (for Tokelau), and Tuvalu. Treaties with all four countries relinquishing United States claims were signed in 1980 and 1981. Clipperton Island, which was the subject of a dispute with Mexico, resolved in favour of France in 1930 (→ Clipperton Island Abitration), was administered as part of French Polynesia until 1979. In that year control was transferred to Paris.

3. Pacific-Wide Organizations and Institutions

(a) The Economic and Social Commission for Asia and the Pacific (ESCAP)

ESCAP is one of the five → regional commissions of the United Nations under the control of the → United Nations Economic and Social Council (ECOSOC). When it was established in 1947 as the Economic Commission for Asia and the Far East (ECAFE), it was decided not to include the Pacific Islands "in the first instance". In 1973 ECOSOC approved the Commission's recommendation that its scope by widened to include the Trust Territory of the Pacific Islands and the Gilbert and Ellice Islands (later named Kiribati and Tuvalu). In 1974, the Commission's name was changed to ESCAP and its geographical mandate broadened to include the whole Pacific. At its 34th session held in Bangkok in 1978, the Commission endorsed the "medium-term plan for 1980–83", setting forth priority areas for development, namely food and agriculture, energy, raw materials and commodities (→ Commodities, International Regulation of Production and Trade), → technology transfer, international trade (→ World Trade, Principles), → transnational enterprises and external financial resource transfers, and integrated rural development (→ International Law of Development). The same session sought to strengthen ESCAP's activities in the Pacific by the appointment of a senior officer in the area, in order to improve working linkages, to maintain effective liaison between the Commission and the countries of that area, and to assist the Executive Secretary in the programming and implementation of activities relevant to the area's needs.

The Commission's activities became linked with the concept of the new → international economic order by the New Delhi Declaration of March 6, 1975 when ESCAP adopted measures towards the establishment of such an order in the Asian and Pacific region. In 1977 the existing ECAFE institutions were re-named to reflect the broadened focus: the Asian and Pacific Development Institute, the Statistical Institute for Asia and the Pacific, the Asian and Pacific Development Administration Centre, and the Social Welfare and Development Centre for Asia and the Pacific. A new Asian and Pacific Centre for Women and

Development was added in 1977. In 1972, even before the official change of geographical scope, the Commission had established a Committee for Coordination of Joint Prospecting for Mineral Resources in South Pacific Offshore Areas, with support from the → United Nations Development Programme (UNDP). Its activities have included reconnaissance surveys for mineral sand deposits off the Cook Islands, for precious red coral off Tonga and Samoa, and for manganese nodules off Tonga and the Cook Islands (→ Marine Resources).

The Asian Development Bank was established by an agreement signed at Manila on December 4, 1955 (→ Regional Development Banks). The region covered by the Bank is the same as that of ESCAP. In addition to the Pacific regional members, the countries of the → European Communities, Canada and the United States are also members. ESCAP has also sponsored the creation of the Asia-Pacific Telecommunity, which adopted its own constitution in 1977 and is linked with the → International Telecommunication Union. Another economic organization which is tied to ESCAP is the Asian and Pacific Coconut Community, created by an agreement signed in 1968.

(b) The European Communities

Through the → Lomé Conventions of 1975 and 1979 the → developing States in the Pacific region enjoy special links with the European Communities in trade cooperation, mineral products, investments, industrial and agricultural cooperation, and financial and technical cooperation. Particular provision is made under the Lomé II Agreement of October 31, 1979 for assistance to the least developed land-locked and island African, Caribbean and Pacific (ACP) countries (→ Islands; → Land-Locked and Geographically Disadvantaged States). The ACP countries also enjoy under the Lomé Conventions a scheme for the stabilization of export earnings (STABEX).

(c) Other organizations

Some countries in the Pacific, e.g. Kiribati, Nauru, Tonga and Tuvalu, have not joined the UN by reason of its cost (→ Micro-States), but they participate in the work of such → United Nations Specialized Agencies as the → Food and Agriculture Organization, the → International Civil Aviation Organization, the → Universal Postal Union and the → World Health Organization. The activities of ESCAP and the UNDP are also applicable. The UN member States in the region – Fiji, Papua New Guinea, Samoa, the Solomon Islands and Vanuatu – participate in the Pacific Islands Development Programme.

All nine of the fully independent Pacific Island countries are members of the → British Commonwealth and share in projects such as those sponsored by the Commonwealth Fund for Technical Cooperation. The Commonwealth Heads of Government Meeting, held in Australia in 1981, paid special attention to the problems of Pacific Commonwealth countries and future regional meetings will be held. The area of the related → Colombo Plan extends as far west as Fiji.

Australia, Fiji and New Zealand are members of the International Telecommunications Satellite Organization (→ Intelsat), as it controls a satellite which is of great importance in telecommunications in the area (→ Satellites in Space). Nonmember users of the system are Kiribati, Nauru, the Solomon Islands, Tonga, New Caledonia, French Polynesia and Guam.

4. South Pacific Organizations

(a) The South Pacific Commission

The South Pacific Commission was founded on February 6, 1947 with the signing of the Canberra Agreement. The purpose of the Commission is to encourage and strengthen international cooperation in promoting the economic and social welfare and advancement of the peoples of the region. Health education, nutrition and economic development are given high priority. It has also sponsored such regional bodies as the South Pacific Air Transport Council (SPATC) and regional cultural activities such as the South Pacific Festival of Arts. The participating governments are Australia, the Cook Islands, Fiji, France, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Samoa, the Solomon Islands, Tuvalu, the United Kingdom, and the United States. Other independent States in the region, and the dependent territories, are entitled to send representatives to the annual meetings of the

South Pacific Conference, which are now jointly held with the annual meeting of the Commission as a result of the Memorandum of Understanding of 1974. Despite the geographic limitation of its name, the South Pacific Conference also invites the United States territories north of the equator to attend its meetings. The headquarters of the Permanent Secretariat of the Commission is located in Noumea, New Caledonia.

(b) *The South Pacific Forum*

The South Pacific Forum was established in 1971 at the initiative of Fiji. Unlike the South Pacific Commission, the purposes of which are essentially non-political, the Forum provides a venue for discussion of all matters of general interest to the countries of the region. It has no written constitution, nor a permanent secretariat. Its members are Australia, the Cook Islands, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu. At the 1980 Forum, the Federated States of Micronesia were admitted with observer status, reserving the question of full membership for future discussion.

The Forum has discussed such political matters as → nuclear tests and dumping of radioactive wastes in the Pacific (→ Waste Disposal; → Marine Environment, Protection and Preservation; → Water Pollution), the political advancement of the overseas territories of France in the region, law of the sea negotiations (→ Conferences on the Law of the Sea), → immigration, and problems of trade, communications and resources. It also sponsors meetings of ministers and officials on various matters of regional concern, for example meetings of Labour and Transport Ministers and the South Pacific Regional Telecommunications meetings. The Forum supports a Committee on South Pacific Trade, which has offices in Sydney, Australia.

The Forum sponsored the South Pacific Bureau for Economic Cooperation (SPEC) which was established by an agreement signed by Forum members on April 17, 1973. It has its headquarters in Suva, Fiji. The functions of the Bureau include the promotion of inter-island trade and trade with countries outside the region, the study of Forum members' development plans and policies and their harmonization, the provision of advisory services on sources of aid and technical assistance (→ Economic and Technical Aid), and the study of regional transport needs. It also acts as a clearing house for information on trade, production, and economic development in the region. SPEC assisted the governments of Fiji, Samoa and Tonga in 1974 in establishing a Pacific Secretariat in Brussels to negotiate with the European Communities on behalf of the region. There is clearly some overlap between the functions of SPEC and those of the South Pacific Commission, and proposals for their eventual merger have been made.

The South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) was signed on July 15, 1980. The parties were Australia, New Zealand, and most of the other Forum members. The agreement was designed to ease Australian and New Zealand import restrictions on goods from the Pacific Islands and thus to lessen the large imbalance of trade between the developed and less developed parts of the region. The agreement permits non-reciprocal, duty-free access of a wide range of island goods to the Australian and New Zealand markets (→ Customs Law, International).

The South Pacific Forum Fisheries Agency (FFA) was the outcome of the Eighth Forum held at Port Moresby in August 1977, which also adopted a common declaration on the law of the sea for presentation to the Third UN Conference on the Law of the Sea. That declaration recognized the great significance of living marine resources in the economies of island countries as a future development prospect; it asserted the particular need for cooperation in the conservation and optimum utilization of highly migratory fish such as tuna, which is the main fish stock of the region (→ Fisheries, International Regulation). The Forum Fisheries Agency Convention established an Agency, a Forum Fisheries Committee, and a Secretariat with headquarters in Honiara, Solomon Islands. Art. III(2) of the Convention recognized that effective cooperation in the management of highly migratory species of fish "will require the establishment of additional international machinery to provide for cooperation between all coastal States in the region and all States involved in the harvesting of such resources". This Article appears to be based on

the draft provisions which led to Arts. 61 and 118 of the United Nations Convention on the Law of the Sea (1982), but the Forum Fisheries Agency Convention makes no provision for accession by States outside the region. The functions of the Committee are to promote intra-regional coordination and cooperation in the harmonization of policies with respect to fisheries management, cooperation in respect of relations with distant water fishing countries, cooperation in surveillance and enforcement, on-shore fish processing, and marketing, and in respect of access to the 200-mile economic zones of other parties to the Forum Fisheries Agency Convention (→ Exclusive Economic Zone; → Coastal Fisheries; → Fishery Zones and Limits).

The islands of the Pacific are critically dependent upon shipping services for their livelihood. The South Pacific Conference established in 1974 a Regional Shipping Council, and commissioned a study by SPEC of the feasibility of establishing a regional shipping line. The outcome was the creation of the Pacific Forum Line in 1978 and the purchase of a number of ships with financial aid from Australia and New Zealand

5. Cooperation in Security Matters

There is no regional security or defence treaty in the Pacific area (→ Collective Security). The → ANZUS Pact (1951) links only Australia, New Zealand and the United States, and does not extend to other countries (cf. → Alliance). The air forces of Australia and New Zealand perform reconnaissance and surveillance duties on an availability basis at the request of certain island States (→ Military Reconnaissance), and naval and air services have been provided in cases of natural disasters (→ Relief Actions). A detachment of troops from Papua New Guinea was requested by the Government of Vanuatu in 1980 to assist in dealing with a secessionist rebellion (cf. → Civil War).

6. Evaluation

The widely scattered islands of the Pacific, with small populations and few natural resources, illustrate both the pressing need for, and the difficulty of achieving, institutions and mechanisms of regional cooperation. The slow pace of political evolution in the area has been reflected in the uneven development of regional cooperation. Substantial progress has been made in the period since 1971, but the need to rationalize certain overlapping institutions, and to achieve cost-effectiveness in regional cooperative activities, is evident.

Report[s] of the South Pacific Commission.
M. HAAS (ed.), Basic Documents of Asian Regional Organizations (1974).
A. BLAUSTEIN and E. BLAUSTEIN (eds.), Constitutions of Dependencies and Special Sovereignties (1978).
The Pacific Islands Yearbook[s].

R. GOY, L'évolution du régionalisme dans le Pacifique Sud, AFDI, Vol. 21 (1975) 217–240.
South Pacific Commission, Regional Cooperation in the South Pacific (1978).
R.S. CLARK, Self-Determination and Free Association: Should the UN Terminate the Pacific Islands Trust?, Harvard ILJ, Vol. 21 (1980) 1–86.
See also periodical articles in: Australian Foreign Affairs Record.

I.A. SHEARER

REGIONAL COOPERATION AND ORGANIZATION: SOCIALIST STATES

1. Socialist States, the Socialist Community and the Socialist World System

Within the literature of the communist world, a distinction is drawn between "socialist States" and "States having a socialist orientation". The latter were partly also called "national-democratic States". The characteristic elements of a socialist → State are the recognition of Marxist-Leninist ideology, the supremacy of the Communist Party and a system of economic planning which is based on the pre-eminence of State property. Socialist States manifesting such characteristics exist in Europe, Asia and (with Cuba) America. In terms of development, they are partly industrialized and partly → developing States. The "States having a socialist orientation" are all developing countries in Asia, Africa and Latin America.

A consequence of the dualist structure of socialist States is that relations exist not only between the respective States, but also between the ruling communist parties, which in the main are legally

regulated. It is presupposed that relations on the party level rest on the principle of "proletarian internationalism", while those at State level rest on the principle of → socialist internationalism. The Soviet interpretation of these two closely related principles accords a leading role to the Communist Party of the Soviet Union (CPSU) and the Soviet State within the framework of inter-party and inter-State relations (→ Hegemony), which are termed "relations of a new kind". This leadership role is justified by reference to the seizure of power by the Bolshevic Party in the October Revolution of 1917, out of which grew Soviet Russia as the first socialist State in history, and by reference to the great experience gained by the CPSU and the Soviet State in building socialism and communism. Here the socialist social order is seen as a prior stage to a communist social order which can only be realized when it is established throughout the world. From this ideological statement of aims arises a world revolutionary aspect which to a greater or lesser extent is apparent in the foreign policy and international legal approach of each of the socialist States.

As a justification for her leading role within the socialist States, the Soviet Union refers to the claim contained in the 1977 Constitution of the USSR that she is the only "State of the whole people" with a fully "developed socialist society" As far as the other socialist States are concerned, these continue to be characterized as "dictatorships of the proletariat" which are still building and extending socialism as it develops.

Those States which, following the breakup of the initial Eastern Bloc, have accepted or acquiesced in the Soviet Union's claim to leadership are referred to on the part of the Soviets as the "socialist community" or, in a narrower sense, the "socialist world system". A wider meaning of "socialist world system", however, includes all socialist States: this meaning was once carried by the term "socialist camp". The geographical limits to these terms can be deduced not from the 1977 Constitution of the USSR so much as from the Report of the Central Committee at the XXVI CPSU Congress in 1981. According to this, the "socialist community" comprises the Soviet Union and the European People's Democracies of Bulgaria, Czechoslovakia, Hungary, Poland and Romania, the German Democratic Republic, the Asian People's Democracies of Mongolia, Vietnam and Laos, and finally also Cuba. This restricted community does not include Soviet-occupied Afghanistan or Vietnam-occupied Kampuchea. Albania, Yugoslavia, North Korea and the People's Republic of China are regarded as socialist States outside the community.

Of those non-European States which make up the socialist community, Cuba, Mongolia and Vietnam but not Laos are members of the → Council for Mutual Economic Assistance (Comecon). Mongolia is particularly dependent on the Soviet Union. However, like North Korea she is bound by bilateral → treaties of → alliance not only to Russia but also to the People's Republic of China. On the other hand, the Soviet Union has only a bilateral treaty of political cooperation, which comes close to being a treaty of alliance with Vietnam, but not, however, with Laos or Cuba. Several European States loyal to the Soviet Union have concluded such treaties of political cooperation, which also exist between the Soviet Union and a series of African and Asian States having a socialist orientation. The most important link binding the Eastern European and East Asian system of alliances was broken by the Chinese termination in 1979 of the Sino-Soviet Treaty of Friendship, Alliance, and Mutual Assistance signed on February 14, 1950. Thus, the socialist community should be seen as an intercontinental association of States whose core is a regional one made of European States bound together by stronger treaty ties.

2. *The Treaty Basis of the Alliance System*

(*a*) *Phases and forms of development*

The regional organization of the socialist States, whose centre lies in central and Eastern Europe, has developed on the basis of a bilateral system of treaties unmatched in the inter-war period in its wide compass. In the course of its development, this versatile system of pacts has been subjected to numerous alterations, partly the result of the ambitions of the Soviet Union as hegemon seeking to extend the system of alliances and strengthen unity, partly due to the efforts of the other contracting parties to preserve their national independence.

A major organizational reinforcement was achieved by the close connection made between a bilateral and a multilateral system of pacts. The community organizations based on the multilateral system of pacts are formed by the → Warsaw Treaty Organization (or Warsaw Pact) and Comecon. These were preceded by the establishment of the bilateral system of pacts. Initially, this was the only tie of international law which bound the inner areas of Soviet power into a legal and not merely a political unity. Today, the bilateral system provides additional protection for the core elements of the socialist community and at the same time forms the skeleton of the Soviet system of alliances. Since the 1960s the organization of the Warsaw Pact and Comecon has been considerably extended. Since both institutions have permanent organs, they are of greater importance in organizational terms than conferences and other forms of cooperation under the bilateral treaties of alliance.

The system of bilateral pacts has undergone considerable changes in the course of developments. At the heart of the system are the treaties of friendship, cooperation and mutual assistance which Stalin had already initiated during World War II. From the individual phases of development it is possible to distinguish three generations of bilateral treaties following upon each other and each time increasing the closeness of the alliance.

Those bilateral treaties belonging to the first generation served to bolster defences against external attack, thus guaranteeing the security of the contracting parties. They are therefore best characterized as security treaties. Stalin's aim with these treaties was to secure the predominance of the Soviet Union in the eastern part of central Europe and in south-eastern Europe. However, Tito and Dimitrov also played a considerable part in the development of this system of bilateral pacts, both with the aim of establishing a federative association to a greater or lesser degree throughout the area.

The starting point took the form of a bilateral treaty of alliance between the Soviet Union and Czechoslovakia concluded on December 12, 1943. Of the total of 23 treaties concluded between 1943 and 1949, 16 have remained valid after Yugoslavia left the Eastern Bloc following the conflict between Tito and the Cominform. These treaties bound the Soviet Union, Poland, Czechoslovakia, Hungary, Romania and Bulgaria to each other. After the rupture with Yugoslavia, Albania remained bound by a bilateral treaty with Bulgaria only. After its establishment in 1949, the German Democratic Republic did not participate in the system of bilateral pacts in view of the unsolved German question (→ Germany, Legal Status after World War II).

Albania was one of the founding members of Comecon in January 1949, while the German Democratic Republic was accepted into membership in September 1950. Both countries did not become full participants in the Soviet system of alliances until the conclusion of the Warsaw Treaty on May 14, 1955. This, like the bilateral treaties, was entitled a "Treaty of Friendship, Cooperation and Mutual Assistance".

Under Khrushchev, the bilateral system of alliances was seen as supplemental to the multilateral treaty of alliance. Thus, where the extension of the 20-year treaties was concerned, at first only the establishment of a connection with the Warsaw Treaty was considered. This is apparent from the form adopted for the protocol of November 27, 1963, under which the Soviet-Czechoslovakian treaty of alliance was extended.

This approach was only altered with the conclusion of a bilateral treaty of alliance between the Soviet Union and the German Democratic Republic on June 12, 1964. Thus began the inclusion of the German Democratic Republic in the bilateral system of pacts, a policy continued by Khrushchev's successors who also decided on a complete renewal of the other treaties of alliance.

The recognition of Soviet hegemony in Eastern Europe was more explicit in the new treaties of alliance; where the principle of "peaceful coexistence" is mentioned in relationship to the principle of "socialist internationalism", the emphasis is on the priority of the latter. In addition, particular emphasis was placed on economic cooperation within the framework of Comecon. Thus, the second generation alliance treaties form the legal basis for considerably greater cooperation in both the economic and other areas. They were accordingly regarded not only as being security pacts but also as constituting treaties of integration.

The system of new bilateral treaties of alliance was only properly completed after the armed → intervention in Czechoslovakia which prompt-

ed the withdrawal of Albania from the Warsaw Treaty Organization. Altogether 20 second generation treaties of alliance were concluded between 1964 and 1972, between the Soviet Union and the German Democratic Republic (June 12, 1964), the Soviet Union and Poland (April 8, 1965), Poland and Czechoslovakia (March 1, 1967), Poland and the German Democratic Republic (March 15, 1967), Czechoslovakia and the German Democratic Republic (March 17, 1967), Poland and Bulgaria (April 6, 1967), the Soviet Union and Bulgaria (May 12, 1967), Hungary and the German Democratic Republic (May 18, 1967), the Soviet Union and Hungary (September 7, 1967), Bulgaria and the German Democratic Republic (September 7, 1967), Czechoslovakia and Bulgaria (April 26, 1968), Poland and Hungary (May 16, 1968), Czechoslovakia and Hungary (June 14, 1968), Czechoslovakia and Romania (August 16, 1968), Hungary and Bulgaria (July 10, 1969), the Soviet Union and Romania (July 7, 1970), Poland and Romania (November 12, 1970), Romania and Bulgaria (November 19, 1970), Romania and Hungary (February 24, 1972) and Romania and the German Democratic Republic (May 12, 1972).

Although the treaty of alliance between the Soviet Union and Czechoslovakia of May 6, 1970 was also concluded during this period, it is of a different character and must be regarded as the first of the third generation treaties of alliance. Since the conclusion of the Final Act of the Conference of Security and Cooperation in Europe (CSCE) of August 1, 1975 (→ Helsinki Conference and Final Act on Security and Cooperation in Europe), five further third generation treaties have been concluded, all of them with the German Democratic Republic and all having further features which distinguish them from the model treaty between the Soviet Union and Czechoslovakia and from the second generation treaties of alliance.

The starting point for this development was the new treaty of alliance of October 7, 1975 concluded between the Soviet Union and the German Democratic Republic. Further treaties of alliance followed between the German Democratic Republic and Hungary (March 24, 1977), the German Democratic Republic and Poland (May 28, 1977), the German Democratic Republic and Bulgaria (September 14, 1977) and the German Democratic Republic and Czechoslovakia (October 3, 1977).

The third generation treaties of alliance, with which until now Romania has not been associated, manifest a stronger claim to hegemony on the part of the Soviet Union and the aspiration towards greater "unity and coherence". Security and increased integration are guaranteed by considerably tighter ties to the community of States led by the Soviet Union which rests on the Breshnev Doctrine and the requirement of a "closer *rapprochement* of nations". So far they can be called "bloc treaties". Also perceptible in the treaties concluded after the Helsinki Conference are the attempts to reinterpret the principles laid down in the CSCE Final Act and the downgrading by treaty of the problems associated with Germany and → Berlin.

At present, the system of bilateral treaties of alliance consists of third and second generation treaties which to some extent overlap each other. The latter, like the first generation treaties, were concluded for a period of 20 years. They are each renewable for a term lasting five years each time, unless they have been terminated by notice given not less than 12 months before the lapse of the term of duration (→ Treaties, Termination). The third generation treaties, on the other hand, are valid for a period of 25 years. The relationship of these treaties to each other, especially with respect to the German Democratic Republic, remains unclear. The latter has concluded third generation treaties of alliance even though the corresponding second generation treaties have not lapsed. Furthermore, the "Treaty of Sovereignty" concluded between the Soviet Union and the German Democratic Republic of September 20, 1955 has neither been amended nor cancelled. This, like the treaty of alliance of June 12, 1964, rests on the assumption that the German question remains open.

The bilateral status of forces agreements (→ Military Forces Abroad) are important supplements to the bilateral treaties of alliance and the Warsaw Pact. After her armed intervention in Hungary in November 1956 a number of such treaties were concluded between the Soviet Union and: Poland (December 17, 1956), the German Democratic Republic (March

12, 1957), Romania (April 15, 1957) and Hungary (May 27, 1957). The status of forces agreement with Romania lapsed with the withdrawal of Soviet forces from Romanian territory in 1958. The armed intervention by the Soviet Union and her followers in Czechoslovakia in August 1968, which like the intervention in Hungary could neither be justified by the respective bilateral treaty of alliance nor by the Warsaw Pact, led to the conclusion of a further Soviet status of forces agreement with Czechoslovakia on October 16, 1968.

As compared with its counterparts, the Soviet status of forces agreement with the German Democratic Republic is notably disadvantageous to the latter. The provisions which differ give the Soviet Union an additional possibility of intervention.

(b) Assistance, consultation and cooperation

Friendship, cooperation and assistance are invoked by the Soviet Union and her narrower circle of followers in the name of the bilateral and Warsaw pacts as constitutive elements of "socialist internationalism" and are seen as principles of a "socialist international law", which is accorded overall precedence (→ Socialist Conceptions of International Law).

The greatest emphasis is placed on mutual assistance which is expressed in the principle of fraternal or comradely help (in Russian the word is pomošč, meaning assistance or help). In descending order of importance follow "cooperation" and then "friendship". As far as the bilateral treaties of alliance are concerned it is thus clear that these are treaties of mutual assistance. The short form used to describe these as "friendship treaties" is misleading. Like the Warsaw Pact, they are primarily concerned with the duty to afford mutual assistance to defend against all uses of forces aimed against the → sovereignty, → territorial integrity and political independence of one of the contracting parties. One of the major differences between the bilateral treaties of alliance and the Warsaw Treaty consists in the automatic duty to afford assistance with all means where a → casus foederis arises.

The origins of the duty to afford assistance in the first generation treaties of alliance, which to a large extent were concerned with the possibility of aggression on the part of Germany or one of the States allied with Germany, lay in Art. 53(1) of the → United Nations Charter. This, combined with Art. 107 sanctioned preventive actions against former enemy States (→ Enemy States Clause in the United Nations Charter). On the other hand, the treaties of the second and third generations rest on Art. 51 of the UN Charter, which allows collective self-defence in cases of armed attacks.

Unlike the Warsaw Pact, the second and third generation treaties do not place a regional limitation on the affording of assistance by restricting it to Europe. The exception to the rule is the treaty of alliance between the Soviet Union and Finland, a first generation treaty which has been extended continuously. Here the obligation to afford assistance is restricted to the Soviet Union, in the event of an attack on or over Finnish territory. In addition, part of the treaty is concerned with the policy of neutrality which determines the special position of Finland within the Soviet system of alliances.

During the course of development of the system of bilateral pacts, the importance of consultation has grown. The newer treaties of alliance now provide for a qualified form of consultation. This appears not only to serve the measures to be taken in defence against attack, but also to guarantee the "unity and coherence" of the socialist community and thus secure Soviet hegemony. "Unity and coherence" is seen by Soviet international lawyers as a further principle of socialist internationalism, alongside the three principles mentioned above, and is interpreted in terms of the "Breshnev Doctrine".

The parties to the bilateral treaties of alliance and the Warsaw Treaty characterize them as regional arrangements in terms of Chapter VIII (Arts. 52 to 54) of the UN Charter. A regional arrangement as understood under the UN Charter can only be one which not only guarantees protection against attacks from external States but also promotes the security within the area in question. The bilateral system of treaties guarantees → collective self-defence, but not → collective security, since this requires a peaceful settlement of disputes (→ Regional Arrangements and the UN Charter).

A major difference between the bilateral trea-

ties of alliance and the Warsaw Treaty is that the former provide for "cooperation on all sides", and this is the second major area of emphasis. This is seen as the means within a process of integration which, via "socialist economic integration" and strengthened political and ideological block formation, is to lead to a federal unity of the socialist community of States.

The bilateral treaties of alliance not only provide for political cooperation, including the measures to reinforce "the strength and power of the socialist world system", but also for cooperation in nearly every area of life. In the economic and science and technology fields, this is seen within the framework or in connection with Comecon or one of the specialized inter-State organizations connected with Comecon. Cooperation in the areas of scholarship, education, culture, mass media, health, sport, tourism and others is expressed on a bilateral basis in appropriate agreements. Political cooperation is particularly concerned with the coordination of foreign policy (but also includes ideological policy and → propaganda), and mainly takes place at party level. In 1982, at Soviet initiative, closer cooperation between legislative organs has also been pursued. Cooperation in the area of law has led to the conclusion of bilateral agreements on legal assistance and to regular meetings between the ministers of justice. Cooperation between police forces is a long-standing feature and is particularly close between the State security services.

3. Organization and Cooperation at Party Level

A major addition to the inter-State relations in the Soviet system of alliances, expressed in the bilateral and multilateral system of pacts, is supplied by the relations between the ruling communist parties and the agreements between them.

"The active ties between the ruling communist parties" have been described by Leonid Brezhnev as "the core and developmental foundation for cooperation on all sides by the socialist States". The view of the Soviet Union and her narrower circle of followers is that the communist parties steer and coordinate "all the many sides and branches in the network of the inter-State relations of the socialist countries and guarantee its functioning as a unified whole". The "leading role" of the communist parties is characterized as the "most important principle in the mutual relations between the socialist countries" in connection with "proletarian internationalism", which in turn is seen as the essence of "socialist internationalism". A distinction must be drawn between the exercise of external power of any given socialist State by the individual communist party and the collective maintenance of the "leading role" which, in many cases may extend beyond the narrower region of the alliance to comprise the entire socialist community.

It was only after Stalin's death that inter-party relations were formalized. Since 1956, inter-party relations have developed at various levels, in both bilateral and multilateral guises. On occasions, party delegations either alone or with government delegations have held bilateral negotiations. On other occasions, international party conferences have been held attended by delegates from the entire world communist movement, the entire Eastern Bloc or only the narrower Soviet hegemonial sphere. Initially, joint party declarations were composed separately from State agreements. After the model occasion of the Soviet-Polish Declaration of November 18, 1956, it became customary to present the government and party agreements in a single document, which was called a "declaration", "statement" or "communiqué". At first, the multilateral party conferences, which began in 1957, took the form of joint conferences between the first secretaries or general secretaries, generally taking place before Warsaw Pact and Comecon meetings. It is at this anterior meeting that policy decisions were made, which were then later expressed in the resolutions of the two community organizations. Collective policy decisions were at times also made without a subsequent community meeting. Thus, the decision to build the Berlin Wall was made at a meeting of the first secretaries on August 5, 1961 at the initiative of the Soviet Union. The decision was then expressed in a declaration of the Warsaw Pact countries, without a meeting of the Warsaw Treaty Organization taking place.

Later, the functions of the alliance's most important decision-making body were performed by the joint conferences of the party leaders and heads of government. Since 1971 joint meetings of the first secretaries and general secretaries have again been held in the Crimea, which have also

been attended by the Mongolian Revolutionary People's Party. In addition, similar meetings have taken place on the occasion of individual party conferences. Since 1977, the Crimean meetings have been held on a bilateral basis.

Following the first meeting in 1970, meetings between central committee secretaries for international and ideological questions have been held regularly since 1973. Agreements were reached at these sessions on intellectual, cultural and ideological issues governing all official and non-official activities in these areas. Working groups from the responsible central committee departments prepared the meetings, the resolutions of which are binding for the carrying out of bilateral treaties on scientific and cultural cooperation and for the regular meetings of the ministers of culture. Also, in 1974, meetings began between the central committee secretaries for party organization work (who are responsible for issues involving cadres and organization). These are held at infrequent intervals.

In addition to the communist parties from the narrower Soviet sphere of influence, the meetings of the central committee secretaries have also been attended by the communist parties of Mongolia and Cuba, and later also by those of Vietnam and Laos.

In the newer bilateral treaties of alliance, close cooperation between the "social organizations" is provided for. Joint meetings of various kinds on different levels take place not only between the ruling communist parties, but also between the mass organizations, in particular the labour unions and the youth organizations.

The joint party agreements described by some Soviet international lawyers as "new sources" of "socialist international law", can only be held to be of direct legal applicability where they are concerned with the narrower area of competence of the communist parties. This is the case above all in the ideological area. In other cases also, given the power structure within the socialist States, the unanimous party agreements do have a certain importance in international law. However, to be legally binding, an appropriate transformation into an inter-State agreement is necessary.

In spite of various initiatives of a public law character, to be seen in certain party agreements and the stricter interpretation of socialist internationalism, the elements of international law predominate in the ties between the Soviet Bloc States. Thus, from a legal point of view the latter is best characterized as a hegemonial alliance.

B. MEISSNER (ed.), Das Ostpakt-System, Dokumentensammlung (1955).

H. RICHTER (ed.), Freundschaft, Zusammenarbeit, Beistand, Grundsatzverträge zwischen den sozialistischen Staaten (1968).

W.E. BUTLER (ed.), A Source Book on Socialist International Organizations (1978).

V.M. ŠURŠALOV (ed.), International Law Forms of Cooperation among the Socialist States (1962) [in Russian].

S. QUILITZSCH and J. KRÜGER (eds.), Sozialistische Staatengemeinschaft (1972).

A. USCHAKOW, Die Sonderstellung der DDR im osteuropäischen Bündnissystem, in: G. Leptin (ed.), Die Rolle der DDR in Osteuropa (1974) 35–54.

B. MEISSNER, Die Partei im sowjetischen Staats- und Völkerrecht, in: Recht im Dienst des Friedens, Festschrift für Eberhard Menzel (1975) 155–176.

H. FIEDLER, Das bilaterale Paktsystem, in: D. Geyer and B. Meissner (eds.), Sowjetunion, Völkerrechtstheorie und Vertragspolitik (1976) 139–162.

S. ANGELOV (ed.), Socialist Internationalism, Theory and Practice of International Relations of a New Type (1979) [in Russian].

T. SCHWEISFURTH, Sozialistisches Völkerrecht? Darstellung, Analyse, Wertung der sowjetmarxistischen Theorie vom Völkerrecht "neuen Typs" (1979).

D.M. FELDMAN, Socialist International Relations (1981) [in Russian].

D. FRENZKE, Die Rechtsnatur des Sowjetblocks (1981).

J.I. KANDALOV, International Relations and Ideological Cooperation of the Fraternal Socialist States (1981) [in Russian].

B. MEISSNER, Entwicklungsphasen des Ostpakt-Systems in Ost- und Mitteleuropa, in: Ostmitteleuropa, Berichte und Forschungen, Festschrift für Gotthold Rhode (1981) 476–497.

J. PABST, Internationale Beziehungen neuen Typs (1981).

BORIS MEISSNER

REGIONAL COOPERATION AND ORGANIZATION: WESTERN EUROPE

1. Introduction

Although initiatives towards European cooperation date from long before 1945 and had led to the establishment of certain international institutions such as the → Rhine and → Danube

Commissions, World War II marked a decisive turn in European relations. Both during and after the war leading politicans in Western Europe did not opt for a restauration of the pre-war situation but sought a radical reorientation. In some respects they could associate with such progressive ideas expressed in the 1920s and early 1930s as Count Coudenhove-Kalergi's "Pan-European Union" and Aristide Briand's "United States of Europe".

On September 17, 1946, in his famous Zürich speech, Sir Winston Churchill proposed as a solution for Europe's post-war problems:

> "to recreate the European family, or as much of it as we can, and to provide it with a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of United States of Europe."

Although the idea of a "United States of Europe" is still far from realization – if → European integration is ever to reach that stage – Europe and especially Western Europe has made considerable progress in cooperation and integration. This has resulted, *inter alia*, in a complex system of international governmental organizations which to some extent overlap but for the most part reinforce or supplement one another.

2. *Historical Survey*

(a) Early initiatives

Apart from the decision to establish the → Benelux Economic Union, made during the war by the governments of the Benelux countries in exile in London (→ Government-in-Exile), the first steps towards post-war European cooperation consisted of a number of bilateral treaties of → alliance and mutual assistance, of which the Treaty of Dunkirk of March 4, 1947, between France and the United Kingdom, was the first. Soon, however, multilateral treaties followed, some of which resulted in the creation of international organizations.

Initiatives for European economic cooperation followed a famous speech by the American Secretary of State, George Marshall, at Harvard University, in which he called upon the European governments jointly to draw up a recovery programme, the implementation of which would then be supported by United States assistance (→ European Recovery Program; → Economic and Technical Aid). Although the invitation was directed to Europe as a whole, only Western European countries responded. They transmitted to the United States Government a four-year programme. To supervise the implementation of the programme, the Organisation for European Economic Co-operation (OEEC) was established in 1948. In 1961 this organization was succeeded by the → Organisation for Economic Co-operation and Development (OECD), which was no longer a purely European institution since the United States and Canada, followed by Japan and Australia, became full members.

(b) Political and military cooperation

Cooperation of a political and military character was initially prompted mainly by fear of renewed German → aggression and the mounting tensions between East and West. Initiatives by British Foreign Minister Ernest Bevin led to the signing of the Brussels Treaty of March 17, 1948, by France, the United Kingdom and the Benelux countries, which formed the basis of the Brussels Treaty Organization. The activities of the organization were mainly of a social and cultural character (→ Cultural Agreements). In the military field the main functions were soon taken over to a large extent by the → North Atlantic Treaty Organization (NATO) established by the North Atlantic Treaty of April 4, 1949, and in which Canada and the United States participated from the beginning (→ Collective Security). After the Federal Republic of Germany began to be regarded as an ally which should participate in the defence of Western Europe rather than as a potential aggressor, a regulation of German rearmament and the restoration of German → sovereignty became necessary (→ Germany, Legal Status after World War II). To this end the Brussels Treaty was revised and extended with four Protocols in 1954, and the Brussels Treaty Organization was replaced by the → Western European Union (WEU) of which the Federal Republic of Germany became a member. In 1955 the Federal Republic of Germany joined NATO.

(c) Council of Europe

The first steps towards the establishment of a

"general" organization as a framework for cooperation and integration in Europe were taken not by governmental but by private initiative. Several → non-governmental organizations, united in the International Committee of the Movements for European Unity, organized the "Congress of Europe" at the Hague on May 8 to 10, 1948. The Congress adopted the "Message to Europeans", in which, *inter alia*, the desire of a United Europe and of a Charter of → Human Rights was expressed. The proposals of the Congress were submitted by the Belgian and French Governments to the Brussels Treaty Powers while other Western European States were invited to join in the → negotiations which ultimately resulted in the establishment of the → Council of Europe. However, the Statute of the Council did not come close to establishing a "United States of Europe". It still took a functional approach, however broad, based on a voluntary cooperation between the States, which retained their full sovereignty.

(*d*) *European Communities*

Much more ambitious, but mainly restricted to the field of economic policy and international economic relations, was the establishment of the → European Communities (EC) by the "Six" (the Benelux countries, the Federal Republic of Germany, France and Italy). On May 9, 1950, the French Minister of Foreign Affairs, Robert Schuman, proposed that the French and German production of coal and steel be placed under a joint High Authority in an organization which should be open for participation by other European nations. The Treaty instituting the → European Coal and Steel Community (ECSC) was signed on April 18, 1951. The High Authority in particular, composed of independent persons and endowed with broad executive and legislative powers, but also the Assembly consisting of members of the parliaments of the member States, and the Court of Justice with compulsory jurisdiction (→ Court of Justice of the European Communities), gave the organization its "supranational" character with certain "federal" features, even though these applied in a restrictive field of State activity (→ Supranational Organizations). This domain was considerably broadened with the establishment by the Six, in 1957, of the → European Atomic Energy Community (EAEC or Euratom), and especially the → European Economic Community (EEC), whose activities affect almost the whole range of the economic policy and several aspects of the social policy of the member States.

(*e*) *European Defence Community*

A proposal by the French Government to establish a → European Defence Community (EDC) of the Six failed, however. This "Pleven Plan" envisaged a merger of the armed forces of the member States, which at the same time would pave the way for German rearmament. Although the Treaty was signed in Paris on May 27, 1952, and was ratified by the other five countries, it was rejected by the French parliament.

(*f*) *European political cooperation*

Anticipating the establishment of the EDC, the Ministers of Foreign Affairs of the Six proposed that the Assembly of the ECSC together with observers from the other member States of the Council of Europe should prepare a draft treaty for the establishment of a → European Political Community. It was presented to the Ministers of Foreign Affairs on March 10, 1953, but, due to the failure of the EDC, consideration of it was postponed indefinitely. After several years, the idea of European political cooperation was taken up again in the form of the Fouchet Plan, presented to the governments of the Six in 1961. It envisaged the creation of a "Union of European States", which would adopt a common foreign policy on questions of common interest and would pursue a common defence policy. The plan never became reality, due to deep differences of opinion among the Six about its organization and functions. New proposals were made in the Davignon Report in 1970. According to these proposals the Foreign Ministers of the EC countries would meet every six months for exchange of information and for consultation to secure cooperation on matters of foreign policy. The plan was adopted in 1970. In 1973, it was decided to increase the frequency of the meetings to four times a year and to give the cooperation some institutional basis in the Political Committee of the political directors of the ministries of foreign affairs (→ European Political Cooperation).

(g) European Free Trade Association

During the negotiations to establish the EEC, efforts were made by those Western European countries that would not become part of that Community to regulate their economic relations with the EEC along the lines of a → free trade area. Negotiations within the OEEC to that end failed. Seven countries then started negotiations to establish a free trade area among themselves: the → European Free Trade Association (EFTA), which was created in 1960. As a result of the free trade agreements between the EFTA countries and the EEC and the ECSC, the free trade area now covers almost all OECD countries, as was originally envisaged. On the other hand, EFTA as an organization is loosing momentum due to the fact that the United Kingdom and Denmark left it when joining the EC; other countries may follow. EFTA mainly acts as a machinery for the functioning of the free trade area and as a forum for consultation among the remaining members towards closer cooperation and the adoption of common views *vis-à-vis* the EC, OECD, → General Agreement on Tariffs and Trade (GATT) and other international organizations.

(h) Nordic cooperation

Meanwhile, initiatives had been taken to institutionalize the traditional cooperation between the Nordic countries (→ Nordic Cooperation). The Swedish proposal to establish a Nordic defence union failed because of differing attitudes towards NATO. The institution which was created in 1952 was not of an inter-governmental but of an inter-parliamentary character: the → Nordic Council. Attempts also to set up a Nordic → customs union (NORDEK) were abandoned when Denmark and Norway started to negotiate accession to the EC. In 1971, the 1962 Treaty of Helsingfors on cooperation between the Nordic countries was amended to the effect that the Statute of the Nordic Council was incorporated and the Nordic Council of Ministers was set up as an inter-governmental organ alongside the inter-parliamentary Council.

(i) Benelux cooperation

The establishment of the → Benelux Economic Union (Benelux) became effective in 1948. At the same time the → Belgium-Luxembourg Economic Union (BLEU), in existence since 1921, continued to function. In 1960, a new treaty came into force, taking into account new developments in the structure and scope of action of the organization. The Benelux Court of Justice (→ Benelux Economic Union, College of Arbitrators and Court of Justice) was added to the organs of the Organization in 1965.

(j) Specialized organizations

In addition to the above mentioned institutionalized forms of cooperation, several organizations have been set up among Western European countries in specialized fields of technical cooperation. Mention should be made of the following such organizations in a chronological order:

The Central Commission for Navigation of the Rhine. As one of the first international governmental organizations it was established by the Treaty of Vienna of 1815 (→ Vienna Congress (1815)). At present it is based upon the Convention of Mannheim of 1868 as amended in 1963.

The → European Conference of Ministers of Transport (ECMT; better known by its French acronym, CEMT), established by a Protocol signed on October 17, 1953. Since Yugoslavia is also a member, it is not a Western European organization *stricto sensu*.

The → European Civil Aviation Conference (ECAF), based upon a resolution of the first session of the Conference, which was held in Strasbourg from November 29 til December 16, 1955.

The → European Organization for Nuclear Research (usually referred to as CERN, the initials in French of its predecessor, the European Council for Nuclear Research) established by the Convention of 1953.

The → European Conference of Postal and Telecommunications Administrations (ECPT, better known as CEPT) established by the Montreux Arrangement of 1959.

The → European Organization for the Safety of Air Navigation (Eurocontrol), created by the International Convention relating to Cooperation for the Safety of Air Navigation of 1960.

The → European Patent Organisation, established by the European Patent Convention of October 5, 1973.

The → European Space Agency (ESA), proposed by the European Space Conference on December 20, 1972, as a new organization to cover also the activities of the European Space Research Organisation (ESRO) and the European Organisation for the Development and Construction of Space Vehicle Launchers (ELDO, initials of European Launcher Development Organization). ESA was established by Treaty of May 31, 1975 (→ Space and Space Law).

3. *Legal Impact*

As indicated above, the European Communities have progressed farthest on the road to European federalism or unity. Their "supranational" character finds expression in the composition and powers of the Community organs. Three of the four main organs are composed of persons who perform their functions independently of their national governments. The decisions of the Council and the Commission are binding on the member States and, depending on their contents, have direct effect in the national legal orders (→ European Communities, Community Law and Municipal Law). In many important instances the Council may take its decisions by a majority of its members. The Court of Justice has compulsory jurisdiction *vis-à-vis* the member States and decides by majority rule.

All the other organizations mentioned above are predominantly of an inter-governmental rather than a "supranational" character. This holds true even for Benelux, although its structure and purposes resemble those of the EC. Its principal decision-making organ, the Council, decides by unanimous vote. The College of Arbitrators takes its decision by majority vote. So far, however, the College has only been called on to appoint arbitrators for one case. It has been overshadowed by the Court of Justice which, equally by majority vote, renders preliminary rulings and gives → advisory opinions.

EFTA has only one main organ: the Council, composed of governmental representatives of the member States. Those decisions of the Council that bind the States require a unanimous vote. In cases of disputes between member States, the Council may, by majority vote, make recommendations and authorize States to suspend the application of obligations under the Convention *vis-à-vis* a State that has not complied with the recommendation.

As has been said above, the Council of Europe was and still is a far cry from the "United States of Europe" as envisaged in certain circles. It is also of a predominantly inter-governmental character. Its main organ, the Committee of Ministers, not only has to reach in almost all cases unanimity to take decisions, but these decisions, with a few exceptions, have the character of recommendations. The most significant recommendations are those concerning the conclusion of conventions. More than one hundred conventions have been concluded within the framework of the Council of Europe. The first and most important is the → European Convention on Human Rights of 1950. It confers upon the Committee of Ministers the power to decide by a two-thirds majority whether a State party to the Convention has committed the violation of the Convention complained of by another State or an individual victim. The composition and powers of the two organs set up by the Convention, the → European Commission of Human Rights and the → European Court of Human Rights, represent the strongest "federal" features of the Council of Europe, together with its Parliamentary Assembly.

The Nordic Council is composed of delegates of the national parliaments, with representatives of the governments taking part without the right to vote. It cannot, however, adopt measures that are binding upon the States, but only recommendations and statements. Decisions of the Nordic Council of Ministers, on the contrary, which require unanimity, are binding. However, decisions on matters which, according to national law are subject to parliamentary approval, become binding only after such approval has been given (→ International Law and Municipal Law). In fact, most decisions concern the adoption of recommendations or the issuing of statements.

The OECD is strictly inter-governmental in character. It serves as an instrument of data-collecting and as a forum of consultation, information, cooperation and coordination. Although the Council has the power to make binding decisions, as a rule such decisions require unanimity and are binding only after the States have complied with the requirements of their

national constitutional procedures. They therefore resemble international agreements between States rather than decisions by an international institution. NATO presents a similar picture.

The Council of the Western European Union has far-reaching powers concerning mainly the size and nature of the defence apparatus. Some of those decisions require unanimity, others a two-thirds majority or a simple majority. The Assembly, which is composed of those persons who are the parliamentary representatives of the WEU countries in the Parliamentary Assembly of the Council of Europe, has only recommendatory powers.

The technical organizations mentioned above are all of an inter-governmental structure and only bind the member States with their approval. They are mainly of an administrative and consultative nature with operational functions in their respective technical fields of action. In the case of the ESA, decisions of the Council concerning space research and technology programmes are made by majority vote. However, States which do not take part in a certain project may not participate in the decision-making.

4. *Coordination between Organizations*

The above description clearly shows that the post-World War II movement towards European unity has in fact resulted in a multiplicity of organizations rather than in a centralized system of Western European cooperation. Indeed, the political and economic developments have been and still are such that a unified or integrated system of cooperation could only have been achieved at the expense of the scope and depth of such cooperation. The functional and decentralized approach enabled those States, which at a certain moment were able and willing to do so, to institutionalize and intensify their cooperation in certain fields by establishing an organization to that end with a limited membership and with the appropriate institutional structure and powers. Thus, a multi-geared system has been created that, because of the open membership of most of the organizations, could function as an intermediate structure.

In the meantime this structure leaves room for, and demands coordination between, the different organizations, be it only by reason of the overlaps they present. Especially the Council of Europe has proved to be a most appropriate forum for discussing and promoting such coordination. As the Western European organization with an almost general membership and with its organs composed of governmental and parliamentary representatives, it offers ample occasion for statesmen, diplomats, governmental and non-governmental experts and parliamentarians of the Western European countries to meet and discuss problems of common concern. Thus, for example, contacts between EC members and non EC States take place regularly within the framework of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. To that end the Parliamentary Assembly and the European Parliament meet jointly once a year (→ Parliamentary Assemblies, International).

It has been proposed by the Parliamentary Assembly that the Council of Europe and other Western European organizations should agree on a certain division of functions in such a way that activities of an operational character would be performed by the "specialized" organizations, while the Council of Europe would concentrate on discussing matters which seemed ripe for a convention, agreement or administrative arrangement. Such a division has been realized to a certain extent, although the Council of Europe performs certain activities for the implementation of its conventions which could be called "operational". Between the Parliamentary Assembly and the WEU an agreement was reached to restrict the debate on European defence in the Assembly to the political aspects while the WEU would discuss the military aspects. And in 1959 it was decided that the Council of Europe would take over the social and cultural activities of the WEU. Moreover, in the field of defence, the Treaty of Brussels obliges the WEU to work in close cooperation with NATO and to rely on the appropriate military authorities of NATO for information and advice on military matters. On the other hand, the fact that NATO has no parliamentary organ makes the WEU Assembly a useful forum for discussing European defence and East-West relations alongside the Parliamentary Assembly of the Council of Europe.

Coordination among the European Communities is very intensive, as has found expression

in the merger of their organs. Plans for a merger of the three Communities as such, however, have not yet been effectuated. Coordination between the EC and Benelux is of obvious necessity, since the Benelux members for many of the Benelux activities are at the same time bound by obligations under the EC treaties. The same holds true, be it to a lesser degree, of the relations between the EC and the organs of Nordic cooperation. Not only is Denmark a member of both, but the other Nordic countries have also strong ties with the EC. As to the coordination between the EC and EFTA, mention has already been made of the free trade agreements of the individual EFTA countries with the EC. Finally, coordination between the EC and the OECD is a matter of course, since the EC has exclusive powers in several of the fields dealt with by the OECD. For that reason the Commission of the EC takes part in the work of the OECD. Formal relations have also been established between the OECD and EFTA, the Council of Europe and CEMT.

These instances of coordination between Western European organizations could be supplemented by many other examples such as the relations between EFTA and the Nordic Cooperation or between the OECD and Benelux. They suffice to indicate that inter-institutional coordination has become necessary, and is in fact taking place, in the overall development of Western European cooperation and integration.

Annuaire européen – European Yearbook, Documentary Section (since 1955).

R. SOCINI, Rapports et conflits entre organisations européennes (1960).
M. PALMER and J. LAMBERTS, European Unity (1968).
C. DELMAS, Le fédéralisme et l'Europe (1969).
H. BRUGMANS, L'idée européenne 1920–1970 (1970).
L. CARTOU, Organisations européennes (4th ed. 1973).
A.H. ROBERTSON, European Institutions, Co-operation, Integration, Unification (3rd ed. 1973).
M. JANSEN, History of European Integration 1945–1975 (1975).
F.R. WILLIS (ed.), European Integration (1975).
H.G. SCHERMERS, Integratie van internationale organisaties (1978).
R. SELBERT, Compatible Two Sphere Integration: The Simultaneous Danish Participation in the European Communities and Nordic Cooperation (1979).
J. TWITCHETT (ed.), European Co-operation Today (1980).

P. VAN DIJK

REGIONAL DEVELOPMENT BANKS

1. Introduction. – 2. Inter-American Development Bank: (a) Establishment; membership. (b) Structure. (c) Purpose. (d) Capital resources; funds for special operations. (e) Trust funds. – 3. African Development Bank; African Development Fund: (a) Establishment; membership. (b) Structure. (c) Purpose. (d) Capital resources; non-regional membership. (e) African Development Fund. (f) Operations; borrowings. – 4. The Asian Development Bank: (a) Establishment; membership. (b) Structure. (c) Purpose. (d) Capital resources; Asian Development Fund; Technical Assistance Special Fund. (e) Operations; borrowings. – 5. Matters Common to the IDB, AfDB and ADB: (a) Juridical personality. (b) Judicial process. (c) Freedom of assets from restrictions and taxation. (d) Other immunities. (e) Other aspects. – 6. Other Regional or Sub-Regional Development Banks: (a) West African Development Bank. (b) East African Development Bank. (c) Arab Bank for Economic Development in Africa. (d) Arab Fund for Economic and Social Development. (e) Islamic Development Bank. (f) European Investment Bank. (g) Nordic Investment Bank. (h) Andean Development Corporation. (i) Caribbean Development Bank. (j) Central American Bank for Economic Integration. (k) The OPEC Fund for International Development.

1. *Introduction*

The regional development banks supplement the role of the → International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA). They came into being because a need was perceived by the countries of the different regions, to provide closer attention to specific regional needs and priorities, and to allow for a source of funding of development in addition to bilateral and World Bank financing (see also → Financial Institutions, Inter-Governmental).

2. *Inter-American Development Bank*

(*a*) *Establishment*; *membership*

The Agreement establishing the Inter-American Development Bank (IDB) was drafted by a Specialized Committee of Government Representatives called by the Inter-American Economic and Social Council from January to April 1959, following the recommendation of the Ministers of Foreign Affairs of the 21 American republics at their meeting in Washington in September 1958; it was signed on April 8, 1959 and entered into force in December 1959 (UNTS, Vol.

388, p. 69). The seat of the IDB is Washington, D.C. The IDB had, as of December 31, 1980, 43 member countries, from both the Americas and Europe.

(*b*) *Structure*

The IDB's highest authority, the Board of Governors, is composed of one governor from each member country, with an alternate governor. The Board of Governors meets annually and on other occasions as necessary.

The Executive Board is composed of twelve executive directors, one appointed by the United States, eight elected by groups of Latin American countries, two by the non-regional members, and one by Canada, to serve for a three-year term. Each elected executive director appoints his alternate, who must be from a different member country, except in the case of Canada. The Board operates in continuous session and is, according to Art. VIII(3) of the IDB Articles of Agreement, responsible for the conduct of operations of the IDB.

The President of the IDB acts as Chairman of the Executive Board, having no vote except to break a tie, and leads the daily operations and staff of the IDB. The President is elected for a renewable period of five years by a majority of the total voting power of the member countries, including an absolute majority of the governors of regional members. An Executive Vice President is appointed by the Board of Directors on the recommendation of the President with such authority and functions as are determined by the Board of Directors.

(*c*) *Purpose*

With the purpose of contributing to the acceleration of the process of economic and social development of the regional developing member countries (→ Developing States), the IDB promotes the investment of public and private capital; utilizes its own capital for financing the development of member countries; encourages private investment in projects, and supplements private investment when private capital is not available on reasonable terms and conditions; cooperates with the member countries to orient development policies, and provides technical assistance for the preparation, financing and implementation of development plans and projects. In carrying out its functions, the IDB cooperates with national and international institutions and with private sources in supplying investment capital.

(*d*) *Capital resources; funds for special operations*

The IDB's subscribed ordinary capital resources as of December 31, 1980 exceeded 9000 million dollars, including paid-in capital and callable capital. In addition, the IDB in 1976 created inter-regional capital, separate from its ordinary capital resources, to which 16 non-regional countries as well as some regional member countries have subscribed capital in the form of both paid-in and callable shares. The inter-regional capital as of December 31, 1980 totalled almost 2000 million dollars including both paid-in and callable capital. The IDB may borrow on the strength of its callable capital.

The IDB also has a Fund for Special Operations, which as of December 31, 1980 had authorized resources totalling almost 6000 million dollars contributed to the IDB by its member countries.

The 16 non-regional countries, on joining the IDB, agreed to contribute approximately $900 million over a three-year period, of which half has been subscribed to shares in the inter-regional capital stock and half paid as a contribution to the Fund for Special Operations.

(*e*) *Trust funds*

One June 19, 1961 the IDB entered into an agreement with the United States Government under which it became administrator of the Social Progress Trust Fund. The original resources of the Fund, amounting to $394 million, included the major part of the Special Inter-American Fund for Social Development envisaged in the Act of Bogotá (→ Bogotá Pact (1948)), for which the United States Congress appropriated funds in 1961 as part of the Alliance for Progress Program (→ Regional Organization and Cooperation: American States). In 1963, the United States Congress appropriated another $131 million to replenish the original resources.

On February 27, 1975 the IDB and the Venezuelan Investment Fund entered into an agreement under which the IDB is administering a $500 million Venezuelan Trust Fund. The resources of the Fund are helping finance projects

in economically less developed member countries, those with limited markets and those of intermediate development. In addition, the IDB administers funds established by a number of other member and non-member countries and the → Intergovernmental Committee for Migration, to help foster the economic and social development of the IDB's member countries.

3. *African Development Bank; African Development Fund*

(*a*) *Establishment; membership*

On February 16, 1961, the African members of the UN Economic Commission for Africa (→ Regional Commissions of the United Nations), by Res. 27(III), requested the Executive Secretary to undertake a thorough study of the possibility of establishing an African Development Bank (AfDB). On March 1, 1962 the Economic Commission for Africa, by Res. 52(IV), established a committee composed of representatives of nine member governments (Committee of Nine) to make all necessary governmental and other contacts relevant to the establishment of the AfDB. The Agreement Establishing the African Development Bank, which was adopted and opened for signature by a Conference of Finance Ministers held in Khartoum, Sudan on August 4, 1963, entered into force on September 10, 1964 (UNTS, Vol. 510, p. 4). The seat of the AfDB is Abidjan, Ivory Coast.

As of 1982, the AfDB had 50 members, all African States. The Board of Governors decided to open up membership to non-regional countries by Res. 05-07/79 of May 17, 1979. Presently, however, there are no non-regional members.

(*b*) *Structure*

At the Board of Governors of the AfDB, the highest authority of the institution, each member country is represented by a governor and alternate.

The Board of Directors is composed of nine members who may not be governors or alternate governors, are elected by the Board of Governors for a three-year term and may be re-elected. Each director appoints an alternate, who may not be of the same nationality as his director. The directors are responsible in accordance with Art. 32 of the AfDB Articles of Agreement for the general operation of the AfDB.

The President is elected by a majority of the total voting power of the members for a five-year period, which may be renewed. The President is the Chairman of the Board of Directors without vote, except in case of an equal division, and leads the daily operations and staff of the AfDB.

(*c*) *Purpose*

The role of the AfDB is principally to bring about an orderly expansion in the foreign trade of its members; to undertake, or participate in the selection, study and preparation of projects which contribute to the development of member countries, to mobilize and expand financial resources for investment projects and programmes; to promote investment in Africa of public and private capital which will contribute to the economic and social progress of its members; to provide technical assistance as needed and to seek cooperation with national and regional institutions within Africa and with international organizations concerned with the development of Africa.

(*d*) *Capital resources; non-regional membership*

The AfDB's available resources as at December 31, 1981, comprising paid-in capital, reserves, unallocated net income and borrowings, amounted to Units of Account (UA) 1538.84 million. Its subscribed capital at that date stood at UA 2188.92 million of which UA 301.65 million was paid in. With regard to the opening of the AfDB's capital stock to non-regional countries, the amended Articles of Agreement of the AfDB were ratified on May 7, 1982. As a result, AfDB capital stock will be increased, mainly through the capital participations of non-regional members, to about $6.3 million. The size of the Board of Directors will be broadened from nine to eighteen, including twelve Directors representing regional members and six representing non-regional members. Voting power is distributed so that regional members have two-thirds of the total number of votes. Decisions on policies of the AfDB will be subject to a simple majority of 50 per cent of the vote. A quorum of meetings of the Board of Governors will be constituted by the attendance of members holding not less than two-thirds of

the total number of votes, including 35 per cent of regional members' votes.

(*e*) *African Development Fund*

At their Eighth Annual Meeting held in Algiers in July 1972, the Governors of the AfDB adopted an Agreement Establishing an African Development Fund (AfDF). The Fund, an autonomous legal entity, was formally inaugurated at the Ninth Annual Meeting of the AfDB held in Lusaka, Zambia, in July 1973. The Fund provides finance on concessional terms for the purpose of assisting the AfDB's contribution to the economic and social development of the AfDB's members, and for the promotion of cooperation, including regional and sub-regional cooperation, and increased international trade, particularly among such members. The resources of the Fund consist of subscriptions by participants and other resources, including grants and loans. The Agreement establishing the Fund entered into force on June 30, 1973.

The Fund utilizes the offices, staff organization, services and facilities of the AfDB to carry out its functions. The President of the AfDB, also the President *ex officio* of the Fund, is Chairman of the Board of Directors without vote, except to break a tie.

The Fund's constituent members are as of May 1982, the 50 member countries of the AfDB and 25 other countries. The governors and alternate governors of the AfDB are *ex officio* governors and alternate governors of the AfDB. In addition, each participant country which is not a member of the AfDB appoints a governor and alternate. The Board of Directors of the Fund is composed of twelve directors, of whom six are designated by the AfDB from members of the Board of Directors of the Bank, and six are selected by the participant countries. As of December 31, 1980 the total subscriptions to the Fund reached approximately UA 1167 million.

The AfDB also administers the Nigeria Trust Fund.

(*f*) *Operations*; *borrowings*

During 1981, loan commitments amounted to UA 277.5 million for the AfDB, bringing cumulative lending (net of cancellations) to UA 1335 million as of December 31, 1981. Overall lending by AfDB and AfDF in 1981 amounted to $635.5 million while cumulative lending stood as of December 31, 1981 at $3110 million. The AfDB has usually borrowed in the Eurodollar market and from member States and non-African institutions and governments. It has also borrowed in the other main capital markets of the world.

4. *The Asian Development Bank*

(*a*) *Establishment*; *membership*

The Asian Development Bank (ADB) was established pursuant to a resolution on Asian economic cooperation adopted at the First Ministerial Conference on Asian Economic Cooperation held in December 1963 and of Resolution 62 (XXI) adopted by the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), formerly United Nations Economic Commission for Asia and the Far East (ECAFE), in 1965. The second Ministerial Conference on Asian Economic Development held in Manila, November 29 to December 2, 1965, adopted and opened for signature the Agreement Establishing the Asian Development Bank (UNTS, Vol. 571, p. 132) (→ Regional Cooperation and Organization: Asian States). The Agreement entered into force on August 22, 1966. The seat of the ADB is Manila, the Philippines.

The ADB's membership consisted as of December 31, 1981 of 30 countries of the region and 14 non-regional countries from Europe and North America.

(*b*) *Structure*

At the Board of Governors, the highest authority of the ADB, each member country is represented by a governor who selects an alternate governor. The ADB's Board of Directors is composed of twelve members who may not be members of the Board of Governors, and of whom eight are elected by the governors representing the regional members and four by the governors representing the non-regional members. Directors serve for a two-year term and are eligible for re-election. Each Director appoints an alternate. The Board of Directors is responsible for the direction of the general operations of the ADB, in accordance with Art. 31 of the ADB Articles of Agreement. The

President is the Chairman of the Board of Directors without vote, except to break a tie, and leads the operations of the ADB.

The President, who must be a national of a regional member country, is elected by a majority of the total number of governors, representing a majority of the total voting power of the members. He or she serves for a five-year term and may be re-elected. Vice presidents are appointed by the Board of Directors on the recommendation of the President, and have the authority and functions as may be determined by the Board of Directors.

(*c*) *Purpose*

The role of the ADB is principally to promote investment of public and private capital in the region of Asia and the Pacific for development purposes, to finance especially those projects for economic development of the region which at present are not financed, or not adequately financed, through existing sources or agencies, and to act as a focal point for, and stimulus to, other measures for regional economic cooperation. In addition to its loan operations, the ADB extends technical assistance for project preparation and evaluation, development planning and other purposes.

(*d*) *Capital resources*; *Asian Development Fund*; *Technical Assistance Special Fund*

As of December 31, 1981 the authorized capital stock of the Bank stood at $8404.5 million (expressed in Special Drawing Rights (SDRs): 7220.6 million), of which the subscribed portion amounted to $8296.8 million (expressed in SDRs: 7128.1 million).

The resources of the ADB available for financing concessional loan commitments are administered in the Asian Development Fund, which was established in June 1974, but has no separate legal personality (→ Subjects of International Law).

The Bank also administers the Technical Assistance Special Fund, not a separate legal entity, which is the principal vehicle for mobilization of resources for financing the Bank's technical assistance activities. As of December 31, 1980, 24 member countries (including most of the developed member countries) had made contributions to the Fund.

(*e*) *Operations*; *borrowings*

During 1981, loan commitments amounted to $1678 million for 57 loans, of which $1147 million was drawn from capital resources and $531.5 million from funds, bringing cumulative lending at the end of 1981 to $10 771 million for 509 projects. The ADB has usually borrowed in the capital markets of the Federal Republic of Germany, Japan and Switzerland. It has also rolled over two-year term dollar-denominated bonds to central banks or monetary authorities of member countries and has undertaken private placements in the Middle East.

5. Matters Common to the IDB, AfDB and ADB

The Articles of Agreement of the regional development banks contain provisions which accord to these banks, in the territories of their member countries, legal status and certain privileges and immunities (→ International Organizations, Privileges and Immunities).

(*a*) *Juridical personality*

The banks have full juridical personality under municipal law with capacity to enter into contracts, to acquire and dispose of property and to sue and be sued. In addition, the banks possess personality under public international law and treaty-making capacity (Articles of Agreement, IDB, Art. XI(1-2); AfDB, Arts. 50, 51 and 59; ADB, Arts. 48, 49 and 58; → International Organizations, Treaty-Making Power).

(*b*) *Judicial process*

The banks are not generally immune from legal process. Actions may be brought against them in the territories of their members in which they have established an office, elected domicile for jurisdictional purposes or have issued or guaranteed securities, but no actions may be brought against the banks by their members or by persons acting for or deriving claims from members (see Articles of Agreement, IDB, Art. XI(3); AfDB, Art. 52; ADB, Art. 50).

The assets of the banks are immune from seizure, attachment or execution prior to delivery of a final judgment against them (Articles of

Agreement, IDB, Art. XI, Section 4; AfDB, Art. 53; ADB, Art. 51).

(c) *Freedom of assets from restrictions and taxation*

To the extent necessary to carry out the purposes and functions of the banks, their property and other assets are exempt from restrictions, regulations, controls and moratoria of any nature (Articles of Agreement, IDB, Art. XI(6); AfDB, Art. 54; ADB, Art. 53).

The banks, their assets, property and income, and their operations and transactions are immune from all taxation (→ Taxation, International). The banks are also immune from liability for the collection or payment of any tax (Articles of Agreement, IDB, Art. XI(9)(a); AfDB, Art. 57(1); ADB, Art. 56(1)). Obligations issued by the banks and the interest thereon are not subject to any tax by a member country if the sole jurisdictional basis for the tax is the place of currency in which the obligations are issued, made payable or paid, or the location of any office or place of business maintained by the banks (Articles of Agreement, IDB, Art. XI(9) (c) and (d); AfDB, Art. 57(3) and (4); ADB, Art. 56(3) and (4)).

(d) *Other immunities*

The archives of the banks are inviolable (Articles of Agreement, IDB, Art. XI(5); AfDB, Art. 53; ADB, Art. 52). Bank officials and employees are immune from legal process for acts performed by them in their official capacity, except when the banks waive such immunity (→ Waiver; → Civil Service, International). (See Articles of Agreement, IDB, Art. XI(8); AfDB, Arts. 56 and 59; ADB, Arts. 55 and 58.)

(e) *Other aspects*

Each loan by the banks involves either a loan agreement or a → guarantee agreement with a member country, governed by the general conditions of each bank and by rules of international law.

Questions of interpretation of the Articles of Agreement must be decided by the Executive Directors, with the possibility of an appeal to the Board of Governors for a final decision. Disagreements between the banks and ex-members or between a member and a bank after a decision to terminate operations must be submitted to → arbitration (Articles of Agreement, IDB, Art. XIII; AfDB, Arts. 61 and 62; ADB, Arts. 60 and 61).

Voting power structures in each of the banks follow in general the principle established in the Bretton Woods organization (→ International Monetary Fund and IBRD) of weighted voting power in accordance with share subscriptions by individual countries (→ Bretton Woods Conference (1944)).

6. *Other Regional or Sub-Regional Development Banks*

(a) *West African Development Bank*

The West African Development Bank (Banque ouest africaine de développement, BOAD) was established by Agreement of the member States of the West African Monetary Union on November 14, 1973 (see also → Economic Community of West African States). The aim of BOAD is to promote balanced development of the States of the Union and to achieve West African economic integration. Its members are Benin, Ivory Coast, Niger, Senegal, Togo, Upper Volta, France and the Federal Republic of Germany.

(b) *East African Development Bank*

The East African Development Bank (EADB) was established in accordance with the Treaty for East African Cooperation signed by the governments of Kenya, Tanzania and Uganda on June 6, 1967, which entered into force on December 1, 1967. Its Charter is appended to the Treaty as Annex VI. Its members are the Treaty's three signatory governments. Other investors, including AfDB and private banks, participated. The EADB awaits the outcome of the settlement of affairs concerning the → East African Community.

(c) *Arab Bank for Economic Development in Africa*

The Banque arabe pour le développement économique en Afrique (BADEA) was established by decisions at the Sixth Arab Summit at Algiers on November 26, 1973 and at the Economic Council of the League of Arab States on December 5, 1973 (→ Arab States, League of).

The Agreement to establish BADEA entered into force on February 18, 1974. The BADEA headquarters is Khartoum, Sudan. The objective of BADEA is to foster economic, financial and technical cooperation between the African States and the Arab nations. BADEA has at present 18 members: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, the Palestine Liberation Organization, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, and the United Arab Emirates.

(d) *Arab Fund for Economic and Social Development*

The Agreement establishing the AFESD was approved by the Economic Council of the League of Arab States on May 16, 1968 and signed on the same date. It entered into force on December 18, 1971. The first meeting of the Board of Governors was held February 6 to 7, 1972 and the first meeting of the Board of Directors on November 18, 1972. The seat of AFESD is Kuwait City, Kuwait.

The AFESD is a regional financial institution, having an independent juridical personality. Its function is to assist the economic and social development of Arab countries through (i) financing development projects, with preference given to overall Arab development and to joint Arab projects; (ii) encouraging the investment of private and public funds in Arab projects; and (iii) providing technical assistance services for Arab economic and social development. Its objectives are to assist member countries in eliminating development constraints, increasing absorptive capacity achieving higher rates of growth, and fostering economic integration and cooperation among member countries.

The AFESD has 21 members: all those in the BADEA plus Somalia, the Yemen Arab Republic, and the People's Democratic Republic of Yemen.

(e) *Islamic Development Bank*

The Second Islamic Finance Minister's Conference, held in Jeddah, Saudi Arabia, August 10, 1974, adopted and opened for signature the Agreement Establishing an Islamic Development Bank. Membership is open to all countries which are members of the Islamic Conference. The Agreement entered into force on April 23, 1975. The seat of the Islamic Development Bank is Jeddah, Saudi Arabia.

The main objective of the Islamic Development Bank is to foster economic development and social progress of member countries and Muslim communities individually as well as jointly in accordance with the principles of the Shariah (→ International Law, Islamic; → History of the Law of Nations: Islam).

The functions of the Islamic Development Bank are to participate in equity capital and grant loans for productive projects and enterprises, besides providing financial assistance to member countries in other forms for economic and social development. The Bank is also required to establish and operate special funds for specific purposes, including a fund for assistance to Muslim communities in non-member countries, in addition to setting up trust funds. The Bank is authorized to accept deposits and to raise funds in any other manner. It is also charged with the responsibility of assisting in the promotion of foreign trade, especially in capital goods, among member countries, providing technical assistance to member countries, extending training facilities for personnel engaged in development activities, and undertaking research for enabling the economic, financial and banking activities in Muslim countries to conform to the Shariah.

The Islamic Development Bank has 36 members: all those in the AFESD plus Bangladesh, Cameroon, Chad, Guinea, Guinea-Bissau, Indonesia, Malaysia, Mali, Niger, Pakistan, Senegal, Turkey, Uganda and Upper Volta.

(f) *European Investment Bank*

The → European Investment Bank (EIB) was created by Art. 129 of the Treaty of Rome, establishing the → European Economic Community (EEC) as a banking institution which would complement the actions of the member States for the purpose of development. To this end, the EIB borrows funds on domestic and international capital markets and with these resources, working on a non-profit basis, provides long-term loans and guarantees to help finance industrial and infrastructure projects which, according to Art. 130 of the EEC Treaty (i) foster development in less advanced regions; (ii) help to modernize or con-

vert industries; or (iii) are of common interest to several member States or the Community as a whole.

According to Art. 129 of the EEC Treaty, the members of the EIB are the member States of the EEC. The EIB's highest authority is its Board of Governors composed, according to Art. 9 of its Statute, of ministers appointed by member States. The Board of Directors has exclusive powers over the granting of loans, guarantees and borrowings. The Management Committee, composed of the President and four Vice-Presidents, leads the daily operations of the EIB.

The EIB has also come to play an important part in providing development finance in countries outside the EEC which have signed association or cooperation agreements with the Community (→ European Economic Community, Association Agreements). To date, these agreements, which in each case provide for lending up to specified limits, have concerned 13 countries in the Mediterranean basin, and 58 African, Caribbean and Pacific (ACP) countries, signatories to the → Lomé Conventions.

(*g*) *Nordic Investment Bank*

The Nordic Investment Bank agreement entered into force on June 1, 1976, in accordance with a decision of the Nordic Council of Ministers (→ Nordic Council and Nordic Council of Ministers; → Nordic Cooperation). The purpose of the Bank is to make loans and give guarantees in accordance with regular banking practices, taking into account social and economic considerations, in order to promote investment projects and exports of common interest to the Nordic countries. The seat of the Nordic Investment Bank is Helsinki, Finland. All the powers of the Bank are vested in a Board of Directors which is composed of two members from each country appointed for a term of four years. Daily operations are presided over by a managing director appointed for five years.

The proportion of shares in initial capital of the Bank are: Sweden 45 per cent, Denmark 22 per cent, Finland 16 per cent, Norway 16 per cent, and Iceland 1 per cent, respectively. The Bank can make loans and guarantees up to a total of two and a half times its capital markets and on international capital markets. On April 18, 1980 the Bank was prescribed by the IMF as a holder of special drawing rights (SDRs), and thus authorized to accept, hold and use SDRs.

(*h*) *Andean Development Corporation*

The Andean Development Corporation (ADC) is the main promotional and financial institution of the Andean subregional integration framework (→ Andean Common Market). Its Constituent Agreement was signed on February 7, 1968 and entered into force on January 30, 1970. The seat of the ADC is Caracas, Venezuela. The ADC is composed of Bolivia, Colombia, Ecuador, Peru and Venezuela.

The authorized capital of the Corporation is $400 million. The financial capacity of the ADC is further expanded through the use of all regular mechanisms and resources of world capital markets, and by the direct or indirect access to international credit agencies, international technical or financial assistance organizations, and those government or private entities with similar objectives. In this connection, an additional $50 million has been made available.

The activities of the ADC are primarily related to national and multinational initiatives and projects, especially to those in which the productive capacities, services, investments or markets of two or more countries of the subregion are involved. During the present phase the ADC is giving preferential attention to the industrial sector, considering new plants as well as the expansion and modernization of existing industries in the Andean Area.

(*i*) *Caribbean Development Bank*

The Caribbean Development Bank (CDB) was established by the Agreement signed in Kingston, Jamaica, on October 18, 1969 by twelve regional and two non-regional members, and entered into force on January 26, 1970. In addition to the founding members, the Agreement provides that membership in the CDB will be open to all States and territories of the region and to non-regional States which are members of the → United Nations or of the → United Nations Specialized Agencies or of the → International Atomic Energy Agency. Venezuela was admitted in 1973, Colombia in 1974. The seat of the CDB is St. Michael, Barbados.

The role of the CDB is to contribute to the harmonious economic growth and development of the member countries of the Caribbean and to promote economic cooperation and integration among them, having special and urgent regard to the needs of the less developed countries (→ Developing States; → Caribbean Cooperation).

The authorized capital of the CDB must at all times be held or be available for subscription in the proportion of not less than 60 per cent by regional members and not more than 40 per cent by non-regional members. A "soft" loan fund, known as the Special Development Fund, has to date received contributions from the seven governments to the extent of $37.5 million. In addition, the CDB has received loans totalling $37.5 million as part of the Caribbean development facility provided to the Caribbean through the Caribbean Group for Co-operation in Economic Development (CGCED). Other special funds have been subscribed by five States to the extent of $84.7 million. Additional financial and technical resources were received from the IDB, and from the United States Agency for International Development. The CDB has also recently concluded Agreements with the World Bank and the → International Development Association for a loan of $23 million and credits totalling $8 million. Financing for regional projects has been received from the European Development Fund (EDF).

The CDB has established a Technical Assistance Fund to be utilized for financing advisory services, training and studies in the fields of general development, project implementation, project preparation and pre-investment and bank development.

The CDB is composed of 18 regional countries and territories and two non-regional countries.

(*j*) *Central American Bank for Economic Integration*

The Agreement establishing the Central American Bank for Economic Integration (CABEI) was signed in Managua, Nicaragua on December 13, 1960 by the Governments of El Salvador, Guatemala, Honduras, and Nicaragua. Costa Rica became a full member of the CABEI in 1963. The seat of CABEI is Tegucigalpa, Honduras.

The capital of the CABEI is subscribed by the five member countries. CABEI is the financial institution of the Central American Economic Integration (→ Central American Common Market) and as such is a juridical person of international character, fully authorized to undertake financial agreements.

The CABEI's main objective is to implement the economic integration and the balanced economic growth of the member countries. In carrying out this objective, its principal investment sectors are: regional infrastructure projects; long-term investment projects in regional industries; coordinated agricultural projects to improve, expand or substitute agricultural activities for the establishment of a regional Central American supply system; support of Central American free trade objectives by financing enterprises which need to expand or modernize their operations; projects to finance services necessary for the functioning of the Central American Common Market; and other productive projects to create economic coordination among the member countries and to increase Central American trade.

The Statute of the Central American Fund for Economic Integration (CAFEI) was approved by the Board of Governors during its Sixth Extraordinary Meeting held on April 10, 1965. The Fund was constituted with the purpose of fulfilling the additional investment needs of the public sector which tend to promote and strengthen the economic integration and balanced development of Central America.

The Board of Governors also approved during its 14th Ordinary Meeting held on January 14, 1975, the Statute of the Social Development Fund, established to finance programmes or projects framed within the social development policy and plans, whether regional or national, concerned with the Central American economic integration process.

(*k*) *The OPEC Fund for International Development*

The → OPEC Fund for International Development (The Fund) was established by the 13 member countries of the → Organization of Petroleum Exporting Countries (OPEC) on January 28, 1976, as a collective aid facility to provide additional financial assistance on highly

concessionary terms to developing countries other than OPEC member countries. An amendment to the Agreement Establishing the Fund was adopted in September 1979, authorizing the Fund to make use in its future operations of the amounts received as repayments of previous loans. The seat of the Fund is Vienna, Austria.

The Fund's resources are to be used for providing long-term loans to finance balance of payments support and development projects and programmes, and for making contributions in the name of the Fund or its members to international development agencies, and beneficiaries of which are developing countries, and providing loans to such agencies.

Agreements Creating Development Banks, Regional Development Banks, in: A.P. Mutharika (ed.), The International Law of Development, Vol. 1 (1978) 67–266.

F. HERRERA, The Inter-American Development Bank and the Latin American Integration Movements, Journal of Common Market Studies, Vol. 5 (1966) 172–180.

R.R. NIELSON, The Establishment and Operation of the Asian Development Bank, Columbia Journal of Transnational Law, Vol. 9 (1970).

J. WHITE, Regional Development Banks (1970).

J. SYZ, International Development Banks (1974).

Y.C. AMEGAVIE, La Banque africaine de développement (1977).

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RIO TREATY *see* Inter-American Treaty of Reciprocal Assistance of Rio de Janeiro (1947).

SOUTH-EAST ASIA TREATY ORGANIZATION

1. Establishment and Termination

The South-East Asia Treaty Organization (SEATO) was established under the Pacific Charter and the South-East Asia Collective Defence Treaty (the Manila Treaty), of September 8, 1954. Its members were Australia, France, New Zealand, Pakistan, the Philippines, Thailand, the United Kingdom, and the United States. France and Pakistan later ceased to be active members of SEATO. The Council of SEATO, at its 20th annual meeting on September 24, 1975, agreed that in the light of changing circumstances in the South-East Asian region, SEATO should be phased out. The Organization was formally wound up on June 30, 1977. The 1954 Treaty, however, remains in force between all the parties.

2. Historical Background

SEATO has sometimes been described as the counterpart in South-East Asia to the → North Atlantic Treaty Organization (NATO). Like NATO and the → Warsaw Treaty Organization, SEATO was born out of the Cold War. The first security pact in the region was the Security Treaty between Australia, New Zealand and the United States (ANZUS), signed on September 1, 1951; the → preamble to that Treaty referred to the future desirability of "a more comprehensive system of regional security in the Pacific area" (→ ANZUS Pact). At that time the war in → Korea had reached a cease-fire (→ Armistice; → Suspension of Hostilities), and attention was directed more towards events in South-East Asia, especially in Indo-China. The defeat of the French forces at Dien Bien Phu in May 1954 was followed by discussions between Prime Minister Sir Winston Churchill and President Dwight D. Eisenhower in June 1954 on the need for a → collective security arrangement in Asia. The ANZUS Pact (which the United Kingdom had not been invited to join) then held a Council meeting at which it was decided to set up study groups to prepare the drafting of what later became the Manila Treaty. The Pacific Charter, signed in Manila on the same day as the Treaty, reiterated the latter's main purposes in the form of a proclamation.

3. Structure

The structure of SEATO was not established to its full extent by the Manila Treaty. Art. V of that Treaty provided for a Council, on which each party should be represented, to consider matters relating to the implementation of the Treaty. The Council was also made responsible for consultation with regard to military and other planning as circumstances might require. At the second meeting of the Council, held in Karachi in March 1956, it was announced that a permanent working group to assist the Council representatives had been authorized, together with a full-time

secretariat. The headquarters of the SEATO secretariat were established in Bangkok.

The non-military aspects of the Manila Treaty are stated in Art. III, which obliges the parties to cooperate "in the further development of economic measures, including technical assistance... to promote economic progress and social well-being" (→ International Law of Development). Consequently, the structure of SEATO contained two parts: a civil organization, served by the Secretariat-General, and a military organization, served by a military secretariat. Both organizations were under the control of the SEATO Council, consisting usually of the foreign ministers of each party meeting annually. Between annual meetings the ambassadors of the SEATO member States accredited to Thailand met regularly in Bangkok to direct the work of the civil side of the organization. On the military side, the Military Advisers Group met twice a year to direct coordinated defence planning; this Group was assisted by a Military Planning Office and staff established at SEATO headquarters in Bangkok.

The decision-making process of SEATO was not specified in the Manila Treaty. The Council was not invested with the power to bind member States. In 1955 the Council decided that it should act by unanimity. No provision was made by the Treaty for financing SEATO, but in practice the expenses of the Secretariat-General and Military Planning Office were borne by the richer members.

4. *Activities*

(*a*) *Economic and social*

No central fund was established in order to implement the economic and social objectives of Art. III of the Manila Treaty. As in the case of the → Colombo Plan, aid was given on a bilateral basis. Australia was the only member to establish a SEATO aid programme separate from other multilateral or bilateral programmes. It is therefore difficult to distinguish the amounts of aid dispensed under SEATO from other aid programmes (→ Economic and Technical Aid). Some projects, however, were specified as SEATO projects, such as a cholera research laboratory in Pakistan, and vehicle workshops, community development and hill tribes research centres in Thailand. SEATO also established and funded the Asian Institute of Technology in Bangkok.

(*b*) *Military*

The Military Planning Office was responsible for developing and maintaining plans to ensure that coordinated action by member States could be taken to meet the Treaty objective of response against → aggression in the Treaty area (→ Alliance). Specialist committees were established in such fields as intelligence, mapping communications, logistics, meteorology, electronics and medicine. The Military Planning Office also organized periodical military exercises, involving the participation of air, ground and sea forces of the parties.

5. *The Manila Treaty*

(*a*) *Collective defence*

The preamble and Art. I of the Treaty are so worded as to conform with the regional arrangements envisaged by Chapter VIII of the → United Nations Charter (→ Collective Self-Defence; → Regional Arrangements and the UN Charter). Art. I of the Treaty, in which the parties pledge to settle their disputes by peaceful means (→ Peaceful Settlement of Disputes) and to refrain from the threat or → use of force in any manner inconsistent with the purposes of the → United Nations, is phrased in terms identical with the corresponding provisions of the ANZUS Treaty and of the NATO Treaty. Art. II of the Manila Treaty is similar to the NATO Treaty in its insistence on the maintenance of individual capacity and → self-help by the parties in addition to joint efforts and collective capacity. The concluding words of Art. II are, however, novel; in addition to resisting armed attack, the parties are to "prevent and counter subversive activities directed from without against their territorial integrity and political stability" (→ Territorial Integrity and Political Independence). This clause was inserted to guard against the invocation of the Treaty in cases of genuinely indigenous insurgent movements.

The core of the Treaty is contained in Art. IV. Paragraph 1 provides that:

"Each party recognizes that aggression by

> means of armed attack in the treaty area against any of the parties or against any State or territory which the parties by unanimous agreement may hereafter designate, would endanger its own peace and safety, and agrees that it will in that event act to meet the common danger in accordance with its constitutional processes ...."

The "Understanding of the United States of America" attached to the Treaty declares that the references to aggression and armed attack in Art. IV shall be understood by the United States as applying only to communist aggression, but that in cases of other aggression or armed attack it will consult with the other parties as provided in Art. IV, para. 2. The core Article is thus significantly different from the corresponding Article of the NATO Treaty. It also differs significantly from the NATO Treaty in that an armed attack on one or more parties is not regarded as an attack on all, but only as endangering the peace and safety of the other parties; and the parties will then "act to meet the common danger" instead of, as in the NATO Treaty, assist the party attacked by taking forthwith individual and collective action (→ Collective Measures). These differences may be explained by the difficulties encountered by the United States in securing Senate ratification of the NATO Treaty; the central issue then was whether that Treaty effectively gave to the President an executive power to declare → war without the authority of Congress.

(b) *The "Protocol States"*

Art. IV, paras. 1 and 2 also apply to "any State or territory which the parties by unanimous agreement may hereafter designate". A Protocol, signed on the same day as the Treaty, unanimously designated for the purposes of Art. IV "the States of Cambodia and Laos and the free territory under the jurisdiction of the State of Vietnam". Art. IV, para. 3 of the Treaty states that no action on the territory of a designated State or territory is to be taken except at the invitation or with the consent of the → government concerned (→ Territorial Sovereignty). Requests for civil and → military aid, including the sending of training and combat personnel, were made individually to SEATO members by the Republic of → Vietnam. Cambodia and Laos at first rejected the Manila Treaty, but after 1970 accepted civil and military assistance under it.

(c) *SEATO and the Vietnam War*

It is clear from United States statements that the Manila Treaty was not the sole basis for the commitment of troops and other military assistance to the Republic of Vietnam, but it was a major basis and one reiterated in the Tonkin Gulf Resolution passed by Congress in 1964, and in the 1966 Memorandum of the State Department on the Legality of United States Participation in the Defense of Vietnam. It had been argued that such assistance violated the Manila Treaty because no unanimous decision had been taken by the parties to "act together to meet the common danger". Moreover, such action had not been authorized by the → United Nations Security Council under Art. 53 of the UN Charter. Against these views, the United States argued that Art. IV of the Treaty permitted individual action without the agreement of the other parties, and that the right of collective self-defence under Art. 51 of the UN Charter was altogether independent of Art. 53. The Secretary-General of SEATO, at a SEATO Council meeting in 1966, referred to:

> "the wide latitude of freedom open to individual members of the alliance to choose the manner and degree of assistance to be rendered, or even for one member to withhold assistance or keep the matter under consideration for as long as it pleases ... Assistance under the Manila Pact may be collective or individual."

6. *Evaluation*

SEATO was established as part of the perimeter of Western defensive alliances at a time when → China was an ally of the Soviet Union. It assumed great importance during the Vietnam War, although three parties – France, Pakistan and the United Kingdom – took no active part in that war. In 1973 SEATO was reorganized to reduce the military side of its work, and more attention was given to the economic and social development of the regional members. The SEATO umbrella, however, was not indispensable to such activities which were, in any event, bilaterally financed or carried out in cooperation with other organizations.

With the changes in Western attitudes towards China in the early 1970s, and the increasing desire of the regional members not to be identified with what was generally regarded as an overt anti-communist grouping, the phasing out of SEATO became inevitable. The regional members of SEATO (except Pakistan) joined the wider group of the → Association of South-East Asian Nations (ASEAN) in 1967, which promised a different form of regional security based on economic and social development, and on political harmonization (→ Regional Cooperation and Organization: Asian States). Rather than relying on support from powers outside the region, the regional members of SEATO sought to build up their own strength through concerted bargaining with the rest of the world (cf. → International Economic Order).

The Manila Treaty, however, remains in effect and may be invoked at any time according to its terms.

Pacific Charter and Southeast Asia Collective Defense Treaty, Manila, September 8, 1954, UNTS, Vol. 209 (1955) 23–37.

Memorandum on the Legality of the United States Participation in the Defense of Vietnam, DeptStateBull, Vol. 54 (1966) 474–484.

G. MODELSKI (ed.), SEATO Six Studies (1962).

D.E. KENNEDY, The Security of Southern Asia (1965).

P. LYON, SEATO in Perspective, Year Book of World Affairs (1965) 113–136.

Royal Institute of International Affairs, Collective Defence in South-East Asia (1965).

H. HABIG, Die SEATO und das Völkerrecht, Thesis, University of Würzburg (1973).

I.A. SHEARER

SOUTH PACIFIC COMMISSION

1. Formation and Membership

The Agreement (known as the Canberra Agreement) establishing the South Pacific Commission (SPC) was signed in Canberra, Australia, on February 6, 1947, on behalf of Australia, France, the Netherlands, New Zealand, the United Kingdom and the United States. It came into force on July 29, 1948 and was registered under Art. 102 of the → United Nations Charter on August 10, 1951 (→ Treaties, Conclusion and Entry into Force; → Treaties, Registration and Publication). The aim of the founding States in establishing the Commission was to provide a consultative body for matters affecting economic and social development in the territories in the South Pacific region covered by the treaty and to ensure the welfare and advancement of the peoples of those territories (Art. IV). The territorial scope of the Commission initially comprised all those → non-self-governing territories in the Pacific Ocean, administered by the participating governments, which lay wholly or in part south of the Equator and east from and including what was then Netherlands New Guinea (now West Irian (Indonesia) and no longer included). In 1951, the territorial scope was extended northward to include Guam and the United Nations Trust Territories of the Pacific Islands (→ Pacific Islands; → United Nations Trusteeship System).

The Netherlands withdrew in 1962, when she ceased to administer Netherlands New Guinea (→ Decolonization: Dutch Territories), and a number of newly-independent Pacific States (→ Decolonization) have been progressively added as participating governments. The Agreement has been amended to preserve the right of the inhabitants of these countries to continue to benefit from the operations of the Commission.

As of October 1981, the participating governments were Australia, the Cook Islands, Fiji, France, Nauru, New Zealand, Niue, Papua New Guinea, the Solomon Islands, Tuvalu, the United Kingdom, the United States and Western Samoa.

2. Administration and Finance

The functioning of the Commission has become integrated with that of the South Pacific Conference, which was established under Art. IX of the Agreement to provide an opportunity for non-self-governing territories to make known their special needs to the participating governments. In addition to the participating governments, the countries and territories entitled to be represented at the South Pacific Conference are: American Samoa, the Federated States of Micronesia, French Polynesia, Guam, Kiribati, the Marshall Islands, New Caledonia, Northern Mariana Islands, Palau, the Pitcairn Islands, Tokelau, Tonga, Vanuatu, and Wallis and Futuna.

In 1967 the Conference became an annual event, and its role was further expanded in Memoranda of Understanding, which were signed by the participating governments in 1974 and 1976, but whose legal status is uncertain. The 1974 Memorandum provides for the Conference to examine and adopt the Commission's work programme and budget for the coming year and to discuss any other matters within the Commission's competence. Representatives, one from each participating government and island government or administration, have one vote each. The Conference has a Planning and Evaluation Committee as well as a Committee of Representatives of Participating Governments which approves the administrative budget, nominates the Commission's principal officers and reports to the Conference. Since 1976, each participating government has had one vote on the Committee, in contrast to the → weighted voting system which was provided for the Commission itself in the Agreement (1964 amendment), but is no longer of practical importance.

The headquarters of the Commission Secretariat, which has a Management Committee with a supervisory role over all Commission activities, are in Noumea, New Caledonia. The Commission's Community Education Centre, Regional Media Centre and Plant Protection Officer (→ Plant Protection, International) are all based in Suva, Fiji. The official working languages of the Commission are English and French (Art. V, Section 17).

Contributions to the Commission's budget (→ International Organizations, Financing and Budgeting) are made by participating governments in proportions agreed to from time to time. The percentage contributions to the 1982 budget were: Australia (33.6), France (14.2), New Zealand (16.3), the United Kingdom (12.3), the United States (17), and the Cook Islands, Fiji, Nauru, Niue, Papua New Guinea, the Solomon Islands, Tuvalu and Western Samoa (0.85 each).

Voluntary contributions are also made by territorial administrations and governments.

3. *Activities*

In furthering its general purposes of acting as a consultative and advisory body in economic and social development matters and in securing the welfare and advancement of their peoples, the Commission gives technical assistance in rural management and technology (→ Economic and Technical Aid); youth and community services (both health and education); development of → marine resources; information services and data analysis; translation services and cultural exchanges. The Commission does not concern itself with the politics of the States and territories within its scope, nor does it attempt to control their development programmes (→ International Law of Development).

4. *Relations with Other International Organizations in the South Pacific*

The Commission has coordinated activities of United Nations aid agencies in the South Pacific. It has collaborated with the → Food and Agriculture Organization of the United Nations (FAO), → International Labour Organisation (ILO), → World Health Organization (WHO), → United Nations Educational, Scientific and Cultural Organization (UNESCO) and the United Nations Special Fund. Since the establishment of the WHO Area Office in Suva, Fiji, in 1963 (→ Public Health, International Cooperation) and a United Nations Technical Assistance Board regional office in Apia, Western Samoa in 1964, these bodies have been less dependent on the Commission for local expertise, but cooperation has continued.

A difficult problem of overlapping competency has emerged with the growing importance of the South Pacific Forum (SPF) and its progeny the South Pacific Bureau for Economic Co-operation (SPEC). Consultations between these bodies and the Commission have been inconclusive (→ Regional Cooperation and Organization: Pacific Region).

Agreement Establishing the South Pacific Commission, Canberra, February 6, 1947, UNTS, Vol. 97 (1951) 227–269.

Amendments to the Agreement: UNTS, Vol. 124 (1952) 320–323; UNTS, Vol. 201 (1954) 374–377; UNTS, Vol. 542 (1965) 350–358.

South Pacific Commission, Regional Co-operation in the South Pacific (1980).

Report[s] of the ... South Pacific Conference.

T.R. SMITH, South Pacific Commission (1972).

A. HAAS, The South Pacific Commission: Towards

Regional Self Determination, 1965–1970, Australian National University, Historical Journal, Vols. 10–11 (1973–74) 21–25.

R. HERR, Cross-Cutting Pressures in Contemporary South Pacific Regionalism, World Review, Vol. 18 (1979) 15–26.

C. FRY, South Pacific Regional Organisation: Proposals for Change, Australian Foreign Affairs Record, Vol. 52 (1981) 286–295.

COLIN PHEGAN

TRANSFRONTIER COOPERATION BETWEEN LOCAL OR REGIONAL AUTHORITIES

A. Introduction

1. Factual Background

Most international → boundaries are dividing lines drawn in the light of political considerations. For this reason they are often artificial barriers, ignoring pre-existing geographical, economic, ethnic or cultural ties. As a result frontier zones are frequently found to be suffering from specific structural disadvantages when compared to the inland centres of the State (e.g. the communications and industrial infrastructures may be underdeveloped).

In order to minimize these disadvantages, local and regional authorities in frontier zones have been led to develop closer cooperation among themselves and aim at the best possible utilization of the co-productive capacities on either side of the boundary. Not only the national governments, but also the responsible local or regional authorities in the frontier zones of → neighbour States have increasingly felt it necessary to play their part in the process of achieving effective neighbourly cooperation. Whereas transfrontier cooperation concerning nation-wide questions is a prerogative of central government, transfrontier cooperation dealing with matters of purely local or regional scope is of particular concern to local or regional authorities, which are immediately affected by common problems in the frontier zone and, therefore, would appear to be more competent and willing to come to a timely and mutually satisfactory solution than their respective national governments. For this reason a specific concept of a decentralized transnational neighbourly cooperation is required from which a system may be derived which has adequate instruments and methods of transfrontier cooperation and which is open to all local or regional authorities seeking to solve their respective difficulties jointly.

The need to strengthen local or regional transfrontier cooperation is, at least in Western Europe, generally acknowledged by the responsible bodies in the frontier zones, as a closer look at the respective current practice will reveal (see section C *infra*). This decentralized type of transfrontier cooperation, especially when operated by democratically legitimized bodies, is not only of great value for the favourable development of the infrastructures in the frontier zones themselves, but is also an essential prerequisite of success in the endeavours of neighbour States to achieve greater unity, which is one of the predominant aims of the → Council of Europe and of the → European Communities (→ European Integration).

This is the reason why in recent years this specific phenomenon of transfrontier cooperation has been dealt with very intensively not only by the Council of Europe (see section D(e) *infra*), but also by the European Communities (see the "Draft of a Proposal for a Council Regulation Concerning the Establishment of Transfrontier Regional Consortia (*Euroverbände*), in: European Parliament, Session Documents 1976–1977, Doc. 355/76, October 25, 1976) and by the → Organisation for Economic Co-operation and Development (OECD) (see the Recommendation of the OECD Council for Strengthening International Co-operation on Environmental Protection in Frontier Regions (Doc. C(78)77 Final, September 22, 1977); → Environment, International Protection; → Transfrontier Pollution).

2. Definition

"Transfrontier cooperation" means every concerted initiative or action between local or regional authorities separated from each other by the international boundary of their respective States aimed at strengthening their neighbourly relations by all available formal or informal, legally binding or non-binding means of cooperation. Not included are all forms of cooperation

crossing a → federal State's internal boundaries only.

So-called twinnings (*jumelages, Städtepartnerschaften*), i.e., partnerships of local communities belonging to different countries, cannot be examined here more closely. Such "twinnings" lack the element of contiguity, which is typical for all other forms of local transfrontier cooperation. Moreover, in practice, twinnings are usually arranged without reference to legally binding instruments of cooperation.

By the expression "local or regional authorities" is meant all entities on a lower level than that of State or component State governments exercising local or regional functions pursuant to the internal law of the respective State (e.g. local councils (communes), counties, inter-community units, regional associations). The criteria "local" and "regional" do not differ qualitatively to such an extent that separate legal evaluation is required. (Accordingly, further discussion refers to "local" transfrontier cooperation only.)

B. Specific Legal Problems

Local transfrontier cooperation presupposes a minimum of homogeneity in the political and ideological systems of the neighbouring States, especially a certain degree of openness of their common boundary. But even when these indispensable conditions are satisfied, various administrative and legal problems regularly arise in the context of such transfrontier cooperation, not to speak of the political-psychological obstacles which partners very frequently must surmount before entering into fruitful dialogue with each other (e.g. differences in language or ethnic stereotypes).

This article can deal only with the legal problems of local transfrontier cooperation. First, there is a fundamental difficulty in that central or federal governments which traditionally have a "monopoly" in the field of foreign relations (→ Foreign Relations Power) may in general be reluctant to allow their local authorities to act in this domain. Secondly, the powers of every local authority are, in principle, restricted to its own territory. A more concrete and, perhaps, even more serious legal impediment to local transfrontier cooperation may be caused by institutional discrepancies between neighbouring States. Above all, apparent divergencies in the basic administrative structures of the States are often to be found, especially with regard to the degree of centralization or decentralization their systems allow. Furthermore, considerable disparities between the respective national legal orders exist, particularly with regard to the distribution of powers. The competence to deal with a substantive "transfrontier" question and the power to cooperate with foreign authorities are usually not combined under the auspices of one entity even within a State's national legal order. Thus, for example, a local council responsible for the water supply or waste water treatment does not, at least *prima facie*, appear to be empowered by law to conclude a transfrontier agreement in these areas with a neighbouring foreign authority. These intra-State differences increase the practical difficulties for each local authority seeking transfrontier cooperation. In particular, it is rarely easy to find the "right" partner on the other side of the boundary.

Such fundamental divergencies between the systems of neighbouring States cannot be expected to be settled by an overall process of harmonizing the conflicting legal orders of neighbours (notwithstanding the hope that isolated unifying measures may succeed); rather they ought to be reconciled by the development of a system providing for adequate procedural mechanisms for local transfrontier cooperation.

C. Current Practice

Local transfrontier cooperation takes place in every frontier zone in the world where States exist together as good neighbours, keeping their common boundary more or less open. Such cooperation, however, is not evident, for example, in the froniter zones between Eastern and Western European States belonging to antagonistic ideological blocs or between Eastern European States themselves where the boundaries are closed or at least rigidly controlled. A totally different situation exists in many regions of the western hemisphere; for example, there is widespread low-level cooperation across the boundaries between the United States and Canada (→ American-Canadian Boundary Disputes and Cooperation) and between the United States and Mexico (→ American-Mexican Boundary Dis-

putes and Cooperation). The American practice of local transfrontier cooperation is characterized by informality and the use of non-legal instruments, and is thus difficult to illustrate with documents. The most striking examples of local transfrontier cooperation seem to be centred in Western Europe where a very broad spectrum of mechanisms of low-level cooperation not only informal, but also institutional and legally binding, can be observed. This is the reason why the following survey is restricted to current Western European practice. In doing this, a distinction will be made between such forms of local transfrontier cooperation where the partners are only obliged to concert their actions by means of information, consultation or coordination on the one hand and those forms of cooperation which create immediate substantive legal obligations on the other.

1. Non-Binding Transfrontier Cooperation

Cooperation mechanisms have been established in almost all Western European frontier zones on local level by means of which the responsible local authorities on either side of the boundary try to concert their policies and strategies in view of specific problems of the respective frontier area. The nature of such mechanisms vary: Some are merely informal, others institutionalized over a long period or even based on legally binding arrangements; some are integral parts of broader inter-governmental transfrontier cooperation; still others appear to be based on rather isolated initiatives between local authorities. Only the most important local (or regional) transfrontier mechanisms of information, consultation and/or coordination – which are concentrated on the frontier zones in the Nordic countries (cf. → Nordic Cooperation) and along the length of the → Rhine – can be referred to in the following survey.

(*a*) *Nordic countries*

For the Nordkalotten (comprising territories north of the polar circle belonging to Finland, Norway and Sweden) there are regular conferences of local and regional representatives; the Nordkalotten Committee has existed since 1971.

For the Öresund region (including frontier territories of Denmark and Sweden), the Öresund Council was established in 1964 and is composed of representatives of Danish and Swedish local authorities.

For the Danish-German frontier areas the Flensburg Fjord Joint Committee, a mixed transfrontier municipal association was founded in 1972.

(*b*) *The Rhine*

For the German-Dutch frontier areas mention should be made of the inter-municipal working groups "Rodaland" (existing since 1971) and the "Grenzland Kreis Heinsberg-Limburg" (existing since 1974), but, above all, of five different "Regios", which are mixed consultative bodies composed of local authorities from both countries: "Euregio" (which has been functioning since 1965; since 1978 democratically elected representatives have sat on the Euregio Council); the "Rhine-Waal Regio" (existing since 1971); the "Rhine-Maas Euregio" (existing since 1976 and encompassing German, Dutch and Belgian local authorities); the "Ems-Dollart-Region e.V." (founded in 1977; → Ems-Dollart); and the "Grenzregio Rhein-Maas-Nord" (existing since 1978).

For the Saar-Lorraine-Luxembourg region the "Saar-Lor-Lux Commissions" were set up in 1971 at governmental and regional level, both functioning as consultative and coordinating bodies. In 1980, this specific mechanism of transfrontier cooperation has been legally confirmed by an exchange of notes between the governments of the Federal Republic of Germany, France and Luxembourg.

For the upper Rhine areas, only three low-level associations may be mentioned here: the German-Swiss-French "Conference of Upper Rhine Regional Planners", which, since 1972, has worked on a very informal basis; the French-German "Communauté d'intérêts Moyenne Alsace-Breisgau (CIMAB)", founded as an association under the German Civil Code in 1965; and the "Regio Basiliensis", originally founded as a Swiss association, but later (in 1971) raised to a genuine transfrontier body which is called the "Conférence tripartite permanente de coordination régionale". In 1975 a mixed German-French-Swiss governmental commission ("Commission tripartite") was set up by treaty and charged with the duty of fostering transfrontier cooperation in

the Upper Rhine region. This commission is being assisted by northern and southern regional "subcommittees".

2. *Legally Binding Transfrontier Cooperation*

Today, throughout Western Europe, particularly in the territories reported in the preceding section, a large number of legally binding transfrontier agreements between local authorities exist which entail immediate substantive obligations for the contracting parties. Only some common characteristics of these agreements, which represent the most intensive form in present-day local transfrontier cooperation practice, can be shown here: The parties to such agreements are in the main local councils, intercommunity units and counties. The agreements refer to a variety of substantive objects, most frequently, to waste water treatment (→ Water Pollution), water and energy supplies, transport and communications problems, refuse disposal (→ Waste Disposal), mutual aid in the event of disasters, and the provision of social and cultural facilities. As to the question of the "applicable law" ("proper law") of such agreements, a generally valid answer is hard to find: Analysing the relevant practice, it would appear that there is no agreement in existence where the parties have chosen public → international law as the agreement's proper law. In almost half of all the agreements (known by the author) the proper law has not been defined by the parties or cannot be determined reliably because of the unclear wording of the respective agreement. Most of the other agreements would appear to have been put under the private law régime of one of the States to which the parties belong; a significant minority of agreements specify the applicable law by reference to the public law of one of the respective States. Most agreements include provisions for the event of a dispute arising between the parties. These are to be submitted, in a minority of cases, to the competent national judicial authorities of one of the respective States, in the majority of cases, however, to an arbitral tribunal (→ Arbitration). Finally, by consent of the parties, most agreements come into force only after being approved by the competent controlling authorities.

All these legally binding agreements, especially those put under the régime of one State's internal public law, raise a variety of national and transnational legal problems. To what extent public international law may be instrumental in solving these problems will be shown in the following section.

D. Relevance of Public International Law

1. *General International Law*

The phenomenon of local transfrontier cooperation appears to be ignored by general international law, since local councils, counties, intercommunity units, etc., are not deemed to be → subjects of international law. Only those bodies below the State level which are empowered by the constitutional law of the respective State to enter into cooperation with other subjects of international law may be viewed as entities possessing the (full or restricted) capacity to bind themselves in → international relations. However, local authorities lack this legal capacity, at least as far as the Western European States as well as, for example, those in the United States are concerned. This is the reason why, for example, the customary principles of good neighbourliness and of *sic utere tuo ut alienum non laedas* (→ Neighbour States), which create responsibilities only for States and sub-divisions of States recognized as subjects of international law, cannot be relevant to local transfrontier cooperation.

Although, in principle, every transfrontier activity of neighbouring local authorities remains outside the realm of public international law, international → treaties made by neighbouring States in this respect may nevertheless make an important impact on local transfrontier cooperation, in particular, with regard to legally binding agreements.

2. *International Treaties*

Every international treaty concluded by neighbouring States and enabling the respective local authorities to enter into transfrontier agreements may assume important legal functions in two different respects. Firstly, it may create mutual international obligations for the neighbouring States to foster and encourage all initiatives to be taken in the future by their respective local

authorities in this field. Secondly, and this is certainly more important, such an international treaty may legitimize local transfrontier cooperation within the internal legal order of every State party, provided that it is self-executing, i.e., intended to bind the States concerned internally, and therefore is operative (where necessary after being transformed or incorporated into municipal law) in the same way as every enabling national law which has been enacted internally (→ Self-Executing Treaty Provisions; → International Law in Municipal Law: Treaties).

The need for such enabling international treaties is so much the more as none of the national legal orders of the concerned parties appears to have any law enabling local authorities to conclude legally binding transfrontier agreements. Moreover, every agreement put under the public law of one or the other State and implying a (temporary) renunciation on the exercise of certain prerogatives of the State in favour of a foreign authority appears in any case to be allowed on constitutional grounds only when it has been expressly authorized by the competent legislative authority. This seems to be valid at least with regard to those States whose systems are governed by the principle of parliamentary control of every substantial executive act in the field of foreign relations.

Considering these domestic legal prerequisites to local transfrontier cooperation practice, the significance of enabling international treaties becomes apparent. A search for such treaties in current Western European practice reveals the following situation:

As to bilateral enabling treaties, there are only very few to be found; three examples may be mentioned here:

The Boundary Treaty of April 8, 1960 between the Netherlands and the Federal Republic of Germany provides, *inter alia*, that competent local authorities of both sides may conclude agreements concerning the maintenance of frontier water courses.

In the treaty between the Swiss Canton Schaffhausen and the German *Land* Baden-Württemberg of August 17, 1976 on treatment of waste water originating from the Bibertal and the Hegau, the States parties approved an agreement on this matter which had been concluded six years earlier by the competent Swiss and German inter-community units.

The treaty between Luxembourg and the German *Land* Rheinland-Pfalz of October 17, 1974 concerning the joint discharge of water management functions by local councils and other corporate bodies may be seen as almost a prototype for future bilateral enabling treaties. It provides that the relevant local authorities may establish inter-community units, enter into legally binding agreements governed by public law and form inter-municipal working groups. At least one local transfrontier agreement has been concluded and one inter-community unit has been established by reference to this enabling treaty.

As to multilateral treaties in this respect, only two, but both of great interest, can be cited here:

In the Convention between Denmark, Finland, Norway and Sweden of May 26, 1971 on transfrontier cooperation between local authorities of the Nordic States (which entered into force in 1979), each of the contracting States recognizes that its own local authorities, in managing their affairs, are entitled to cooperate with local authorities in another contracting State. This provision, however, is not meant to confer on local authorities the power to transfer the exercise of their own prerogatives onto foreign local authorities. The Nordic Convention is declaratory in character since it only confirms what has already been practised for a long time by the local authorities of the very homogeneously structured neighbouring States.

The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities was opened for signature on May 21, 1980 and entered into force on December 22, 1981 (European Treaty Series No. 106). As of November 15, 1982, it had been ratified by Austria, Denmark, the Federal Republic of Germany, Ireland, the Netherlands, Norway, Sweden and Switzerland. This important Convention is the outcome of persistent preparatory work done by the Council of Europe since 1966. On the inter-State level the actual Outline Convention creates some legally binding obligations for the signatory States which are rather vague ("each Contracting Party undertakes to facilitate and foster transfrontier co-operation ..." (Art. 1)) and weakened, moreover,

by a number of reservation clauses ("with due regard to the different constitutional provisions of each Party" (Art. 1)). In any case, there is no provision in this Convention which could be interpreted as a clause enabling local authorities to carry out transfrontier cooperation. Appended to this Convention is a graduated system of "Model and Outline Agreements, Statutes and Contracts" on the inter-State as well as the inter-local level. These models are "intended for guidance only and have no treaty value" (Art. 3(1)). They may prove to be useful patterns for future agreements. This is particularly true of two inter-State model agreements which contain provisions enabling contractual transfrontier cooperation on the part of local authorities (by reference to the private or public law of one of the States parties) and the participation in associations or consortia of local authorities formed in the territory of another party (models 1.4 and 1.5). Although its intrinsic legal value may be less than hoped, the Outline Convention as it stands is designed to be of considerable political and psychological help in the continuous process of making local transfrontier cooperation easier and more effective in Western Europe than it has been in the past.

Council of Europe, Treaties, Agreements, Arrangements and Bodies Relating to Transfrontier Cooperation in Europe (1980), Doc. CPL (15) 6, Appendix II.

P. ORIANNE, European Co-operation between Local Authorities (1973), Council of Europe Doc. CE/Loc (73) 12.

J.-M. QUINTIN, European Co-operation in Frontier Regions (1973), Council of Europe Doc. CEMAT (73) EP 9.

H. JORDANS, Grenzüberschreitende Rechtsprobleme zwischen den niederländischen, belgischen und deutschen Gemeinden im Aachener Grenzraum und ihre Lösungen (1974).

V. VON MALCHUS, Partnerschaft an europäischen Grenzen (1975).

E. KLEIN, Umweltschutz im völkerrechtlichen Nachbarrecht (1976).

M. BOTHE, Rechtsprobleme grenzüberschreitender Planung, Archiv des öffentlichen Rechts, Vol. 102 (1977) 68–89.

P.-M. DUPUY, La coopération régionale transfrontière et le droit international, AFDI, Vol. 22 (1977) 837–860.

L. FRÖHLER, P. OBERNDORFER and F. ZEHETNER, Rechtsprobleme grenzüberschreitender Raumplanung (1977).

J.-M. WOEHRLING, Legal Problems of Transfrontier Cooperation at Local or Regional Level (1977), OECD Doc. ENV/TFP/77.10.

M. BOTHE, Local Co-Operation on Transfrontier Environmental Problems, in: Environmental Protection in Frontier Regions (1979) 91–109.

P. DUPUY and H. SMETS, Co-operation in Frontier Regions, Environmental Policy and Law, Vol. 5 (1979) 175–178.

J. WITMER, Grenznachbarliche Zusammenarbeit (1979).

A. BERG, Grenzüberschreitende unterstaatliche Zusammenarbeit in Europa: Zum Übereinkommen zwischen Dänemark, Finnland, Norwegen und Schweden über grenzüberschreitende Zusammenarbeit von Gemeinden der nordischen Staaten, ZaöRV, Vol. 40 (1980) 600–624.

U. BEYERLIN, Grenzüberschreitende unterstaatliche Zusammenarbeit in Europa: Zum Entwurf eines Europäischen Rahmenübereinkommens über die grenzüberschreitende Zusammenarbeit zwischen Gebietskörperschaften, ibid., 573–599.

U. HAMBÜCHEN, Potentielle Organisationsformen für grenzüberschreitende interkommunale Kooperation, dargestellt am deutsch-niederländischen Grenzraum (1980).

A.C. KISS, La frontière-coopération, in: Société française pour le droit international, Colloque de Poitiers, La frontière (1980) 183–223.

K.-H. STORSBERG and S. ERCMAN, Auswertung der Erfahrungen mit den Methoden der grenzüberschreitenden Zusammenarbeit auf nationaler, regionaler und örtlicher Ebene: Alternativvorschläge, Zeitschrift für Umweltpolitik, Vol. 3 (1980) 553–568.

G. BURDEAU, Les accords conclus entre autorités administratives ou organismes publics de pays différents, in: Mélanges offerts à Paul Reuter, Le droit international: unité et diversité (1981) 103–126.

H. STEIGER and T. BRUHA, Internationale Regelungen grenzüberschreitender Einwirkungen auf die Qualität der Binnengewässer, in: R. Bernhardt et al. (eds.), Fünftes deutsch-polnisches Juristen-Kolloquium, Vol. 1 (1981) 105–170.

P.-M. DUPUY, Legal Aspects of Transfrontier Regional Co-operation, West European Politics, Vol. 5 (1982) 50–63.

M. OEHM, Rechtsprobleme Staatsgrenzen überschreitender interkommunaler Zusammenarbeit (1982).

B. SCHLÖGEL, Grenzüberschreitende interkommunale Zusammenarbeit (1982).

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TREATY FOR AMAZONIAN COOPERATION

The Treaty for Amazonian Cooperation, signed by the representatives of Bolivia, Brazil, Colom-

bia, Ecuador, Guyana, Peru, Surinam and Venezuela on July 3, 1978, marked the first subregional effort to promote both development and conservation of the world's largest hydrographic system. The Treaty goes far beyond regulating the use of an → international river.

1. *Historical Background*

When the 4000-mile-long Amazon River was opened to foreign merchant vessels in the mid-19th century, the riparian States maintained that this action had been taken by a voluntary concession of sovereign rights through unilateral acts or bilateral treaties rather than under any obligatory principle of international law. The early development of the resource-rich tropical and subtropical Amazon region which followed took place largely at the hands of foreign companies. Their activities aroused deep-seated suspicions which were to impede later efforts of international organizations (e.g. the failure of an agreement promoting scientific study of the area (UNESCO Doc. NS/ILHA/LO Annex I, 1948)).

In 1959 at its eighth session, the United Nations Economic Commission on Latin America urged integrated use of the area's interdependent resources (ECOSOC Doc. E/CN.12/503). Brazil began her own development efforts in the Amazon region in the 1950s, followed by Peru on a much smaller scale. The two established a → mixed commission to study the navigability of rivers in the basin. Latin American attention initially focused, however, on other integration efforts, such as the 1969 treaty establishing the → La Plata Basin Régime (→ Regional Cooperation and Organization: American States), whose language in part served as a model for the Treaty for Amazonian Cooperation.

Brazil's measures to settle landless peasants in Amazonia had taken on major proportions by the 1970s. Substantial investments of foreign capital were made in the region (see Scherfenberg, pp. 54–59). With 63.3 per cent of the Amazon Basin in her territory, Brazil began promoting the idea of an Amazon pact by circulating a detailed draft in November 1976 to the seven other States in the region (French Guiana was excluded because of her dependent status). In bilateral talks, Brazil eventually convinced the other States that the pact would be useful for security purposes, regional economic development, and as an aid to resisting any internationalization schemes. Negotiations opened in Brasilia on November 28 to 30, 1977, followed by a second round on March 27 and 28, 1978. (For a description of the interests of each State in negotiating an Amazonian Pact, see Landau, Treaty, pp. 470–476, and Scherfenberg, pp. 12–53.)

By the time the final text of the agreement was approved in Caracas following the negotiating session held from May 15 to 18, 1978, Brazil's ambitious draft had undergone substantial changes (for details see Ware, pp. 112–127). The smaller States, fearing Brazilian → hegemony, insisted on explicit protection of their → sovereignty and stronger provisions regarding conservation. Thus revised, the multilateral Treaty for Amazonian Cooperation (known as the Amazon Pact) was signed by the eight States on July 3, 1978 in Brasilia, and entered into force on August 3, 1980 upon ratification by the last State, Venezuela. At their first meeting under the Treaty (October 23 and 24, 1980), the ministers of foreign affairs issued the Declaration of Belém, which repeated or made more specific many of the Treaty commitments.

2. *Basic Provisions*

The Treaty is in force in the parties' territories "in the Amazonian Basin as well as in any territory of a Contracting Party which, by virtue of its geographical, ecological or economic characteristics is considered closely connected with that Basin" (Art. II). The parties agree in Art. I of the Treaty to undertake joint efforts which, while preserving the environment and conserving natural resources, are to "promote the harmonious development of their respective Amazonian territories . . . ." Toward this end, the parties agree that they will exchange information and prepare operational agreements and understandings as well as the pertinent legal instruments therefor (Art. I, para. 1). Joint studies and measures aimed at promoting the region's economic and social development are called for, with special consideration to be given to initiatives presented by the least developed countries (Arts. XI and XVII). Although the parties endorse improved infrastructural links between the countries, the priority goal remains incor-

porating the Amazonian territories into their respective national economies (Art. X). Areas targeted for coordinated efforts are health services, hydro resources, promotion of tourism and conservation of the region's ethnological and archaeological wealth (Arts. V, VIII, XIII and XIV).

Regarding river use, the parties pledge, without prejudice to existing rights and agreements, reciprocally to guarantee "complete freedom of commercial navigation on the Amazon and other international Amazon rivers . . ." (Art. III, which, however, excludes → cabotage). Present and future municipal fiscal and police regulations are still to be observed, but they should be uniform and favour navigation and trade (ibid.). The riparian States further agree to carry out studies on navigation and communication with the Atlantic Ocean (Art. VI), which would help Bolivia in particular (→ Land-Locked and Geographically Disadvantaged States).

Measures for scientific and technical exchanges and cooperation also feature prominently in the Treaty (e.g. Arts. VII(a) and IX, para. 1), particularly with regard to conservation. The need to "maintain the ecological balance within the region and preserve the species" is reflected in the provision for an annual conservation report from each State (Art. VII; → Environment, International Protection; → Plant Protection, International; → Wildlife Protection). International agencies may be enlisted to participate in studies, programmes and projects (Art. IX, para. 2).

All of these provisions must be read in conjunction with Art. IV, in which the parties affirm that "the exclusive use and utilization of natural resources within their respective territories is a right inherent in the sovereignty of each state", whose exercise is not subject to "any restrictions other than those arising from International Law" (→ Natural Resources, Sovereignty over). The Belém Declaration re-emphasized State sovereignty over the use and protection of human and natural resources along with the importance of the region's economic and social development. The sovereign equality of the contracting parties is protected by the unanimity required for substantive decision-making under the Treaty (Art. XXV; → States, Sovereign Equality). Moreover, commitments made by the parties under the Treaty may not be "to the detriment of projects and undertakings executed within their respective territories, according to International Law and fair practice between neighboring and friendly countries" (Art. XVI).

The Treaty is to have no effect on territorial rights or boundary claims (→ Boundary Disputes in Latin America) or on any other treaty in force between the parties (Art. XIX). It also leaves national regulations for the protection of indigenous cultures and natural resources undisturbed (Art. XII; → Indigenous Populations, Protection). The Treaty is not open to adherence by others, nor is it subject to interpretative reservations (Arts. XXVI and XXVII; → Treaties, Reservations). It is to remain in force indefinitely, but provides for denunciation (Arts. XXVII and XXVIII). The parties have explicitly protected their rights to conclude other agreements so long as they are not contrary to the achievement of the aims of the Amazon Pact (Art. XVIII).

3. *Organs*

Decision-making and oversight under the Treaty are divided among three entities, none of which is a standing body: meetings of the ministers of foreign affairs, the Amazonian Cooperation Council and the Permanent National Commissions. The functions of the secretariat fall to the party in whose territory the next regular meeting of the Council is scheduled (Art. XXII). The ministers of foreign affairs are to meet on a rotating basis "when deemed opportune and advisable, in order to establish the basic guidelines for common policies" (Art. XX). The Amazonian Cooperation Council, comprised of high level diplomatic representatives, is to meet at least once a year under rules of its own drafting, and is hosted on a rotational basis. Special meetings may be held on one member's initiative with the support of the majority. The Council is charged with ensuring compliance with the Treaty, recommending ministers' meetings and drawing up their agenda, executing their decisions, and evaluating the implementation of plans (Art. XXI and Belém Declaration, Arts. IX to XIV). Both Council and ministerial decisions require a unanimous vote (Treaty, Art. XXV). Studies and plans presented to the Council are to be executed by the Permanent National Commissions which are entrus-

ted with domestic enforcement of the Treaty and of decisions of the ministers and the Council (Arts. XXI(4) and XXIII).

4. *Special Legal Problems*

The Amazonian Pact and the Belém Declaration provide the necessary framework for closer integration and economic development of the area. Initial efforts made under the Pact include the establishment of a Mixed Commission for Amazonian Cooperation by Ecuador and Colombia and an agreement by Brazil and Peru to link their trans-jungle road systems. Interesting questions remain regarding the relationship of such integration efforts to other legal arrangements in the region, and regarding the blending of development and conservation policies under the Pact with international environmental law.

(*a*) *Relationship to other bodies*

The extent of cooperation with other agencies for Latin American integration, as provided for in Art. XV of the Treaty, remains to be determined in practice. The Belém Declaration (Art. X) named only the Latin American Economic System (→ Latin American Economic Cooperation) and the Inter-American Development Bank (→ Regional Development Banks). The absence of any reference to the → Andean Common Market created by the Cartagena Agreement probably reflects that group's own weakened position rather than its displacement by the Amazonian Treaty as had been feared by the States participating in both. The Amazon Pact's relationship to the → Latin American Integration Association created by the Treaty of Montevideo (1980) also remains to be clarified (regarding physical integration and border trade, compare Amazonian Pact, Art. XII, with Treaty of Montevideo, Arts. 45 and 49, and with Cartagena Agreement, Art. 86).

(*b*) *International environmental law*

The lush vegetation of the Amazon rain forest belies its fragility as an ecosystem. The forest cover performs key soil conservation functions against the intense sun and torrential rains (for details see B. Meggers, Amazonia (1971), pp. 18 to 19 and 157 to 158). According to present forecasts, between the years 1975 and 2000 at least 121.5 million hectares, representing 23.5 per cent of the 1975 rain forest area, will be depleted (Environmental Policy and Law (hereafter EPL), Vol. 6 (1980) p. 162). As the Amazonian Basin encompasses the largest remaining tropical forest, its deforestation may well affect the world's climate (ibid., p. 161; Sternberg, pp. 304 to 308). These concerns have led many member States of the → United Nations Environment Programme (UNEP) to support development of "an integrated international program for the wise use of such forests" (cited in EPL, op. cit. p. 64; and see UNEP Doc. GC.8/5/Add. 1, Annex I, p. 23). The Belém Declaration, however, declared "unacceptable" any initiatives tending to raise doubts regarding State sovereignty over the utilization and conservation of forestry resources (Declaration, Art. VIII), with the Peruvian Minister of Foreign Affairs suggesting that the → developing States' control over the "world's lung" be used as a bargaining counter with the developed countries (cf. → International Economic Order). Brazil maintains, moreover, that such matters should be dealt with on a regional rather than on an international basis (EPL, Vol. 7 (1981) p. 127). These positions are in contrast to the outcome of the United Nations Conference on the Human Environment held at Stockholm in 1972 where it was declared, "there are environmental programs of global nature, such as pending climate changes... which can best be solved through international cooperation..." (UN GA Doc. A/CONF.48.10, Annex II, para. 42). The Principles of the Stockholm Declaration (reaffirmed by the Nairobi Declaration in 1982 (UNEP Doc. GC.10/INF.5)) subject the exercise of sovereignty over resources to certain limitations which are absent from Art. IV of the Amazon Pact and the Belém Declaration (Principle 22; see also Principles 1 to 4, 14 and 21).

5. *Evaluation*

The Amazon Pact has been justly characterized as a "lengthy and detailed agreement to agree" (Ware, p. 118). It suffers from serious institutional weaknesses, particularly the lack of a permanent secretariat. The Treaty lacks a mechanism for dispute resolution, but the unanimity rule precludes decisions unacceptable to any party. Despite its shortcomings, the Treaty unites nations

with different colonial heritages and languages in the creation of a framework for future joint efforts towards the development and integration of the area. The Pact's aim of economic development, while necessary and laudable, remains to be harmonized with its conservation purposes. Moreover, in their promotion of an "Amazonia for the Amazonians", the parties may increasingly have to countenance the growing concerns of other States and international organizations over the unrestricted use of certain resources whose destruction or degradation could produce world-wide consequences.

Tratado de Cooperación Amazónica, Integración latinoamericana, Vol. 3 (1978) 62–64.
Treaty for Amazonian Cooperation, ILM, Vol. 17 (1978) 1045–1053.
Declaración de Belém, Integración latinoamericana, Vol. 5 (1980) 101–103.

E.J. GREÑO VELASCO, Implicancias del Pacto Amazónico, Revista Argentina de la Relaciones Internacionales, Vol. 4, No. 10 (1978) 55–76.
J. GREÑO VELASCO, Pacto Amazónico y Tratado de la Cuenca del Plata: Analogías y diferencias, Revista de Política Internacional, No. 165 (1979) 75–92.
L. MARIÑAS OTERO, El Tratado de cooperación amazónico, Revista de Política Internacional, No. 166 (1979) 63–71.
U. SCHERFENBERG, Der Amazonaspakt: Inhalt, Ziele und Probleme eines neuen Integrationsvertrags (1979).
A.R. VARTIAN, International Agreements: Treaty for Amazonian Cooperation, Harvard ILJ, Vol. 20 (1979) 182–187.
W. HUMMER, Neueste Entwicklungen im fortschreitenden Integrationsprozeß in Lateinamerika, Jahrbuch des öffentlichen Rechts, Vol. 29 (1980) 527–563.
G. LANDAU, Ansätze zu internationaler Zusammenarbeit im Amazonasgebiet, Europa-Archiv, Vol. 13 (1980) 415–424.
G. LANDAU, Treaty for Amazonian Cooperation: A Bold New Instrument for Development, Georgia Journal of International and Comparative Law, Vol. 10 (1980) 463–489.
H.O. STERNBERG, Amazonien: Integration und Integrität in: D. Benecke, M. Domitra and M. Mols (eds.), Integration in Lateinamerika (1980) 293–322.
D. WARE, The Amazon Treaty: A Turning Point in Latin American Cooperation?, Texas ILJ, Vol. 15 (1980) 117–137.
A. DE MEIRA MATTOS, Pacto Amazônico – Cooperação e Integração, Revista Brasileira de Estudos Políticos, No. 53 (1981) 91–152.

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WARSAW TREATY ORGANIZATION

1. Historical Background and Establishment

The Warsaw Treaty, or Warsaw Pact, was concluded at the initiative of the Soviet Union by the signing of the Treaty of Friendship, Cooperation and Mutual Assistance in the Polish capital on May 14, 1955 (UNTS, Vol. 219, p. 3). In addition to the USSR, the signatory States were Albania, Bulgaria, Czechoslovakia, the German Democratic Republic, Hungary, Poland, and Romania. On the basis of this treaty, which was supplemented on May 14, 1955 by a resolution on the establishment of a Joint Command, a military and political organization, the Warsaw Treaty Organization, having the character of an → international organization, was established. The Warsaw Treaty, as a multilateral treaty of → alliance, considerably extended the previous Soviet system of alliances, made up of bilateral agreements (→ Regional Cooperation and Organization: Socialist States). The German Democratic Republic, which had not been party to the bilateral system of treaties, was thus admitted into the Soviet system of alliances and Albania, which had hitherto a treaty of alliance with Bulgaria only, became more closely bound to the Soviet Union.

The main reason for the conclusion of the Treaty was the inclusion of the Federal Republic of Germany into the Western alliance system with the entry into force of the Paris Agreements (→ Bonn and Paris Agreements on Germany (1952 and 1954)). Accordingly, the → preamble to the eleven-article Treaty describes the Warsaw Pact as a counterbalance to the → Western European Union and the → North Atlantic Treaty Organization and, together with Art. 11, as a possible bargaining counter in the event of the establishment of a "system of collective security in Europe". Further reasons were provided by the Soviet Union's desire for closer political and military integration within her inner European power base and the necessity, in view of the conclusion of the → Austrian State Treaty (1955), to create a legal basis for the stationing of Soviet troops in Hungary and Romania (→ Military Forces Abroad).

2. *Structure*

(*a*) *Membership*

The Warsaw Treaty was concluded for a period of 20 years; during this time the original membership has declined from eight to seven. Under a law passed on September 13, 1968, Albania withdrew from the Pact in protest against the armed → intervention by the Soviet Union and her followers in Czechoslovakia in August 1968, in which Romania did not take part. Other States have not joined the Pact, which may be regarded as an open organization with restrictions. Of the remaining member States, none availed themselves of the possibility of giving one year's notice of termination before the Treaty's expiration; as a result the Treaty was automatically extended in 1975 for a further ten years in accordance with Art. 11. If it is not renewed, the Treaty will come to an end in 1985 (→ Treaties, Termination).

(*b*) *Assistance*; *consultation*; *cooperation*

The Warsaw Pact is above all a multilateral treaty of mutual assistance; it is one of those treaties of alliance which combine cooperation for the purposes of securing peace with the affording of assistance in case of armed attack (→ Aggression). Thus, the mutual assistance clause is of central importance. The essence of the latter appears in the first paragraph of Art. 4:

> "In the event of an armed attack in Europe on one or more of the States Parties to the Treaty by any State or group of States, each State Party to the Treaty shall in the exercise of the right of individual or collective self-defence, in accordance with Article 51 of the United Nations Charter, afford the State or States so attacked immediate assistance, individually and in agreement with the other States Parties to the Treaty, by all the means it considers necessary, including the use of armed force."

The obligation to provide assistance to allies is, like its equivalent in the North Atlantic Treaty, expressed in rather elastic terms. An automatic provision of military assistance is not foreseen by the Treaty, which instead leaves the type and scale of the assistance as a matter for each individual ally. The special case of the German Democratic Republic is considered below (see section 6).

The provision of mutual assistance is expressly restricted to the eventuality of an armed attack in Europe. Defence against attack is founded on the right of individual and collective → self-defence under Art. 51 of the → United Nations Charter, which is an exception to the general prohibition of the → use of force.

As is the case under the North Atlantic Treaty, the importance of → consultation within the Warsaw Pact is emphasized. The first paragraph of Art. 3 states that the parties are to consult together "on all important international questions". On the other hand, the second paragraph in Art. 3 provides that the parties are to "consult together immediately" if "anyone of the Contracting Parties considers that a threat of armed attack on one or more of the States Parties to the Treaty has arisen". The qualified nature of such consultation becomes apparent from the terms of Art. 4 which, in connection with the obligation of mutual assistance, provide that "(t)he States Parties to the Treaty shall consult together immediately concerning the joint measures necessary to restore and maintain international peace and security".

Despite its regional exclusivity, the Warsaw Pact should therefore be regarded as only an inchoate regional arrangement in the sense of Chapter VIII (Arts. 52 to 54) of the UN Charter, since the emphasis is on → collective self-defence and not → collective security (→ Regional Arrangements and the UN Charter).

The duty of close military cooperation between Warsaw Pact States under Art. 5 is supplemented by the terms of Art. 8 which declare the parties' undertaking to "promote the further development and strengthening of the economic and cultural ties among them". The detailed filling in of these guidelines has been left partly to the → Council for Mutual Economic Assistance and partly to bilateral treaties of alliance and cooperation.

(*c*) *Organs*

In most cases the structure and mandate of the organs of the Warsaw Pact are regulated by unpublished statutes or orders (in Russian: *položenie*). Documents from the German Democratic Republic use the term "basic rules" (*Grundsätze*).

The supreme political organ of the Warsaw Pact is the Political Consultative Committee (PCC). By Art. 6 the PCC is charged with carrying out the consultations provided for under the Treaty and with the "consideration of matters arising in connection with the application of the present Treaty". The powers of the PCC extend to performing a general leadership function in the military sphere. Under Art. 6 each Warsaw Pact member delegates "a member of the Government or . . . some other specially appointed representative" to sit on the PCC. For some time these have been the first or general secretaries, the prime ministers, the foreign ministers and the defence ministers. The Commander in Chief, the Chief of Staff and the Secretary-General (since 1972) all take part in PCC meetings *ex officio*.

On January 26, 1956, under the power granted to it in Art. 6, the PCC set up a "Permanent Commission for Foreign Policy Issues" and a "Joint Secretariat" as "auxiliary organs". On March 17, 1969 the Committee of Defence Ministers, the Military Council and the Technical Committee of the Joint Armed Forces were constituted on the same basis. These were followed on November 26, 1976 by the Committee of Foreign Ministers and the reorganized Joint Secretariat, which were expressly characterized as "organs of the Political Consultative Committee". This may well also be the status of the Committee of Defence Ministers.

The Joint Secretariat is of particular importance among the organs working in the political area. It prepares the meetings of the PCC, conducts its day-to-day business and stays in constant contact with the Council for Mutual Economic Assistance. The Joint Secretariat was originally headed by the Chief of Staff of the Joint Armed Forces; at the beginning of the 1970s the post was handed over to a civilian as the "Secretary-General of the Political Consultative Committee".

The Committee of Foreign Ministers developed out of the Conferences of Foreign Ministers which had taken place since 1959. The establishment of the Committee provided a firm institutional framework for these Conferences. The technical preparations for meetings are carried out by the Joint Secretariat. These efforts are supplemented by consultative meetings between the deputy foreign ministers.

The Committee of Foreign Ministers plays an influential part in the coordination of the foreign policy of the Warsaw Pact countries. It prepares the respective PCC resolutions, which previously had come into being as proposals of the Permanent Commission. It also attempts to seek unanimity on individual substantive issues and supervises the carrying out of the basic foreign policy decisions of the PCC in the member States.

Within the framework of the military organization of the Warsaw Treaty the Joint Command, the Chief of Staff, the Military Council and the Technical Commission are all bound directly to the Joint Armed Forces. The structure of the Joint Armed Forces was set down in the Statute of March 17, 1969. The Joint Armed Forces consist of the contingents of each Warsaw Pact member, including the entire National People's Army of the German Democratic Republic and the Soviet forces organized into army-groups which are stationed in Czechoslovakia, the German Democratic Republic, Hungary and Poland under bilateral troop agreements.

The Committee of Defence Ministers provides the link between the political and military organs of the Warsaw Pact and the national forces. The Committee developed out of the Conferences of Defence Ministers which have been held since 1961. The Committee's institutional reinforcement took place in connection with the reorganization of the Joint Command and Joint Staff of the Warsaw Treaty armed forces.

Since the defence ministers are responsible for all of their countries' military forces, the main task of the Committee of Defence Ministers – whose activities are governed by the Statute of March 17, 1969 – is the coordination of the defence policies of the Warsaw Pact countries. The Committee, which includes the Chief of Staff, prepares for the PCC proposals to strengthen the defensive capabilities of the alliance and makes recommendations to the Joint Command of the Joint Armed Forces on the implementation of the resolutions passed by the PCC in the military sphere.

The military leadership of the Warsaw Treaty armed forces lies with the Joint Command and not the Committee of Defence Ministers. The legal basis of the Joint Command was laid down in accordance with Art. 5 by the Resolution of

May 14, 1955 and the Statute of January 28, 1956, and reformulated on March 17, 1969. In cooperation with the High Commands of the national armed forces, the Joint Command takes measures to improve the fighting strength and combat readiness of the Joint Armed Forces. It also coordinates training programmes and plans joint exercises and manoeuvres.

The Commander in Chief of the Joint Armed Forces is the head of the Joint Command. His activities are guided by the resolutions of the PCC and the recommendations of the Committee of Defence Ministers. He is further supported by the work of the Military Council and the Technical Committee.

Further members of the Joint Command as deputies of the Commander in Chief were the Defence Ministers of the other Warsaw Pact countries, as first laid down by the Resolution of May 14, 1955. In formal terms, the position of the allies of the Soviet Union was improved by the reforms of March 1969, in that this function was taken over by the deputies of the Defence Ministers who now hold the responsibility for relations with the military organization.

At the service of the Commander in Chief is a staff composed of permanent representatives of the Chiefs of Staffs of the Warsaw Pact countries. This staff is the Commander in Chief's executive organ. In particular, it is charged with working out operational plans and acting as the working organ of the Committee of Defence Ministers by undertaking the administrative work of the Committee.

To ensure that the connection between the armed forces of the allies and the military command is as close as possible, the Joint Command sends representatives to the individual high commands of national armed forces.

The Military Council of the Joint Armed Forces is a new institution set up under the Statute of March 17, 1969. It acts as an advisory organ to the Joint Command and concerns itself with the improvement of individual parts of the Warsaw Treaty armed forces, their combat and staff operational training, and prepares appropriate recommendations for the Joint Command. In addition to the Commander in Chief who presides over the Military Council and the Chief of Staff who is also his first deputy, the Council's membership comprises deputy ministers of defence or the chiefs of staff of the member countries.

The Technical Committee of the Joint Armed Forces is concerned with improving the weaponry of the Warsaw Pact forces and coordinating the development, construction and testing of defence technology.

The Joint Command, the Staff of the Joint Armed Forces and, it would seem also, the Technical Committee which cooperates closely with the Joint Secretariat, are permanent organs. The legal position, privileges and immunities of the staff and other executive organs of the Joint Armed Forces, which all enjoy diplomatic privileges, are regulated in detail by a convention of April 24, 1973.

3. *Decision-Making Process*

Given the military and economic imbalance between the Soviet Union and the other members, the hegemonial nature of the structure of the Warsaw Treaty Organization is pronounced (→ Hegemony). The ability of the Soviet Union to bring her predominance to bear on the Organization is facilitated by her having complete control over its permanent organs, which are all located in Moscow. The Secretary-General, the Commander in Chief of the Joint Armed Forces, who also presides over the Military Council, and the Chief of Staff have thus far always been Soviet nationals. This may also be assumed of the head of the Technical Committee. In addition, the Soviet Union is able to influence the process of policy formation in the Warsaw Treaty Organization at the party level. On the other hand, the principle of unanimity within the Organization sets legal limits to Soviet influence over the decision-making process.

4. *Finances*

Precise information on the financing of the Warsaw Treaty Organization is not available. Without doubt the Soviet Union, as the leading power, carries the main burden.

5. *Activities*

The Resolution of January 28, 1956 foresaw that the PCC would meet as required, in any event not less than twice a year. Between 1955 and 1983, i.e. in the past 28 years, only 19 official

meetings of the PCC have taken place. Over the years the periods between meetings have grown shorter, but otherwise no regular pattern is discernible. This is in general different in the case of those organs which are not of the permanent type. The Committees of Foreign Ministers and Defence Ministers as a rule meet once a year, the Military Council twice a year. The military activities of the Organization have since 1961 taken the form of numerous joint staff and troop exercises, command staff exercises and troop and fleet manoeuvres.

6. *Special Legal Problems*

Special legal problems arise first out of the relationship between the Warsaw Pact and the bilateral treaties of alliance (→ Regional Cooperation and Organization: Socialist States). A second problem concerns the special position of the German Democratic Republic within the Organization.

The German Democratic Republic constitutes a special case in the rules regarding the provision of assistance and the stationing of troops. Because of the variant text of the German language version of the original Warsaw Treaty, the degree and direction of the assistance to be provided by the German Democratic Republic is to be determined by the other Pact countries. In the Russian, Polish and Czechoslovakian versions each State party is to afford each State party who is a victim of an attack assistance "by all the means it considers necessary". The German version, on the other hand, sets down the obligation to afford "immediate assistance, individually and in agreement with the other States Parties to the Treaty, by all the means they consider necessary". It can hardly be assumed that the German version is the result of a translation error. In practice, however, the controversy over the variant German mutual assistance clause may be of little importance, since the decision whether to mobilize the National People's Army to engage in military action would probably be taken by the Joint Command dominated by Soviet hegemonial power.

Treaty of Friendship, Co-operation and Mutual Assistance, Warsaw, May 14, 1955, UNTS, Vol. 219 (1955) 3–33.

Dokumente zum Warschauer Vertrag (2nd ed. 1962).

V.F. MAL'CEV (ed.), The Warsaw Treaty Organization, Documents and Materials 1955–1980 (1980) [in Russian].

B. MEISSNER (ed.), Der Warschauer Pakt (1962).

A.S. BACHOV, The Warsaw Pact Organization (1971) [in Russian].

R.A. REMINGTON, The Warsaw Pact (1971).

G. ZIEGER, Der Warschauer Pakt (1974).

J. HACKER, Der Warschauer Pakt, in: D. Geyer, B. Meissner (eds.), Sowjetunion, Völkerrechtstheorie und Vertragspolitik (1976) 163–181.

V.S. ŠEVCOV, Organization of the Warsaw Treaty, An Instrument of Peace and Security of Nations, Soviet Year-Book of International Law, 1975 (1977) 45–54 [in Russian, with English summary].

S. TIEDTKE, Die Warschauer Vertragsorganisation, Zum Verhältnis von Militär- und Entspannungspolitik in Osteuropa (1978).

S. VLADIMIROV and L. TEPLOV, The Warsaw Treaty and NATO, Two Directions, Two Policies (1979) [in Russian].

Bayerische Landeszentrale für politische Bildungsarbeit, Nordatlantikpakt – Warschauer Pakt (1980).

A. ROSS JOHNSON, R.W. DEAN and A. ALEXIEV, Die Streitkräfte des Warschauer Pakts in Mitteleuropa: DDR, Polen und ČSSR (1982).

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WESTERN EUROPEAN CUSTOMS UNION

International economic relations and the → international economic order had been profoundly disrupted by World War I, by certain developments in the inter-war years and finally by World War II. Plans to remedy this situation were already being made while World War II was still in progress. They found their first expression in the → Atlantic Charter (1941) and were further elaborated in the agreements concluded at the → Bretton Woods Conference (1944) which provided for the creation of a world bank and the establishment of a development fund (→ International Monetary Fund). It was not, however, until 1947 that the → International Bank for Reconstruction and Development was finally set up.

The same year, 1947, also saw the drafting of the → Havana Charter, which was intended to provide the legal basis for an International Trade Organization. This project failed as its provisions,

at least according to United States opinion, were too dirigistic. The necessary ratification process in the United States was not even set in motion as it would have had no chance of success.

Nevertheless, it proved possible to save part of the Havana Charter by incorporating it in the → General Agreement on Tariffs and Trade (GATT) which was signed in Geneva in 1947.

GATT proved at first to be a highly promising instrument. In the so-called "Kennedy Round" (1964–1967) an all-round tariff reduction, spread over four years, of 50 per cent was achieved. But in the 1960s, the decade of the formation of numerous new sovereign States (→ Decolonization), most of which were → developing States, almost all the new States promptly took protectionist measures on behalf of their own national economies with little heed to the economic intentions of GATT. Even the fact that a new Part IV was included in the Agreement, on matters of special concern to the developing countries, did not suffice to provide a satisfactory solution to their problems.

In this situation, parallel attempts to construct a new regional economic order gained special weight, especially on the European continent (→ Regional Cooperation and Organization: Western Europe). This development was possible within the framework of GATT, which, although global in intention, provides scope for regional ties (zones of preference, → free trade areas, → customs unions and economic unions). The Marshall Plan developed by the United States (1947) and the → European Recovery Program established thereunder provided a major impetus for this development.

In April 1948, 16 European States outside the Soviet sphere of interest and the three western zones of Germany signed an agreement setting up the Organisation for European Economic Co-operation (OEEC; see → Organisation for Economic Co-operation and Development). The task of this organization was above all to work out a plan satisfactory to all parties for the distribution of the money provided by Marshall aid, with emphasis on accelerating the recovery of war-ravaged economies, for example by removing excessively high customs barriers and especially by a general reduction of tariffs. To this end the work of the European Customs Union Study Group (with its seat in Brussels) was to be encouraged.

This Study Group had been formed in 1947 at the instigation of Belgium, Luxembourg and the Netherlands. Earlier experiences of these States may well have played a decisive role, as the first → Belgium-Luxembourg Economic Union dated back to 1921. Also worthy of mention is the "Geneva Tariff Truce Conference" which took place in 1930 with the participation of 17 States. Its aim was to set up a "European Customs Union" by a gradual reduction of tariffs. This was followed, after the failure of an attempt at a customs union between Germany and Austria (see → Customs Régime between Germany and Austria (Advisory Opinion)), to the signing in 1932 of the Ouchy Convention by Belgium, Luxembourg and the Netherlands (→ Benelux Economic Union), the main goal of which was also the lowering of existing tariff levels. A further attempt at an economic union between these three countries was made in 1944, but immediate post-war reactions were sceptical. Nevertheless, these States were able to agree on a common tariff in 1948 and finally, in 1949, the entire quota system was dismantled.

This development was of considerable importance in Europe, because the economic disruptions which had been feared did not occur. It was thus proved that such a concept was realizable among European countries.

The European Customs Union Study Group, which had recommended, *inter alia*, the introduction of a system of customs valuation and uniform tariffs, was also responsible for setting up the → Customs Cooperation Council in Brussels in 1950. The Council's main task was the harmonization of the European tariff system – an important one, as harmonization is one of the means of moving towards free trade by forming an economic association in which tariffs are essentially of no further significance.

In view of the above, it is therefore interesting that the attempt at a Franco-Italian customs union made in 1948 and sponsored by both governments ended in failure. It aimed at creating a tariff union and, eventually, an economic union; it was hoped that other European States would adhere to the treaty, thus opening the way for a uniform European system. The experiment was probably made

too soon and therefore fell victim to economic problems created by the war. The French parliament rejected the project, which was finally abandoned at the Conference of Santa Margherita in 1951.

Other instruments with similar economic content also failed to achieve any real significance. Of these, special mention must be made of the Brussels Treaty of 1948 which eventually led to the establishment in 1954 of the → Western European Union. That Convention lists in Art. 1 important economic and political principles which were all intended to serve the recovery and future security of Europe. They cannot, however, influence the economy in general, or tariffs in particular, as they form part of the collective security system of the → North Atlantic Treaty Organization and have thus been transferred to a different level.

Similar problems would probably have occurred if the → European Defence Community had become a reality. This was indeed primarily envisaged as a political community (→ European Political Community) needing and aspiring to a common European economic area, but initially military considerations were predominant. The question is, however, moot as the project failed.

The origins of the → European Communities (EC) are to be sought in a completely different area. Following the establishment of the → European Coal and Steel Community (ECSC) in 1951 and the Messina Conference of 1955, the → European Economic Community (EEC) and the → European Atomic Energy Community (Euratom) were set up in 1957 on the basis of the "Treaties of Rome". From the very beginning, the main purpose of the EEC was the creation of a "common market" which would, step by step, lead to a customs union. The members undertook, within twelve years, to eliminate customs duties and quantitative restrictions in their mutual trade and to establish a common external tariff for trade with third countries according to the principles of GATT. This development was intended to go beyond a simple customs union to a real economic union, for example, by abolishing the preferential treatment of third countries by individual members and by aiming at the formulation of a common economic policy.

As a result of the trends within the EC, the significance of the → European Free Trade Association (EFTA) has been considerably reduced. Founded in 1960, it existed at first alongside the EC as an alternative with only a basic organizational structure and was modest in its political ambitions. It also aimed from the start at reducing customs duties, but had no basic interest in setting up a common tariff for trade with third States, a feature which characterizes customs unions. Autonomous tariff policy therefore remained within the competence of the individual member States.

EFTA has proved itself as a viable alternative to the EC and even, within its limited aims, as capable of development, although the first attempt at a free trade area, introduced originally by the OEEC (with the participation of 17 members), ended in failure. At that time, State structures were too varied and interests too diversified – frequently contradictory – for such an attempt to succeed. It can, however, be safely prophecied that for political and economic reasons emphasis in Western Europe will remain on the EC and that this will increase, not without side effects for EFTA. The number of States which are not linked to any system, whether the EC or EFTA, will also decline. It is likely that the present Western European economic structure, with the classical concept of the customs union as crystallization point, will finally develop into a unified political entity.

J. VINER, The Customs Unions Issue (1950).
F.K. LIEBICH, Die europäische Zollunion, Ihre Möglichkeiten und Grenzen (1951).
R. ZINSER, Das GATT und die Meistbegünstigung (1962).
H. STEINBERGER, GATT und regionale Wirtschaftszusammenschlüsse (1963).
H.R. KRAEMER, EWG und EFTA, Entwicklung, Aufbau, Tätigkeit (1968).
G.R. DENTON (ed.), Economic Integration in Europe (1969).
J.H. JACKSON, World Trade and the Law of GATT (1969).
K.W. DAM, The GATT Law and International Economic Organization (1970).
F. JAEGER, GATT, EWG und EFTA, Die Vereinbarkeit von EWG- und EFTA-Recht mit dem GATT-Statut (1970).
W. FISCHER, Der deutsche Zollverein, die Europäische Wirtschaftsgemeinschaft und die Freihandelszone, Ein Vergleich ihrer Motive, Institutionen und Bedeutung (1972).

C. SAUNDERS, From Free Trade to Integration in Western Europe (1975).
F. MACHLUP, Economic Integration, Worldwide, Regional and Sectoral (1976).
F. MACHLUP, A History of Thought on Economic Integration (1977).
H. KASTERS, Europäische Wirtschaftsintegration (1978).

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WESTERN EUROPEAN UNION

1. Origins: the Brussels Treaty of 1948

After World War II, the idea of a defensive → alliance of European nations gave rise to various proposals between 1946 and 1948 for a form of western continental union. These proposals were designed to ensure the security of Western Europe on the basis of the acceptance of more specific obligations relating to → collective security and → collective self-defence than had been entered into in 1945 at San Francisco.

In the Treaty of Dunkirk (March 4, 1947; UNTS, Vol. 9, p. 187), France and the United Kingdom had accepted an obligation of mutual assistance as well as a general undertaking relating to economic cooperation. This Anglo-French alliance was extended to include Belgium, Luxembourg and the Netherlands by the Brussels Treaty for Collaboration in Economic, Social and Cultural Matters and for Collective Self-Defence. Signed on March 17, 1948, the Brussels Treaty entered into force on August 25, 1948 for a period of 50 years (UNTS, Vol. 19, p. 51).

The principal objective of the five signatories of the 1948 Treaty was to set up a joint defence system. The Brussels Treaty, on which Western European Union (WEU) is based, was concluded in its original form essentially in order to counter the perceived political and military threats of the Soviet Union, and to prevent renewal of German → aggression. The Brussels Treaty created, almost incidentally, the first inter-governmental organization to be established in Western Europe after World War II, although it was not until the revision of the Treaty in 1954 that this body was incorporated as Western European Union.

The Brussels Treaty expanded the provisions of the Dunkirk Treaty dealing with military and wider political cooperation and also laid down more comprehensive economic, social and cultural objectives. The → preamble to the Brussels Treaty expresses the resolve of the parties to "fortify and preserve the principles of democracy, personal freedom and political liberty, the constitutional traditions and the rule of law, which are their common heritage".

The obligation of collective defence is set out as follows: "If any of the High Contracting Parties should be the object of an armed attack in Europe, the other High Contracting Parties will, in accordance with the provisions of Article 51 of the Charter of the United Nations, afford the Party so attacked all the military and other aid and assistance in their power" (original Treaty, Art. IV; modified Treaty, Art. V). The following article further requires the parties to report to the → United Nations Security Council any measures they may take under the article just quoted, and to terminate such measures as soon as the Security Council has acted to maintain or restore peace.

A standing Consultative Council was created by the Brussels Treaty for the purpose of → consultation between the parties on all matters dealt with in the instrument. Special provision was made for the immediate convening of the Council in particular circumstances; however, no further dispositions were provided concerning the structure and functions of the institution which the parties had established. No mention was made of an international secretariat which was in fact required in order to implement the measures of cooperation contained in the Treaty.

The Brussels Treaty makes provision for the accession of any other State. It does not expressly provide that it creates a → regional arrangement falling within Chapter VIII of the → United Nations Charter, and some authors have doubted whether in fact it does so.

The Treaty provides for the settlement of justiciable disputes between the parties by recourse to the → International Court of Justice (ICJ), and for the settlement of other disputes by conciliation (→ Conciliation and Mediation; → Peaceful Settlement of Disputes).

The means of giving effect to the provisions of the Brussels Treaty were possessed by the → North Atlantic Treaty Organization (NATO,

created in 1949) and in practice the defence functions of the Brussels Treaty were largely absorbed into NATO upon the establishment in 1951 of the latter's Supreme Allied Command in Europe. The early experience gained under the Brussels Treaty in organizational terms and in the form of the results of studies, in both the military and civil spheres, was of considerable value in NATO's formative period.

2. *Paris Protocols of 1954*

The Federal Republic of Germany was not an original member of NATO and, following the failure of the → European Defence Community in 1954, it became urgently necessary to find the legal and institutional means of enabling her participation in the system of Western European defence. In particular, safeguards were sought relating to German rearmament. The Brussels Treaty proved to be a suitable and convenient instrument for this purpose.

At the London Conference of 1954, which was attended by the parties to the Brussels Treaty as well as by representatives of the Federal Republic of Germany, Italy, the United States and Canada, a number of arrangements were worked out providing, *inter alia*, for inclusion of the Federal Republic and Italy in a revised defence treaty (Final Act of the London Conference, October 3, 1954, British Command Paper, Cmnd. 9289). Certain of these arrangements were shortly afterwards adopted in the Paris Protocol which revised the Brussels Treaty and established Western European Union (see also → Bonn and Paris Agreements on Germany (1952 and 1954); → Treaties, Revision).

The Protocol (with Exchange of Letters) Modifying and Completing the Brussels Treaty, which was signed in Paris on October 23, 1954 and entered into force on May 6, 1955 (UNTS, Vol. 211, p. 342), accepted the Federal Republic of Germany and Italy into membership of the defence community, set out new objectives of the States parties and created WEU and its attendant institutions. This Protocol is accompanied by three further Protocols which contain detailed dispositions concerning military forces and armaments, and which are to be regarded as an integral part of the first Protocol, according to Art. 1 of that instrument.

An Agreement on the status of WEU national representatives and international staff was signed in Paris on May 11, 1955; it entered into force with retroactive effect to May 6 of that year. A further Convention signed in Paris on December 14, 1957 with the objective of establishing an international tribunal for the protection of private interests, as contemplated by Art. 11 of Protocol IV, did not obtain the necessary ratification from France and did not enter into force. On several occasions certain technical elements contained in Annex III of Protocol III of the modified Brussels Treaty have been amended in conformity with the procedure laid down in the Treaty. The headquarters of WEU are located in London.

The first Paris Protocol replaced the preambular paragraph of the Brussels Treaty which referred to a renewal of German aggression by a new clause in which the parties resolved to "promote the unity and to encourage the progressive integration of Europe". The Protocol created the WEU Council and Assembly, and it added a new Art. IV to the Brussels Treaty, requiring the parties and WEU and its organs to cooperate closely with NATO in the execution of the Treaty. The obligation of collective self-defence has been retained without change in Art. V of the modified Treaty.

The exchange of letters referred to in the title of the Protocol concerned the acceptance of the jurisdiction of the ICJ by Italy and the Federal Republic of Germany, neither of which was at that time a member of the United Nations. This procedure was necessary in order to implement the undertaking contained in old Art. VIII and new Art. X of the Brussels Treaty relating to the submission of justiciable disputes between the parties to the ICJ. The letters also dealt with the establishment of a simplified procedure for the settlement of disagreements of a technical nature arising from the modified Treaty.

Protocol II deals with the military forces of WEU, and sets limits on the maximum size of land and air formations maintained by each member State in Europe. It committed the United Kingdom to maintain certain forces on the Continent, with their removal, except in emergency, subject to the concurrence of a majority of the other parties.

Protocol III and its Annexes deal with → arms

control; its provisions include an undertaking by the Federal Republic of Germany not to manufacture atomic, chemical or biological weapons, as well as certain other weapons and equipment (cf. → Weapons, Prohibited). This undertaking is reinforced by a supervision agreement. The other States parties also agreed to accept controls on their stocks of certain weapons. The Agency of Western European Union for the Control of Armaments was established for this purpose by Protocol IV.

3. *Structure*; *Functions*

WEU's central organ is the Council. Art. VIII of the modified Brussels Treaty gives the Council wide terms of reference, enabling it to consider all matters relating to the aims and implementation of the Treaty, and to set up subsidiary bodies. Under Art. VIII (3), the Council may be convened at the request of any party for consultations on "any situation which may constitute a threat to peace, in whatever area this threat should arise, or a danger to economic stability" (→ Peace, Threat to). In Protocol III, provision is made for the Council to amend the list of armaments contained in Annex IV of that instrument. Voting procedures are also laid down in Art. VIII of the Treaty, under which the rule of unanimity prevails in the absence of any other arrangement. The Council is composed of the Foreign Ministers of the member States, who meet periodically; it may also be convened at the ambassadorial level. The Council is assisted by the Secretariat and reports annually on its activities to the Assembly.

The WEU Assembly was created in accordance with the terms of Art. 5 of the first Paris Protocol (Art. IX of the revised Brussels Treaty), which states that the Council shall report to such a body. The same article stipulates that the Assembly shall be composed of representatives of the Brussels Treaty Powers to the Consultative Assembly of the → Council of Europe. The membership of WEU's Assembly comprises 89 representatives, the numbers from each country being determined in accordance with Art. 26 of the Statute of the Council of Europe. The powers and procedures of the Assembly were not provided for in the Treaty, and it adopted its own Charter and Rules of Procedure in 1956 (see also → Parliamentary Assemblies, International). The Assembly is competent to carry out "the parliamentary functions arising from the application of the Brussels Treaty" (Charter, Art. I (a)); the principal restriction placed on its competence is that its agenda is to be determined with due regard for the activities of other European organizations. It may make recommendations and transmit opinions to the Council. The Assembly, which has its seat in Paris, appoints a number of steering bodies and working committees.

The Agency for the Control of Armaments, which is also based in Paris, was established in accordance with Art. VIII (2) of the modified Brussels Treaty; its structure, functions and powers are set out in Protocol IV. The Agency is staffed by administrators and technical experts who carry out tasks of verification and supervision relating to stocks and manufacture of certain weapons, in collaboration with NATO. In 1955, the Council established the Standing Armaments Committee which has a general mandate of coordination with regard to military equipment and weapons resources. The Committee is composed of representatives of WEU's member States and is assisted by an International Secretariat.

4. *Activities*; *Evaluation*

WEU's early history is closely associated with the post-World War II movement towards → European integration and unification (see also → Regional Cooperation and Organization: Western Europe). Although conceived primarily for purposes of regional defence and military security, WEU and its predecessor were created with wide responsibilities relating to economic, social and cultural matters and to political cooperation in general. However, as the first political union of post-World-War-II Western Europe, the Consultative Council of the 1948 Brussels Treaty was soon overtaken by the Council of Europe. Likewise, until the creation of the → European Economic Community, economic matters became the particular responsibility of the Organisation for European Economic Co-operation (established 1948; see → Organisation for Economic Co-operation and Development). The defence community created by the Treaty was transformed in little more than a year into NATO. However, the obligation of collective defence contained in the Brussels Treaty (Art. IV of the original

Treaty, Art. V of the modified Treaty) is expressed in terms which are more forceful than those adopted in the corresponding Art. 5 of the North Atlantic Treaty.

The Paris Protocols of 1954 instituted a more elaborate form of organization and committed the seven signatory States of the revised Brussels Treaty to more extensive obligations, of a predominantly technical character, in regard to armaments control and military resources. The creation of WEU stimulated the re-equipping and expansion of certain European combat industries, as well as post-World-War-II rearmament efforts in general. However, the Union possessed no command structure and, in practice, the WEU Council largely surrendered its powers to the Council of NATO.

The Protocol Modifying the Brussels Treaty reflected the political achievement of the London Conference in the process of re-establishing the relations of the Federal Republic of Germany with the other Western European Powers. WEU was itself able to contribute to Franco-German *rapprochement* over the question of the → Saar Territory, since the proposed European Statute of the Saar was to be implemented within the framework of the Union.

Between 1959 and 1960, the formal transfer to the Council of Europe of WEU's exercise of competence in social and cultural matters took place, consolidating the practice of referral carried out by the WEU Assembly since 1955. In the armaments field, the implementation of obligations relating to the control of nuclear weapons caused difficulties between the parties (cf. → Nuclear Warfare and Weapons; → Disarmament). WEU's role as a European inter-governmental institution appeared then to be waning. However, a new role for the Union arose with the creation of the → European Communities without the initial participation of the United Kingdom. The membership of WEU comprised only Britain and the then six signatory States of the Community Treaties and, at various times during the 1960s, the Union provided a valuable institutional framework within which liaison was possible between politicians on the Continent and in Britain, and a forum in which debate of the problems of Britain's accession to those Treaties could be conducted.

Following the entry of the United Kingdom into the European Community in 1973, the frequency and scope of political consultations in the WEU Council were again reduced. In recent times, discussions in the Council and Assembly have covered global political questions as well as matters relating specifically to European security.

The fundamental provisions of the revised Brussels Treaty, particularly those contained in Arts. IV, V and VIII (3), have conserved sufficient value to receive continuing periodic reaffirmation by the States members of WEU. The Union's broad objective to promote and encourage the unity and integration of Europe is now pursued in a variety of other organizations. However, the WEU Assembly remains the sole international parliamentary assembly in Western Europe fully competent to debate questions of military security and arms control. Thus, WEU may retain its role to serve as a nucleus of purely European cooperation in defence matters.

Treaty for Collaboration in Economic, Social and Cultural Matters and for Collective Self-Defence, Brussels, March 17, 1948, UNTS, Vol. 19 (1948) 51–63.

Protocol (with Exchange of Letters) Modifying and Completing the Brussels Treaty, Paris, October 23, 1954, UNTS, Vol. 211 (1955) 342–357.

Annual Report[s] of the Council of WEU.

Proceedings of the Assembly of WEU.

W.E. BECKETT, The North Atlantic Treaty, The Brussels Treaty and the Charter of the United Nations (1950).

J. BENOIST, L'Union de l'Europe occidentale, RGDIP, Vol. 59 (1955) 624–657.

P. FISCHER, Dreijährige Bilanz der Westeuropäischen Union, Europa-Archiv, Vol. 14 (1955) 47–64.

E.B. HASS and P. MERKL, Parliamentarians against Ministers: the Case of Western European Union, International Organization, Vol. 14 (1960) 37–59.

E. DE LA VALLÉE POUSSIN, Das Rüstungskontrollamt der WEU, Europa-Archiv, Vol. 16 (1961) 681–684.

H. WIEBRINGHAUS, A propos du transfert de compétences entre organisations internationales: Le cas du transfert de certaines activités de l'U.E.O. au Conseil de l'Europe, AFDI, Vol. 7 (1961) 537–550.

N. SALTER, Western European Union, The Role of the Assembly 1954–1963, International Affairs, Vol. 40 (1964) 34–46.

A. IMBERT, L'Union de l'Europe occidentale (1968).

A.H. ROBERTSON, European Institutions (3rd ed. 1973) 122–149.

J. WESTHOF, L'Union de l'Europe occidentale avant et après l'élargissement des Communautés Européennes, European Yearbook, Vol. 23 (1975) 94–123.

R. DOBBELSTEIN, Britain's European Policy and the Western European Union, Revue de droit international et de sciences diplomatiques et politiques, Vol. 54 (1976) 123–160, 177–198.

G. RASTRELLI, Unione dell'Europa occidentale, unione europea e parlamento europeo, Il Politico, Vol. 44 (1979) 685–701.

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YAOUNDÉ CONVENTIONS *see* Lomé Conventions

LIST OF ARTICLES*
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