INTERNATIONAL AND SUPRANATIONAL PUBLIC AUTHORITIES*

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I

DEFINITION OF THE CONCEPT

Although in many national systems of law, the term "public authority" and its equivalents in non-English legal terminology have a fairly specific meaning,¹ its assessment as an institution of international public law must proceed from elements of fact and law so divergent that, on first sight, an enumeration of cases rather than a definition of the concept would seem appropriate. To begin with a purely verbal consideration, it may be noted that the term "authority" is employed in treaties to designate international institutions which are intergovernmental organizations² as well as others which are organs of such organizations,³ or to denote one or more States administering a trust territory under chapter twelve of the United Nations Charter.⁴ The examples here chosen also show far-reaching differences between the entities called "authorities" as regards legal status, functions, and powers. The word refers to bodies with and without international personality; to institutions with specific—and limited—administrative and operational functions in respect of some political or economic activity;⁵ and to the trustee administering a given territory and there unrestrictedly exercising the rights of the sovereign.⁶

Yet, these international "authorities" have in common their bases—treaties⁷ or

*The views expressed in this study are those of the writer alone, and do not necessarily reflect the official opinion of the Organization which he serves. The article was in print before September 30, 1961, when the O.E.C.D. Convention came into force.

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¹ Cf. Gerwig, *Public Authorities in the United States*, *supra*, at 591-618; and Dallmayr, *Public and Semi-Public Corporations in France*, *infra*, at 755-93.

² E.g., the United Nations Organization (U.N. CHARTER art. 81); the International Ruhr Authority. For text of the agreement relating thereto, see 83 U.N.T.S. 105 (1951).

³ E.g., the High Authority of the European Coal and Steel Community (E.C.S.C.). See E.C.S.C. Treaty arts. 7-19; 1 AMOS PEASLEE (Ed.), *INTERNATIONAL GOVERNMENTAL ORGANIZATIONS, CONSTITUTIONAL DOCUMENTS* 358 (1956) [hereinafter cited as PEASLEE].

⁴ U.N. CHARTER arts. 81, 84.

⁵ E.g., the High Authority of E.C.S.C., as well as the Commissions of the European Economic Community (E.E.C.) and the European Atomic Energy Community (Euratom).

⁶ Cf. Trusteeship Agreement with Italy on the Administration of the Territory of Somali, art. 7, U.N. Gen. Assembly Resolution 442(V) of Dec. 2, 1950; 2 CLAUDE COLLIARD (Ed.), *ACTUALITÉ INTERNATIONALE ET DIPLOMATIQUE* 1950-56, at 65, 69 (1957).

⁷ "International Law prescribes no form for international engagements. There is no legal distinction between formal and informal engagements. If an agreement is intended by the parties to be binding, to affect their future relations, then the question of the form it takes is irrelevant to the question of its

other international acts binding on those who have accepted them⁸—and their confinement to functions the preponderant elements of which are neither law-making, nor regulatory, nor judicial in nature.

If this suggests the activity of international public authorities to be comparable to that of executive agencies within a State, one of the domains attributed to such authorities would have been staked out appropriately once it is understood that in international no less than in internal law, executive functions are “merely the residue . . . after legislative and judicial functions have been taken away.”⁹ The execution of rules of public international law contained in treaties and law-making acts of international institutions, or in the body of applicable customary law, constitutes only one aspect of executive action.

Neither specifically legislative nor specifically judicial international organizations are equipped to take immediate, if necessary physical, action for the maintenance of international peace and security;¹⁰ the government of internationalized territories;¹¹ or the provision of services which are too expensive, too complex technically, too dangerous, or otherwise unsuitable to be furnished by one State alone.¹² Thus, international public authorities are bound, in the exercise of their main functions, to enact orders of a general nature closely resembling if not substantially identical with law-making,¹³ and to take decisions for the settlement of specific disputes.¹⁴ Yet these functions, constantly widening for technological, economic,

existence. What matters is the intention of the parties, and that intention may be embodied in a Treaty or Convention or Protocol or even a Declaration contained in the minutes of a Conference.” Legal advice given to the United Kingdom government, as reported in ARNOLD MCNAIR, *THE LAW OF TREATIES* 48 (1938). See, to the same effect, 1 CHARLES ROUSSEAU, *PRINCIPES GÉNÉRAUX DU DROIT INTERNATIONAL* 143 (1944); 1 FRIEDRICH BERBER, *LEHRBUCH DES VÖLKERRECHTS* 413 (1960). On the exchange of notes as treaties, see WEINSTEIN, *Exchanges of Notes*, 29 *BRITISH YEARBOOK OF INTERNATIONAL LAW* 205 (1952) [hereinafter cited as *BRIT. YB. INT'L L.*]. 3 GEORG DAHM, *VÖLKERRECHT* (1961), which appeared after this article was in print, gives at pp. 57-164 the most recent account of the law of treaties.

⁸ Especially acts of international organizations with binding effect, whether they are called decisions, resolutions, or recommendations. See generally, on this question, 1 GEORG DAHM, *VÖLKERRECHT* 25-28 (1958); Virally, *La valeur juridique des recommandations des organisations internationales*, 2 *ANNUAIRE FRANÇAIS DU DROIT INTERNATIONAL* 66 (1956) [hereinafter cited as *A.F.*]; Dahm, *Die völkerrechtliche Verbindlichkeit von Empfehlungen internationaler Organisationen*, 12 *DIE ÖFFENTLICHE VERWALTUNG* 361 (1959). For a well-informed summary of practice and opinion, see 2 GEORG DAHM, *VÖLKERRECHT* 25-35 (1961). Drafts of trusteeship agreements under chapter XII of the U.N. Charter have been submitted by the prospective administering states to the appropriate organs of the United Nations for approval. See *The Authority Which Will Exercise the Administration of the Trust Territory* (Art. 81), 4 *REPERTORY OF PRACTICE OF UNITED NATIONS ORGANS* 225, 226, paras. 65-67 (1955); *General Survey*, 4 *id.* 272, 273, paras. 18-20 (1955); Wolfe, *The States Directly Concerned: Article 79 of the United Nations Charter*, 42 *AM. J. INT'L L.* 368, 387 (1948).

⁹ 7 *HALSBURY'S LAWS OF ENGLAND* 192 (3d Simonds ed. 1954).

¹⁰ See generally JULIUS STONE, *LEGAL CONTROLS OF INTERNATIONAL CONFLICT* (1954).

¹¹ Discussed in MÉIR YDIT, *INTERNATIONALIZED TERRITORIES* (1961).

¹² H. ADAM, *LES ÉTABLISSEMENTS PUBLICS INTERNATIONAUX passim* (1957). See also, the assessment of Adam's theses by Langrod, *Quelques aspects du problème des établissements publics internationaux*, 7 *ARCHIVS DES VÖLKERRECHTS* 113 (1958); and Parry, *The International Public Corporation*, in W. FRIEDMANN (Ed.), *THE PUBLIC CORPORATION* 495 (1954).

¹³ See the references in note 8 *supra*; Merle, *Le Pouvoir Réglementaire des Institutions Internationales*, 4 *A.F.* 341, 351 (1958); Scheuner, *Die Rechtssetzungsbefugnis internationaler Gemeinschaften*, *FESTSCHRIFT VERDROSS* 229, 237 (1960).

¹⁴ A summary of treaty provisions can be found in Colliard, *Le Règlement des différends dans les organisations inter-gouvernementales de caractère non politique*, *MÉLANGES BASDEVANT* 152, 154 (1960).

and political reasons, are equalled in importance, if not in scope, by a further activity assumed by international public authorities: the control exerted by them over subjects of international and internal law alike for the purpose of ensuring compliance with public international law.¹⁵

Functionally, an international public authority might therefore be defined as an institution of an executive or supervisory nature in the service of a community of States,¹⁶ established by or in conformity with¹⁷ a treaty, and responsible for the application of specific rules of international law which it implements itself or which, by appropriate means of control, it causes others to implement.¹⁸ It may also fulfill both of these functions.¹⁹

One particular type of intergovernmental institution that fits into this definition is the supranational public authority. Subject only to the treaty providing for its establishment and functioning, and bound neither in the person of any individual member, nor collectively by instructions from any government, the supranational authority, as represented thus far by the High Authority of the European Coal and Steel Community (E.C.S.C.) and, to a lesser extent, by the Commissions of the European Economic Community (E.E.C.) and European Atomic Energy Community (Euratom), is a composite organ of an international public organization, with primary responsibility for the implementation of the aims and purposes of that organization irrespective of special desiderata of specific Member States. It is endowed with the power to enforce the provisions of the treaty, and of rules made and decisions taken thereunder directly against the Member States, their nationals, and the property and rights of either of them,²⁰ notwithstanding any objections by

¹⁵ See, on this development within the framework of international organizations, Merle, *supra* note 13; Monaco, *Le contrôle dans l'organisation internationale*, Festschrift SCHÄTZEL 329 (1960). For a discussion of the law of international controls generally, see Hahn, *Internationale Kontrollen*, in HANS-JÜRGEN SCHLOCHAUER (Ed.), *Wörterbuch des Völkerrechts* 66 (2d ed. 1961) [hereinafter cited as SCHLOCHAUER]; Hahn, *Der Masstab der internationalen Aufsicht im Friedensvölkerrecht*, 10 JAHRBUCH FÜR INTERNATIONALES RECHT 2 (German) (1961) [hereinafter cited as J.I.R.]

¹⁶ This part of the definition permits the inclusion of authorities which obviously are conducting affairs of an international character but at the same time are attached, if not subject to, a specific national law, as for instance, the Mosel Company (*infra*, at 650-51), or are even part of the administrative hierarchy of one State, like the Badische Wasser-und Strassenbaudirektion under the Geneva Protocol of Dec. 18, 1929 (*infra*, at 649).

¹⁷ For example, the United Nations Relief and Works Agency for Palestine Refugees in the Near East under the U.N. Charter which was originally established by U.N. General Assembly Resolution 302(IV) of Dec. 8, 1949. The view set forth in the text does not imply the acceptance of Scelle's theory of "dédoublement fonctionnel" according to which any organ of a State applying rules of international law, as for example a national judge applying provisions of a treaty, is considered an organ both of the international and of the internal legal order. For a brief exposition, see Scelle, *Le phénomène juridique de dédoublement fonctionnel*, Festschrift WEHBERG 324 (1956). A critique of this theory will be found in C. DE VISSCHER, *Théories et réalités en droit international public* 175 (3d ed. 1960).

¹⁸ For an exhaustive collection of examples of international control, see PHILIP C. JESSUP & HOWARD J. TAUBENFELD, *Controls for Outer Space and the Antarctic Analogy* 11-116 (1959).

¹⁹ On this aspect, see *infra*, at 662-63.

²⁰ On the interaction between the High Authority of the E.C.S.C. and the two supranational commissions on the one hand and the further organs of the Communities on the other hand, see Münch, *Zur Systematik der Organe der europäischen Gemeinschaften*, Festschrift SCHÄTZEL 338 (1960); *id.*, *Prolegomènes à une théorie constitutionnelle des Communautés Européennes*, 1 RIVISTA DI DIRITTO EUROPEO 126 (1961) (Italian); Jaenicke, *Aussprache zu den Berichten von Professor Münch und*

the territorial sovereign. In as much as such a body is the main instrument for the application of an organizational treaty, this justifies the whole organization to be considered as supranational. This preponderance of the supranational organ or organs within an organization distinguishes the three present manifestations of that type of authority²¹ from its forbears which had also executory powers as against States and subjects of internal law but were not the principal organs within their respective organizations.

II

THE FUNCTIONS OF PUBLIC INTERNATIONAL AUTHORITIES

So many intergovernmental organizations or organs thereof, as well as independent intergovernmental bodies without an organizational framework, international personality, or permanent character,²² are authorities as the term is tentatively understood here that the value of the concept might be clouded by an amorphous mass of related phenomena if classification did not permit the recognition of groups of cases and their distinctive features. Though frequently employed, classification according to subject matter²³ is more likely to bring to light the diversity of the institutional and procedural machinery used to cope with a particular set of facts than a unifying normative element.²⁴ Better suited to the purposes of this study seems to be characterization according to the legal functions fulfilled by such authorities, *i.e.*, in accordance with the legal nature of their activities. Broadly speaking, four main categories offer themselves:

- (i) authorities having primary if not exclusive responsibility for the administration of specific territories or subject matters under international jurisdiction, and vested with such rule-making and quasi-judicial tasks as may be incidental to their main functions;
- (ii) authorities restricted to purely executive or regulatory tasks, and devoid of any other incidental powers;
- (iii) authorities producing or distributing goods or offering services which could possibly be provided just as well by lesser entities than associations of States or bodies established by them, were it not for the belief—widely held by the

Privatdozent Steindorff, 2 *BERICHTE DER DEUTSCHEN GESELLSCHAFT FÜR VÖLKERRECHT* 131 (1957); Reuben & Effron, *The Common Market and Euratom Treaties: Supranationality and the Integration of Europe*, 6 *INT'L & COMP. L.Q.* 670, 674 (1957). See also, symposium, *European Regional Communities*, 26 *LAW & CONTEMP. PROB.* 349-588 (1961).

²¹ High Authority of the E.C.S.C., and the Commissions of E.E.C. and Euratom.

²² From which the notion "international organ" was originally derived. See Wehberg, *Entwicklungsstufen der Internationalen Organisation*, 52 *FRIEDENSWARTE* 193 (1954) and *La Police Internationale*, 48 *ACADEMIE DE DROIT INTERNATIONAL, RECUEIL DE COURS* 1, 15 (1934, II) [hereinafter cited as R.C.]; Strupp, *Les règles générales du Droit de la Paix*, 47 *id.* 459, 531-34 (1934, I); Verdross, *Le fondement du droit international*, 16 *id.* 299-307 (1927, I).

²³ For the numerous writings following that method, see the bibliography preceding the chapters in 2: DAHM, *op. cit. supra* note 8, pt. 3.

²⁴ That element is clearly brought out in Jenks, *Some Constitutional Problems of International Organizations*, 22 *BRIT. YB. INT'L L.* 11 (1945); KARL ZEMANEK, *DAS VERTRAGSRECHT DER INTERNATIONALEN ORGANISATIONEN passim* (1957).

- makers of foreign policy in many countries—that certain tasks of an operational nature should be entrusted to intergovernmental agencies;
- (iv) authorities of all three types exercising supervisory functions and the more far-reaching rights and obligations that usually go with the power to control.

III

INTERNATIONAL AND SUPRANATIONAL ADMINISTRATIONS

Beginning with the venerable—and now functionally if not legally extinct—European Commission of the Danube,²⁵ there have been several intergovernmental organizations with primary responsibility for the administration of the territories of States or of parts thereof, rivers, other means of transportation and communication, and border areas.

1. *International territories*

Thus, in accordance with articles forty-five to fifty of the Treaty of Versailles, the Saar territory from 1919 to 1934 was administered in all respects by a Commission appointed for this purpose by the Council of the League of Nations²⁶ and the same measure of sovereign rights was exercised by a League of Nations Commission between June 1933 and June 1934, over the area of Leticia at the Amazonas until it was returned to Colombia following the termination of its conflict with Peru.²⁷

2. *International waterways*

It is likely that the ill-starred Peace Treaty of 1920 with Turkey²⁸ might have created a Straits Commission with similar yet not as far-reaching sovereign powers over the de-militarized land and sea area surrounding the Dardanelles, individuals living there, and ships passing through. Yet, the classical example for the administration of an international waterway by an intergovernmental body remains the European Commission of the Danube.

The common feature of these instances of international administration of terri-

²⁵ The functions, powers, and status of the Commission were governed by numerous diplomatic instruments, which are enumerated in 8 M. O. HUDSON (ED.), *INTERNATIONAL LEGISLATION* 82 (1931) [hereinafter cited as HUDSON]; 9 *id.* at 95. The Belgrade Danube Convention of Aug. 18, 1948 (33 U.N.T.S. 181) purports to dissolve the European Commission of the Danube, whereas the Western Powers maintain that the Convention of 1921 (1 HUDSON 681) is still in force. The latter view is also taken in *SIÈCLE DE COOPÉRATION SUR LE DANUBE, 1856-1956 passim* (Rome 1956), a collection of reports on the Commission's achievements published by the Commission at the occasion of its centenary. An account of the opposing views is given in No. 37 der Beilagen zu den Stenographischen Protokollen des Nationalrates IX GP. (Austria), of Sept. 9, 1959, pp. 21-22.

²⁶ Treaty of Versailles, § IV Annex, ch. 2. For further examples of territories which were internationalized in accordance with that Treaty, see YBIR, *op. cit. supra* note 11, at 45.

²⁷ YBIR, *op. cit. supra* note 11, at 59-62. Another example of the administration of a territory—under the Feb. 10, 1947, Peace Treaty with Italy—was the government of the Free City of Trieste (1945-1954) by a governor under the authority of the Security Council, appointed by and responsible to the United Nations. *Id.* at 231-72.

²⁸ This treaty never entered into force and was replaced by the Peace Treaty of Lausanne, July 24, 1923; LOUIS LE FUR & GEORGES CHKLAVER, *RECUEIL DE TEXTES DE DROIT INTERNATIONAL PUBLIC* 752 (2d ed. 1934).

tory²⁰ is the comprehensive power of the Authority to command as well as to enforce its orders against States and individuals and their property. To that extent, such an administration restricts the jurisdiction of the original territorial sovereign or sovereigns, and acts in its or their stead. The ancillary powers of a rule-making and judicial nature exercised by authorities of that kind³⁰ amply demonstrate that the nations which established these administrations intended to make them autonomous units of international government, subject only to such external political or judicial controls as were specifically permitted by the international arrangements defining their status.³¹

3. *Headquarters districts of international organizations*

However, these are not the only examples for the administration of territory by international authorities. Headquarters districts of international organizations may be added to the list no matter whether one considers their rights and prerogatives as flowing from servitudes in favor of intergovernmental institutions³² or from the latter's position as proprietors and sovereigns of the areas in question.³³

4. *Boundary commissions*

Still territorial in nature, but more restricted in scope, were the rights of international commissions which, like the European Commission of the Danube by virtue of the Treaty of Berlin of 1878³⁴ and the Commission of Four by virtue of the Lausanne Convention of April 24, 1923,³⁵ were to determine definitively the course of a boundary, or like the Straits Commission, established by the latter treaty to enforce the demilitarization of a certain area.³⁶

This group of cases has in common that administrative action is taken only concerning States, and that such action affects individuals and their property exclusively through the intermediary of the local sovereign.

5. *Special cases*

The United States-Canadian International Joint Commission established under the Root-Bryce Treaty of 1912³⁷ is apart from these groups in as much as it can both grant concessions for specific uses of boundary waters, and arbitrate any controversy between the two nations on the course of their common boundaries.

²⁰ For a concise description of the above and other cases, see JESSUP & TAUBENFELD, *op. cit. supra* note 18, at 50.

³⁰ For example, of the European Commission of the Danube under the 1921 Paris Convention instituting the Definitive Statute of the Danube. 1 HUDSON 681.

³¹ See the analysis of the powers of the European Commission of the Danube in the advisory opinion of the Permanent Court of International Justice, ser. A, No. 14 (1927).

³² To this effect, see FERENC ALBERT VALI, *SERVITUDES OF INTERNATIONAL LAW* 295-97 (2d ed. 1958).

³³ As advocated by PHILIPPE CAHIER, *ETUDE DES ACCORDS DE SIÈGE CONCLUS ENTRE LES ORGANISATIONS INTERNATIONALES ET LES ETATS OÙ ELLES RÉSIDENT* 210-11 (1959). On the legal status of the premises of international organizations generally, see CLARENCE W. JENKS, *INTERNATIONAL IMMUNITIES* 46 *et seq.* (1961).

³⁴ Art. 2. See MAX FLEISCHMANN, *VÖLKERRECHTSQUELLEN* 148 (1905) [hereinafter cited as FLEISCHMANN].

³⁵ Art. 5. See 2 HUDSON 1037.

³⁶ Art. 10. 2 HUDSON 1037.

³⁷ Treaty With Great Britain Relating to Boundary Waters Between the United States and Canada, Jan. 11, 1909, 36 Stat. 2448, T. S. No. 548.

The States acting as administering authorities under article eighty-one of the United Nations Charter do not fit into any of the categories thus far enumerated. Surely that administration is, like the whole trusteeship system, under the authority of the United Nations,³⁸ but to conclude that trust territories are therefore under international administration would overlook that the holders of governmental power in its entirety in all trust territories are sovereign States, and that the functions of government are exercised by agents of those States and not by international organs or officials,³⁹ however tightly the latter may control the trustee.⁴⁰

With a certain measure of justification, it may be contended that the salient features of the more permanent administrative authorities thus far mentioned, in particular the European Commission of the Danube, may be understood as elements of condominium over territory⁴¹ as well as characteristics of international institutions.

6. *Supranational administrations*

This observation does not apply to the supranational authorities provided for in the treaties establishing the European Coal and Steel Community (E.C.S.C.), the European Economic Community (E.E.C.), and the European Atomic Energy Community (Euratom).⁴² For while their powers are limited in scope and as to subject matter within the substantive fields assigned to them, they may exercise their functions over the whole territory of *all* the Member States, unfettered by boundaries and other geographical limitations. Historically, the prototype of this kind of authority has been the High Authority of the E.C.S.C. It has retained that quality until today for no other reason than the reluctance of governments to assign powers of the same political weight to the two analogous bodies established in the wake of the Spaak report of 1956,⁴³ the Commissions of the E.E.C. and of Euratom.

The High Authority of the E.C.S.C. is not only the administrative organ of the Community, but is also clothed with political and law-making functions. It was the intention of the framers of the E.C.S.C. to make the High Authority the central instrument for the establishment of a common market in coal and steel.⁴⁴ In fact, the Treaty offers sufficient evidence that this intention prevailed in the negotiations. "Decisions" which shall be "binding in all their details"; "recommendations" which are "binding with respect to the objectives they specify but shall leave to those to whom they are directed the choice of appropriate means for attaining these objectives"; and "opinions" which "shall not be binding"⁴⁵—these are the arms which the High Authority may use for the implementation of the Treaty. Decisions and recommendations of a general character must be published in the official gazette of

³⁸ U.N. CHARTER art. 75.

³⁹ See, to the same effect, ALFRED VERDROSS & KARL ZEMANEK, *VÖLKERRECHT* 478-79 (4th ed. 1959).

⁴⁰ YDIT, *op. cit. supra* note 11, at 66, 70.

⁴¹ For comment on this notion, see Schneider, *Condominium*, in 1 SCHLOCHAUER 297 (1960).

⁴² E.C.S.C. Treaty art. 8 *et seq.*; E.E.C. Treaty art. 155 *et seq.*; Euratom Treaty art. 24 *et seq.*

⁴³ INTERGOVERNMENTAL COMMITTEE ON EUROPEAN INTEGRATION, REPORT, April 21, 1956.

⁴⁴ Declaration of Robert Schuman, the French Foreign Minister, May 9, 1950, in 1 CLAUDE COLLIARD (Ed.), *DROIT INTERNATIONAL ET HISTOIRE DIPLOMATIQUE 1815-1950*, at 761-63 (3d ed. 1955).

⁴⁵ E.C.S.C. Treaty art. 14.

the E.C.S.C.⁴⁶ Other decisions and recommendations take effect on notification to the parties concerned. All decisions and recommendations are immediately binding on the Member States, enterprises, and associations, and may be enforced as against enterprises and associations,⁴⁷ and to a lesser extent against Member States.

It is significant that in the E.C.S.C., it is ordinarily the High Authority which has both the initiative and the responsibility for action under the constituent instrument. Constitutionally required cooperation with the Council of Ministers⁴⁸ usually takes the form of an act of the High Authority with the assent of the Council. In periods of crises, however, the Council exercises decisive authority, provided it acts unanimously.⁴⁹

The functions of the E.E.C. are, by contrast, much more limited.⁵⁰ Observers agree that in the E.E.C., the Commission, though in principle equipped with the same armory of measures as in the E.C.S.C., has only strictly limited and narrow possibilities of regulatory action.⁵¹ It is predominantly an administrative organ restricted to the preparation and the execution of the law-making acts of the Council of Ministers which is charged with the implementation of the legislative program of the E.E.C. Treaty.⁵² The Commission may exercise more far-reaching influence on the Council by means of its constitutionally guaranteed right to initiate the action of the Council,⁵³ which the latter can extend by requesting the Commission to submit proposals relating to additional subjects.⁵⁴

The picture would be incomplete were it not mentioned that the Commission administers the European Social Fund and conducts the negotiations on behalf of the Community with non-Member States and other international organizations, though in doing so it is subject to the directives of the Council.⁵⁵ On the other hand, while under the E.C.S.C. Treaty, acts of the Council are not generally subject to the judicial control of the Court of the Community on the application of the Commission, the opposite is true under the E.E.C. and Euratom Treaties.⁵⁶

⁴⁶ *Id.* art. 15. The *Journal Officiel des Communautés Européennes* [hereinafter cited as JOURNAL OFFICIEL] is now the official gazette of the three Communities. See *Décision portant création du Journal Officiel des Communautés Européennes du 15 Septembre 1958*, [1958] JOURNAL OFFICIEL 390, 419.

⁴⁷ E.C.S.C. Treaty arts. 47, 54(6), 58(4), 59(7), 65.

⁴⁸ See, e.g., FRANZ WILHELM JERUSALEM, *DAS RECHT DER MONTANUNION* 33 (1954).

⁴⁹ E.C.S.C. Treaty arts. 58(3), 59(2). See MÜNCH, *op. cit. supra* note 20, at 353.

⁵⁰ MÜNCH, *op. cit. supra* note 20, at 353.

⁵¹ See, e.g., Wohlfarth, *Europäisches Recht*, 9 J.I.R. 12, 12-13 (1960); Steindorff, *Europäische Wirtschaftsgemeinschaft*, 1 SCHLOCHAUER 479, 482 (1960); v. d. Heydte, *Die Politischen Organe der Europäischen Wirtschaftsgemeinschaft*, 54 FRIEDENSWARTE 1, 4-7 (1957).

⁵² For a list of cases in which the E.E.C. Commission itself has powers of decision, see ERNST WOHLFARTH, ULRICH EVERLING, HANS JOACHIM GLAESNER & RUDOLF SPRUNG, *DIE EUROPÄISCHE WIRTSCHAFTSGEMEINSCHAFT* 461 (1960).

⁵³ *Id.* at 462.

⁵⁴ E.E.C. Treaty art. 152. But see E.E.C. Treaty art. 149, under which the Commission's proposals may be changed only by a unanimous vote of the Council. However, this rule applies only to modifications, and not to final decisions on Commission proposals.

⁵⁵ E.E.C. Treaty arts. 124, 228, 229.

⁵⁶ Article 33(1) of the E.C.S.C. Treaty which limits judicial review has not reappeared in the E.E.C. and Euratom Treaties. This clause may afford the possibility of counteracting retarding movements of the Council by judicial intervention on application of the Commission. E.E.C. Treaty art. 173.

The powers of the Euratom Commission are more extensive, as the Euratom Treaty itself largely implements the legislative measures required for the attainment of its objectives. From a purely organizational point of view, the interplay of Commission and Council is, however, the same as under the E.E.C. Treaty, since legislative action is as a rule initiated by the Commission but taken by the Council, whereas the Commission has plenary jurisdiction over the administration of the Treaty and all enactments of the Community issued thereunder.⁵⁷

In sum, then, only the High Authority of the E.C.S.C. can at present be said to be clothed with primary responsibility for the application of the Treaty and the implementation of those of its clauses which provide for legislative action, whereas the two other supranational authorities are limited to tasks which under internal law would be predominantly executive in nature. Yet, there is a possibility that the executive organs of the E.E.C. and of Euratom, in spite of their more restricted statutory role, may gain greater and perhaps decisive importance when the legislative processes within the two more recent Communities approach completion, and administration and execution of the Treaties and of the Council's legislation become the main activities of the supranational organizations.

Still, there remains the great innovation that an international organization may, through its various organs, act as law-maker and administrator whose acts no longer require affirmative action by the Member States to be binding upon them, their agencies, their nationals, and their enterprises. This gives the three supranational authorities more far-reaching powers than any other functional international administration has heretofore possessed.⁵⁸

IV

EXECUTIVE AND REGULATORY AGENCIES

Examples of authorities of the purely executive type with no other incidental powers are the now extinct International Danube Commission as it operated under the Danube Convention of 1921,⁵⁹ and the Danube Commission functioning under the present 1948 Convention,⁶⁰ the validity of which remains contested.⁶¹ In both cases, the responsibility of the Commissions consists in the supervision of the areas determined in the Convention; the planning of works required for the maintenance and improvement of the waterway; failing action by a riparian State, the execution of such works and, if need be, the determination of dues for the financing of the river's maintenance and improvement. All these functions are executive in nature. Tolls and dues are not in the nature of permanent tax-like levies, but are fees for

⁵⁷ Euratom Treaty art. 124(1). To the same effect, see the well-informed study by HELMUT DRÜCK, *DIE INTERNATIONALE ZUSAMMENARBEIT BEI DER FRIEDLICHEN VERWENDUNG DER ATOMENERGIE INNERHALB EUROPAS* 78 (1959).

⁵⁸ For examples, see JESSUP & TAUBENFELD, *op. cit. supra* note 18, at 85-116.

⁵⁹ 1 HUDSON 681.

⁶⁰ 33 U.N.T.S. No. 518, at 181, 187 (1949).

⁶¹ See note 25 *supra*, and Seidl-Hohenveldern, *Donau*, in 1 SCHLOCHAUER 393 (1960).

specific services rendered or specific works done, which are payable only until a given financial obligation assumed for such a purpose has been satisfied.

Another type of executive agency is represented by the institutions provided for under Commodity Agreements, *e.g.*, for sugar, wheat, tin, and rubber,⁶² which are designed to guarantee a suitable income to producers and other interested parties by appropriate marketing interventions and the restriction or increase of production and sales, and to encourage consumption. This is not the place to discuss the structural details of the Commodity Agreements.⁶³ Suffice it to say that the powers of the institutions concerned are almost always directed at meeting the exigencies of specific crop years, production seasons, or other economic cycles which are, in advance, limited in time and, therefore, offer instructive examples for executive action in individual cases. This qualification ensues from the fact that the Agreements provide not only the machinery and the guiding principles for that kind of action but also rules about its particulars. Thus, the action of the Councils, apart perhaps from the enactment of the Rules of Procedure,⁶⁴ is comparable to the adoption of the budget by a parliament. Though general in appearance, such action is limited to the decision of concrete and specific cases, to be implemented by Executive Boards and Secretariats during a period of time limited and a set of facts specified in advance. By the same token, the distribution of Marshall Plan Aid by the Organization for European Economic Cooperation (O.E.E.C.) in the early years of that Organization was executive rather than rule-making in character.⁶⁵

However, most of the present acts of the latter intergovernmental organization which do not relate either to the internal administration and procedure of the O.E.E.C. or to one of its operational activities in the fields of productivity and nuclear energy, or to the European Monetary Agreement, appear to be regulatory in nature.⁶⁶ Thus, not only the Code of Liberalisation and the Code of Liberalisation of Capital Movements but most other acts of the O.E.E.C. which are devoid of any link with a specific case or controversy are acts of legislation or quasi-legislation.⁶⁷

A like predominance of legislative action may be found in such organizations as the United Nations, the International Labor Organization, the Universal Postal Union, the International Telecommunications Union, the International Civil Aviation Organization, the World Meteorological Organization, and the World Health Organization, as well as the European Free Trade Association. All of these through

⁶² See CHARLES H. ALEXANDROWICZ, *INTERNATIONAL ECONOMIC ORGANISATIONS* 179-85 (1953).

⁶³ Cf. Hahn, *supra* note 15, at 19-20.

⁶⁴ *E.g.*, the Rules of Procedure of November, 1959, enacted under the 1958 International Sugar Agreement as printed in an undated brochure of the International Sugar Council, together with the Agreement.

⁶⁵ See H. ADAM, *L'ORGANISATION EUROPÉENNE DE COOPÉRATION ÉCONOMIQUE passim* (1949).

⁶⁶ On the operational activities of the O.E.E.C., see *infra*, at 656-57.

⁶⁷ For an attempt to set out the constitutive elements of a rule-making by international organizations, see Merle, *supra* note 13, at 341-43; SCHEUNER, *op. cit. supra* note 13, at 234. For accounts of the legislative activity of the O.E.E.C., see Freymond, *Les 'Décisions' de l'Organisation Européenne de Coopération Économique (O.E.C.E.)*, 11 *ANNUAIRE SUISSE DE DROIT INTERNATIONAL* 65 (1954); Elkin, *The Organisation for European Economic Co-operation, Its Structure and Powers*, 4 *EUROPEAN YEARBOOK* 96, 123-31 (1958).

various techniques promote the progress of international legislation or impose its provisions on Member States.⁶⁸

V

INTERNATIONAL PUBLIC SERVICES

Beyond the domain of the international executive and legislative agency there is a group of cases, constantly growing in number, which represents the operational element in the law of international organizations. These include such long-established and well-reputed institutions as the Bank for International Settlements in Basle, which, having been established in what may be called the "mail coach" period of the international operational agency, offers every promise for further longevity, as well as the Euratom Supply Agency. The latter, although perhaps representing a doctrinal achievement in the law of international organizations, has attracted comments which are most discouraging,⁶⁹ but apparently justified.⁷⁰ Still, it is this kind of international and supranational authority which corresponds closest to its namesake in the United States. The related institutions in the United States are for the most part, and certainly for the most eye-catching part, *e.g.*, the Tennessee Valley Authority and the Port of New York Authority, operational in nature and functions.

Before setting out the functional characteristics of this type of international public service, it has to be affirmed⁷¹ that the entities concerned are, like any other international authorities—as that notion is understood here—established by or in accordance with, and in conformity with treaties for the purpose of implementing specific treaty rules providing for or allowing operational activities. It therefore seems irrelevant for the purpose of staking out the domain of the international public service whether services are rendered only to individuals and private legal entities and associations, *i.e.*, whether the use of a service is reserved to beneficiaries other than States and intergovernmental organizations.⁷² Nor is there any intrinsic necessity to consider as international public services sovereign States, their agencies, their political or territorial subdivisions and other corporate entities established under the public law of a country, or private business concerns (whatever their form and status may be under internal law), simply because they pursue economic activities that are not limited in scope to the territory of one State only.⁷³ The usefulness of considering all arrangements transcending the territorial and jurisdictional limits of one State and the vari-

⁶⁸ For references to the relevant provisions, see Merle, *supra* note 13, at 343; Jenks, *supra* note 24, at 34.

⁶⁹ ". . . quite to the contrary, there is an oversupply of uranium which makes this organization quite superfluous. It was difficult to interpret the treaty provisions in such a manner that the Agency has not been able to function until today. . . ." Siegfried Balke, German Federal Minister for Nuclear Affairs, in *AUSGEWÄHLTE RECHTSFRAGEN AUS DEM GEBIET DER EUROPÄISCHEN GEMEINSCHAFTEN* 12 (1960). [Ed. transl.]

⁷⁰ DRÜCK, *op. cit. supra* note 57, at 71.

⁷¹ In view, notably, of H. ADAM, *LES ÉTABLISSEMENTS PUBLICS INTERNATIONAUX* (1957), and Sereni, *International Economic Institutions and the Municipal Law of States*, 96 R.C. 133 (1959, I).

⁷² To this effect, see ADAM, *op. cit. supra* note 71, at 133.

⁷³ Sereni, *supra* note 71, at 133.

ous corporate and noncorporate entities involved as a whole need no longer be argued,⁷⁴ in as much as this approach is particularly well suited to measure in their entirety the legal consequences of a specified, actual or potential, chain of events arising in connection with a transnational transaction.⁷⁵ The merits of that method are less evident when it is used for the critical assessment of a specific institution in one specific field of law, national or international.

Finally, there is no convincing proof that an international public service may not have a policy-making body.⁷⁶ As will be seen, there are a considerable number of international public services which in the course and by means of their operational activities may either make or influence political decisions of considerable moment.

International bodies with operational functions exist now in many branches of economic and social life. The diversity of tasks assumed by public international services shows that they are considered as useful tools for cooperation in almost any province of intergovernmental relations—political as well as nonpolitical.

1. *Transportation*

The field of transportation⁷⁷ has attracted multi-State arrangements for centuries. The relatively recent past has witnessed the advent of a still rising number of operational agencies, most of which are concerned with the management and administration of specific means of transportation or of installations ancillary thereto.

(a) *River authorities.* Thus, the Geneva Protocol of December 18, 1929, entrusted the Badische Wasser und Strassenbaudirektion, Karlsruhe, an agency of the Land (State) of Baden with the regulation of the Rhine between Strasbourg-Kehl and Idstein under the direction of a Franco-German-Swiss Works Commission in which each of the three States involved was represented by two members and which took its decisions unanimously, the President of the Permanent Court of International Justice appointing an arbiter in case of dissents.⁷⁸ Though enjoying certain advantages, *e.g.*, in the use of the public properties of the three States for purposes of the works, the operational instrumentality, named Badische Wasser-und Strassenbaudirektion, was practically devoid of privileges and immunities, absolute or functional.

The same holds true of the Hafenverwaltung Kehl, a public authority (Körperschaft des öffentlichen Rechts) administering the Rhine port of Kehl which faces Strasbourg and which was placed under a mixed Franco-German direction by a compact of October 19, 1951, between the German Land Baden and the Port Autonome de Strasbourg.⁷⁹ Leaving aside questions of German constitutional law

⁷⁴ PHILIP JESSUP, *TRANSNATIONAL LAW* (1956) blazed the trail here.

⁷⁵ For a model of that kind of presentation, see Note, *United States Agencies and International Organizations Which Foster Private American Investment Abroad*, 71 HARV. L. REV. 1102 (1958).

⁷⁶ See, however, ADAM, *op. cit. supra* note 71, at 9, 11.

⁷⁷ For a brief survey, JOSEPH P. CHAMBERLAIN, PHILIP C. JESSUP, ADOLF LANDE & OLIVER J. LISSITZYN, *INTERNATIONAL ORGANIZATION* 3-7 (1955).

⁷⁸ 5 HUDSON 125.

⁷⁹ For the French text of Convention and Statute, see ADAM, *op. cit. supra* note 71, at 248.

which arose out of this arrangement and led to a political controversy that was settled by a decision of the West German Federal Constitutional Court,⁸⁰ it seems worth stating that the Kehl Port Authority was created by the 1951 Protocol and the Statute annexed thereto for the purpose of exempting the Port area and installations from the administration of the Land Baden to which it had belonged before. At all levels, the administrative machinery used and the powers entrusted to it seem to betray the desire to extend in time a situation of fact which had apparently been in line with certain post-World War II objectives of the French Government. Still, it is hard to deny that in its institutional setup, in its mandate, and in its functions, the Hafenverwaltung was an operational agency of an international character.⁸¹

The Danube Commission, as provided for in the 1948 Belgrade Convention,⁸² offers some features which resemble those of an operational agency. Yet, while its functions are the maintenance and operation of the waterway under its control, its powers and obligations have been so much diminished at the expense of the riparian States as compared with the European Danube Commission that its executive and operational tasks are merely ancillary to those of the riparian countries. With that limitation, the present Danube Commission also finds its place here.⁸³

Cases in which especially the operational functions of international bodies are very strongly developed in connection with the dredging of a waterway are the International Mosel Company and the International Mosel Commission. The purpose of these establishments is succinctly stated in article one of the Convention of October 27, 1956,⁸⁴ between France, Germany, and Luxembourg; they are to render the Mosel, between Koblenz and Thionville, accessible to ships of up to 1500 tons, and thereby to facilitate and accelerate traffic in that waterway, primarily between the Ruhr Valley and the Lorraine. The Mosel Company is to undertake the works required for making the river navigable to that extent; the Commission is to safeguard the navigability of the river once that stage has been reached, to determine the fees for the use of the waterway, and to guarantee the freedom of shipping thereon. The 1956 Convention takes into account that the Mosel is a tributary of the Rhine and, by a series of references to the treaties governing the status of the latter river, provides for the application of certain relevant rules to the Mosel, notably as regards the customs régime and the typical police powers, *e.g.*, the maintenance of health and safety, the control of which is one of the tasks of the Mosel Commission.⁸⁵ Yet, the status of the Mosel Commission is different from that of the Rhine Central Commission,⁸⁶ particularly in three respects:

⁸⁰2 ENTSCHEIDUNGEN DES BUNDESVERFASSUNGSGERICHTS 347 (1953).

⁸¹Cf. Bernhardt, *Kehler Hafen-Fall*, 2 SCHLOCHAUER 218 (1961).

⁸²33 U.N.T.S. No. 518, at 181, 187 (1949).

⁸³The European Commission of the Danube (see *supra*, at 642-43) does not belong to this group, as its functions transcended the operational domain.

⁸⁴11 VERTRÄGE DER BUNDESREPUBLIK 35 (1959).

⁸⁵*Id.* arts. 29-33.

⁸⁶For a summary of its history and the present text of the treaties governing its operation, see 1 PEASLEE 158.

- (1) As it has its own income from fees it will set, it is more independent.
- (2) It has a stronger position as regards the works necessary for the upkeep of the river in as much as it may initiate such action or enjoin the riparian States from works which it considers undesirable.⁸⁷
- (3) Finally, the Mosel Commission is subject to judicial control as regards its executive and rule-making decisions by courts of the riparian States designated in accordance with the Convention of Mannheim of 1868, with appeals not, as in the case of the Rhine, to the Commission, but to an independent international arbitral tribunal.⁸⁸

As regards the Mosel Company, the capital of which is distributed in proportions which reflect the political and economic issues involved in that venture,⁸⁹ its novel feature for purposes of the present discussion is the determination of the proper law of the Society. Though the Company is a closed corporation of German law—*Gesellschaft mit beschränkter Haftung* (G.m.b.H.)—it is governed by the Convention, the Statute annexed to that Treaty, and only subsidiarily (“*subsidiarement*,” “*subsidiär*”) by the German law of closed corporations (G.m.b.H.-Gesetz).⁹⁰ This proviso is modeled in the same way as the corresponding rules of the European Company for the Chemical Processing of Irradiated Fuels (Eurochemic) Convention,⁹¹ on the lines of the 1955 *Société Européenne pour le Financement de Matériel Ferroviaire* (Eurofima) Convention,⁹² which in that respect had developed further a concept first applied in the establishment of the Bank for International Settlements and the statutes thereof: the international commercial corporation created in execution of a treaty but deriving its legal personality from and being subject to the law of a specific country.

Yet the subjection to a national law is only relative in as much as the German Government guarantees the corporate rights of the foreign partners in the Mosel Society against any changes of German company law subsequent to the coming into force of the Convention which would adversely affect these rights. Furthermore, the Society, its personnel, and activities benefit from so many privileges, exemptions, and immunities that one is tempted to see in that special treatment a manifestation of the international personality of that Luxembourg-Franco-German enterprise⁹³ which at all levels of its administration and management is fitted to ensure balanced weight to the German and French Governments in its day-to-day operation.

It will be recalled that the corresponding instance of international cooperation in North America—the joint construction of the Saint Lawrence Seaway—was brought about in a much less formal manner, the machinery used consisting of

⁸⁷ MOSEL CONVENTION arts. 36-37.

⁸⁸ *Id.* art. 35.

⁸⁹ *Id.* art. 10; STATUTE OF THE MOSEL SOCIETY arts. 5-7.

⁹⁰ MOSEL CONVENTION art. 9.

⁹¹ Dec. 20, 1957; 13 VERTRÄGE DER BUNDESREPUBLIK 340 (1961).

⁹² For an unofficial English text of that Convention and of the Statutes, see 26 BULLETIN OF THE INTERNATIONAL UNION OF RAILWAYS (1955).

⁹³ To this effect, see ADAM, *op. cit. supra* note 71, at 156.

parallel parliamentary action and, in fact, coordinated works by Canada and the United States which had been preceded by the creation of the Saint Lawrence Seaway Development Corporation on the part of the United States by Act of May 13, 1954, and the establishment in Canada of the Saint Lawrence Seaway Authority.⁹⁴ The exchange of notes of August 17, 1954, which marked the end of the preparatory period, opened the way to a joint operational activity which, based on a tradition of mutual confidence, helped to establish an international public service in the absence of institutional arrangements in the form of treaties.

(b) *Other authorities in the field of transportation.* Still in the field of communications but perhaps devoted to more modest objectives are the international public services which were entrusted with the management of the Cape Spartel Lighthouse, of the International Airport of Basle-Mulhouse, and which will construct the tunnel under the Mont Blanc.

The International Commission of the Cape Spartel Lighthouse administered the maintenance and upkeep of that lighthouse at the entrance of the Mediterranean Sea until it was ended in 1958 in the wake of Morocco's accession to independence.⁹⁵ The Basle-Mulhouse Airport, a joint Franco-Swiss "établissement public" created by the Convention of July 4, 1949,⁹⁶ marks one of the doctrinal stages that led to the concept underlying Eurofima, as the Airport Authority is subject to French law except where the Convention, the Statutes and the Annexes provide otherwise. This amounts to a rebuttable presumption in favor of the applicability of French law, whereas under the Eurofima Arrangement and in the instances modeled on its lines, the international agreements prevail, and only lacunae are filled "subsidiirement" by the application of a specific national law.

Finally, the Mont Blanc Tunnel arrangements⁹⁷ provide for two enterprises, one Italian, the other French, to undertake the building of the tunnel on their respective territories, and for the management of the tunnel by a corporation of which each State subscribes half of the capital. The participation of the two contracting parties in the administration of the tunnel is defined accordingly. The whole organizational structure is supervised by a mixed Franco-Italian Commission.⁹⁸

While all of the international agencies in the field of communications discussed thus far were related to a specific region or a specific inland waterway, the last insti-

⁹⁴ 68 Stat. 95 (1954), 31 U.S.C. § 846 (1958) (defined as "wholly owned Government corporation"); 68 Stat. 93 (1954), as amended, 33 U.S.C. §§ 981-90 (1958); CAN. REV. STAT. ch. 242 (1952). On the subject as a whole, see Cohen & Nadeau, *The Legal Framework of the St. Lawrence Seaway*, U. ILL. L. F. 29 (1959).

⁹⁵ Protocol of March 31, 1958, 38 DEP'T OF STATE BULL. 749 (1958). For a description of the Cape Spartel experience, see Stuart, *The International Lighthouse at Cape Spartel*, 24 AM. J. INT'L L. 770 (1930), and JESSUP & TAUBENFELD, *op. cit. supra* note 18, at 100-01.

⁹⁶ The text of the Convention and Statute can be found in ADAM, *op. cit. supra* note 71, at 223 *et seq.*

⁹⁷ The text of this Convention can be found *id.* at 262.

⁹⁸ The construction companies are subject to their respective national laws, and the supervisory bodies apply the law of the place where they have to intervene. *Id.* arts. 2, 13. Special agreements on monetary, fiscal, customs and social questions raised by the construction and upkeep of the Tunnel are envisaged by art. 12.

tution to be referred to, Eurofima,⁹⁹ is to finance rolling stock for the railways of the contracting parties whose national railway systems are the shareholders and at the same time the users and clients of the corporation established by the Convention of October 22, 1955. The latter is a Swiss corporation, governed by Swiss law "à titre subsidiaire" only, and obviously owes much to the trail-blazing precedent of the Bank for International Settlements which has its seat, like Eurofima, in Basle.¹⁰⁰ The considerable progress marked by Eurofima has since been confirmed by a number of enterprises created also within the framework of European regional organizations, notably in the nuclear field.¹⁰¹

2. *Nucleonics*

Proceeding chronologically, however, the first operational agency¹⁰² in the field of nucleonics is not one modeled along the lines of Eurofima but an entity which itself has become a prototype of international public services: C.E.R.N. It grew out of the UNESCO-sponsored Conseil Européen pour la Recherche Nucléaire and has retained the latter's initials since, in spite of its present name, European Organisation for Nuclear Research. This institution, set up by the Agreement of July 1, 1953,¹⁰³ is devoted exclusively to scientific research in the peaceful uses of the atom, in particular basic research, and maintains for that purpose laboratories in Meyrin near Geneva, which are among the best equipped in the world.¹⁰⁴ This is its operational task. It is financed by the Member States which are the users of the installation. The latter serves as a European research center in nucleonics to which nationals of non-Member States may be invited as fellows and guests by C.E.R.N.'s organs (Council and Director). Though the Geneva institution is also the administrative center of an association of States, its main purpose—the maintenance and management of nuclear research installations—qualifies it as an international public service with international personality.¹⁰⁵

This double nature is also a characteristic of the International Atomic Energy Agency (I.A.E.A.). But whereas the constitutional designation of its purpose forces C.E.R.N. to be an operational agency, the I.A.E.A. is, under its basic instrument, an international public service only potentially. True, its Statute¹⁰⁶ vests the agency

⁹⁹ European Company for the Financing of Railway Rolling Stock. See BULLETIN, *op. cit. supra* note 92.

¹⁰⁰ Bank for International Settlements Statute art. 2 (location); Bank for International Settlements Convention art. 1 (law applicable).

¹⁰¹ See *infra*, at 654-57.

¹⁰² Except for the wartime cooperation between Canada, the United Kingdom, and the United States in the field of nucleonics which in the form of the Combined Development Agency approached institutional character. See Hahn, *Atomenergie, Friedliche Nutzung*, 1 SCHLOCHAUER 100, 102-03 (1960), and the literature quoted therein.

¹⁰³ C.E.R.N. Agreement, July 1, 1953, 5 VERTRÄGE DER BUNDESREPUBLIK 465 (1956) (in force since Sept. 29, 1954).

¹⁰⁴ For a detailed report, see DRÜCK, *op. cit. supra* note 57, at 46; Hahn, *Europäische Organisation für Kernphysikalische Forschung*, 1 SCHLOCHAUER 473 (1960), and the literature quoted therein.

¹⁰⁵ For a list of treaties concluded by C.E.R.N., see DRÜCK, *op. cit. supra* note 57, at 47, 48.

¹⁰⁶ Statute of the International Atomic Energy Agency, Oct. 26, 1956, [1957] 8 U.S.T. & O.I.A. 1093, 1095, T.I.A.S. No. 3873.

with powers that would permit its activity in the whole range of the peaceful uses of the atom as well as ancillary sciences and services. Yet within this wide domain, its powers may be exercised only if Member States accept voluntarily aid from, and in consequence, control by, the Agency. Nor is there any constraint for Member States to make available special fissionable or any other nuclear materials, facilities, or information to the Agency for distribution among other contracting parties in need thereof.

The detailed provisions of the Statute, and the efforts made thereunder for the exchange of information and the promotion of research, the supplying of materials, the exchange and training of scientists and experts and the control by the Agency to exclude the use for other than peaceful uses and to ensure the application of generally accepted safety standards need not remain without consequences.¹⁰⁷ But the scarcity of fissionable material belongs to the past. There now is an abundance of uranium and of nuclear information, even as to highly recent developments.

Atomic information is no longer the top-secret matter it used to be in the early days of nucleonics and up to the late fifties. Purely commercial relationships are about to be used on a large scale to bring about the nuclear equipment of nations in fields in which it was thought during the drafting of the I.A.E.A. Statute and during a certain period thereafter that the Agency should display its main activity.¹⁰⁸

Yet there remain sectors in which this universal intergovernmental organization, which includes States from both sides of the Iron Curtain, will play an uncontested role: it is to establish, in consultation and collaboration with the United Nations and its specialized agencies concerned, world-wide standards of safety for protection of health and minimization of danger to life and property (including such standards for labor conditions), and to insure their application in its own installations and in those which it is invited, or entitled by virtue of project agreements, to control for that purpose. It is also to provide for an appropriate documentation center and further the access of underdeveloped areas and their scientists to the uses of the atom and of connected scientific disciplines. Yet it may be doubted whether these are typical operational tasks.¹⁰⁹

The Euratom Treaty provides for a number of operational agencies, the respective importance of which can no longer be measured on the basis of the Treaty and its *travaux préparatoires* alone, particularly as developments beyond the control of the framers have considerably changed—and weakened—the role of the Euratom Supply Agency.

That Supply Agency, during the drafting of the Euratom Compact widely hailed or decried as a significant step towards a technocracy within the Community and

¹⁰⁷ See I.A.E.A. ANN. REP. (U.N. Doc. No. INFCIRC/4 (1959)); [1959-60] BOARD OF GOVERNORS ANN. REP. 114 (U.N. Doc. No. GC(IV) (1960)).

¹⁰⁸ I.A.E.A. PREPARATORY COMM'N REP. (U.N. Doc. No. GC1/1-GOV/1 (1957)).

¹⁰⁹ Perhaps it is yet too early for such a judgment. As the list of Agreements concluded by the I.A.E.A. shows, the initial period does not seem to be over yet, as most of the Agreements have been organizational rather than operational in nature. U.N. Doc. No. INFCIRC/20 (1960).

its Member States,¹¹⁰ was to be a kind of statutory monopoly exclusively responsible for the supply of all consumers in the community with nuclear ores, concentrates and fuels. It was thus to secure an appropriate influence for the community and the consumers living therein on a market which was presumed to be narrow and dominated by scarcity and its usual concomitants. The Member States were to guarantee the free exercise of the Agency's function in their territories and to communicate to it all information, or ensure the transmittal thereof by their subjects, necessary for the accomplishment of the Agency's tasks. Finally, they and their subjects were to accept the determination of prices and conditions of sale and purchase.

In fact, the market in fissionable material and nuclear equipment and facilities soon after the signing of the Euratom Treaty on March 25, 1957, became such that the buyer was no longer exposed to dictation by the producer or seller, but could negotiate his terms by the usual commercial means. The doctrinal rigidity which wanted to reserve to the Agency an option on any ores, concentrates, and fuels produced in the Community,¹¹¹ the monopoly for the supply of all consumers,¹¹² and the monopoly for the import and export of that material,¹¹³ had been already weakened by a set of clauses in the Treaty which in fact conceded that the Agency should only authorize agreements already negotiated between producers and consumers, and act as a kind of commodity exchange in nuclear material without any proper influence on the prices other than that flowing from supply and demand. The Statute of the Agency¹¹⁴ and its practice, as well as that of the Commission established thereunder, have only confirmed the relatively modest practical importance of this new institution.¹¹⁵

On the other hand, at least one of the joint enterprises provided for in the Euratom Treaty seems to be established as envisaged by the relevant clauses of the basic instrument.¹¹⁶ Within the meaning of the Euratom Compact, joint enterprises are undertakings—existing or to be established—of fundamental importance for the development of nuclear industry in the community (and not only in a Member State) in the establishment and management of which the organization, its Member States,

¹¹⁰ See Bülck, *Zur Systematik der Europäischen Wirtschaftsgemeinschaften*, 3 *BERICHTE DER DEUTSCHEN GESELLSCHAFT FÜR VÖLKERRECHT* 66, 102-06 and nn. 122, 123 thereat (1959).

¹¹¹ Euratom Treaty arts. 52(2b), 57-63.

¹¹² *Id.* arts. 52(2b), 60, 61.

¹¹³ *Id.* arts. 52(2b), 59(b).

¹¹⁴ Euratom Supply Agency Statute, Nov. 6, 1958, [1958] *AMTSBLATT DER EUROPÄISCHEN GEMEINSCHAFTEN* 534.

¹¹⁵ "It . . . seems necessary to limit the operations of the Agency to a minimum compatible with the provisions of the treaty, and to afford users and producers a large degree of freedom in their business operations." *EURATOM COMM'N TROISIÈME RAPPORT GÉNÉRAL SUR L'ACTIVITÉ DE LA COMMUNAUTÉ* 64, para. 87 (1960). [Ed. transl.].

¹¹⁶ Euratom Treaty arts. 45-51. The first joint enterprise is to be built at Chooz, in the French Ardennes, and will be maintained by the Société Nucléaire Franco-Belge des Ardennes (S.E.N.A.). For a detailed report, see COUNCIL Doc. No. R/963/60 (Oct. 7, 1960). The Decision establishing S.E.N.A. has been adopted, and its Statute—of April 27, 1961—approved by the Euratom Council on September 9, 1961, [1961] *JOURNAL OFFICIEL DES COMMUNAUTÉS* 1173, 1175, which appeared after the completion of this paper.

or private capital may take part. They enjoy certain privileges as regards local tax laws and other levies and assessments. These special rules, like the rule that national legislation may be applied subsidiarily,¹¹⁷ betray the influence of the Eurofima Convention and notably of the Mosel Convention.¹¹⁸

The third group of entities of an operational character provided for in the Euratom Treaty are the institutions of research and higher learning which in the Treaty are referred to as the Joint Nuclear Research Center, the Central Bureau of Nuclear Measurements, and the Institution at University Level.¹¹⁹ The Euratom Commission has begun to establish the two entities first named, which are endowed with far-reaching privileges and immunities,¹²⁰ but has not yet arrived at definitive results as regards the University project.¹²¹

In its nonregulatory activities, the European Nuclear Energy Agency (E.N.E.A.), the operational arm of the O.E.E.C. in the field of nucleonics, is comparable neither to C.E.R.N. nor to the operational entities provided for in the Euratom Treaty. To begin with, E.N.E.A. is not an international organization of its own, but only an organ, for a specific sphere of action, of the O.E.E.C., which latter alone has legal personality under international law and the law of the Member States.¹²² Apart from its legislative achievements, particularly in the field of protection of the population at large and of workers in nuclear installations and related fields against nuclear radiation,¹²³ the conclusion of a Convention on Third Party Liability in the Field of Nuclear Energy,¹²⁴ the liberalization of trade in special nuclear material, nuclear facilities and equipment,¹²⁵ and the first steps towards a supervision and emergency warning system in cases of increase in environmental radioactivity, its great success in the operational field^{125a} is the establishment, under its aegis, of what are by now three joint undertakings: Eurochemic, and the reactor projects in Halden, Norway, and Winfrith, United Kingdom.¹²⁶

¹¹⁷ Euratom Treaty art. 49.

¹¹⁸ See *supra*, at 650-51.

¹¹⁹ Euratom Treaty arts. 6-9.

¹²⁰ For technical indications regarding the research establishments at Ispra, Italy; Petten, Netherlands; and Karlsruhe, Germany, as well as the Central Bureau of Nuclear Measurements, see EURATOM COMM'N TROISIÈME RAPPORT GÉNÉRAL, *op. cit. supra* note 115, at 29. For the most recent developments, see *id.*, QUATRIÈME RAPPORT GÉNÉRAL 15-52 (1961).

¹²¹ See COMITÉ INTERIMAIRE POUR L'UNIVERSITÉ, RAPPORT AUX CONSEILS DE LA COMMUNAUTÉ ÉCONOMIQUE EUROPÉENNE ET DE LA COMMUNAUTÉ EUROPÉENNE DE L'ÉNERGIE ATOMIQUE (1957), and *id.*, QUATRIÈME RAPPORT GÉNÉRAL 58 (1961).

¹²² E.N.E.A. was established by Decision C(57)255 of the Council of the O.E.E.C. on Dec. 17, 1957, 5 EUROPEAN YEARBOOK 273 (1957).

¹²³ O.E.E.C. Council Decision C(59)109 (Final) of June 12, 1959 (on the Adoption of Radiation Protection Norms).

¹²⁴ July 29, 1960.

¹²⁵ O.E.E.C. Council Decision C(56)109 (Final) of July 19, 1956 (concerning Standstill Measures in respect of Intra-European Trade in the Field of Nuclear Energy, extended from time to time by Decisions of the O.E.E.C. Council).

^{125a} Recommendation of the O.E.E.C. Council C(61)98 (Final) of July 7, 1961.

¹²⁶ For a particularized report, see Hahn, *Europäische Kernenergie-Agentur*, 1 SCHLOCHAUER 471 (1960) (with bibliography); Wolff, *Centro Internazionale di studi e Documentazione sulle Comunità Europee*, IL DIRITTO DELL'ENERGIA NUCLEARE 239, 244-53 (1961).

The Eurochemic, in Mol, Belgium, was the first joint undertaking of the O.E.E.C. in the field of nuclear energy. It was established by a treaty.¹²⁷ The privileges and immunities enjoyed by Eurochemic, its tasks, and the fact that a special group of instructed Government representatives make decisions concerning certain important matters, raise some doubt as to whether Eurochemic has been correctly named a "joint stock company—société par actions"¹²⁸ as that notion is presently understood. Again, Eurochemic, like Eurofima and the institutions modeled on its lines, is subject, in the first place, to a Convention providing for its establishment and a Statute annexed thereto, *i.e.*, conventional international law, and only subsidiarily to Belgian law.

Though Eurochemic has been a success, both operationally and politically,¹²⁹ it must not be overlooked that the E.N.E.A. has not used the same legal devices in the establishment of its more recent joint undertakings. Neither the Agreement of June 11, 1958, concerning the Halden (Norway) Boiling Water Reactor Project, nor the Agreement of March 23, 1959, concerning the High Temperature Gas Cooled Reactor Project at Winfrith, United Kingdom, create a corporate entity with legal personality, but are limited to the distribution of financial charges resulting from the arrangement, and to procedural and substantive details concerning research work pursuant to the Agreement. The reactors and the installations appertaining thereto remain the property of the national institutions which have assumed the obligation to build and to operate these common undertakings. It is evident that the two more recent project arrangements of the E.N.E.A. provide for a lesser degree of internationalization than Eurochemic which is truly an international corporation under European law.¹³⁰

Finally, one of the most recent international operational agencies in the field of nuclear energy is the Nordisk Institut for Teoretisk Atomfysik. Its structure is closely modeled on the lines of the C.E.R.N. Agreement of 1953. The Convention among the five Scandinavian states, Denmark, Finland, Iceland, Norway, and Sweden, establishing the Copenhagen Institute¹³¹ is another product of the movement towards regional organizations in the fields of nucleonics.¹³²

3. *Economics and Finance*

There are numerous international operational agencies in the field of economics and finance. One of the earliest and most successful institutions of this kind has

¹²⁷ Eurochemic Treaty, Dec. 20, 1957; 13 VERTRÄGE DER BUNDESREPUBLIK 340 (1961).

¹²⁸ Eurochemic Statute art. 1.

¹²⁹ See BALKE, *op. cit. supra* note 69, at 8; WOLFGANG CARTELLIERI, GRUNDSÄTZLICHE RECHTS-PROBLEME DES ATOMGESETZES 7 (1960) (Veröffentlichungen des Instituts für Energierecht an der Universität Bonn).

¹³⁰ The two agreements are published in INTERNATIONAL ATOMIC ENERGY AGENCY, LEGAL SERIES NO. 1, MULTILATERAL AGREEMENTS 233, 249 (1959).

¹³¹ Nordita (Nordisk Organisation for Teoretisk Atomfysik) is operated on a provisional basis, since the convention formally establishing the organization has still not been finally agreed upon. Letter from the Danish O.E.E.C. Delegation to the author, Sept. 1, 1961. See also, 15 NUCLEAR PHYSICS 390-91 (1960) (Dutch).

¹³² For an account on this trend, see 2 GEORG DAHM, VÖLKERRECHT 778, 784 (1961).

been the Bank for International Settlements (B.I.S.) in Basle, incorporated in conformity with an international convention¹³³ and having legal personality as a company limited by shares under Swiss law.¹³⁴ Its share capital was initially distributed among European Central Banks, one American and one Japanese group, which latter, however, resold its shares to European Central Banks.¹³⁵ Originally the B.I.S. was to serve as an instrument for winding up the reparations which Germany had to pay under the Treaty of Versailles and under the Young Plan. To this end, it was to replace political authorities which, until 1930 and under the Dawes Plan, had supervised the transfer and the distribution of the German reparation payments. At the same time, however, the Bank has more general tasks under its statute. Indeed, the latter have since become its main field of operation.

The Bank is now the agent of the O.E.E.C. for the execution of the European Monetary Agreement.¹³⁶ It also has important functions in the framework of the 1953 Agreement on the Settlement of German External Debts,¹³⁷ and is responsible for the management and servicing of the 1954 loan floated by the European Coal and Steel Community on the American market.¹³⁸ The Bank for International Settlements continues to aid central banks in the field of international payments by facilitating and executing gold transfers among these national agencies.

Hardly comparable with the B.I.S. is the International Bank for Reconstruction and Development (I.B.R.D.), established in the wake of the war¹³⁹ to secure long term capital for the devastated economies of the European and Asian belligerents, as well as investments in countries in the process of development. The I.B.R.D. is a world-wide organization, and its sixty-six members (at the end of 1960) had by that time subscribed to a capital of over nineteen billion dollars.¹⁴⁰ Subscriptions are not the only source of the Bank's income. It has floated a considerable number of loans on the American and European markets which, after 1947 and even more so after the end of Marshall Plan aid, have been directed to non-European countries for basic investments, communications, agriculture, and forestry. In principle, it is the government of a member country which is the recipient of a loan from the bank. For other recipients, the government or the central bank concerned must guarantee to service the loan.

To overcome the limitation that loans can only be given to governments or government guaranteed recipients, and the further restriction that such loans may

¹³³ Hague Convention, Jan. 20, 1930, 5 HUDSON 307; Statutes attached to the Convention, 5 HUDSON 314.

¹³⁴ Constituent Charter, para.1; Statutes art. 1.

¹³⁵ ROGER AUBOIN, *THE BANK FOR INTERNATIONAL SETTLEMENTS, 1930-1955*, at 4 (Princeton Essays in International Finance No. 22, 1955).

¹³⁶ European Monetary Agreement, Aug. 5, 1955, art. 20, as amended by Supplementary Protocol No. 3, Jan. 15, 1960, and O.E.E.C. Council Decision C(60)146 (Final), July 19, 1960.

¹³⁷ Agreement on German External Debts, Feb. 27, 1953, [1953] 4 U.S.T. & O.I.A. 443, T.I.A.S. No. 2792; 3 VERTRÄGE DER BUNDESREPUBLIK 85 *et seq.* (1956).

¹³⁸ See JEAN SALMON, *LE RÔLE DES ORGANISATIONS INTERNATIONALES EN MATIÈRE DE PRÊTS ET D'EMPRUNTS, PROBLÈMES JURIDIQUES* 287 (1957).

¹³⁹ I.B.R.D. Articles of Agreement, Dec. 27, 1945, 2 VERTRÄGE DER BUNDESREPUBLIK 313 (1956); 9 HUDSON 889.

¹⁴⁰ Press Release of I.B.R.D. European (Paris) Office, March 10, 1961, p. 1.

only be given at fixed interest rates, the I.B.R.D. in 1955 founded a subsidiary, the International Finance Corporation. That institution¹⁴¹ is to invest in private enterprise without government guarantees and to undertake general financial operations of an ordinary commercial character, wherever possible in collaboration with private investors.¹⁴²

While the main activity of the economic institutions discussed so far¹⁴³ is operational in nature, the International Monetary Fund has also important regulatory powers.¹⁴⁴ The operational part of the Fund's activity consists in the rendering of financial assistance—standby credits¹⁴⁵—in the case of balance of payments difficulties which in a number of cases have been used to stabilize the economies of member countries in conjunction with short-term credits from the European Payments Union,¹⁴⁶ and now from the European Fund¹⁴⁷ which is administered by the O.E.E.C. under the European Monetary Agreement.¹⁴⁸

The latter, a regional agreement on financial cooperation among the eighteen members of the O.E.E.C., provides for two activities: (1) a multilateral system of settlements among these States which is operated by the Bank for International Settlements under the supervision of a Board of Management and the authority of the Council of the O.E.E.C.,¹⁴⁹ (2) the granting of credits to contracting parties in order to aid them to withstand temporary over-all balance of payments difficulties that endanger economic relations between the O.E.E.C. Members.¹⁵⁰ Like the E.N.E.A.,¹⁵¹ the European Fund has no legal personality of its own; its assets are held in trust by the O.E.E.C. which alone has legal capacity.¹⁵²

¹⁴¹ International Finance Corporation, Articles of Agreement, April 11, 1955, 10 VERTRÄGE DER BUNDESREPUBLIK 433 (1958).

¹⁴² See I.F.C. FOURTH ANN. REP. (1959-60), and I.F.C. Press Release, Feb. 24, 1961. The latter contains a memorandum from the President of the I.F.C. of Feb. 10, 1961, on a proposal for amending article III of the I.F.C.'s Articles of Agreement, so as to enable it to invest in capital stock. On the law applicable to I.F.C., see *infra*, at 664.

¹⁴³ To which institutions must be added, since Sept. 24, 1960, the International Development Association, another creation of the I.B.R.D. with worldwide membership. I.B.R.D. Press Release, *supra* note 140, at 9. Under its Articles of Agreement of April 26, 1960, it is to "raise standards of living in the less-developed areas of the world included within the Association's membership" (art. 1), and to use for that purpose techniques of intergovernmental financing designed to make that assistance bear less heavily on the balance of payments than do conventional loans. See EXECUTIVE DIRECTORS ON THE ARTICLES OF AGREEMENT OF I.D.A. REP. (Jan. 26, 1960).

¹⁴⁴ Articles of Agreement, Dec. 27, 1945, 2 VERTRÄGE DER BUNDESREPUBLIK 227 (1956); 9 HUDSON 820. On the regulatory activities of the I.M.F., see the summary in 2 GEORG DAHM, VÖLKERRECHT 612-16 (1961) and I.M.F. ANN. REP. 26-31 (1960). On the doctrinal implications of these activities, see Aufricht, *The Fund Agreement and the Legal Theory of Money*, 10 ÖSTERREICHISCHE ZEITSCHRIFT FÜR ÖFFENTLICHES RECHT 26 (1959).

¹⁴⁵ Another transaction open to the Fund and its members is the purchase and repurchase technique available under article 5 of the I.M.F. Articles of Agreement. For comments on this, see Mann, *Money in Public International Law*, 96 R.C. 1, 22-25 (1959, 1).

¹⁴⁶ For a summary, see MANAGING BOARD OF THE E.P.U., FINAL REP. 21 (1959).

¹⁴⁷ See BOARD OF MANAGEMENT OF THE E.M.A. SECOND ANN. REP. 54-65 (1961).

¹⁴⁸ See note 136, *supra*.

¹⁴⁹ E.M.A. arts. 8-16.

¹⁵⁰ *Id.* arts. 2-7.

¹⁵¹ In this respect, the European Fund is also like the European Productivity Agency and the Office for Scientific and Technical Personnel. For a concise description of these operational branches of the O.E.E.C.,

Still in the economic and financial field, the Treaty establishing the European Economic Community provides for three entities of an operational character. The first is the European Social Fund, which is to contribute to the retraining and the resettlement of workers whose employment has to be changed as a consequence of structural changes ensuing from the operation of the Common Market.¹⁵³ According to article 199 of the Treaty, the income and expenditure of the fund forms part of the budget of the Community.

The European Investment Bank,¹⁵⁴ the second of the operational entities created by the E.E.C. Treaty, is to grant loans and guarantees on a non-profit basis to facilitate the financing of projects for developing less developed regions, for modernizing or converting enterprises or creating new activities where these are required but cannot be financed entirely by Member States, and finally for projects which are of common interest to several Member States whose financial means are insufficient to cover the expenditure required. The Bank is an independent corporate entity with legal personality, necessarily limited to the internal law of the Member States.¹⁵⁵ Its decisions are to be in line with normal banking procedures, and it is to borrow the funds necessary for its tasks in the international capital markets when its capital does not suffice.¹⁵⁶ The third operational entity created by the E.E.C. Treaty is the Development Fund for the promotion and acceleration of economic growth in the overseas territories of Member States. It enjoys a wider degree of operational independence than the Social Fund, but it is also administered by the Commission.¹⁵⁷

4. *Refugees, human rights, and cultural activities*

In a field which may be in rather general terms described as operational activities for the furtherance and protection of human rights, the United Nations has first established the International Refugee Organization for handling the special problems created by the displacement of people during and after the war. Its successor since 1951, the United Nations Office for Refugees, administers a special refugee fund fed by voluntary contributions from member countries.¹⁵⁸ Special funds were also

see BUNDESMINISTERIUM FÜR WIRTSCHAFT, DER EUROÄPISCHE WIRTSCHAFTSRAT, HANDBUCH 1959, at 77-83 (1959).

¹⁵² To this effect, see Huet, *L'Accord Monétaire Européen du 5 Août 1955*, 1 A.F. 455, 461 (1955).

¹⁵³ E.E.C. Treaty arts. 123-28. For comment, see WOHLFARTH, ET AL., *op. cit. supra* note 52, at 375 *et seq.*; POLITICAL AND ECONOMIC PLANNING (PEP), EUROPEAN ORGANIZATIONS 305 (1959).

¹⁵⁴ E.E.C. Treaty arts. 129-30.

¹⁵⁵ International personality is all the more likely to accrue, as the Bank's legal capacity has not been limited to any one legal order, and thus the development need not jump hurdles as in the case of the B.I.S. See *infra*, at 663.

¹⁵⁶ E.E.C. Treaty art. 130 and the Protocol on the Statute of the European Investment Bank. On the law applicable to the transactions of the Bank, see *infra*, at 664 n.182.

¹⁵⁷ Implementing Convention relating to the Association with the Community of the Overseas Countries and Territories art. 1.

¹⁵⁸ It is submitted that the Technical Assistance Board of the United Nations, established by the 1949 General Assembly, Resolution 304 (IV), also belongs to the group of international services in the field of economics and finance. It pursues the activities which its name indicates and is financed out of voluntary contributions pledged by Governments to a special account established by the Secretary-General of the United Nations separate from the regular budgets of the United Nations and its specialized agencies.

created to meet the problems ensuing from hostilities in Palestine and Korea.¹⁵⁹ These funds are administered by the United Nations Relief and Works Agency for Palestine Refugees in the Near East,¹⁶⁰ and the United Nations Korean Reconstruction Agency,¹⁶¹ respectively.

The United Nations Children's Fund, another operational agency of the United Nations, is mainly financed by contributions from member nations, but also through the sale of commemorative cards and public collections.¹⁶² The Agency subsidizes special programs for children, especially in the sphere of child health.¹⁶³

VI

INTERNATIONAL CONTROLS

Few if any of the international institutions discussed here lack such powers of supervision and control as may be suitable for the enforcement of the substantive and procedural provisions of their constituent instruments.¹⁶⁴ A classification of the various modes of supervision and control according to the degree of their effectiveness¹⁶⁵ helps to discover several control schemes which reflect the gradual progress of this technique of international law enforcement.

There is, of course, a supervision which consists in no more than the collection, scrutiny, and distribution of information by international offices. This system is current in the international administrative unions which have existed since the end of the last century.¹⁶⁶

Almost on the same level are the supervisory functions of the regional and other subcommissions of the Economic and Social Council of the United Nations, though as a practical matter, these have a possibility of influencing public opinion by the publication of reports and factual data advocating certain policies to be followed by Member States in specific fields.¹⁶⁷

¹⁵⁹ Palestine: G.A. Res. of November 19, 1948, 212 (III), creating special fund; Korea: G.A. Res. 410 A(V) of December 1, 1950, para. 8.

¹⁶⁰ Established by G.A. Res. 302 (IV) of December 8, 1949.

¹⁶¹ Established by G.A. Res. 410 A (V) of December 1, 1950.

¹⁶² Established under U.N. G.A. Res. 57(I) of Dec. 11, 1946, and continued under Resolution 802 (VIII) which also changed the name from United Nations International Children's Emergency Fund to the present designation.

¹⁶³ The two funds of the Council of Europe are mentioned, *infra* at notes 179 and 180. Apart from the discussion of the Soviet technique in this field by ADAM, *op. cit. supra* note 71, at 190-97, see also DRÜCK, *op. cit. supra* note 57, at 49-52. On the Komatom Institute of the Soviet bloc States in Dubna near Moscow which has the same, or substantially similar tasks as C.E.R.N. but is said to have no international personality and almost no privileges and immunities, see DRÜCK, *op. cit. supra* note 57, at 49-52. This book also contains a German translation of the Convention and the Statute of the Dubna Institute of Sept. 23, 1956, *id.* at 144-53.

¹⁶⁴ On instances of international control by functional intergovernmental organizations, see JESSUP & TAUBENFELD, *op. cit. supra* note 18, at 11-134.

¹⁶⁵ For such a classification and the reasons for it, see Hahn, *Internationale Kontrollen*, in 2 SCHLOCHAUER 66 (1961).

¹⁶⁶ See Wehberg, *Entwicklungsstufen der Internationalen Organisation*, 52 FRIEDENSWARTE 193, 198 (1954).

¹⁶⁷ However, the U.N. Refugee Fund Executive Committee may give binding directives to the High Commissioner for Refugees. *Article 68, General Survey*, 2 REPERTORY OF PRACTICE OF U.N. ORGANS Supp. No. 1, at 121, 123 (1958).

Still higher on this scale of control schemes are those agencies which may employ any methods of supervision feasible, except controls on the spot.¹⁶⁸ Where control on the spot is made, its legal basis is either an ad hoc agreement between the supervisory international agency and the territorial sovereign for a specific case, or it is set out in the treaty constituting a particular agency of control.¹⁶⁹

These phenomena prove the existence of various means for observing facts of international legal relevance with a view to determining whether pertinent rules of international law are complied with. But in recent times, observation has frequently been coupled with procedures for the rectification of acts or omissions not in compliance with obligations under treaties or customary international law.¹⁷⁰ Of course, most of these corrective measures can be directed only against States, and may be enforced against individuals solely by the territorial sovereign itself or with its authorization in each specific case.

But even among the international—as distinguished from supranational—organizational treaties concluded between 1950 and 1960, there are instances where control is directed by virtue of such a treaty immediately against individuals, enterprises, and associations.¹⁷¹ Furthermore, although most agencies capable of giving financial support to States lack the power of on-the-spot control, practice has widely recognized their right to dispatch missions, and to appoint permanent control organs for no other purpose than to keep a close watch in the territory of the State or States concerned on the advisability of assistance before the granting of aid, on its use during the period of credit, and on accounts at the moment of repayment.

The most remarkable progress of international control has been made in Europe in the treaties establishing the three Communities among the Six. It is impossible to give in a few lines even an approximate picture of the various methods employed to ensure a permanent administrative control, a judicial control which is comparable to judicial supervision of the executive and the legislative branches of government in the Member States of the supranational communities, and a political control through the European Parliament which, though only slowly emerging,¹⁷² is nevertheless already a legal and political force.¹⁷³ Suffice it to say that differences in the methods of control provided for in the constitutions of the supranational communities and, e.g., in the E.F.T.A. Convention which was concluded after the establishment of the E.E.C. and the Euratom, indicate more than a divergence of techniques. This seems to signify that controls as incisive and far-reaching as those envisaged in the supranational treaties presuppose a political decision to integrate the Member

¹⁶⁸ As under the international commodity agreements.

¹⁶⁹ E.g., the Convention on Security Control of Dec. 20, 1957, concluded under the aegis of O.E.E.C./E.N.E.A., 13 VERTRÄGE DER BUNDESREPUBLIK 310 (1961).

¹⁷⁰ For a list of cases, see Kopelmanas, *Le Contrôle Internationale*, 77 R.C. 58 132 et seq. (1950, II).

¹⁷¹ See *Convention*, supra note 169.

¹⁷² See Stein, *The European Parliamentary Assembly: Techniques of Emerging Political Control*, 13 INTERNATIONAL ORGANIZATIONS 233 (1959).

¹⁷³ See e.g., E.E.C. Treaty art. 144 (resignation of Commission on motion of censure).

States and their populations—and not only with respect to specific, functionally defined matters.

VII

THE LAW OF INTERNATIONAL AND SUPRANATIONAL PUBLIC AUTHORITIES

This paper has shown that the law of international and supranational public authorities is part of the law of international, intergovernmental institutions. The treaty basis and the obligation to serve the community of interests which the States concerned have acknowledged among themselves in establishing an international authority are features common to all international institutions, not only to these authorities. International administrations and executive and regulatory agencies are analyzed in a growing number of monographs on international institutions and organizations of which they are typical examples; and non-judicial international controls—long a forgotten subject—are now also discussed with increasing frequency.¹⁷⁴ A brief summary of the main legal features of international public services may contribute to the doctrinal evaluation of that subject, which has, comparatively speaking, been neglected up to now.

The legal status of these operational agencies is dependent on their functions, as their legal personality under national or international law seems less determined by the constituent treaties than by the practice of the States and the agencies applying these treaties. For instance, the international personality of the Bank for International Settlements is still disputed by writers.¹⁷⁵ But in practice, it exercises the essential concomitants of international personality, although it has been refused that quality in the Convention providing for its establishment and its Charter despite a proposal to the contrary which was discussed at length during the *travaux préparatoires*.¹⁷⁶ Today, the majority of writers and the treaty-making departments of a considerable number of governments see no harm in treating the Bank for International Settlements as a contracting party to arrangements that are treaties.¹⁷⁷

There may be cases where such an evolution is excluded because the operational agency is a branch of another institution which alone has legal standing under international and national law alike.¹⁷⁸ Yet the example of the two special funds of the Council of Europe¹⁷⁹ shows that even in such a situation, circumstances may

¹⁷⁴ See *supra*, at 661-63, and notes 164-66, 170, 172 *supra*.

¹⁷⁵ For a survey of the authorities, see Hahn, *Der Masstab der internationalen Aufsicht im Friedensvölkerrecht*, 10 J.I.R. 2, 8 n.33 (1961).

¹⁷⁶ Part III of the Message of the Swiss Federal Council to Swiss Federal Parliament "relatif à l'approbation de la Convention concernant la banque des règlements internationaux . . .," of Feb. 7, 1930.

¹⁷⁷ E.g., the Agreement of May 13, 1948, between the United States, France, the United Kingdom, and the B.I.S., 140 U.N.T.S. No. 1888, at 187 (1952); Agreement of Jan. 9, 1953, between the B.I.S. and the Federal Republic of Germany, 3 VERTRÄGE DER BUNDESREPUBLIK 187 (1956).

¹⁷⁸ As is true in the case of the operational arms of the O.E.E.C. (European Fund, E.N.E.A., and O.S.T.P.), see *supra*, at 656, 659.

¹⁷⁹ Council of Europe Resettlement Fund, established by Resolution 56(9) of the Committee of Ministers of April 16, 1956; Cultural Fund of the Council of Europe, established by Resolution 58(13), June 16, 1958.

force the mother organization to admit the distinct legal personality of one subsidiary, but allow it to refuse the same to the other.¹⁸⁰

There are a great number of cases where the constituent instrument expressly confers the capacity to act under national or international law. But unless an international public service is part of the organizational setup of a State or of one of its territorial or political subdivisions and meant to remain such an instrumentality with the resulting sovereign powers, its legal personality under national or international law need not be stipulated by a treaty to be a reality. That lesson may safely be drawn from the as yet rather brief history of international public services.

As regards the privileges and immunities of these operational agencies, three groups of cases can be distinguished. First, there are organizations like the International Atomic Energy Agency and the European Organization for Nuclear Research, which have by and large the privileges and immunities enjoyed by the United Nations and its Specialized Agencies and are subject to no other law than that of their constituent instrument, rules and regulations made thereunder by their organs, and such principles of conventional or customary international law as the constitutive instrument or internal legislative acts may declare applicable. There the sovereign character of the agencies' activity has been deemed so predominant that submission to a national law was considered as inadvisable, though specific operational activities may be treated differently if the organs of the institutions see fit to do so.¹⁸¹

The second group, represented, e.g., by the International Finance Corporation,¹⁸² still has no general attachment to any national law, although it may subject specific agreements to the internal law of a State, but no longer enjoys jurisdictional immunity. Still, the I.F.C. is exempt from taxes and customs duties, and its archives, property, and assets are not subject to search and seizure of whatever kind. The intrinsic justification of the submission of the I.F.C. and like institutions to ordinary judicial processes lies in the need both to protect and to strengthen the confidence of individuals and enterprises in the trustworthiness of the entity.

Finally, there are a number of operational agencies which are subject to a specific national law in the sense that lacunae in the organic instrument must be or may be¹⁸³ filled by the relevant rules of that national law. This feature, usually accompanied by a number of legal advantages which place the entities concerned somewhere between tax-privileged public utilities under internal law and an international organization without jurisdictional immunity, can be found especially in Europe, beginning with the Bank for International Settlement and more developed in Eurofima, Eurochemic, and the joint enterprises envisaged by the Euratom Treaty.

¹⁸⁰ Namely, to the Cultural Fund. On the development of the two cases, see Kiss, *Les Fonds Spéciaux du Conseil de L'Europe*, 5 A.F. 659 et seq. (1959).

¹⁸¹ On this point, see the divergent views expressed in Verdross, *Die Sicherung von ausländischen Privatrechten aus Abkommen zur wirtschaftlichen Entwicklung mit Schiedsklauseln*, 18 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 635 (1959), and Mann, *The Proper Law of Contracts Concluded by International Persons*, 35 BRIT. YB. INT'L L. 349-50 (1959).

¹⁸² And probably most of the Special Funds of the United Nations, as well as the Development Fund and the European Investment Bank of the E.E.C.

¹⁸³ See Euratom Treaty art. 49, para. 4.

Depending on their place within the above classification, the organizational structure of the international public services is either (1) an intergovernmental organization with a council of government representatives which may either delegate powers or a part thereof to a small deliberative and policy-making body,¹⁸⁴ or retain them and supervise a Secretary General or Director with executive functions aided by the Secretariat;¹⁸⁵ or (2) a joint stock corporation or a limited liability company as it is known in its basic features in most national laws: a body representing the shareholders, and the management. However, there always intervenes, either as part of the corporate structure¹⁸⁶ or as a supervisory body, an institution which is political in nature and is to safeguard the non-technical interests of the participating governments in the venture.

Although the source of financial resources is highly important, few authorities can rely for that purpose on tax-like assessments. Among these happy few are the High Authority of the E.C.S.C., which is financed from the coal and steel levy under the constituent treaty,¹⁸⁷ and the agencies responsible for the dredging and maintenance of the St. Lawrence Seaway and the Mosel, which collect tolls. The others either have to rely on loans if they need income beyond their working capital, as is the case with several of the banking institutions, or they are financed through allocations in the budget of another international agency or agencies.¹⁸⁸ Finally, the numerically most important group is dependent on annual budgets financed by payments of Member States. If the consequences ensuing from the latter situation may not always contribute to the operational independence of public international services, that element, like so many others, reflects appropriately the present stage of evolution of these agencies—midway between the political cooperation of States and the operation of international services solely in accordance with the technical requirements of their users and of their functions.

¹⁸⁴ I.B.R.D., I.F.M.

¹⁸⁵ O.E.E.C., E.F.T.A.

¹⁸⁶ Eurochemic.

¹⁸⁷ But even the E.C.S.C. High Authority had to bolster its finances by loans. See SALMON, *op. cit.* *supra* note 138, at 287.

¹⁸⁸ E.g., the European Social Fund