

The Library of World Affairs
Number 44

EUROPEAN INSTITUTIONS

Co-operation: Integration: Unification



by A.H. Robertson

Third Edition

STEVENS/MATTHEW BENDER

European Institutions

CO-OPERATION : INTEGRATION : UNIFICATION

THIRD EDITION

BY

A. H. ROBERTSON, B.C.L.(Oxon.), S.J.D.(Harvard)

Published under the auspices of

THE LONDON INSTITUTE OF WORLD AFFAIRS

LONDON
STEVENS & SONS LIMITED

NEW YORK
MATTHEW BENDER

1973

THIRD EDITION

*Published in 1973 by
Stevens & Sons Limited
of 11 New Fetter Lane,
London — Law Publishers
and printed in Great Britain
by The Eastern Press, Ltd.
of London and Reading*

*Published in the U.S.A. by
Matthew Bender & Co. Inc.
235 East 45th Street,
New York,
New York 10017*

ISBN Hardback 0420 43470 4
Paperback 0420 44090 9

Library of Congress Catalog Card No. 72 94556

©
Stevens & Sons Ltd
1973

THE LIBRARY OF WORLD AFFAIRS

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GEORGE W. KEETON
AND
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Number 44

EUROPEAN INSTITUTIONS

BY THE SAME AUTHOR

Characterisation in the Conflict of Laws, Harvard, 1940

The Council of Europe, London, 1956 (2nd ed., 1961; French translation, 1962)

Human Rights in Europe, Manchester, 1963

Human Rights in the World, Manchester, 1972

Published lectures:

The Council of Europe as an organ of intergovernmental co-operation, University of Strasbourg, 1952

Legal Problems of European Integration (Hague Academy of International Law, Recueil des Cours, 1957)

The Law of International Institutions in Europe (Melland Schill Lectures, University of Manchester, 1961)

Constitutional Developments in the Council of Europe (Institut d'Etudes Européennes, Bruxelles, 1964)

The International Protection of Human Rights (Montague Burton Lecture, University of Nottingham, 1970; Spanish translation in *Foro Internacional*, Mexico, 1970)

Le Conseil de l'Europe et les Droits de l'Homme, in *Les Organisations Régionales Internationales* (Recueil des Cours de la Faculté Internationale pour l'Enseignement du Droit Comparé, Paris, 1971)

AUSTRALIA

The Law Book Company Ltd.
Sydney : Melbourne : Brisbane

GREAT BRITAIN

Stevens & Sons Limited
London

INDIA

N. M. Tripathi Private Ltd.
Bombay

ISRAEL

Steimatzky's Agency Ltd.
Jerusalem : Tel Aviv : Haifa

NEW ZEALAND

Sweet & Maxwell (N.Z.) Ltd.
Wellington

PAKISTAN

Pakistan Law House
Karachi

U.S.A. AND CANADA

Matthew Bender & Co. Inc.
New York

In memory of

W. B. R.

PREFACE

THE movement for European co-operation, integration and unity has taken on many forms in the last twenty-five years and led to the creation of many new institutions. Some of these are organs of intergovernmental co-operation on the traditional pattern, others include parliamentary assemblies of a novel character and others again possess supranational powers, by reason of the fact that certain governments have quite deliberately transferred to them some portion of their sovereignty.

It is not easy to follow these developments and keep informed about the creation and activities of all these new institutions. The *European Yearbook* was founded twenty years ago for this purpose and constitutes a mine of information. Yet it seemed to me that it would be useful for many people to find in one volume a description of the structure and functions of the more important European organisations, with some information about their principal activities. That is what I have tried to furnish in this book. I have attempted to put together in a clear and (I hope) readable form a mass of information, the greater part of which is available elsewhere but not readily accessible except to specialists.

This work constitutes an essay in that branch of international law which is known as "the law of international institutions." This corresponds, on the international plane, to the subject of constitutional law, which studies the structure and functions of the organs of government in any one country; by analogy, the law of international institutions studies the structure and functions of the organs of international administration. Nor does the comparison end there. Just as an important part of constitutional law derives from constitutional practices or conventions, so, on the international plane, it is essential to study the practices followed and the conventions which are being established in the various international institutions, in addition to the legal texts by which they were created. This, therefore, is another of the guiding principles of my text.

One problem which arose was to determine which organisations should be included. In the majority of cases, it was, of course, easy to decide. A borderline case was constituted by the European regional organs of the United Nations and of the Specialised Agencies, with

particular reference to the Economic Commission for Europe. I decided to exclude them for a reason which appears to me to be basic and decisive, namely, that they form part of an entirely different historical process. The institutions described in this book owe their origins to a specifically European movement for co-operation, integration or unity and have specifically European purposes. The European organs of the United Nations and of its Specialised Agencies, on the other hand, are basically subdivisions of world organisations; it was administratively convenient for the United Nations to set up economic commissions in nearly every continent, but, like dutiful children to a parent, they all owe allegiance to New York; the Economic Commission for Europe is like the others in this respect; its loyalties are, quite rightly, to the United Nations itself and not to the movement for European unity which this book is all about.

After twenty-five years' development of European institutions, the word "Europe" has acquired a political meaning which is quite different from its normal geographical sense. Geographically speaking, the ECE is European; politically, it is not. It is the tragedy of modern Europe that artificial barriers prevent "European" political ideas from extending over the whole continent. The European movement will never be entirely successful until political Europe and geographical Europe are the same. Perhaps the Conference on European Security and Co-operation planned for 1973 will help to bring this objective nearer.

Another case of doubt was NATO. The North Atlantic Treaty Organisation only has significance through the presence of a dominant partner which is a non-European power. It might therefore have seemed logical to omit NATO from this book. On the other hand, thirteen out of fifteen members of the organisation are European States and the history and activities of NATO impinge on the events described in this book (particularly on the creation of Western European Union) at so many points that I felt it would be a mistake to leave it out. While NATO does not form part of the movement for European unity, it is a condition of its success. When the late M. Spaak, one of the most fervent Europeans of them all, accepted the post of Secretary General of NATO and Chairman of its Council, I felt that my opinion was vindicated by higher authority.

As a result, this book starts with a historical survey of developments over the last twenty-five years, then deals with eight "major" institutions: the Council of Europe, OECD, NATO, Western European Union,

the Coal and Steel Community, the Economic Community, Euratom and the European Free Trade Association. A separate chapter is devoted to each, except that the three European Communities, which have so much in common—particularly since the “merger treaties” of 1965—are dealt with together. Nine smaller or more specialised organisations are described more summarily in two later chapters. These are: the European Conference of Ministers of Transport, the European Civil Aviation Conference, the Conference of Posts and Telecommunications, the European Organisation for Nuclear Research, the Space Research Organisation and the Launcher Development Organisation in Chapter 8; the Central Commission for the Rhine, Benelux and the Nordic Council in Chapter 9. I have also attempted in Chapter 10 to describe the various attempts made over the years to pursue the elusive goal of European political co-operation.

A few words seem necessary on the subject of terminology. The expressions “European unity,” “European co-operation” and “European integration” are used a great deal these days in many different senses. Though opinions may differ as to their correct meanings, I think it is right to explain the sense in which I use them in this study. I understand “European co-operation” to mean the process of collaboration between independent, sovereign States in Europe, each of which remains free to participate or not in any project that is submitted for consideration: the Council of OECD and the Committee of Ministers of the Council of Europe are obvious examples of institutions which function in this way. “European integration,” by contrast, usually designates the process by which certain European States seek to go further than “co-operation,” by setting up institutions of a supranational character which may lead ultimately to their federation. The three Communities, for Coal and Steel, the Common Market and Euratom, are, of course, examples of this process. (The term “integration” is, however, sometimes used in a more general sense as in the Protocol to the Brussels Treaty of October 23, 1954, and in the title of my first chapter.) “European unity” or “unification,” on the other hand, I understand as a long-term political objective of imprecise content, which is considered as an ultimate aim by the proponents of both co-operation and integration. Thus, the aim of the Council of Europe is “greater unity between its members,” than which nothing could be more general and vague. Frequently, those who use this term have no precise idea as to what they mean by it: does European unity imply a federation or confederation of

States, or an alliance, or a loose association on the lines of the Commonwealth? No doubt its use is not consistent and varies according to the context; I too am probably guilty of this fault. In short, it is a political idea with no agreed definition and therefore, at this stage, incapable of legal analysis.

It seemed to me that the value of this book would be greatly increased if it included as appendices the treaties by which the various institutions have been created. I am grateful to the publishers for having agreed to this suggestion. In the case of the treaties establishing the Coal and Steel Community and the Economic Community, I have only included the institutional provisions, since the complete texts of the treaties would be too long. The Euratom treaty has been omitted altogether, since its institutional provisions are so similar to those of the Economic Community. The treaties setting up the Rhine Commission have also been omitted for reasons of space; references have been given to indicate where they may be found.

The second edition of this book, published in 1966, covered substantially the same organisations as the first edition (1959) but took into account the creation of the European Free Trade Association and the establishment of two new organisations of a technical character dealing with space research and with the development and construction of space vehicle launchers.

In the present third edition, the organisations dealt with are the same as in the second edition; it is not necessary to describe additions to the European family but rather the development and, in some cases, the enlargement of the existing institutions. This applies particularly, of course, to the European Economic Community: the theme of the "summit meeting" at The Hague in December 1969 was "completion, strengthening and enlargement" which might also be used as a succinct indication of the contents of this volume.

It was prepared during the winter and spring of 1971-72 and, in general, covers developments down to the end of 1971. When I started work on this edition, the negotiations for the enlargement of the Communities from six to ten members were still in progress in Brussels; as the work proceeded, the treaty of accession was signed on January 22, 1972, but it was only ratified long after the type had been set. Moreover, while this preface was in preparation, the Norwegian referendum in October 1972 reduced the numbers of new members of the EEC from four to three. As I wrote in the second edition, any book which attempts

even partially to recount contemporary history runs the risk of becoming out of date before it is published. I have been able in Chapters 1 and 6 to recount the essential facts about the enlargement of the Communities, while Appendix 7 gives the text of the Treaty of Accession and that part of the "Act concerning the Conditions of Accession" which contains the institutional provisions. This, however, must now be read in the light of the negative result of the Norwegian referendum, and all references to Norwegian accession must be considered as inoperative. For the same reasons, the figures for the membership of the Community institutions given in Chapter 6 must be read in the light of the modifications resulting from the Treaty of Accession and the accompanying Act in Appendix 7.

This means that on January 1, 1973, the number of delegates to the European Parliament will be increased from 142 to 198, including ten each for Denmark and Ireland and thirty-six for the United Kingdom; the membership of the Commission will be increased from nine to thirteen, including two British members, one Irishman and one Dane; while the number of judges on the court will be increased from seven to ten. In October 1972, Mr. Edward Heath announced the nomination of Sir Christopher Soames and Mr. George Thomson as the two British members of the Commission. It was expected that about 300 British officials would be included among nearly 1,700 administrative officials in the Common Market Secretariat (totalling about 6,000) in Brussels.

The extracts from the treaties setting up the Coal and Steel Community and the European Economic Community given in Appendices 5 and 6 are taken from the official translations submitted to the British Parliament in January 1972. Occasional quotations in Chapters 1 and 6, however, have been taken from the earlier unofficial translations, which were available at the time.

Another development while this book was in production has been the successful outcome in July 1972 of the negotiations (referred to on page 223) for the association with the Economic Community of the six members of EFTA which did not apply for full membership: Austria, Switzerland, Portugal, Finland, Sweden and Iceland. Similar negotiations for the association of Norway are expected to take place now that Norway will not join the Communities as a full member in 1973.

At the time of writing this preface, further important developments affecting the life of the Communities are expected to result from the "summit meeting" of the nine members of the enlarged Communities

held in Paris on October 19 and 20, 1972. Various decisions were taken to achieve economic and monetary union by progressive steps ending in 1980, for the creation of a Regional Development Fund, to establish a Community policy for the environment, to implement a policy of association with the Mediterranean countries and for the further development of political co-operation between the member States. As regards the institutions of the Community, it was agreed to strengthen the supervisory powers of the European Parliament and to reinforce and improve the relations of the Council and of the Commission with that body. Finally, the Heads of State or Government set themselves the major objective of transforming the whole complex of their relations into a European Union by the end of the present decade. Any detailed account of these developments, however, must await another occasion.

As regards bibliographies, a mass of literature has been published in recent years on European institutions, particularly on the Continent. Believing that it would be confusing to group all this together, I have prepared a separate bibliography for each chapter. These bibliographies include the more important or general works: more detailed references are to be found in the footnotes. As this book is primarily intended for English-speaking readers, I have, as a general rule, only included material in the English language, but exceptions to this rule have been made in cases where little or nothing has been published in English.

Those who wish to study the relevant literature in other languages are recommended to consult the excellent bibliographies contained in the successive volumes of the *European Yearbook*, which are compiled by the staff of the Library of the Peace Palace at The Hague. Two works which may be particularly recommended are *Organisations Européennes* by W. J. Ganshof van der Meersch (Brussels, 1966), and *Droit des Communautés Européennes* prepared under the direction of W. Ganshof van der Meersch by Michel Waelbroeck and others (Brussels, 1969).

Being myself an official of one European institution, I wish to make the usual disclaimer and state that any opinions which may be expressed in this book are those of the author and not of the organisation by which he is employed. I have tried to make this an objective and scientific study of European institutions and hope that it will contribute to a wider knowledge of what they are, how they function and what they are trying to do.

STRASBOURG,
November 15, 1972.

A. H. ROBERTSON.

MEMBERS OF EUROPEAN ORGANISATIONS

January 1, 1973

| | C. of Europe | OECD (1) | NATO (2) | WEU | European Communities (3) | EFTA (4) | ECMT | ECAC | ECPT | CERN (5) | ESRO | ELDO (6) | Rhine Commission | Bene-lux | Nordic Council | |
|----------------|--------------|----------|----------|-----|--------------------------|----------|------|------|------|----------|------|----------|------------------|----------|----------------|----------------|
| Austria | | | | | | | | | | | | | | | | Austria |
| Belgium | | | | | | | | | | | | | | | | Belgium |
| Cyprus | | | | | | | | | | | | | | | | Cyprus |
| Denmark | | | | | | | | | | | | (6) | | | | Denmark |
| Finland | | | | | | (4) | | | | | | | | | | Finland |
| France | | | | | | | | | | | | | | | | France |
| Germany | | | | | | | | | | | | | | | | Germany |
| Greece | | | | | | | | | | | | | | | | Greece |
| Iceland | | | | | (3) | | | | | | | | | | | Iceland |
| Ireland | | | | | | | | | | | | | | | | Ireland |
| Italy | | | | | | | | | | | | | | | | Italy |
| Luxembourg | | | | | | | | | | | | | | | | Luxembourg |
| Malta | | | | | | | | | | | | | | | | Malta |
| Netherlands | | | | | | | | | | | | | | | | Netherlands |
| Norway | | | | | | | | | | | | | | | | Norway |
| Portugal | | | | | | | | | | | | | | | | Portugal |
| Spain | | | | | | | | | | | | | | | | Spain |
| Sweden | | | | | | | | | | | | | | | | Sweden |
| Switzerland | | | | | | | | | | | | | | | | Switzerland |
| Turkey | | | | | (3) | | | | | (5) | | | | | | Turkey |
| United Kingdom | | | | | | | | | | (5) | | | | | | United Kingdom |
| Yugoslavia | | (1) | | | | | | | | | | | | | | Yugoslavia |

1. Also U.S.A., Canada, Japan and Australia. Yugoslavia is a full member as regards economic policies, scientific and technical matters, agriculture and fisheries, technical assistance and productivity; she has observer status in other matters. New Zealand is a full member of the Committee for Agriculture.
2. Also U.S.A. and Canada.
3. Greece and Turkey have associate status. The Treaty for the accession of Denmark, Ireland, Norway and the United Kingdom was signed on January 22, 1972, but the proposal for Norwegian accession was rejected by a referendum held in October, 1972.
4. Finland has associate status. The Convention has been extended to Liechtenstein. The United Kingdom and Denmark withdrew at the end of 1972.
5. Turkey and Yugoslavia have observer status.
6. Also Australia. Denmark has observer status.

ABBREVIATIONS

| | | | | |
|-------------|----|----|----|---|
| BENELUX | .. | .. | .. | Belgium, Netherlands and Luxembourg. |
| BTO | .. | .. | .. | Brussels Treaty Organisation. |
| CERN | .. | .. | .. | European Organisation for Nuclear Research. |
| ECAC | .. | .. | .. | European Civil Aviation Conference. |
| ECE | .. | .. | .. | Economic Commission for Europe. |
| ECMT | .. | .. | .. | European Conference of Ministers of Transport. |
| ECPT | .. | .. | .. | European Conference of Posts and Telecommunications. |
| ECSC | .. | .. | .. | European Coal and Steel Community. |
| EDC | .. | .. | .. | European Defence Community. |
| EEC | .. | .. | .. | European Economic Community. |
| EFTA | .. | .. | .. | European Free Trade Association. |
| ELDO | .. | .. | .. | European Launcher Development Organisation. |
| EPA | .. | .. | .. | European Productivity Agency. |
| EPC | .. | .. | .. | European Political Community. |
| EPU | .. | .. | .. | European Payments Union. |
| ESRO | .. | .. | .. | European Space Research Organisation. |
| EURATOM | .. | .. | .. | European Atomic Energy Community. |
| EUROCONTROL | .. | .. | .. | European Organisation for the Safety of Air Navigation. |
| EUROFIMA | .. | .. | .. | Société européenne pour le financement de matériel ferroviaire. |
| FAO | .. | .. | .. | Food and Agriculture Organisation. |
| GATT | .. | .. | .. | General Agreement on Tariffs and Trade. |
| ICAO | .. | .. | .. | International Civil Aviation Organisation. |
| ILO | .. | .. | .. | International Labour Organisation. |
| NATO | .. | .. | .. | North Atlantic Treaty Organisation. |
| OECD | .. | .. | .. | Organisation for Economic Co-operation and Development. |
| OEEC | .. | .. | .. | Organisation for European Economic Co-operation. |
| UN | .. | .. | .. | United Nations. |
| UNESCO | .. | .. | .. | United Nations Educational, Scientific and Cultural Organisation. |
| WEU | .. | .. | .. | Western European Union. |
| WHO | .. | .. | .. | World Health Organisation. |

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