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SOME REMARKS ON THE EXTERNAL RELATIONS
OF THE EUROPEAN COMMUNITIES

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The opinions expressed in this article are those
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Introduction: The three European Communities and their institutions

There are three European Communities:

- the European Coal and Steel Community (ECSC),
established by the Treaty of Paris, of 18 April 1951,
- the European Economic Community (EEC, "Common Market"), and
- the European Atomic Energy Community (EURATOM),
the two latter both established by the Treaties of Rome,
of 25 March 1957.

Each Community had six "original Member States":
the Kingdom of Belgium, the Federal Republic of Germany,
the French Republic, the Italian Republic, the Grand Duchy
of Luxembourg and the Kingdom of the Netherlands.

Since 1 January 1973 each Community has, as a result of the
Treaty of Accession of Brussels, of 22 January 1972, nine
Member States: the six original ones and the Kingdom of
Denmark, Ireland and the United Kingdom of Great Britain
and Northern Ireland.

The three Communities, which have identical membership,
have not been merged into one - the term "European Community"
in its singular form is a political, and not (yet) a legal
one -, but its institutions have. Every Treaty provides for
four institutions, see Art. 4, EEC Treaty and Art. 3,
EURATOM Treaty: Assembly, Council, Commission, Court of
Justice. The enumeration in Art. 7, ECSC Treaty is a bit
different, especially as it set up a High Authority instead
of a Commission. But there have never been three times
four institutions; instead, a merger was operated in two

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steps. A Convention on certain Institutions common to the European Communities signed in Rome on 25 March 1957, provided for the setting up of a single Assembly and a single Court of Justice. About ten years later, the "Merger Treaty" of Brussels, 8 April 1965, provided for the establishing of a single Council and - out of the two Commissions and the High Authority - a single Commission of the European Communities. The institutions: Assembly, which, since 1958, calls itself the "European Parliament", Council, Commission, Court of Justice, are therefore common to the three Communities. "Each institution shall act within the limits of the powers conferred upon it by this Treaty" (Art. 4 (1), second subparagraph, EEC Treaty). These "powers conferred" differ from Treaty to Treaty, and the institutions therefore have different competences according to the specific Treaty under which they act in a particular case.

Competences of the ECSC and EURATOM

The powers of these two Communities in external relations are limited. Both communities have to do with two limited sectors of economic activities, though they are important to those who operate in them. Moreover, as for the Coal and Steel Community, the Treaty provides expressly that "commercial policy" shall in general remain a power of the Member States: "The powers of the Governments of Member States in matters of commercial policy shall not be affected by this Treaty, save as otherwise provided therein" (Art. 71, para. 1, ECSC Treaty, this provision not being affected by the later establishing of the EEC: Art. 232 (1), EEC Treaty). The exceptions to this rule are limited, and the role of the ECSC in external relations is generally speaking limited to some railroad traffic agreements for transportation of coal and steel in transit with Switzerland and Austria.

Different to the ECSC, the EURATOM Community has external powers. Its treaty even contains a Chapter X entitled "External Relations". As laid down expressly in Art. 101, para. 1, of the Treaty, "the Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third State, an international organisation or (even!) a national of a third State". This Community has in fact negotiated and concluded some agreements with third States, e.g. with the United States of America (original text published in the Official Journal of the European Communities - O.J. 1959, p. 309). Noteworthy too is the "mixed agreement" - that is, an agreement to which, in addition to the Community, one or more Member States are parties, Art. 102, Euratom Treaty - between several Member States, EURATOM as such and the International Atomic Energy Agency (IAEA, Vienna) in implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, signed on 5 April 1973, the so-called "Verification Agreement". The Euratom Treaty gives a larger share of powers as regards external relations to the Commission than to the Council: here the Commission negotiates and also concludes the Agreement, sometimes with the approval of the Council, sometimes only keeping it informed: Art. 101 paras. 2 and 3, Euratom Treaty.

Competences of the EEC

By far the widest area of the external relations of the European Communities falls under the EEC Treaty. It is this community which has to do with a large range of economic sectors - except coal and steel and nuclear energy -: customs union, agricultural policy, free movement of persons, services and capital, transport, commercial policy, association agreements, etc.

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But there is no specific chapter on "External Relations" in the EEC Treaty. It is therefore necessary to look for these powers in several places:

1. First of all there is the common commercial policy: Art. 113, EEC Treaty provides that after 1 January 1970, the common commercial policy "shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, ...".

Art. 113(3) and Art. 114 specify the procedure for the negotiation and the conclusion of these agreements. This procedure - also spelled out in Art. 228 to cover every agreement of the EEC, not only the commercial agreements - comprises the following four steps:

- a general discussion between Council and Commission whether negotiations should be conducted; if the answer is positive, the Council authorizes the Commission to open negotiations and at the same time fixes the 'negotiating directives';
- the negotiations proper with the third country which are conducted by the Commission alone, but with the 'silent assistance' of a committee set up by the Council and comprising one civil servant of each Member State;
- after the successful ending of the negotiations, participation of the European Parliament which here only takes the form of information of its committees by the Council before the latter signs the agreement;
- the conclusion of the agreement which falls to the Council, and which technically is in most cases a two-stage operation, first the signature and later a formal conclusion (ratification).

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The "negotiation by the Commission, conclusion by the Council" pattern is a good example of the system of checks and balances set up by the EEC Treaty.

2. There are also the so-called association agreements provided for in Art. 238, EEC Treaty. Though there exists no definition of what such an agreement is, one can say that it is more than a commercial agreement, and naturally less than full membership. It often contains provisions for some sort of common action to be set up between the EEC and the associated country. In the case of European countries, it may be a preliminary situation paving the way to full membership.

Association agreements may only be concluded unanimously by the Council and require, before their conclusion, that the European Parliament be consulted.

3. There is one competence of the EEC in the external relations field which cannot expressly be found in the Treaty but which results from its interpretation by the judges of the European Court of Justice: in the famous ERTA-case (European Road Transport Agreement) the Court ruled that external competences are not limited to those Articles which expressly say so. If the Treaty contains a competence (be it for the inner market) and the institutions have applied this competence to establish common rules, then the external competence also shifts to the Community. (Case 22/70, 31 March 1971, Collection of Court cases vol. XVII/1971, p. 263; there is no official English version of this judgement which was handed down before English became an official language of the European Communities, but see Common Market Law Reports, vol. 10/1971, p. 335 or Common Market Law Review, vol. VIII/1971, p. 392).

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4. Finally, there is no reason to assume that the EEC Treaty's "necessary and proper" clause of Art. 235 by which under certain conditions powers not provided for in the Treaty, but necessary to attain one of the objectives of the Community can be created, should only be limited to internal relations. The ERTA-judgment says expressly that Art. 235 permits the Council to take all "appropriate steps" in the sphere of external relations also.
5. To conclude this list one should point to Arts. 229 to 231, EEC Treaty which deal with establishing appropriate relations for co-operation with international organisations. But it has to be noted that agreements of substance drawn up in the framework of these organisations have to obey the criteria of the common commercial policy or of the association agreements.

Practice of EEC external relations

A survey of this practice is given annually in the General Report on the Activities of the European Communities, published each February by the Commission, e.g. Ninth General Report (1975), pp. 215-275. Multilateral relations, development policy, common commercial policy, international organisations and diplomatic relations are covered as well as the description of relations with certain countries and regions. The survey does not distinguish between commercial and association agreements because it is more the content than the title which determines the importance of an agreement.

To enumerate some commercial agreements, however, one has to put first those between the EEC and those member countries of the European Free Trade Association (EFTA) which did not accede to the European Communities in 1973: Sweden, Iceland, Finland and Norway, Switzerland and Austria, Portugal. These are "preferential agreements" under Art. XXIV para. 5 (b) of GATT and are intended to provide finally for the operation of a full

free trade area in a large part of Europe. There are other agreements, sometimes preferential ones, sometimes non-preferential ones, with countries around the Mediterranean Sea, in Latin America or in South East Asia. Lists of countries which have agreements with the EEC can be found in the following two Answers given by the Commission to Written Questions submitted to it by members of the European Parliament: n° 571/73, by Mr Cousté, O.J. n° C 58 of 18 May 1974, pp. 4-9; n° 814/75, by Mr Jahn, O.J. n° C 128 of 10 June 1976, pp. 14 and 15 - the latter answer specifically directed to co-operation agreements.

It would, however, not be right to think that the Community's commercial policy is conducted only by way of agreements. There is a large area of autonomous action to be noted, e.g. the autonomously decided suspensions of tariff rates. The system of generalized preferences in favor of exports from developing countries established by the EEC as early as mid-1971 is to be noted here though the acts passed do not expressly say that they form part of the commercial policy. The general regulations on imports into and exports from the EEC as well as the anti-dumping legislation are, however, expressly based on Art. 113, EEC Treaty.

Amongst the association agreements there are firstly those with European countries which one day may apply for full membership: the associations with Greece and with Turkey date from the early sixties, those with Malta and Cyprus have been added more recently. These agreements are normally very substantial ones and are also accompanied by a financial aid scheme in which the Member-States of the EEC, taking part in the agreements and thus making them "mixed agreements", provide large amounts of finance for the development

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of the economies of these partners. Greece asked in mid-1975 for the opening of negotiations for membership of the European Communities, and it is to be foreseen that they will start soon.

Then there is the Lomé Convention between the EEC, its Member States and 46 African, Caribbean and Pacific developing countries, signed in Lomé, Togo, on 28 February 1975, which entered into force on 1 April 1976 (O.J. n° L 25 of 30 January 1976, of which see pp. 1 and following.) This is the main contribution of the EEC and its Member States to the development of a large part of the Third World, providing inter alia for free importation of their products into the Common Market, for substantial financial aid of more than 3,000 million "units of account" and the new system of stabilisation of export earnings (Stabex) of these countries in the event of their earnings dropping rapidly.

It is not yet possible to quote any agreement which has been concluded in application of the ERTA doctrine of the Court of Justice, but some negotiations are under way. On the contrary, last year saw the conclusion by the Community of a convention in the new field of the environment, based on Art. 235, EEC Treaty; the Convention for the prevention of marine pollution from land-based sources, O.J. n° L 194, 25 July 1975, pp. 5 and following.

The relations between the EEC and international organisations are manifold (the present author dealt with this in detail two years ago in a paper presented before the German Scientific Association for European Law; this paper is mentioned below). Since its beginning the EEC has participated in the work of GATT, in such a way that it can be considered a de facto member of GATT bound by its rules: cf. judgment of the Court of Justice of the

European Communities in the third International Fruit Company case, joined cases 21-24/72, 12 December 1972, Collection vol. XVIII/1972, p. 1219; discussed by Ehlermann and Forman in Common Market Law Review, vol. X/1973, pp. 332 (336).

In many other international organisations the EEC is represented, generally with observer status, alongside its Member States which, in turn, retain the voting rights. The actual representation of the EEC is very often that called 'bicephale' (two-headed), which means that the representative of the Member State presiding, under a system of rotation, over the Council and the representative of the Commission, both concomitantly represent the EEC. This pattern can be found in OECD, in FAO, in UNCTAD, to name but a few. Even such a political body as the General Assembly of the United Nations granted observer status to the EEC in 1974, so that it can take part in the discussions of the General Assembly's Second Committee on economic matters. The last development is the Community's full membership, excluding its Member States from this status, of the Paris Conference on International Economic Co-operation, the famous North South Dialogue. The question of voting rights does not occur here as this conference will take its decisions "by consensus".

As to Commodity agreements, the EEC is very often a full partner to them, mainly alongside its Member States - e.g. Cereals and Food Aid, Tin, Cocoa -, but in one case without them: the 1974 Multifibre Arrangement. Naturally there is always close co-operation between the EEC and its Member States.

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In addition to all this there are about 100 diplomatic missions accredited to the European Communities which, in turn, do not exercise an active right of legation.

Conclusion

The European Communities have widespread external relations. The EEC particularly has been given large powers in important areas of economic activities. In close co-operation with its Member States the EEC plays an active role in bilateral relationships with other industrial countries and developing countries, as well as in international organisations, multilateral agreements and conferences.

Further material for study may be found in the above-mentioned Annual General Reports of the Commission of the European Communities;

see also: Ernst U. Petersmann, Auswärtige Gewalt, Völkerrechtspraxis und Völkerrechtsbindungen der Europäischen Wirtschaftsgemeinschaft
in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht, vol. 35/1975,
pp. 213 and following (with an English summary)

Dr. Bernhard Schloh, Die Stellung der Gemeinschaft und ihrer Organe in internationalen Organisationen,
in: Die Aussenbeziehungen der Europäischen Gemeinschaft, Kölner Schriften zum Europarecht,
Band 25/1975, pp. 83 and following.