Vanderbilt Journal of Transnational Law

Volume 15
Issue 2 *Spring 1982*

Article 3

1982

Recent Development

Platte B. Moring, III

RECENT DEVELOPMENT

EUROPEAN COMMUNITY—FINANCIAL AUTONOMY FOR THE EUROPEAN COMMUNITY: AN INTEGRATIONIST APPROACH TO INTERNATIONAL LEGAL PERSONALITY

TABLE OF CONTENTS

I. INTRODUCTION

In the decade after the Second World War a few outstanding statesmen believed that the transfer of sovereign powers from the nation-states of Western Europe to a supranational organization would lead to an era of European accord through political and

economic integration.[1] Although nationalism has not lost its meaning, the European Community[2] has since acquired sufficient administrative, legislative, and judicial sovereign rights through integration to establish itself as a new legal order in Western Europe. The most recent development contributing to European integration, the implementation of the decision[3] granting the Community financial autonomy, has far greater implications for Europe than the mere restructuring of Community-Member State[4] relations. In the larger debate on the international legal personality of the European Community, the acquisition of budget control powers by the supranational organization represents a significant transfer of sovereignty from the Member States to the Community which enhances its claim to personality. This latest move toward integration provides an opportunity to examine the international legal personality of the European Community.

II. LEGAL PERSONALITY AND INTEGRATION THEORY

A. *Significance of International Legal Personality*

According to legal scholar Hans Kelsen, a legal person "is that legal substance to which duties and rights belong as legal qualities."[5] As a subject of the legal system, a legal person has rights and duties, or more accurately stated, is rights and duties: "[T]he legal person is not a separate entity besides 'its' rights and duties,

---

1. Jean Monnet, Paul-Henri Spaak, Alcide de Gasperi, and Konrad Adenauer were among the most prominent statesmen for European integration.

2. The European Community, generally known as the Common Market, comprises the European Coal and Steel Community (ECSC), the European Atomic Energy Community (EURATOM), and the European Economic Community (EEC).

3. Decision on Replacement of Financial Contributions, Apr. 21, 1970, 13 O.J. EUR. COMM. (No. L 94) 19 (1970), *reprinted in* OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITY, TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES 843 (1978) [hereinafter cited as TREATIES]. Since January 1, 1980, all Member States furnish the Community with their customs duties, agricultural levies, and a percentage of their value added tax. This creates financing referred to as the Community's own resources. *See infra* text accompanying notes 136-50.

4. The Member States of the European Community are Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, Netherlands, West Germany, and the United Kingdom.

5. H. KELSEN, GENERAL THEORY OF LAW AND STATE 93 (1945).

but only their personified unity or—since duties and rights are legal norms—the personified unity of legal norms."[6] To say that an entity has legal personality is to maintain that it has rights and duties within the legal order.

Whether an international organization possesses legal personality is important for several reasons. First, an international legal personality can bring international claims and have claims brought against it.[7] Second, a determination that international organizations have legal personality alters the definition of international law. Under traditional theories of international law only sovereign states have rights and duties in the international legal system, because they are the only entities that can possess international legal personality.[8] Conventional theorists who equate international legal personality with sovereignty grant legal personality only to those entities (states) which have full sovereign powers.[9] In many respects, however, this theory obscures reality.

During this century, it has become increasingly apparent that entities other than states are significant actors in the international arena. The International Court of Justice (ICJ) recognized this development in its *Advisory Opinion on Reparations for Injuries Suffered in the Service of the United Nations*[10] (*Reparations Case*). The ICJ recognized that international legal personality was an open-ended and relative concept; international law had not absolutely defined the category of international persons.[11]

---

6. *Id.*

7. 5 H. SMIT & P. HERZOG, THE LAW OF THE EUROPEAN COMMUNITY 6-17 (1976). A determination that an international organization such as the European Community has an international legal personality has significance to the practitioner. Consider a scenario in which the Common Market expropriates the property of a business incorporated under the laws of the United States or breaks a contract with that corporation. Assume that this action violates international law. Dissatisfied with remedies available in the European Court of Justice, the United States corporation may want the State Department of the United States to assert an international claim on its behalf for compensation in an international tribunal other than the International Court of Justice. H. STEINER & D. VAGTS, TRANSNATIONAL LEGAL PROBLEMS 205-06 (2d ed. 1976). The Statute of the International Court of Justice only permits states to appear as parties before it. *See* STATUTE OF THE I.C.J. art. 34 (1945). This Recent Development provides the theoretical basis upon which a practitioner could support such a claim.

8. T. HOLLAND, THE ELEMENTS OF JURISPRUDENCE 395 (1928).

9. *Id.*

10. 1949 I.C.J. 174.

11. Lissitzyn, *Territorial Entities Other than Independent States in the*

The subjects of international law, those entities possessing legal personality and therefore certain rights and duties in the world legal order, are not only the sovereign states.

B. *Approaches to Determining International Legal Personality*

In the *Reparations Case,* the ICJ concluded that the United Nations, an organization, was an international legal person. Since the United Nations is not a state, the ICJ declared that it does not have the same rights and duties as does a state.[12] The ICJ, maintained that the international organization was nevertheless, a legal person capable of possessing international rights and duties, including the capacity to bring international claims.[13] The United Nations had international legal personality because it performed certain functions in the international arena.[14]

This functional approach to the determination of whether an entity has international legal personality requires an examination of the external relations of the entity. As an entity begins to assert itself in international affairs by exercising sovereign functions, the entity acquires international legal personality.[15] Finn Seyersted, among others, has adopted the *Reparations Case* approach for the ascertainment of the objective legal personality of an international organization.[16] He believes that the external relations of an organization establish whether or not the organization possesses international legal personality, and that the internal constitution or charter of the organization creates limits on the exercise of that personality.[17] Once an entity has international le-

---

Law of Treaties, 125 RECUEIL DES COURS 14 (1968). The International Law Commission noted as a principle of international law that entities other than states might possess international legal personality. *Draft Articles on the Law of Treaties,* [1953] 2 Y.B. INT'L L. COMM'N. 137.

12. *Reparations Case, supra* note 10, at 178-79.

13. *Id.* at 179-80.

14. *Id.*

15. F. SEYERSTED, OBJECTIVE INTERNATIONAL PERSONALITY OF INTERNATIONAL ORGANIZATIONS 28-29 (1963).

16. *Id.* at 46.

17. *Reparations Case, supra* note 10, at 179-80. This view reaffirms the position taken by the ICJ in the *Reparations Case.* "Whereas a State possesses the totality of international rights and duties recognized by international law, the rights and duties of an entity such as the Organization (United Nations) must depend upon its purposes and functions as specified or implied in its consti-

gal personality it has the same legal capacities as a state subject to the limitations of its internal constituent documents.[18]

International jurist D.P. O'Connell has criticized the method of analysis employed in the *Reparations Case* and espoused by Seyersted. O'Connell writes:

> It is a mistake to jump to the conclusion that an organization has personality and then deduce specific capacities from an a priori conception of the concomitants of personality. The correct approach is to equate personality with capacities, and to inquire what capacities are functionally implied in the entity concerned.[19]

The major theoretical flaw with the Seyersted approach is that it assumes that every entity deemed to have international legal personality has certain legal capacities as a consequence of possessing that personality. In actuality, different kinds of international persons have different capacities.[20] If an entity has certain capacities as specified or implied in its charter, *then* it has international legal personality to perform those functions; the converse is not necessarily true.[21] As O'Connell states, "[P]ersonality is not, therefore, a synonym for capacity to perform acts X, Y, and Z; it is an index, not of capacity per se, but of specific and different capacities."[22] International legal personality is the sum of the capacities of an international entity as construed from the functions of that entity.[23] Accordingly, the ICJ in the *Reparations Case* "was wrong in asserting that the capacity to bring a claim automatically derives from the existence of personality."[24] The capacity to bring international claims may arise by necessary implication from the constituent documents of an international organization, but this capacity is not the immediate product of an ascertainment of international legal personality.[25]

This Recent Development will use the integrationist approach to assess the international legal personality of the European Community. Since the integrationist approach is a rejection of the

---

tutent documents and developed in practice." *Id.*

18. F. SEYERSTED, *supra* note 15, at 17.
19. 1 D. O'CONNELL, INTERNATIONAL LAW 98 (1970).
20. Lissitzyn, *supra* note 11, at 15.
21. *Id.*
22. 1 D. O'CONNELL, *supra* note 19, at 82.
23. *Id.* at 99.
24. *Id.*
25. *Id.*

Seyersted approach, there is no need to examine the Community's attempts to exercise particular rights and duties in its external relations in an effort to determine its international legal personality. Instead, the international legal personality of the European Community will be indexed through an examination of the powers expressly given to it in its constituent documents, the powers conferred upon it by necessary implication, and the powers developed in customary practice. The powers of the European Community were initially created by the transfer of sovereignty from the Member States to the supranational organization.[26] As this process continues, the internal measures taken by the Member States to further Western European integration will result in the granting of more functions to the Community, and thereby to the assignment of a greater degree of international legal personality to that entity. Integration theorist Pierre Pescatore maintains that "the attribution of international prsonality is conceivable only if an international organization is based upon a sufficient unity of interests and action which would enable it to engage in coherent action in the international arena."[27] The idealized notion of a "United States of Europe" possessing all the rights and duties of a state becomes less a fiction and more of a reality as the Community acquires more sovereign powers. This Recent Development will thus review the trend towards European integration with particular emphasis on the events in the evolution of financial autonomy for the European Community to assess its international legal personality.

III. TOWARD EUROPEAN INTEGRATION

A. *Formation of the ECSC*

World War II destroyed the notion of an omnipotent nation-state.[28] The states of Western Europe realized that interdependence, not independence, was the key to economic and political survival in the post-war years.[29] Accordingly, in 1948 the Benelux

26. Treaty Establishing the European Economic Community, Mar. 25, 1957, preamble, 298 U.N.T.S. 11 [hereinafter cited as EEC Treaty].

27. E. STEIN, P. HAY & M. WAELBROECK, EUROPEAN COMMUNITY LAW AND INSTITUTIONS IN PERSPECTIVE 932 (1976); *see* Pescatore, *Les relations extérieures des Communautés Européenes*, 103 RECUEIL DES COURS 1, 37-39 (1961).

28. D. LASOK & J. BRIDGE, AN INTRODUCTION TO THE LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES 118 (2d ed. 1976).

29. *Id.*

countries[30] formed a free trade area based on the principle that neighboring countries should eliminate common border taxes to present a common import duty frontier to the rest of the world.[31] At the same time, a few European leaders[32] developed the idea that international control of raw materials would eliminate the competition in armaments and economics that leads to war.[33] The 1951 Treaty of Paris (ECSC Treaty)[34] which created the European Coal and Steel Community (ECSC), removed essential war resources from the individual national control of the Benelux countries. The ECSC was more than an intergovernmental organization. The ECSC Treaty established supranational institutions which were capable of actions binding Member States; the High Authority, Council of Ministers (Council), Assembly (Parliament), and the Court of Justice (Court).[35] Acting independently of the signatory governments, the ECSC managed a common market in coal and steel, controlled investments and scientific research, and imposed common taxes for the maintenance of the organization.[36]

---

30. These are Belgium, Netherlands, Luxembourg.

31. R. GURLAND & A. MACLEAN, THE COMMON MARKET: A COMMON SENSE GUIDE FOR AMERICANS 14 (1974).

32. *See supra* note 1.

33. In the Schuman Plan, French Minister of Foreign Affairs Robert Schuman proposed that France and Germany place their coal and steel production under a common authority and invited other European States to do the same. L. LORETTE, LE MARCHÉ, COMMUN 38 (1961).

34. Treaty Establishing the European Coal and Steel Community, Apr. 18, 1951, 261 U.N.T.S. 140 [hereinafter cited as ECSC Treaty].

35. *Id.* art. 7. The High Authority, *id.*, is now commonly referred to as the Commission and performs administrative functions as the community's executive organ. The Assembly is a political body composed of elected representatives from the Member States with limited budgetary and control powers. The Council of Ministers is an intergovernmental institution composed of one minister from each of the Member State governments with the authority to enact Commission initiatives. Finally, the Court of Justice has one judge from each Member State and interprets Community law. The three European Communities share a common Commission, Parliament, Council, and Court, Treaty Establishing a Single Council and a Single Commission, Apr. 8, 1965, 10 O.J. EUR. COMM. (No. 152) 2 (1967), *reprinted in* TREATIES, *supra* note 3, at 785 [hereinafter cited as Merger Treaty].

36. D. LASOK & J. BRIDGE, *supra* note 28, at 12.

B. *Establishment of Two New Communities*

The ECSC proved that supranational institutions could function despite diverse national interests.[37] Drawing on this experience, the Foreign Ministers of "the Six"[38] founding countries met in June 1955 and proclaimed their intention "to pursue the establishment of a United Europe through the development of common institutions, a progressive fusion of national economies, the creation of a Common Market and a harmonization of social policies."[39] On March 25, 1957, these Member States signed the Treaty of Rome (EEC Treaty) establishing the European Economic Community (EEC).[40] On the same day, the Six organized the European Atomic Energy Community (EURATOM) which was designed to pool joint resources to reduce the cost of nuclear research and development.[41] Thus, three distinct economic communities united Western Europe in 1957.

C. *The Merger Treaty and Constitutional Crisis*

The European Community concurrently moved toward integration and disintegration in the mid 1960's. France vetoed the admission of the United Kingdom to the Common Market in both 1963 and 1965.[42] During this period of strained relations between the advocates of socioeconomic integration and the proponents of national sovereignty, the Commission presented a number of proposals to the Council.[43] This reform package included farm price regulations, the institution of the Community's own resources,

---

37. *Id.* at 13.

38. They are Belgium, France, Italy, Luxembourg, Netherlands, and West Germany.

39. L. LORETE, *supra* note 33, at 60.

40. EEC Treaty, *supra* note 26.

41. Treaty Establishing the European Atomic Energy Community, Mar. 25, 1957, preamble, 298 U.N.T.S. 167 [hereinafter cited as EURATOM Treaty].

42. E. STEIN, P. HAY & M. WAELBROECK, *supra* note 27, at 5-6. General de Gaulle's insistence on an independent French nuclear force posed an insurmountable obstacle to further political integration in the Community during the early sixties. The French president had previously forestalled discussion of the creation of the European Defense Community with an integrated military budget. De Gaulle vetoed British entry into the Common Market in 1963 and 1965, declaring that the United Kingdom was not ready for membership. *Id.*

43. EEC COMM'N DOC. (No. 65) 150 (1965), *cited in* 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-698. The Council fixed a deadline of June 30, 1965, for the resolution of these issues. *See infra* text accompanying note 45.

and enhanced budgetary powers for the European Parliament.[44] While the debate on the Commission proposals progressed, the Six signed the Merger Treaty[45] establishing a single Council, a single Commission, a common budget, and a single board of auditors for the three Communities.[46] The Merger Treaty unified certain elements of the three financial regimes but did not consolidate the three Community treaties or alter the powers of the executive organs of the entire Community.[47] Commentators regarded the Merger Treaty as a significant step in European integration.[48]

Two months after the merger of the three Communities, however, France blocked the adoption of the aforementioned Commission proposals. Preferring that the Council make decisions by unanimous agreement of the Member States, France objected that the integrationist tendencies of the Commission portended autonomous power for the Community and refused to participate.[49] France did not rejoin the Community until seven months later when the Member States reached a compromise known as the Accords de Luxembourg (Accords).[50] Commentators have suggested that the Accords did little more than establish an agreement to disagree,[51] and they did have a permanent and unsettling effect on European integration. On the question of voting in the Council, the Accords required the Council to seek unanimous agreement on issues involving very important interests of a signa-

---

44. D. LASOK & J. BRIDGE, *supra* note 28, at 117.

45. Merger Treaty, *supra* note 35.

46. *Id.* chs. 1-3.

47. The Merger Treaty provided for a single budget encompassing the budget of the EEC and the administrative budgets of EURATOM and the ECSC. F. GRIEVES, SUPRANATIONALISM AND INTERNATIONAL ADJUDICATION 121 (1969). The research and investment budgets of EURATOM were incorporated into the unified budget, but kept separate from the operational expenditures of the ECSC. The Treaty Amending Certain Budgetary Provisions, Apr. 22, 1970, 14 O.J. EUR. COMM. (No. L 2) 1 (1971), *reprinted in* TREATIES, *supra* note 3, at 855.

48. K. SAVAGE, THE STORY OF THE COMMON MARKET 13-14 (1969).

49. E. STEIN, P. HAY & M. WAELBROECK, *supra* note 27, at 63. The French Foreign Minister, serving as President of the Council at the time of the expiration of the June deadline for adoption of the Commission's reforms, refused to extend the time limit. Subsequently, France invoked its "empty chair" policy.

50. ECSC, EEC & EURATOM, 9TH GEN. REP. 31-33 (1966).

51. D. LASOK & J. BRIDGE, *supra* note 28, at 118.

tory nation.[52] Community observers[53] maintained that the Accords virtually eliminated the possibility of a qualified majority vote[54] in the Council, and therefore weakened a supranational feature of the Community treaties. Consequently, the Nine renounced the unanimous consent provision of the Accords in 1974.[55] Nevertheless, the Accords continue to block European integration by providing a quasi-legitimate basis for Member State assertions of national sovereignty in opposition to the otherwise supranational decisions of the Community.[56]

---

52. E. STEIN, P. HAY & M. WAELBROECK, *supra* note 27, at 65. The Accords did not define the meaning of "important national interests" nor state any course of action for situations in which the Council could not reach unanimous agreement. D. LASOK & J. BRIDGE, *supra* note 28, at 118. Since the Council did not follow the requisite procedures set out in article 236 of the EEC Treaty for treaty amendment nor those provided in article 219 for treaty interpretation in formulating the Accords, the legal validity of the voting compromise agreement was questionable. D. LASOK & J. BRIDGE, *supra* note 51, at 119. In fact, it was in direct conflict with article 148 which clearly states that the Council only requires a vote of a qualified majority to act. *See infra* note 54.

53. Address by Professor Eric Stein, regular meeting of the University Research Club (Feb. 20, 1974), *reprinted in* L. QUADRANGLE (Univ. Mich. Law Alumni), May 1974, at 10.

54. EEC Treaty article 148 demands only a qualified majority vote to carry an issue. *See supra* note 26. The Treaty, however, requires a unanimous vote in certain instances, *id.* arts. 14(7), 45(3), 59, 76, 93(2), 136, 188, 223, 227, but most notably on Treaty amendments, *id.* art. 236, and treaties of accession, *id.* art. 237. A qualified majority is established by obtaining 45 votes in favor based on the following weighted scale of Member State votes:

Belgium	5	Ireland	3
Denmark	3	Italy	10
Germany	10	Luxembourg	2
Greece	5	Netherlands	5
France	10	United Kingdom	10
		Total Votes:	63

4 H. SMIT & P. HERZOG, *supra* note 7, at 5-108 & Supp. 1979 at 36; Act Concerning the Accession of the Hellenic Republic, May 28, 1979, *reprinted in* 22 O.J. EUR. COMM. (No. L 291) 17, 20 (1979).

55. Summit Meeting of the Heads of Government of the Nine Countries of the European Community, Paris, Dec. 9 and 10, 1974.

56. *See* D. LASOK & J. BRIDGE, *supra* note 28, at 120.

D. *Formation of European Political Cooperation*

The first major step toward political integration within the European Community began in 1969 at the Hague Summit Conference. The Heads of State of the member governments adopted a resolution instructing the Foreign Ministers to make proposals for the achievement of political union among the Common Market countries.[57] Subsequently, the Foreign Ministers established European Political Cooperation[58] (EPC) as a new institution to develop a common foreign policy for the Community. Quarterly meetings of the Foreign Ministers augment an efficient network for exchanging daily telegrams on foreign policy issues.[59]

Since European Political Cooperation is not a part of the EEC Treaty, the Ministers meet outside the institutional framework of the Common Market.[60] This separate existence created a conflict between the EPC and the Community concerning the lack of responsibility of this political union to the internal organs of the Common Market.[61] Although European Political Cooperation presents an annual report to the European Parliament on its activities,[62] this consultation procedure was not deemed sufficient to coordinate the activities of the two supranational institutions.[63] Accordingly, the Heads of State assembled in Paris in December 1974 and established the European Council as the supreme authority governing both the Community and European Political Cooperation.[64]

---

57. ECSC, EEC & EURATOM, 3D GEN. REP. 15 (1969) [hereinafter cited as 3D GEN. REP.].

58. The Conference of Ministers of Foreign Affairs is known as European Political Cooperation.

59. *Saving the EEC,* ECONOMIST, Nov. 28, 1981, at 11, 12.

60. Wellenstein, *Twenty-Five Years of European Community External Relations,* 16 COMMON MKT. L. REV. 420 (1979).

61. 6 H. SMIT & P. HERZOG, *supra* note 7, at 6-236, 6-237.

62. ECSC, EEC & EURATOM, 9TH GEN. REP. 17 (1975) [hereinafter cited as 9TH GEN. REP.]; *Report on Political Cooperation,* BUL. EUR. COMM'N, (No. 10) 129 (1979).

63. ECSC, EEC & EURATOM, 8TH GEN. REP. 297 (1974) [hereinafter cited as 8TH GEN. REP.].

64. Wellenstein, *supra* note 60, at 422. To facilitate the coordination of the activities of European Political Cooperation and the Community, the Paris Summit provided that the Commission would have representation at all meetings of the EPC and that the Foreign Ministers would meet biannually with the Political Affairs Committee of the Parliament. Additionally, the members of the European Parliament may submit questions to the EPC. ECSC, EEC &

European Political Cooperation has served many important functions in European integration. Not only has it become "the world's most advanced model of collective diplomacy,"[65] but it has also contributed to the formation of a uniform European Foreign Policy:

> From the outside, the Community may still look like a strange monster with many heads in the world of sovereign national states which, at least in theory, determine international politics. In practice, however, the Community and the Nine manage to speak with one voice more or less to the tune of their internal cohesion.[66]

In recent years, European Political Cooperation has produced common Community policy on the rights of Palestinians,[67] economic sanctions against Iran,[68] independence for Zimbabwe,[69] and denunciation of the Soviet invasion of Afghanistan.[70]

IV. Sources of International Legal Personality

A. *Treaty of Rome*

1. Specific Treaty Provisions

Because the legal personality of an international organization is the sum of its legal capacities,[71] it is necessary to examine not only the capacities bestowed by integration on the European Community, but also those capacities bestowed upon the Community in specific treaty provisions. Additionally, European Court of Justice decisions and customary practice providing for the trans-

---

EURATOM, 13th Gen. Rep. 333 (1979) [hereinafter cited as 13th Gen. Rep.]. The European Council, consisting of the Heads of State of the ten current members (Denmark, Ireland, and the United Kingdom joined the original "six" in 1973; Greece became a member in 1980), meets at least three times a year to supervise both the EPC and the Community. The representative of the Member State who holds the Office of President of the Council presides over the European Council. E. Stein, P. Hay & M. Waelbroeck, *supra* note 27, at 91.

65. Von der Goblentz, *Luxembourg Revisited or the Importance of European Political Cooperation*, 16 Common Mkt. L. Rev. 685, 688 (1979).

66. *Id.* at 686.

67. *See* ECSC, EEC & EURATOM, 12th Gen. Rep. (1978) [hereinafter cited as 12th Gen. Rep.]; 13th Gen. Rep., *supra* note 43; ECSC, EEC & EURATOM, 14th Gen. Rep. (1980) [hereinafter cited as 14th Gen. Rep.].

68. *See* 14th Gen. Rep., *supra* note 67.

69. *See* 13th Gen. Rep., *supra* note 64.

70. *See* 14th Gen. Rep., *supra* note 67.

71. *See supra* text accompanying notes 7-25.

fer of sovereignty from the Member States to the supranational community have expanded EEC powers in directions not indicated by a close reading of the Treaty articles alone.[72]

Unlike the ECSC Treaty which established the ECSC, the EEC Treaty does not expressly grant the Common Market legal personality in international relations.[73] Although the drafters of the EEC Treaty explicitly provided in article 211 that the EEC have "the most extensive legal capacity" in each of the Member States,[74] they desired to limit the international legal personality of the EEC to those powers delineated in the Treaty.[75] Since the Member States had become worried about the degree of international legal personality possessed by the ECSC, they deliberately omitted a general clause granting the EEC international legal personality.[76] Nevertheless, since a number of other Treaty articles[77] assume that the EEC has legal capacity to function in world commerce, "there is fairly general but not unanimous agreement among writers that the Community has legal personality in the international field."[78]

The external relations capacity of the Community does not differ greatly from the internal measures taken by the Member States to further integration because it is both an element of integration and the manifestation of the Community's internal capacities. As evidenced by European Political Cooperation, this power is an indicia of integration because it demonstrates the "evolution towards a single representation of plural interests."[79] A concerted external relations policy also enables the Community to present a united front.[80]

According to international legal theorist David Ijalaye, "the

---

72. Pescatore, *External Relations in the Case-Law of the Court of Justice of the European Communities*, 16 COMMON MKT. L. REV. 642 (1979).

73. Unlike article 6 of the ECSC Treaty, *supra* note 23, article 210 of the EEC Treaty, *supra* note 26, makes no explicit statement about international legal personality. Neither the Council nor the Commission has enacted measures implementing EEC Treaty article 210 which states, "[t]he community shall have legal personality."

74. EEC Treaty, *supra* note 26.

75. 5 H. SMIT & P. HERZOG, *supra* note 7, at 6-10.

76. *Id.*

77. EEC Treaty, *supra* note 26, arts. 111, 113, 114, 228, 231, 235, 237-238.

78. 5 H. SMIT & P. HERZOG, *supra* note 7, at 6.

79. Leopold, *External Relations Power of the EEC in Theory and Practice*, 26 INT'L & COMP. L.Q. 54, 54 (1977).

80. *Id.* at 55.

most salient evidence of legal personality under public international law is the right to conclude treaties."[81] Article 228 of the EEC Treaty provides the Community with rules for the conclusion of international agreements.[82] Although the Community has not promulgated any regulations implementing article 228, every time the Community concludes a treaty with a third state it effectuates the provision in practice. Common Market officials will repeat the steps taken in previous negotiations of agreements unless a Member State or Community organ challenges their actions in the Court.

Through customary practice, the Community has obtained considerable external relations power at the expense of the Member States, but the Council has attempted to wrest this sovereign capacity from the Common Market.[83] The Luxembourg Accords stress that the Council, rather than the more supranational Commission, should be the institution most concerned with the Community's external relationships.[84] To this end, the Council has liberally interpreted EEC Treaty article 113 to allow it to appoint special committees to oversee Commission negotiations.[85] Moreover, the Council does not consult the Parliament on a proposed agreement until after it has signed the initiative.[86] These maneu-

---

81. D. IJALAYE, THE EXTENSION OF CORPORATE PERSONALITY IN INTERNATIONAL LAW 16 (1978).

82. Article 228 of the EEC Treaty provides:

> 1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or an international organisation, such agreements shall be negotiated by the Commission. Subject to the powers vested in the Commission in this field, such agreements shall be concluded by the Council after the Assembly has been consulted in the cases provided for by this Treaty.
>
> The Council, the Commission or a Member State may . . . obtain [beforehand] the opinion of the Court of Justice as to the compatibility of the contemplated agreements with the provisions of this Treaty. An agreement which is the subject of a negative opinion of the Court of Justice may only enter into force under the conditions laid down . . . in Article 236.
>
> 2. Agreements concluded under [these] conditions . . . shall be binding on the institutions of the Community and on Member States.

EEC Treaty, *supra* note 26. This article complements articles 111, 113, and 114 concerning tariff and trade agreements and article 238 dealing with association pacts with third states.

83. Leopold, *supra* note 79, at 64-65.

84. *See supra* note 50; Leopold, *supra* note 79, at 61.

85. *Id.* at 66.

86. *Id.* at 65.

vers have hindered the transfer of sovereignty in certain aspects of the treaty-making power envisioned by the EEC charter drafters; "so long as the Council is determined to ensure that the treaty-making power of the Community develops along conventional inter-governmental lines, other aspects of the Community's work will suffer and the political aims of the Community will not be realised."[87]

The EEC Treaty and customary law also imbue the EEC with powers in relationship to international organizations. Article 228 gives the Community the power to enter into treaties with third states and also provides for the conclusion of agreements with international organizations.[88] Articles 229, 230, and 231 call for the development of cooperation with the United Nations, the Council of Europe, the Organization for Economic Cooperation and Development (OECD), and the organs of the General Agreement on Tariffs and Trade (GATT).[89]

At present, international law has not sufficiently progressed to accord diplomatic privileges and immunities to the representatives of international organizations.[90] As a consequence, the EEC has not sent permanent diplomats to third states.[91] The Court, nevertheless, has given article 235 a broad reading so as to permit the Common Market to send missions to third countries to deal with problems within the EEC's competence.[92] Since 1975 the Community has enjoyed official observer status at the United Nations, which allows the Common Market representative to present the position of the Community during General Assembly sessions.[93] Under the authority of EEC article 116, the Community has sent legations to economic international organizations.[94] The

87. *Id.* at 71.

88. EEC Treaty, *supra* note 26.

89. *See* P. MATHIJESEN, A GUIDE TO EUROPEAN COMMUNITY LAW 206-07 (1980).

90. Hunning, *The European Communities and Public International Law,* in LEGAL PROBLEMS OF AN ENLARGED EUROPEAN COMMUNITY 132 (1972).

91. *Id.* at 131-32. The ECSC has a permanent mission in London. Le Tallec, *The Common Commercial Policy of the EEC,* 20 INT'L & COMP. L.Q. 732, 733 (1971).

92. Preliminary Ruling, Hauptzollamt Bremerhaven v. Massey Ferguson GmbH 1973 C.J. Comm. E. Rec. 897 [1973 Transfer Binder] COMM. MKT. REP. (CCH) ¶ 8221. The EEC has designated these missions information and trade offices.

93. 5 H. SMIT & P. HERZOG, *supra* note 7, at 6-248.

94. Hunning, *supra* note 90, at 131.

Common Market maintains permanent liaisons with GATT in Geneva and OECD in Paris,[95] which differ from a diplomatic mission only in that the EEC has not appointed an ambassador. The EEC has accredited over one hundred missions to third countries via article 17 of the Protocol on the Privileges and Immunities of the European Communities.[96]

Under the authority of article 229, the Commission has participated in international conferences in many different capacities.[97] Prior to the start of the United Nations Sugar Conference in 1968, the nations of Eastern Europe objected to the participation of the EEC, claiming that the United Nations Charter permits only states to become members of its agencies.[98] Consequently, at the conference, the Office of Legal Affairs of the United Nations prepared an opinion on the status of the Common Market.[99] Determining that article 116 of the EEC Treaty bound the Member States to proceed only by common action in respect to all matters of particular interest to the Community, the Legal Affairs Office realized that the Common Market would have to act for the Member States if these nations were to have any treaty-making capacity at the conference. Accordingly, the Legal Affairs Office advised the United Nations to grant the EEC more rights than an observer but less capacity than a state.[100]

At the European Conference on Security and Cooperation, the representative of the European Commission had to sit with the delegation holding the chair of the Council of the European Communities during any given six-month period.[101] The EEC was a

---

95. S. HENING, EXTERNAL RELATIONS OF THE EUROPEAN COMMUNITY 6 (1971).

96. Protocol on Privileges and Immunities, the European Economic Community, Apr. 8, 1965, *reprinted in* TREATIES, *supra* note 3, at 815, 825.

97. Le Tallec, *supra* note 91, at 743.

98. *Id.*

99. Opinion Prepared for the United Nations Sugar Conference, [1968] U.N. JURIDICIAL Y.B. 201.

100. Le Tallec, *supra* note 91, at 743. Before finalizing the agreement, the conference inserted a special clause to enable the Community, an international organization, to sign and adhere to the agreement after its entry into force. Ultimately, the Common Market did not ratify the agreement, because it felt that the export allocation was insufficient. *Id.* at 744.

101. Wellenstein, *supra* note 60, at 407, 417. Since the conference refused to seat a delegate from an international organization, the EEC representative had to take his place with a Member State delegation. *Id.* The Final Act of the Conference on Security and Cooperation in Europe, Aug. 1, 1975, *reprinted in* 14 INT'L LEGAL MATERIALS 1292-1325 (1975), was signed by the President of the

contracting party to the International Tin Agreement in 1971[102] and also became a member of the International Wheat Council.[103] At the Law of the Sea Conference,[104] the Community had observer status. Since 1977 the President of the Commission has participated in the economic world summits of the seven major industrialized nations.[105] Finally, the EEC delegation had status coequal to that of state delegations at the Conference on International Economic Cooperation (the North-South Dialogue).[106]

2. Implied Powers

In addition to those specific EEC Treaty provisions granting the Community external relations powers, the Common Market has certain implied powers. Article 235 of the EEC Treaty allows the Community to exercise those powers necessary to attain Common Market objectives.[107] This article allows the Community to engage in international endeavors not specifically provided for in the Treaty.[108] Until 1973, the Commission's main application of article 235 involved the enactment of agricultural trade and customs legislation.[109] The Final Communiqué of the 1972 Paris

---

Council, 12TH GEN. REP., *supra* note 67, at 264.

102. 15 O.J. EUR. COMM. (No. L 90) 1 (1972), *cited in* Le Tallec, *supra* note 91, at 744; 19 O.J. EUR. COMM. (No. L 222) 1 (1976), *cited in* Le Tallec, *supra* note 91, at 744.

103. 17 O.J. EUR. COMM. (No. L 219) 24 (1974), *cited in* Le Tallec, *supra* note 91, at 744.

104. Third United Nations Conference on the Law of the Sea, [1978] 32 U.N.Y.B. 144; *see e.g.*, 14TH GEN. REP., *supra* note 67.

105. 12TH GEN. REP., *supra* note 67; 13TH GEN. REP., *supra* note 64; 14TH GEN. REP., *supra* note 67.

106. ECSC, EEC & EURATOM, 10TH GEN. REP. 235-36 (1976) [hereinafter cited as 10TH GEN. REP.].

107. EEC Treaty, *supra* note 26. Article 235 provides:

> If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously in a proposal from the Commission and after consulting the Assembly, take the appropriate measures.

Id. In addition to the general objectives mentioned in EEC Treaty articles 2 and 3, subsequent articles provide more specific objectives of the Common Market. *Id.* arts. 2, 3. EEC institutions have taken a liberal view of the term "objectives of the Community." 5 H. SMIT & P. HERZOG, *supra* note 7, at 6-289, 6-290.

108. 5 H. SMIT & P. HERZOG, *supra* note 7, at 6-15.

109. *Id.* at 6-276.

Summit,[110] however, advocated the use of article 235 to implement science, energy, environment, and social reform policies.[111] Consequently, the Community has employed article 235 instead of the article 236 amendment powers to broaden the scope of Common Market activity.[112] In fact, article 235 has become a major source of power for the EEC in the foreign relations field.[113] Thus, the Community's exploitation of article 235 has obscured the distinction between the powers extrinsic and those intrinsic to the EEC Treaty.

B. *Judicial Decisions*

Decisions of the European Court of Justice interpreting the treaty-making powers of the Common Market have contributed to the shaping of the scope of its international legal personality. These cases provide another example of the transfer of sovereignty from the Member States to the Community and, therefore, of the expansion of the legal personality of the EEC. Unlike article 101 of the EURATOM Treaty, which states that the external relations power of the Community mirrors its internal capacities,[114] article 210 of the EEC Treaty does not delimit the external relations power of the Common Market.[115] As outlined in the previous section,[116] nevertheless, the Treaty of Rome expressly empowers the Community to make three types of agreements with third states or international organizations: (1) tariff and trade agreements,[117] (2) association pacts,[118] and (3) working relationships with international organizations.[119] The question re-

110. ECSC, EEC & EURATOM, 6TH GEN. REP. 16 (1973) [hereinafter cited as 6TH GEN. REP.].

111. 5 H. SMIT & P. HERZOG, *supra* note 7, at 6-279.

112. *Id.*

113. Some recent examples of the Community's utilization of article 235 as a treaty-making power are the following: (1) Agreement on Registration of Congenital Abnormalities, July 24, 1979, EEC-Hellenic Republic, 22 O.J. EUR. COMM. (No. L 205) 27 (1979); (2) Agreement on Extension of EURONET to Switzerland, Aug. 16, 1979, EEC-Switzerland, 22 O.J. EUR. COMM. (No. L 214) 18 (1979); (3) Convention on Protection of the Rhine Against Pollution, July 25, 1977, 20 O.J. EUR. COMM. (No. L 240) 35 (1977).

114. EURATOM Treaty, *supra* note 41.

115. EEC Treaty, *supra* note 26.

116. *See supra* note 82.

117. EEC Treaty, *supra* note 26, arts. 111, 113, 114.

118. *Id.* art. 238.

119. *Id.* arts. 229-31.

mained open, however, whether the Community could conclude treaties on matters within its internal competence, but not expressly authorized by the EEC Treaty.[120] The Court addressed this issue for the first time in *Commission v. Council (European Road Transport Agreement) (ERTA).*[121]

The *ERTA* case involved United Nations commission[122] negotiations concerning the social conditions of European road transports. Over the course of time the Council developed regulations in this area and the Council and Commission queried whether the governments of the Member States or the Commission of the European Community should terminate the negotiations in the United Nations. In the action brought by the Commission against the Council, the Court decided that "whenever the Community had, in whatever form, adopted common rules intended to implement the 'common policies' provided for by the Treaty, the Member States were no longer authorized, acting individually or even jointly, to enter into binding contractual relationships with third countries affecting these Common rules."[123] This decision was an extension of the requirement in article 116 that Member States yield sovereignty to the Common Market in those areas which the EEC Treaty has given them no power of independent action.[124] Since articles 3 and 75 of the EEC Treaty called for a common transport policy and the Council had enacted regulations furthering this policy, the Court determined that the Community had the exclusive right to negotiate the agreement.[125] In effect, the Court had established the principle that the Community had international legal capacity in areas other than those expressly provided for in the EEC Treaty. The Community could exercise powers externally on the basis of Treaty provisions for which it had adopted implementing measures internally.[126] The 1976 Cornelius

120. Pescatore, *supra* note 72, at 615, 618.

121. 1971 C.J. Comm. E. Rec. 263, [1971] 10 COMM. MKT. L. REV. 335.

122. This Commission is the Economic Commission for Europe of the United Nations. 10 COMM. MKT. L. REV. at 336.

123. 5 H. SMIT & P. HERZOG, *supra* note 7, at 6-11.

124. Hunning, *supra* note 90. Article 234 applies this principle to rights and obligations arising from agreements concluded before the effective date of the Treaty of Rome by requiring the Member States to take all necessary steps to make their prior agreements compatible with the dictates of the Community Treaty. *Id.* at 128.

125. H. SMIT & P. HERZOG, *supra* note 7, at 6-12.

126. *Id.* at 6-11.

Kramer Advisory Opinion[127] affirmed this result.

The *ERTA* and *Kramer* cases, however, left unresolved the question of whether the capacity of the Community to become a party to international agreements in areas in which it had no explicit treaty authority to act depended on the prior promulgation of rules on those subjects. *Opinion 1/76*[128] of the Court addressed this issue. The case involved the legality of an agreement signed by the Community, most Member States, and Switzerland for reducing excess shipping capacity on the Rhine. Similar to the *ERTA* case, *Opinion 1/76* concerned whether EEC Treaty articles 3 and 75, calling for a common transport policy, granted treaty-making powers to the Commission. Unlike the *ERTA* case, the Community had not adopted any internal measures governing the subject matter of the agreement. The Court ruled that the Community had validly participated in the agreement and therefore: "[t]he rule, stated in the *ERTA* case and in *Kramer*, that the Community had the power to enter into international agreements on topics for which the Treaty gave it no direct power to do so only if it had already adopted pertinent internal measures, was . . . abandoned."[129] This decision established the precedent that the EEC has external relations capacity in areas in which it has not enacted any implementing measures. The Common Market may negotiate treaties pertaining to the general objectives of the Community set out in the Treaty of Rome.

Opinion 1/76 was significant in another respect. Since the treaty modified pre-existing obligations of the member states, the Court permitted their participation in the agreement.[130] Accordingly, the Court sanctioned mixed agreements, those treaties signed by the Community and the Member States.[131] Consequently, *Opinion 1/76* stood for the proposition that the EEC Treaty does not prohibit the conclusion of mixed agreements whenever an agreement concerns those powers still within the sovereignty of a Member State.[132] This ruling restricts the EEC's power over external relations by suggesting that Member State

127. Officer Van Justitie v. Kramer, 1976 C.J. Comm. E. Rec. 1297, [1976] 2 COMM. MKT. L. REV. 440.

128. Opinion Given Pursuant to Article 228(1) of the EEC Treaty, Jan. 1976, 1977 C.J. Comm. E. Rec. 741, [1977] 2 COMM. MKT. L. REV. 279.

129. 5 H. SMIT & P. HERZOG, *supra* note 7, at 6-12.

130. *Id.*

131. *Id.*

132. *See* Pescatore, *supra* note 72, at 623.

ratification is necessary to give Community treaties international approval. Furthermore, the Council can determine, at its discretion, when Member States can participate in any treaty-making process.[133] Nonetheless, the Community enters into many agreements as the sole signatory on behalf of the Member States.[134]

Although *Opinion 1/76* greatly expanded the EEC's international legal personality, it provided no guidance on the issue of the legality of treaties concluded on the basis of the implied powers of article 235. To date, the Court has rendered no opinion on this question, but current Community practice validates these undertakings.[135] Consequently, specific Treaty provisions and implied powers have granted the European Community a variable international legal personality which continues to grow in scope as the Member States directly or indirectly transfer their sovereign powers to the Community in the process of integration.

V. Financial Autonomy for the Community

A. *Council Decision of April 21, 1970*[136]

The Council Decision of April 21, 1970 laid the foundation for the most significant move toward integration to date, namely the establishment of financial autonomy for the Community in relation to its Member States. The Decision links two themes that pervade the evolution of the Community budget system from national contributions to financial autonomy: (1) the increase of the European Parliament's powers over the budget vis-a-vis the Council, and (2) the replacement of Member State contributions by the Community's own resources and a form of direct taxing power.[137] This section will trace these two trends through Community history for the purpose of demonstrating how the struggle over the power of the purse has affected the international legal personality of the Common Market by producing a transfer of

133. *See* Leopold, *supra* note 79, at 64-65.

134. *Id.* at 63. The fact that article 228 binds the Member States to agreements reached by the Community, even though they are not contracting parties, is a revolutionary development in the law of international organizations. *See* Le Tallec, *supra* note 91, at 744.

135. *See supra* notes 107 & 113 and accompanying text for the language of article 235, a discussion of the implied powers doctrine, and a partial list of treaties concluded on the basis of the article.

136. Treaties, *supra* note 3.

137. 5 H. Smit & P. Herzog, *supra* note 7, at 5-677.

sovereignty from the member states to the Community, thus furthering European integration.

Pursuant to EEC Treaty article 246(2), interest-free advances from the Member States to the Community initially financed the Common Market.[138] The Community credited these advances to the Member States' contributions when the Six promulgated their budget for the first financial year.[139] Since the Member States could not agree on a uniform scale of percentage contributions for all types of Community expenditures, they developed a social and political scale for contributions.[140] The EEC administrative budget (political scale) and the European Social Fund (social scale) set out the percentages of Member State contributions.[141] In 1961, the Council established a third scale to fund the agricultural policy of the Community.[142] During this stage of Common Market financing, the Member States refused to surrender financial autonomy to the supranational Community.[143]

In 1965, the Commissson, acting under the authority of EEC Treaty article 201, proposed that the Community replace the sys-

---

138. EEC Treaty, *supra* note 26; I. DRÜKER, FINANCING THE EUROPEAN COMMUNITIES 241 (1975).

139. I. DRUKER, *supra* note 138, at 241.

140. *Id.*

141. Members contributed to the Community according to the following scale:

State	% Political Scale	% Social Scale
Belgium	7.9	8.8
Germany	28.0	32.0
France	28.0	32.0
Italy	28.0	20.0
Luxembourg	0.2	0.2
Netherlands	7.9	7.0

EEC Treaty, *supra* note 26, art. 200. "Each scale was the result of hard bargaining, and reflects a balance among the relative economic strengths and financial capabilities of the Member States, considerations of national prestige, and the benefits of each anticipated at the time." I. DRÜKER, *supra* note 138, at 242 (1975).

142. I. DRÜKER, *supra* note 138, at 242; Budget Treaty of 1970, *supra* note 30, at 4. The EEC established the Common Agricultural Policy (CAP) to ensure security of food supplies, stabilize commodity prices, and make farming more efficient. BUREAU OF PUBLIC AFFAIRS, U.S. DEPT. OF STATE, GIST: THE EUROPEAN COMMUNITY (Aug. 1979). The CAP absorbs two-thirds of the Community's $25 billion budget. THE ECONOMIST, POLITICAL EUROPE 4 (1979).

143. I. DRÜKER, *supra* note 138, at 241.

tem of financing through Member State contributions with a scheme of its own resources.[144] The anti-European sentiments of French President Charles de Gaulle, however, precluded any discussion of this issue until his death in 1969.[145] In July of that year, the Commission proposed the establishment of a self-sufficient system of Community financing through its own resources.[146] After examining these recommendations, the Council promulgated the Decision of April 21, 1970, which finalized the understanding reached earlier at the Hague Summit of December 1969 and established a timetable for the replacement of financial contributions from Member States with the Community's own resources.[147] The new techniques of budget finance for the transition to financial autonomy became operational in fiscal year 1971.[148] A new single scale for Member State contributions replaced the old political and social scales.[149] Revenues from the common customs tariff and agricultural levies were paid directly to the Community.[150] Additionally, the Decision gave the Parliament sole responsibility for its own budget.[151]

According to the timetable in the Council Decision of April 21, 1970, the drafters of the agreement intended that revenues from not more than one percent of a value added tax based on a uniform assessment would replace Member State contributions by fiscal year 1975.[152] Since the Council could not come to an agreement on an assessment policy, however, it became impossible to use the value added tax as a part of the Community's own

144. EEC COMM'N DOC. (No. 65) 150 (1965), *supra* note 43. This proposal was part of the package deal which became the focus of the constitutional crisis of 1965. D. LASOK & J. BRIDGE, *supra* note 28, at 131.

145. I. DRÜKER, *supra* note 138, at 4.

146. EEC COMM'N DOC. (No. 69) 700 (1969) *cited in* 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-252.

147. I. DRÜKER, *supra* note 138, at 252; Treaties, *supra* note 3.

148. EEC Treaty, *supra* note 26, art. 203. The fiscal year runs concurrently with the calendar year. *Id.*

149. I. DRÜKER, *supra* note 138, at 254.

150. EEC Treaty, *supra* note 26, arts. 18-29. The Community receives the revenues from these duties and levies subject to a ten percent rebate retained by the Member States to cover collection costs. *Id.*

151. Resolutions and Declarations Recorded in the Minutes of the Meeting of the Council on 22 April 1970, Resolution No. 1, *reprinted in* TREATIES, *supra* note 3, at 885.

152. D. LASOK & J. BRIDGE, *supra* note 28, at 131.

resources in 1975.[153] The Nine maintained their voluntary contributions in the interim period to continue the operations of the Common Market.[154] By 1977, the Council had developed a substantially uniform basis for assessment of the value added tax.[155] The adoption of national laws implementing this directive was slow, however, and Member State contributions continued to provide funds through fiscal year 1978.[156] In 1979, all but three Member States[157] were paying a percentage of their value added tax to the Community.[158] Since January 1, 1980, all Member States furnish the Community with their customs duties, agricultural levies, and a percentage of their value added tax—the Community's own resources.[159] As of that date, the Common Market has financial autonomy.

B. *Budget Treaties of 1970*[160] *and 1975*[161]

Since its creation, the European Parliament has struggled for greater control over the Community budget.[162] Although the Parliament had the authority to draft its own budget estimates and debate the amount of the expenditure, the Council had virtually full decision-making power over the budget of the EEC.[163] Parliament made its first effort to gain control over the budgetary pro-

153. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-680.

154. *Id.* Denmark, Ireland, and the United Kingdom joined the Community in 1973. Treaty Concerning the Accession of Denmark, Ireland and the United Kingdom to the European Communities, Jan. 22, 1972, 15 O.J. EUR. COMM. (No. L 73) 5 (1972), *reprinted in* TREATIES, *supra* note 3, at 981.

155. Harmonization of the Laws of the Member States Relating to Turnover Taxes, Common System of the Value Added Tax, 6th Council Directive, May 17, 1977, 20 O.J. EUR. COMM. (No. L 145) 1 (1977).

156. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-681.

157. The recalcitrant states were Ireland, Luxembourg, and West Germany, *see id.* at 5-673.

158. *Id.* at 5-681.

159. *Id.* at 5-673.

160. Budget Treaty of 1970, *supra* note 47.

161. Treaty Amending Certain Financial Provisions of the Treaties Establishing the European Communities and the Treaty Establishing a Single Council and and a Single Commission of the European Communities, July 22, 1975, 20 O.J. EUR. COMM. (No. L 359) 1 (1977) [hereinafter cited as Budget Treaty of 1975].

162. D. LASOK & J. BRIDGE, *supra* note 28, at 131.

163. *Id.* at 131. The European Parliament had full power over that percentage of the budget allocated to it from levies collected by the ECSC. *Id.*

cess in 1963 in connection with the agricultural fund.[164] The Council frustrated this effort, however, and also a subsequent initiative submitted by the Commission with the reforms package of 1965.[165] Not until the Hague Summit of December 1969 did the Council concur that the Parliament should have increased budgetary powers.[166]

The Budget Treaty of 1970[167] was signed one day after the Council Decision of April 21, 1970. In its preamble, the Six, "[c]onsidering that the replacement of financial contributions of Member States by the Communities' own resources requires a strengthening of the budgetary powers of the Assembly, [r]esolved to associate the Assembly closely in the supervision of the implementation of the budget of the Communities."[168] The Parliament acquired the power to make modifications to the draft budget prepared by the Council. Despite its opposition to integrationist trends, France signed the Budget Treaty of 1970 because it believed that giving the European Parliament a greater role in budget formation would better protect the common agricultural policy from attack by those Member States that did not receive its benefits.[169]

The Six decided to implement the Budget Treaty of 1970 in two stages. For the years 1971-1974, the Council, acting by a qualified majority, had absolute discretion to modify and adopt the Community budget.[170] When the Parliament submitted an amendment that did not increase the aggregate expenditure of an institution, the Council needed a qualified majority to reject the proposal.[171] In all other cases a qualified majority was required to approve the modification.[172] On January 1, 1975, the Community

---

164. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-677.

165. *Id.* at 5-698; *see supra* text accompanying notes 42-56.

166. D. LASOK & J. BRIDGE, *supra* note 28, at 132; Budget Treaty of 1970, *supra* note 47.

167. Budget Treaty of 1970, *supra* note 47.

168. *Id.* at 2. "Democratic Holland was prepared to allow the EEC to raise revenue directly . . . only if the European parliament were given some say in the matter." The Economist, *supra* note 142, at 3.

169. The Economist, *supra* note 142, at 3.

170. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-678. Pursuant to the Decision on Replacement of Financial Contributions, the Council can make no amendments to Parliament's estimate of its own expenditures, unless the figures conflict with Community law. TREATIES, *supra* note 3.

171. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-678.

172. Budget Treaty of 1970, *supra* note 47, art. 5.

budget came out from under the supervision of the Council when the European Parliament acquired complete control over noncompulsory budget expenditures[173] including the power to amend and adopt the budget.[174] The noncompulsory expenditures make up less than one-third of the total budget, consisting mainly of outlays for administration and social programs.[175] Nevertheless, as one commentator observed:

> The political importance of this control may be found to outreach the amount of money actually involved. Control over the free part of the budget will give the Assembly important powers in relation to the activities of the other institutions of the Communities because he who holds the purse strings can effectively control the means whereby the independent functioning of the other institutions of the Communities is guaranteed.[176]

In the same year that the Parliament obtained these new powers concerning noncompulsory expenditures, the Member States passed the Budget Treaty of 1975[177] enhancing the Assembly's control over the entire budget.

The Budget Treaty of 1975 gives the Parliament the authority to reject the entire draft budget and demand that the Council submit a new budget.[178] Additionally, the Joint Declaration of the European Parliament, the Council and the Commission,[179] proclaimed the same year, provides the Assembly with the opportunity to initiate a conciliation procedure in the event the Parliament and Council cannot agree on a policy having "appreciable financial implications."[180] Before examining the Parliament's exercise of these new budgetary powers, it is essential to discuss another structural reform in the Community that has led to greater European integration.

---

173. D. LASOK & J. BRIDGE, *supra* note 28, at 132. When the Community treaties, secondary legislation, international conventions, or private law contracts prescribe the principle and amount of expenditure (either a figure or a determinative price mechanism) the budgetary item is considered compulsory. D. STRASSER, THE FINANCES OF EUROPE 33 (1977).

174. Budget Treaty of 1970, *supra* note 47, art. 4.

175. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-678.

176. D. LASOK & J. BRIDGE, *supra* note 28, at 132.

177. Budget Treaty of 1975, *supra* note 161.

178. *Id.* art. 12(8).

179. 18 O.J. EUR. COMM. (No. C 89) 22 (1975), *reprinted in* TREATIES, *supra* note 3, at 900 ed. n.

180. *Id.*

C. *Direct Elections to the European Parliament*

Article 138 of the EEC Treaty provided that the national parliaments of the Member States nominate delegates to the European Assembly from among their own members.[181] The Six appointed the original Members of the European Parliament (MEP) in numbers corresponding to the strength of the political parties in their national parliaments.[182] In 1960, the assembly, acting pursuant to the same article 138, prepared a draft convention for the election of the MEP by direct universal suffrage.[183] Since the Council found that direct elections would increase the legitimacy and, by implication, the power of the European Parliament,[184] it refused to reach a decision on the draft convention.[185] Frustrated with Council inaction on its proposal for direct elections, in 1969 the Assembly threatened to take the Council to Court.[186] Seven years later, the nine Member States signed an Act Concerning the Election of Representatives of the Assembly by Direct Universal Suffrage (Election Act).[187] The world's first transnational election was held June 7-10, 1979, with sixty-one percent of the eligible European electorate voting.[188]

---

181. EEC Treaty, *supra* note 26.

182. D. LASOK & J. BRIDGE, *supra* note 28, at 125.

183. *Id.*

184. *Id.* at 126. In actuality, the Council had little reason to worry, because the legislative and budgetary powers of the Parliament were quite limited at that time. The Treaty of Rome grants the Assembly no power to initiate, pass, or block legislation. According to EEC Treaty article 144, the Parliament, by a two-thirds majority of votes cast, may censure the Commission and force it to resign as a body. EEC Treaty, *supra* note 26. Although this power is unique in that no other international organization possesses this capacity, nothing prevents the Council from reappointing the same individuals to the Commission. Otherwise, article 140 provides Parliament with the ability to hold the Commission accountable only by submitting written questions to the Commission for comment. *Id.* The Parliament has never exercised its authority to take another Community institution to the Court. *See* 4 H. SMIT & P. HERZOG, *supra* note 7, at 5-423, 5-424.

185. D. LASOK & J. BRIDGE, *supra* note 28, at 126.

186. *Id.* The Parliament passed a resolution urging the Council to take action on the proposal. *See id.* at 126 n.10. The resolution referred to EEC Treaty article 175 which permits the Assembly to take the Council to the Court for failure to act on a request of the Parliament. *Id.*

187. Sept. 20, 1976, O.J. EUR. COMM. (No. L 278) 1 (1976). [hereinafter cited as Election Act].

188. The Economist, *supra* note 142, at 3. EEC Treaty article 138(3) and article 7 of the Election Act mandated that the Assembly draw up a proposal for

Apart from establishing an element of direct control in the Community, the implementation of direct universal suffrage may have a long-term effect on Community-Member State relations and therefore on European integration. Some of the immediate consequences of direct elections are already apparent. The Election Act increased the size of the Parliament from 198 to 410 members,[189] establishing a greater physical presence. Unlike their predecessors, MEP have attempted to attract media attention to highlight their actions on their constituent's behalf.[190] And since the MEP are no longer affiliated with their national parliaments, they have acted with a greater concern for Europe than for national considerations.[191]

D. *The New Parliament*

During the past decade the European Community acquired financial autonomy in relation to its Member States. The creation of the Community's own resources simultaneously prompted the grant of increased budgetary powers to the Parliament vis-a-vis the Council.[192] Both developments have further integrated the Common Market and resulted in the transfer of sovereignty from nation-states to the supranational organization. The European Parliament, composed of directly elected representatives, now controls a Community budget in excess of twenty-five billion dol-

---

a uniform electoral procedure. EEC Treaty, *supra* note 19; Election Act, *supra* note 187. Because no plan was ready for the first election in 1979, the Member States conducted the elections in accordance with their national voting methods. P. MATHIJSEN, *supra* note 89, at 18.

189. Election Act, *supra* note 187. When Greece became the tenth member of the Community on January 1, 1981, the total MEP increased to 434. Documents Concerning the Accession of the Hellenic Republic to European Community, 20 O.J. EUR. COMM. (No. L 291) 1, 21 (1979).

190. Lodge, *The Significance of Direct Elections for the European Parliament's Role in the European Community and the Drafting of a Common Electoral Law*, 16 COMMON MKT. L. REV. 195, 201-03 (1979). This predilection can be observed in Parliament's use of the conciliation procedure with the Council in areas other than budgetary matters such as exploitation of general and special committees to question and investigate the activities of the Commission, and its issuance of policy resolutions as an indirect means of initiating legislation. *Id.; see also* Herman, *Direct Elections to the European Parliament: Comparative Perspectives*, 16 COMMON MKT. L. REV. 209 (1979).

191. Lodge, *supra* note 190, at 203.

192. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-677.

lars.[193] By placing the power of the purse in the hands of the Parliament, the Member States have given the European Community an attribute of sovereignty which should substantially bolster its claim for international legal personality.

The budgetary debates of the past three years provide an indication of the extent to which the Parliament has exercised its newly acquired sovereign powers. Throughout the 1970s the Assembly expressed its dissatisfaction with the high percentage of the budget devoted to the common agricultural policy.[194] The Parliament wanted to direct a greater portion of its spending towards regional aid and industrial development.[195] The Budgetary Treaties of 1970 and 1975 gave the Parliament the necessary authority to reallocate budget priorities and amend the 1979 draft budget to increase expenditure for the European Regional Fund.[196] Despite the Council's objection to this modification, the President of the Assembly declared the budget adopted.[197]

The same wrangle over budget priorities occurred a year later. This time, however, the 1980 draft budget came under the review of the new directly elected Parliament.[198] The Council rejected Parliament's amendments to the budget which mandated increases for social and regional development.[199] Consequently, the Assembly, exercising for the first time the powers given to it by the Budget Treaty of 1975, rejected the budget in toto.[200] Since the Council could not submit a new draft budget before the beginning of the fiscal year, the Community adopted a special Sup-

193. Budget Treaty of 1970, *supra* note 47, at 4.

194. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-683.

195. *Id.*

196. *Id.* The Regional Fund is an instrument used to transfer supplementary resources to the poorest regions of the Community. P. MATHIJSEN, *supra* note 89, at 179-86.

197. *The 1980/1981 Budget Wrangle*, 18 COMMON MKT. L. REV. 5 (1981). Because the Council could not get a qualified majority to accept the amendment, the proposed modification was rejected. *See* Budget Treaty of 1975, *supra* note 161, art. 203(5), (6). The Council, nevertheless, could not achieve a qualified majority to fix another rate of expenditure. Subsequently, a conflict arose between the Council and Parliament concerning the amendment. As a consequence, a compromise budget was adopted for 1979. *See* Sopwith, *Legal Aspects of the Community Budget*, 17 COMMON MKT. L. REV. 315, 333-40 (1980).

198. 5 H. SMIT & P. HERZOG, *supra* note 43, at 5-683.

199. *Id.* at 5-683; *see* Sopwith, *supra* note 197, at 340-45.

200. 5 H. SMIT & P. HERZOG, *supra* note 7, at 5-683.

plementary and Amending Budget for 1980.[201]

In preparing the draft budget for 1981, the Parliament realized that the Community, under the 1980 provisional budget, had not spent its allowable appropriation for regional and social expenditures.[202] Accordingly, it decided to insert the additional regional and social expenditures it had hoped to make in the 1981 budget into the second Supplementary and Amending Budget for 1980.[203] The Assembly adopted both the 1980 and 1981 budgets in December 1980.[204] Questioning the legality of the Parliament's budgetary maneuverings, France, Belgium, and West Germany refused to pay for the extra expenditures approved by Parliament in the second 1980 Supplementary and Amending Budget.[205]

The Commission had the authority, under EEC Treaty article 169, to bring these states before the Court for failure to comply with Community obligations.[206] Since it wanted to avoid a showdown between the Court and a Member State similar to that which occurred with France in the "British Lamb War," the Commission was reluctant to take that step.[207] Obviously, noncompliance with Court decisions signifies a lack of interest in the common objectives of the EEC—an anti-integrationist stance which weakens the European Community's claim to a more comprehensive international legal personality.

Concerned that these rumblings about Member State sovereignty in relation to the EEC budget might escalate into a major problem, a Member State of the European Parliament submitted

---

201. *The 1980/1981 Budget Wrangle, supra* note 197.

202. *Id.* Article 203 of the EEC Treaty directs the Commission to establish a maximum rate of increase over the previous year in total expenditure for a particular type of budget appropriation. EEC Treaty, *supra* note 26.

203. *The 1980/1981 Budget Wrangle, supra* note 197.

204. *See id.*

205. When the budget dispute of 1981 ended, Belgium, France, and West Germany did not have to pay the disputed additional contribution. [1981] COMMON MKT. REP. (CCH) Report No. 415.

206. EEC Treaty, *supra* note 26.

207. This development represents a clear example of state sovereignty winning over the principle of supranationality. *See The Mutton and Lamb Story: Isolated Incident or the Beginning of a New Era?*, 17 COMMON MKT. L. REV. 311 (1980). The British Lamb War involved French refusal to comply with court rulings to alter its import arrangements for mutton and lamb which contravened Community law concerning the free movement of goods within the EEC. *Id.* at 311.

a written question[208] to the Commission in the summer of 1981 requesting an opinion on the financial autonomy of the Community.[209] The Commission's response stated that it was "essential to make a clear distinction between own resources and tax revenue for national budgets."[210] Member States merely act as clearing houses between individual taxpayers paying customs duties or value added tax and the Community, which becomes the ultimate recipient and user of the revenue.[211]

VI. State Sovereignty v. Supranationality

The Commissson's response[212] has much more significance than merely reaffirming the decision granting financial autonomy to the Community.[213] More than any of the aforementioned Treaty amendments and judicial decisions that have promoted the move toward integration, the response underscores the meaning of supranationality in relation to the Community. It implicitly requires a Member State either to comply with Community law or leave the Common Market. No state may threaten to withhold the Community's entitlement on the basis of a disagreement with EEC policies or decisions. The supranational institution thus prevails over state sovereignty. The concluding sections of this Recent Development will discuss the concepts of state sovereignty, supranationality, and international legal personality in relation to the theory of recognition.

Under traditional theories of international law only sovereign states can possess international legal personality.[214] Moreover, only a single sovereignty can occupy a given territory.[215] Since there can only be one supreme power, sovereignty is indivisible.[216] According to this theory, an alignment between states exists only on the basis of coordination and cooperation. No sharing, surren-

208. Written Question No. 2053/80 24 O.J. Eur. Comm. (No. C 168) 4 (1981) (submitted by Mr. Notenboom, Member of the European Parliament).

209. See *supra* note 64 for a discussion of the power to submit questions.

210. Written Question No. 2053/80, *supra* note 208.

211. *Id.*

212. *Id.*

213. *See Treaties, supra* note 3.

214. *See supra* p. 1; T. Holland, *supra* note 8, at 395.

215. 3 P. Pescatore, The Law of Integration: Emergence of a New Phenonmenon in International Relations, Based on the Experience of the European Communities 30 (1974).

216. *Id.* at 31.

dering, or transferring of sovereignty occurs between international organizations and their constituent states. Consistent with these teachings, article 2 of the United Nations Charter proclaims that all members have sovereign equality and that their sovereignty remains intact.[217] Proponents of the traditional ideas argue that the state accedes to a system of integration by transferring competences, not sovereign powers.[218]

This theory, at least as applied to the European Community, is not in accord with reality. EEC institutions would have no power unless the Member States had given up a degree of their soevereignty. The Member States have done more than grant the Common Market certain competences; they have surrendered to the Common Market fundamental and vital state functions, namely the formulation of policy, legislation, and the administration of justice. As the ERTA case[219] indicates, only the Court has the power to decide cases involving the exclusive right of Community institutions to legislate involving the EEC's power to develop a common transport policy. Unlike Member States participating in some international organizations, the states forming the Common Market cannot denounce any obligation to the European Community in the name of state sovereignty.[220] As early as 1963, the Court ruled:

> [B]y creating a Community of unlimited duration, having its own institutions, its own personality and its own capacity in law, apart from having international standing and more particularly, real powers resulting from a limitation of competence or a transfer of powers from the States to the Community, the Member States, albeit within limited spheres, have restricted their sovereign rights and created a body of law applicable both to their nationals and to themselves.[221]

The European Community is truly an international organization *pas comme les autres.*

The powers that the Member States have conferred on the organs of the Common Market have initiated new principles of representativity in international law. The Council serves as the

---

217. U.N. Charter art. 2, para. 1; *see* P. PESCATORE, *supra* note 215, at 30.

218. P. PESCATORE, *supra* note 215, at 30-32.

219. *See supra* note 121 and accompanying text.

220. P. PESCATORE, *supra* note 215, at 50.

221. Costa v. Enel, 1964 C.J. Comm. E. Rec. 1143, [1964] 3 COMM. MKT. L. REV. 425, 455.

guardian of the interests of the Member States.[222] When a Treaty amendment or treaty of accession comes before the Council, each Member State has veto power.[223] In other situations, the Council functions by a qualified majority vote.[224] Safeguarding the common interests of the Community, the Commission has directed the transition of the EEC from a customs union to an economic and, in some respects, a political union.[225] The directly elected European Parliament introduces the novel concept of democratic control in an international organization. Finally, the Court serves as the guarantor of the objectives of the "constitution" of the European Community.[226]

The constituent documents of the European Community are more than just treaties; they form a contract between the Member States and the Community. Community powers come from the Member States, but in the final analysis this grant of powers creates a quasi-federal body in some respects more powerful than the states themselves.[227] The conferral of powers has resulted in a division of authority between the Community and Member States. The European Community shares its powers with Member States by assuming the responsibility of producing international policies and legislation in certain areas while giving the states the task of implementation and execution of its directives.[228] Accordingly, the powers are autonomous, not concurrent. For this reason, the Court has deemed it necessary in some instances for both the Community and Member States to become parties to international agreements.[229] Both actors are competent in the areas of their respective sovereignty. This multiple division of powers on both the substantive and functional level has given the Community certain characteristics of a federation.

A federation is a union of several states based on an international treaty, which is later followed by the creation of a constitution which creates organs of the union possessing powers over the member states and their citizens.[230] The European Community

222. P. PESCATORE, *supra* note 215, at 6.
223. *See supra* note 55 and accompanying text.
224. *See supra* text accompanying note 54.
225. P. PESCATORE, *supra* note 215, at 6.
226. *See supra* note 55 and accompanying text.
227. R. GURLAND & A. MACLEAN, *supra* note 44, at 28.
228. P. PESCATORE, *supra* note 215, at 44.
229. *Id.* at 47.
230. C. OKEKE, CONTROVERSIAL SUBJECTS OF CONTEMPORARY INTERNATIONAL

falls short of this definition in only a few respects. It does not yet have a constitution which the Member States may amend without unanimous consent. Moreover, the EEC Treaty does not require that the Common Market conduct unitary external relations in all areas. And yet, the European Community is more than a partnership of states or a confederation. On a continuum of governmental structures, the Common Market falls somewhere between an intergovernmental organization and a federation. Political and legal theorists have classified it as a supranationality.[231]

The term supranational first appeared in conjunction with the Common Market in article 9 of the ECSC Treaty.[232] Since the concept has application in cases in which international integrative movements have placed sophisticated restrictions on state sovereignty, supranationalism is now commonly used to describe the European Community.[233] Three fundamental aspects of supranationalism define the term and help distinguish the Community from other international organizations. First, a supranationality possesses a complex of common values.[234] The Member States subordinate their national interests to the common objectives of the Community; they emphasize the value of economic union through the Common Market over national value hierarchies. Second, a supranationality places real power at the service of common interests.[235] The Parliament, Council, and Commission have defined powers and the Court renders decisions that bind the Member States. Last, a supranationality utilizes its powers independently of its Member States.[236] A supranational organization transcends rules of sovereign equality and nonintervention. Although treaty amendments and treaties of accession remain

---

LAW 38 (1974).

231. I. CLAUDE, SWORDS IN THE PLOWSHARES 379-80 (4th ed. 1971); Robertson, *Legal Problems of European Integration,* 91 RECUEIL DES COURS 105, 143-48 (1957).

232. Article 9 of the ECSC Treaty, *supra* note 34, was subsequently repealed by article 19 of the Merger Treaty, *supra* note 35.

233. F. GRIEVES, *supra* note 47, at 10-18.

234. P. PESCATORE, *supra* note 215, at 50-51; *see* F. GRIEVES, *supra* note 47, at 10-18.

235. P. PESCATORE, *supra* note 215, at 50. This principle distinguishes the European Community from most international organizations that have developed a reputation for the absence or ineffectiveness of their powers. *Id.* at 60; *see* F. GRIEVES, *supra* note 47, at 15.

236. P. PESCATORE, *supra* note 215, at 51; *see* F. GRIEVES, *supra* note 47, at 14.

subject to the unanimity rule, the Council implements most Common Market policies by the vote of a qualified majority.[237] In areas of Community sovereignty, the Member States have no right of independent action.[238] By combining the three criteria of common objective, reality of power, and autonomy, the integration movement has advanced the European Community beyond all other international organizations in acquiring the characteristics of supranationality.

VII. Conclusion: Recognition

While few commentators question the international status of the Community in relation to the Member States and those countries with which it has negotiated treaties, the question of whether the Common Market possesses a universally recognizable personality remains open.[239] In determining the international status of the United Nations, the ICJ in the *Reparations Case* stated that fifty states, "representing the vast majority of the members of the international community, had the power in conformity with international law to bring into being an entity possessing an objective international personality and not only personality recognized by them alone."[240] If this recognition standard determines when an entity has international legal personality, then the increasing membership in the Common Market may indicate that it has objective international personality. Furthermore, over fifty states have implicitly recognized the EEC by entering into commercial negotiations with it or sending diplomatic missions to it.[241]

This standard, however, is based on the constitutive theory of recognition.[242] Under this theory, international legal persons must recognize an entity as having the attributes of legal personality before international law will allow it to acquire rights and duties within the legal system.[243] Most international jurists have discred-

237. *See supra* notes 54-55 and accompanying text.
238. P. Pescatore, *supra* note 215, at 33.
239. D. Lasok & J. Bridge, *supra* note 28, at 24.
240. Reparations Case, *supra* note 10, at 178-79.
241. E. Stein, P. Hay & M. Waelbroeck, *supra* note 27, at 935; *see also* 5 H. Smit & P. Herzog, *supra* note 7, at 606.
242. L. Henkin, R. Pugh, O. Schachter & H. Smit, International Law 171 (1980).
243. E. Stein, P. Hay & M. Waelbroeck, *supra* note 27, at 932.

ited the constitutive theory of recognition because it leaves the important act of identifying the subjects of international law to the whim of nation-states.[244] Constitutive theory permits a state to deny the existence of an international organization as an international legal personality, yet expect it to observe the law of nations.[245] Since this theory has lost favor in international law as a standard for recognizing states, it should not serve as the standard for recognition of international organizations as international legal persons. Instead, declaratory theory should govern recognition. Declaratory theory accords international legal personality to an entity once it has fulfilled the conditions for recognition.[246] Recognition merely acknowledges the fact of the entity's political existence and declares the recognizing state's willingness to treat it as an international person.[247]

Unlike the criteria used to determine statehood (territory, population, government, and international capacity), there are no objective criteria for the recognition of international organizations.[248] Identifying the capacities of an international organization that accord it recognition as a legal personality is a complex task. This Recent Development has proposed that the attributes of supranationality—common objectives, reality of power, and autonomy—are the relevant capacities. The Common Market has acquired the attributes of supranationality as the trend toward integration, highlighted by the Commission's response to the written question on financial autonomy of the Community,[249] has led to the transfer of sovereignty from the Member States to the supranational organization. Accordingly, the European Community should have a measure of international legal personality commensurate with its possession of these attributes.

At this juncture—after twenty-five years of EEC existence—the European Community will itself decide the scope of its international legal personality. Will it advance toward economic and political integration or become an intergovernmental customs union run by sovereign states? Ultimately, the outcome will depend on whether the supranational organs of the Community con-

244. *Id.*
245. B. BOT, NONRECOGNITION AND TREATY RELATIONS 17 (1968).
246. W. BISHOP, INTERNATIONAL LAW 283 (1962).
247. L. HENKIN, R. PUGH, O. SCHACHTER & H. SMIT, *supra* note 242, at 171.
248. C. OKEKE, *supra* note 230, at 187-88.
249. *See supra* notes 208, 209 & 210 and accompanying text.

tinue to increase their powers or whether the proponents of state sovereignty limit the role of the Common Market institutions to functional bureaucracy.

Platte B. Moring, III