

THE COUNCIL OF EUROPE. By A. H. Robertson. New York: Frederick A. Praeger, Inc., 1956. Pp. xiii, 252. \$7.75.

DAS RECHT DES EUROPARATS. By Karl Carstens. Berlin: Dunker & Hum-bolt, 1956. Pp. 243. DM 18.

At the suggestion of private political organizations interested in increased international co-operation, the Council of Europe was established by the countries of western Europe to "achieve a greater unity between its members for the purpose of safeguarding and realizing the ideas and principles which are their common heritage and facilitating their economic and social progress."<sup>1</sup> A new experiment in international organization, the Council is composed of two bodies: the Committee of Ministers, with representatives appointed by, and acting for, the member states; and the Assembly, whose members, independent of their individual governments, are spokesmen for the opinion of the European people. Regulation of the relationship existing between these bodies has been largely a matter of custom and practice for the statute creating the Council establishes only generally their individual roles. Yet while presentation and analysis of these practices is important to an understanding of the Council of Europe, little literature has authoritatively dealt with this problem.

*The Council of Europe*, by Mr. Robertson, and *Das Recht des Europarats*, by Mr. Carstens, fill the gap excellently. Both books have been written by men closely associated with the work of the Council. Mr. Robertson occupies the important legal position of Counsellor to the Assembly, while Mr. Carstens, who once served as Minister's Deputy on the Committee of Ministers, is the former German representative at the Council of Europe. Thus the books contrast the views of an international civil servant with those of a governmental representative, each author's view reflecting his official association with the Council. Mr. Robertson, unmistakably influenced by a liberal empiricism, advocates full use of the Assembly as a new force in international organizations; Mr. Carstens prefers a somewhat cautious, judicious and more legalistic approach. And while the authors' presentations largely coincide, leaving little doubt as to the practices generally accepted, in disagreement they help the reader appreciate some of the main obstacles which the organization encounters.

A major element in the history of the Council, stressed by both authors, has been the role and development of the Assembly. To understand its creation, one must remember that the Council of Europe was established largely as a result of agitation for greater international co-operation.<sup>2</sup> This attitude is reflected in the Assembly—a separate body representing the European public.

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1. THE STATUTE OF THE COUNCIL OF EUROPE, art. I (a) (hereinafter cited as STATUTE). The Council of Europe was established in 1948. At present, the following states are members: Austria, Belgium, Denmark, France, Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Saar, Sweden, Turkey, United Kingdom.

2. THE EUROPEAN MOVEMENT AND THE COUNCIL OF EUROPE 51-53 (1950).

as distinguished from the European governments. Originally, the Assembly was subordinate to and controlled by the Committee of Ministers.<sup>3</sup> The gradual increase in the Assembly's powers illustrates how custom and practice have created law in the field of international relations.

From the outset of the Council's existence, the relations of the Assembly and the Committee have been marked by clashes between the more conservative Committee and the dynamic Assembly. Rarely losing the initiative in its drive for independence and power, the Assembly has successfully eliminated some of the original limitations and controls placed upon its authority. The requirement of prior Committee approval of Assembly agenda has been withdrawn.<sup>4</sup> The manner of electing representatives to the Assembly, originally within the discretion of the member states, has been amended.<sup>5</sup> And the Assembly has discussed defense matters, although such conduct was originally prohibited.<sup>6</sup>

In the field of relations with other international organizations, the Assembly has again superseded the Committee of Ministers. It has begun to establish direct contact with these organizations, as well as with member and non-member states.<sup>7</sup> For example, the Assembly now submits recommendations and resolutions directly to the national legislatures with a request for their support. It thus attempts to muster parliamentary backing strong enough to bring pressure to bear on the governments to take the action sought, despite the fact that their representatives on the Committee of Ministers may be reluctant or even unwilling to make the proposals themselves.<sup>8</sup>

The Council's experiment with a non-governmental Assembly has had an impact on other European organizations. It is likely that the institutional structure of the European Economic Community and of the European Atomic Energy Community will include Assemblies.<sup>9</sup> And in the European Coal and Steel Community, a Common Assembly has been created with a more significant role than that of the Council's Assembly.<sup>10</sup> Moreover, the Assembly of the Coal and Steel Community has formally adopted an informal development of the Council<sup>11</sup>—grouping Assembly representatives according to their na-

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3. THE COUNCIL OF EUROPE 50.

4. STATUTE art. 23(a), as amended.

5. THE COUNCIL OF EUROPE 47-48; DAS RECHT DES EUROPARATS 111-12.

6. THE COUNCIL OF EUROPE 17, 51-52.

7. DAS RECHT DES EUROPARATS 149-51.

8. *Id.* at 150-51.

9. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY arts. 137, 138; TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY arts. 107, 108.

The French official text of these treaties may be found in MINISTÈRE DES AFFAIRES ÉTRANGÈRES, LA DOCUMENTATION FRANÇAISE Nos. 2279, 2280 (1957).

10. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY arts. 20, 24, 95.

11. COMMUNAUTÉ EUROPÉENNE DE CHARBON ET L'ACIER, ASSEMBLÉE COMMUNE, RÈGLEMENT DE L'ASSEMBLÉE COMMUNE, art. 34 (1): "Les Représentants peuvent s'or-

tional political affiliations. This procedure should help promote a political climate favorable to further European consolidation.

Both Mr. Robertson and Mr. Carstens believe that the Council of Europe, as the most representative of the European organizations, has supplied the general framework for a new "All-European" policy.<sup>12</sup> The Assembly, highly instrumental in this development, might well exemplify the beginning of rudimentary institutional control by public opinion. A number of specialized agencies of the United Nations and of other European organizations report annually to the Assembly. Moreover, Assembly support of measures advanced by these organizations has proved highly significant. In labor conventions prepared by the International Labor Organization, this support may be decisive; it has been claimed that without the political support of the Assembly, the European Coal and Steel Community never would have come into existence.<sup>13</sup> In view of the persuasive evidence offered by the authors on the activities of the Assembly, one can reasonably assume that an Assembly recommendation, expressed with sufficient determination and supported by an overwhelming majority, carries a political weight which may not easily be disregarded by the governments.<sup>14</sup>

Only a few of the major changes brought about by practice may be discussed within the limits of this review. Significantly, the forceful policy of the Assembly has prompted the Committee of Ministers to assume the responsibility of active leadership; the Committee submits to the Assembly an annual action program outlining its policy.<sup>15</sup> Motivated by similar considerations, members of the Committee address the Assembly with increasing frequency, either in their own name or on behalf of the Committee. And a Committee of Ministers' Deputies has been established to continue the work of the Council between meetings of the Committee. More important in promoting closer international cooperation, advisory committees of experts have been instituted.

The true meaning of such developments must not be exaggerated or over-emphasized. For they are merely hopeful, modest beginnings which can grow to fruition only in the course of time and experience. At present, the institutional organization of the Council has structural weaknesses. As a step toward achieving fruition, these weaknesses should be remedied. Thus, to remove any official governmental element from the Assembly, the Council should adopt explicit provisions disqualifying government officials from becoming representatives in the Assembly.<sup>16</sup> And the powers of the Secretary General of the

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ganiser en Groupes par affinités politiques." 3 JOURNAL OFFICIEL 393 (1954). See DAS RECHT DES EUROPARATS 137.

12. THE COUNCIL OF EUROPE 54, 106; DAS RECHT DES EUROPARATS 154.

13. *Ibid.*

14. *Id.* at 112.

15. *Id.* at 162; THE COUNCIL OF EUROPE 45.

16. The European Coal and Steel Community Treaty already safeguards the non-governmental character of the Common Assembly. Art. 21 states:

"The Assembly shall consist of delegates whom the parliaments of each of the mem-

Council should be increased so as to correspond to those of the Secretary General of the United Nations.<sup>17</sup>

Mr. Carstens believes that the Assembly's practices may become legally binding only if unanimously and unequivocally accepted by all member states.<sup>18</sup> However, this approach appears too rigid. The Assembly has been assigned certain functions, and it should be able to develop its own procedural precedents to effect those functions. By analogy to an advisory opinion of the International Court of Justice, the acquiescence of a majority of the member states would appear sufficient to make the Assembly's practice legally binding.<sup>19</sup>

The authors differ in their opinion on the effectiveness of the Administrative Tribunal of the Council of Europe. This tribunal is charged with settling disputes which may arise between members of the Secretariat and the Secretary General concerning the applicability of administrative regulations to contracts of service. It is composed of three members, one elected by the Committee of Ministers, one by the Secretary General and one by the members of the Secretariat.<sup>20</sup> Mr. Robertson implicitly considers the Tribunal sufficiently independent to render unbiased judgments.<sup>21</sup> Mr. Carstens, on the other hand, seriously questions this independent status. He observes that an appointee of the Secretary General sits as a member of the Tribunal, even though all disputes before that body involve a prior decision of the Secretary General.<sup>22</sup> While this criticism has some merit, it should be recalled that the composition of the Administrative Tribunals of the United Nations or of the International Labor Organization is hardly more favorable to the complainant in this respect. Moreover, the right of appointment existing in the Council's Secretary is balanced by the Secretariat power of election, a fact which Mr. Carstens seems to dismiss.

The authors also disagree on the Committee of Ministers' power to act upon violation of the European Human Rights Convention. When a violation is charged, the European Human Rights Commission is called upon to settle the dispute.<sup>23</sup> If the Commission fails in this endeavor, it must submit to the Committee a report on the issue, accompanied by a proposed solution. The Committee may not only determine that a violation has in fact been committed,

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ber States shall be called upon to appoint once a year from among their own membership, or who shall be elected by direct universal suffrage, according to the procedure determined by each respective High Contracting Party."

17. *Id.* at 75.

18. DAS RECHT DES EUROPARATS 37.

19. Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion of April 11, 1949, [1949] I.C.J. Rep. 174, 185.

20. COUNCIL OF EUROPE, ADMINISTRATIVE REGULATIONS, STAFF RULES art. 25 (1949).

21. THE COUNCIL OF EUROPE 72.

22. DAS RECHT DES EUROPARATS 194.

23. THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FREEDOMS arts. 24, 30, reprinted in 1 EUROPEAN YEARBOOK 316 (1955).

but may also "prescribe a period during which the Contracting Party concerned must take the measure required by the decision of the Committee of Ministers."<sup>24</sup> According to Mr. Robertson, this implies that the Committee has power "... to decide whether the violation of the Convention has been committed, and if so, what measures shall be taken."<sup>25</sup> Mr. Carstens' interpretation is much narrower. He recognizes that the Committee has power to determine the existence of violation. But the remedy is, in his opinion, within the discretion of the state concerned.<sup>26</sup> While a conflict exists between the French and English versions of the Convention, the English translation, supporting Mr. Robertson's interpretation, would appear to be more in accord with the nature and aims of the Convention.

Without intending to detract from the value of the European Human Rights Convention, the reviewer wishes to take exception to Mr. Robertson's claim that the right to property, included in the Convention after protracted debates, has been strengthened by the reference to general principles of international law.<sup>27</sup> The law governing expropriation and confiscation is much too uncertain and obsolete to deal effectively with disguised or "creeping" expropriation.<sup>28</sup> On the other hand, there is much to be said for his proposal that the Council of Europe be made the central, co-ordinating structure for all existing European organizations. Such centralization would eliminate needless duplication of effort.<sup>29</sup> And with the establishment of the European Economic Community and Euratom, the proposal will be of even greater moment.

The Council of Europe is still in its infancy. While growth has been slow, and accomplishments limited, seven years is but a brief span in the life of a nation or political institution. And the numerous European Conventions prepared by the Council, such as the European Human Rights Convention and the Convention of the Establishment, are impressive and worthy of recognition. Admittedly, the Council has fallen short of the original, long cherished dream of European federation. But the Council, in structure as well as in aims, is a pioneering international organization; its spadework has been preparing the ground for the European Coal and Steel Community, the European Economic Community and Euratom. Commenting on this development M. Jean Monnet recently stated: "Europe's nations faced with the prospect of decline like the city-states of ancient Greece, because they are too small, are making one of the century's greatest experiments in their effort to break the restraints of the past. It may well be through this new kind of federalism . . . that the twentieth century will make one of its greatest contributions to the civilization of succeeding generations."<sup>30</sup>

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24. *Id.* art. 32(2).

25. THE COUNCIL OF EUROPE 152.

26. DAS RECHT DES EUROPARATS 86.

27. THE COUNCIL OF EUROPE 158.

28. RUBIN, PRIVATE FOREIGN INVESTMENT 22, 29 (1956).

29. THE COUNCIL OF EUROPE 208.

30. N.Y. Times, Feb. 3, 1957, § 6, p. 51.

In view of the important role of the Council, the books by Mr. Robertson and Mr. Carstens are especially welcome. They present a most useful exposition of its nature and operation. The authors should be complimented for their outstanding contribution to the understanding of an international organization which may well provide the important link to future development of European institutions.

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