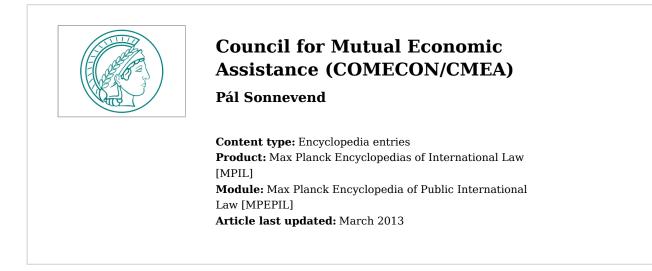
# **Oxford** Public International Law



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## A. Historical Background and Establishment

**1** The Council for Mutual Economic Assistance was founded in January 1949 in Moscow, whereas the exact date of its creation is unknown. The organization used in all its official correspondence, as well as in its international contacts the abbreviation 'CMEA'. This entry uses the official abbreviation, instead of the more commonly used term 'Comecon'. There have been multiple motivations behind the formation of this organization by Bulgaria, Czechoslovakia, Hungary, Romania, and the Soviet Union. One of the reasons was to react to the  $\rightarrow$  Marshall Plan (European Recovery Program) and the establishment of the  $\rightarrow$  Organization for Economic Cooperation and Development (OECD) from which the Soviet Union sought to keep away its allies. With the creation of the CMEA the Soviet Union also aimed at securing its needs in raw materials and capital goods. It is also argued that the Western embargo imposed in 1948 on the Soviet Union had a role to play.

**2** In the first years of its existence, the CMEA showed little signs of formalized activity. Only after the death of Stalin, and parallel with the progress of the integration of Western Europe, has the CMEA been revitalized. Throughout this period, the guiding principle of economic cooperation between the members were autarky and emphasis on bilateral relations, features that actually remained dominant throughout the existence of the organization despite serious attempts to introduce specialization and coordination of the national economic plans.

**3** After the entry into force of the Treaty establishing the European Economic Community attempts were made to transform the CMEA into a fully integrated, centrally planned socialist commonwealth directed from Moscow. Accordingly, in 1962 the Basic Principles of the International Socialist Division of Labour were adopted (reprinted in Butler 14). These plans were later abandoned in favour of a concept of 'socialist economic integration' which led to the adoption of the Comprehensive Programme for the Further Extension and Improvement of Cooperation and the Development of Socialist Economic Integration in 1971. Socialist economic integration remained to be based on the  $\rightarrow$  sovereignty of the participating States, and unlike its Western counterpart, it never lead to the creation of supranational structures and  $\rightarrow$  supranational law.

**4** The lack of real economic integration became apparent during the 1970s as the CMEA Member States incurred substantial debts in hard currency and the oil crisis hit the world economy in 1973. These phenomena were not dealt with by a coordination of economic policies of the CMEA Member States. The only element of 'mutual' assistance traceable within the CMEA was the fact that the Soviet Union supplied its allies with crude oil below the world market price and without demanding hard currency for the supplies. Shortly after Gorbachev became Secretary General of the Communist Party in 1985 the CMEA adopted a Comprehensive Programme for Scientific and Technological Progress of CMEA Member States up to the Year 2000 which thrived to achieve closer ties across national borders in order to reduce the technological gap between the CMEA and the West and to promote intensive economic growth. This programme remained as unsuccessful as an attempt in 1988 to reintroduce a concept of international socialist division of labour.

**5** The collapse of the Soviet rule in 1989 and 1990 first lead to proposals in January 1990 to completely redesign the CMEA, and then in January 1991 to replace the CMEA with the Organization for International Economic Cooperation. Several factors, however, made these plans economically meaningless. These included the reunification of Germany and the introduction of hard currency in the transactions between the members coupled with a complete reorientation of the economies of the region towards the West. Thus the CMEA was formally dissolved with a Protocol signed on 28 June 1991 in Budapest (Протокол об

упраэдении Совета Экономической Вэаимопомощи [Protocol on the Disbandment of the Council for Mutual Economic Assistance]).

## **B. Legal Status and Membership**

6 The CMEA was originally established without any written international treaty basis. The sole evidence of its creation was a communiqué published on 25 January 1949 by most communist newspapers and news agencies announcing that a Council for Mutual Economic Assistance was instituted at a conference held in Moscow on 5-8 January 1949 (К созданию Совета Экономической Вэаимопомощи [On the Creation of the Council for Mutual Economic Assistance] Pravda [25 January 1949] 2; Kommuniqué über die Gründung des Rates für Gegenseitige Wirtschaftshilfe reprinted in Uschakow 18; '1949 Communiqué'; compare also Butler 121-123). Only on 14 December 1959 was the Charter of the Council for Mutual Economic Assistance ('Charter') signed in Sofia; it entered into force on 13 April 1960, the date of deposit of the instruments of ratification of all countries which had signed the Charter with the Government of the Union of Soviet Socialist Republics.

7 Original members in 1949 were the Soviet Union, Bulgaria, Czechoslovakia, Hungary, Poland, and Romania. Albania joined in February the same year, and the German Democratic Republic in September 1950. Originally, according to the 1949 Communiqué and later Art. II (2) Charter, membership in the CMEA was open to other European countries which subscribe to the purposes and principles of the Council. The reference to Europe was deleted in 1962 (compare and contrast Charter and 'The Comecon Charter, 1960: With Amendments Adopted by the Sixteenth and Seventeenth Sessions but still Requiring Ratification' in Kaser 235–246, 236: Protocol concerning the Amendment of the Charter of the Council for Mutual Economic Assistance and of the Convention concerning the Juridical Personality, Privileges and Immunities of the Council for Mutual Economic Assistance Annex I para. 3). This made possible the expansion of the organization beyond the borders of Europe. Accordingly, the Mongolian People's Republic joined the organization in July 1962,  $\rightarrow$  Cuba in July 1972, and  $\rightarrow$  Vietnam in July 1978. All members stayed in the CMEA until its dissolution, except for Albania which ceased to participate in 1961 and the German Democratic Republic which lost its statehood on 3 October 1990 with its accession to the Federal Republic of Germany.

## C. Main Purposes and Fields of Activities

**8** In 1959, Art. I Charter listed the following broad purposes: '[U]niting and co-ordinating the efforts of the member countries of the Council, the planned development of the national economies and the acceleration of the economic and technical progress in those countries, the raising of the level of industrialisation of the countries with a less-developed industry, and a continual growth of productivity, together with a steady increase in the well-being of the peoples, of the member countries'. Later, two other purposes were added: the deepening and improvement of cooperation and the development of socialist economic integration as well as the gradual approximation and equalization of economic development levels (Protocol concerning the Amendment of the Charter of the Council for Mutual Economic Assistance and of the Convention concerning the Juridical Personality, Privileges and Immunities of the Council for Mutual Economic Assistance Annex I para. 1).

**9** These broad purposes did not form a coherent programme, especially when seen in contrast with the purposes of the integration of the free part of the continent. Less industrialized Member States, especially Romania, successfully withstood energetic attempts by the Soviet Union in 1963 to attest supranational powers to the CMEA. Accordingly, in spite of a certain degree of specialization, the CMEA never introduced a supranational central planning for all participating economies. Trade between the Soviet Union and the other members—which made up to 50% of the intra-CMEA trade—and trade

between the other members were governed by bilateral and multilateral agreements. Because of central planning in all participating economies, actual trade was negotiated on an annual basis at government level and was followed-up by contracts between the Stateowned enterprises. It is therefore appropriate to qualify the organization as a permanent framework for bilateral negotiations.

**10** Specialization went only as far as fitted the national interests of the Member States. Agreements were reached, though, on specific products or certain industries, such as nuclear power machinery or computers. In general, specialization seemed to have had limited success. Equally, joint investment projects were not successful on a large scale, with some exceptions in the building of natural gas pipelines and electric power grids.

## **D. Structure**

### **1. Organs and Their Powers**

**11** Organs of the CMEA were according to Art. V Charter the Session of the Council ('Session'), the Conference of representatives of the countries in the Council, the Standing Commissions, and the Secretariat. Further, in 1962 an Executive Committee was formed (compare 'The Comecon Charter, 1960: With Amendments Adopted by the Sixteenth and Seventeenth Sessions but still Requiring Ratification' in Kaser 235–246, 239–40; Protocol concerning the Amendment of the Charter of the Council for Mutual Economic Assistance and of the Convention concerning the Juridical Personality, Privileges and Immunities of the Council for Mutual Economic Assistance Annex I para. 8, 10), and the CMEA also created seven permanently-functioning meetings and two scientific institutes.

**12** Formally, the organization was directed by the Sessions of the Council consisting of delegations of all Member States whereas the Charter left the composition of the respective delegations in the hands of the Member States. In practice, delegations were typically led by the heads of government of the members. Except for the first years of the existence of the organization, the Session met annually to consider questions of economic and scientific cooperation and to determine the course of action of the other organs of the Council. Remarkable, and for international organizations untypical, was the broad authorization given by Art. VI to the Session to '[p]erform such other functions as may be found necessary for achieving the purposes of the Council.' The Session also had the power to establish such organs as it may consider necessary for the discharge of the functions of the CMEA.

**13** The principal executive organ of the CMEA was the Executive Committee consisting of Deputy Prime Ministers generally meeting quarterly and always in Moscow. The tasks of the Executive Committee included directing the implementation of the recommendations of the Council, directing the coordination of national economic plans and specialization, directing the Secretariat, the permanent commissions, and other CMEA organs.

14 The Secretariat was the permanent administrative organ of the CMEA. Located in Moscow, its staff consisted of nationals of the Member States enjoying the status of international civil servants ( $\rightarrow$  *Civil Service, International*). The Secretariat was lead by the Secretary, always a citizen of the Soviet Union, and his deputies. The organization had only three Secretaries in its 42 years of existence. The major task of the Secretariat was, inter alia, to assist in the preparation and conduct of the meetings of the different organs of the CMEA, organize, jointly with the Standing Commissions of the Council, the preparation of draft multilateral agreements, keep a register of the CMEA recommendations and

decisions, and act as depositary for multilateral agreements. The Secretariat also coordinated between the different organs of the CMEA.

**15** The Executive Committee was assisted by committees, the number of which rose in more steps to six. They were to ensure the consideration and solution of major problems in the areas of cooperation in planning, scientific/technical cooperation, cooperation in machine building, cooperation in the field of electronization, cooperation in external economic relations, and cooperation in the field of agroindustrial complexes.

**16** Between 1956 and 1987 more than 20 permanent commissions were established on a sectoral basis to further develop cooperation and coordinate planning among Member States. A 1987 restructuring reduced the number of permanent commissions significantly. They consisted of national delegations as a rule headed by the competent branch minister. They had a permanent seat in one of the members and convened not less than twice a year. The permanent commissions were often considered to be the organs of the CMEA where the practical, specific work takes place.

**17** Three research institutes were established by the Session: the Institute of Standardization, the International Institute of Economic Problems of the World Socialist System, and the International Center of Scientific and Technical Information. The CMEA also created two banks, the International Investment Bank and the International Bank for Economic Cooperation.

#### 2. Decision-making Process

**18** Articles III and IV Charter foresaw two types of enactments ( $\rightarrow$  *International Legislation*): recommendations and decisions, whereas both could be adopted by the Session, the Executive Committee, the committees, and the permanent commissions.

**19** Recommendations were to be adopted in substantive matters of economic and scientific/ technical cooperation, and they were not formally binding upon the respective members. Recommendations were communicated to Member States for consideration, and the obligation stemming from this was to consider the recommendation and to notify the Secretary of the CMEA of the action taken by the Member State. Even a vote in favour of the recommendation by the respective member did not oblige it to implement it. Yet it occurs that in practice State organs seldom refused to accept a recommendation. In contrast, decisions governed organizational and procedural questions and became binding with the signature of the protocol of the meeting of the respective organ.

**20** Beyond recommendations and decisions, a 1979 amendment of the Charter introduced the possibility of concluding an international agreement between the Member States on matters of economic and scientific/technical cooperation (Protocol concerning the Amendment of the Charter of the Council for Mutual Economic Assistance of 14 December 1959 para. 7). Such agreements were designed to substitute for the use of recommendations, since they could become binding on all members in a less complicated and more expedient way. According to Art. IV Charter agreements were to come into force following the relevant national procedures. Yet in practice, agreements usually entered into force on the date of the signature of the protocol of the meeting of the respective organ, unless Member States agreed otherwise.

**21** Based on a socialist understanding of sovereignty and linked to the importance of bilateral trade within the CMEA, the decision making process reflected the principles of unanimity, interest, and the possibility of non-participation. All recommendations and decisions were to be adopted by only those Member States that regarded themselves to be interested, a fact that was in practice assumed unless the Member State made an express

declaration to the contrary. Enactments were not applicable to countries which stated that they had no interest in the question, nevertheless they could subsequently accede to recommendations and decisions adopted by other members. Interested States decided by unanimity, in practice often without a formal vote. There was no difference in the voting power of Member States. The unanimity principle coupled with the possibility of members to declare themselves to be interested led many commentators to find a power of  $\rightarrow$  veto. Yet a 1979 amendment of the Charter expressly provided that the non-participation by one or several members was no obstacle for the cooperation of the interested countries (Protocol concerning the Amendment of the Charter of the Council for Mutual Economic Assistance of 14 December 1959 para. 5). This provision was interpreted to exclude the possibility to declare interest in the matter only to prevent a positive vote by the other interested members.

#### 3. Finances

**22** The expenditures relating to the maintenance of the Secretariat and other expenditures of the CMEA were borne by the members on the basis of an annual budget the draft of which was prepared by the Secretariat. The amount of the contribution shares by the members was decided by the Session taking into account the economic disparities of the Member States.

## **E. External Relations**

**23** The legal capacity and privileges and immunities of the CMEA were laid down in the Convention concerning the Juridical Personality, Privileges and Immunities of the Council for Mutual Economic Assistance concluded 14 December 1959 in Sofia. According to Art. I of that convention the CMEA possessed juridical personality with the capacity to conclude agreements, procure and transfer property, and to appear before court.

**24** Beginning from the middle of the 1950s the CMEA maintained official relations with third States in basically three forms. Several third States—including  $\rightarrow$  *China*, Yugoslavia ( $\rightarrow$  *Yugoslavia*, *Dissolution of*), North Korea, Mozambique, Mexico, Iraq and Finland, as also Vietnam, Cuba, and Mongolia before their formal accession—were invited as observers. According to the rules of procedure of the CMEA, observer States were invited to send representatives to meetings of all political organs, including their working organs. However, most observer States were only represented at the meetings of the Session. The function of observership for third States was mainly to become acquainted with the functioning of the organization, and eventually prepare for membership. Granting observer status to a State also marked the extension of the Soviet influence, best demonstrated by the fact that Afghanistan became a permanent observer in 1980.

**25** Legal basis of observership was Art. X (later Art. XI, see Protocol concerning the Amendment of the Charter of the Council for Mutual Economic Assistance and of the Council for Mutual Economic Assistance Annex I para. 12) Charter, according to which '[t]he Council of Mutual Economic Assistance may invite countries which are not members of the Council to take part in the work of the organs of the Council.' Although paragraph 2 of the same article referred to an international treaty to be concluded on participation, observer States did not conclude such treaties. In contrast, Yugoslavia based its relationship with the CMEA on a treaty signed 17 September 1964 and entered into force 24 April 1965 (Abkommen zwischen dem Rat für Gegenseitige Wirtschaftshilfe und der Regierung der Sozialistischen Föderativen Republik Jugoslawien über die Teilnahme der SFRJ an der Arbeit der Organe des RGW reprinted in Uschakow 889). The Treaty granted Yugoslavia the same legal status as full members enjoyed in those organs in which Yugoslavia participated in. The participation agreement did not contain any commitments other than procedural

and organizational ones relating to mutual economic relations. It mentioned, however, several fields of cooperation which were later extended by the Executive Committee. Yugoslavia was entitled on the basis of the agreement not only to participate in the meetings of the organs of the Council, but also to put forward proposals and to participate in the debate on an equal basis. If Yugoslavia took part in the adoption of a recommendation or a decision, the legal consequences for Yugoslavia from those instruments were the same as on full members. Whereas it might be overstated to call Yugoslavia's position in the CMEA an associate membership, it did participate in certain CMEA activities on the basis of its participation agreement.

**26** Third States also established formal ties with the CMEA through cooperation agreements concluded between the CMEA and the third State. Such agreements existed with Finland (Agreement on Co-operation [1973]), Iraq (Соглашение о сотрудничестве между Советом Экономической Взаимопомощи и Иракской Республикой [Agreement on Cooperation between the Council for Mutual Economic Assistance and the Republic of Iraq] 1975), Мехісо (Соглашение о сотрудничестве между Советом Экономической Взаимопомощи и Мексиканскми Соединенными [Agreement on Cooperation between the Council for Mutual Economic Assistance and the United Mexican States] 1975), Nicaragua (Соглашение о сотрудничестве между Советом Экономической Взаимопомощи и Республикой Никарагуа [Agreement on Cooperation between the Council for Mutual Economic Assistance and the Republic of Nicaragua] 1983), Mozambique (Соглашение о сотрудничестве между Советом Экономической Взаимопомощи и Народной Республикой Мозамбик [Agreement on Cooperation between the Council for Mutual Economic Assistance and the People's Republic of Mozambique] 1985), Ethiopia (Соглашение о сотрудничестве между Советом Экономической Взаимопомощи и Социалистической Эфиопией [Agreement on Co-operation between the Council for Mutual Economic Assistance and the Socialist Ethiopia] 1986),  $\rightarrow$  Angola (Соглашение о сотрудничестве между Советом Экономической Взаимопомощи и Народной Республикой Ангола [Agreement on Cooperation between the Council for Mutual Economic Assistance and the People's Republic of Angola] 1986), South Yemen (Соглашение о сотрудничестве между Советом Экономической Взаимопомощи и Народной Демократической Республикой Йемен [Agreement on Cooperation between the Council for Mutual Economic Assistance and the People's Democratic Republic of Yemen] 1986), and Afghanistan (Соглашение о сотрудничестве между Советом Экономической Взаимопомощи и Демократической Республикой Афганистан [Agreement on Co-operation between the Council for Mutual Economic Assistance and the Democratic Republic of Afghanistan] 1987). Cooperation agreements had a framework character for the development of economic relations, as they contained no substantive provisions on economic cooperation. Their core was the establishment of joint commissions composed of the representatives of the respective third State and the CMEA States, which is remarkable since cooperation agreements were concluded by the CMEA, and not its Member States. The role of the CMEA in the joint commissions was formally limited to organizing and cooperating the Member States' activities. This led some commentators to conclude that the CMEA was not exercising an independent power when it concluded cooperation agreements.

**27** Beyond relations with third States, the Charter also empowered the CMEA to establish relations with international organizations. Such relations ranged from ad hoc contacts to granting observer status or consultative status to the CMEA in the respective organization. Observer status was granted to the CMEA, inter alia, in the General Assembly of the UN, in ECOSOC and in the  $\rightarrow$  United Nations Commission on International Trade Law (UNCITRAL); and it had a consultative status amongst others in the  $\rightarrow$  United Nations

Conference on Trade and Development (UNCTAD) and the  $\rightarrow$  United Nations Industrial Development Organization (UNIDO).

## F. Settlement of Disputes

**28** The Charter of the CMEA contained no provision on the settlement of disputes amongst members. It is to be assumed that such disputes could be discussed in the different organs of the organization. Otherwise, the general methods of the  $\rightarrow$  *peaceful settlement of international disputes* were applicable, whereas Soviet theory and practice gave preference to direct  $\rightarrow$  *negotiation* and consultation.

## G. Evaluation

**29** As rule of law was not the actual strength of the socialist regimes in Eastern Europe, the activity of the CMEA cannot be reproduced solely on the basis of the legal documents. The Soviet Union exerted its economic influence in the countries belonging to the organization in many different ways, including sending advisers to the relevant ministries and authorities, and establishing joint stock companies for the exploitation of natural resources. Further, it is hard to oversee that a strong emphasis on equal sovereignty of the members and the principle of unanimity did not prevent the Soviet Union from achieving several of its purposes within the organization. In that sense the CMEA was certainly an instrument of Soviet  $\rightarrow$  hegemony in the region. Still the CMEA is an example of the taming effect of an international institution on a hegemonic power, and this is certainly a result of the fact that the institutional structure of the CMEA was not suitable to create real economic integration amongst its members.

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