

## EDITORIAL COMMENTS

After the quiet and sunny summer the winter season of European politics made an unexpected start last September in the political commission of the Parliamentary Assembly of the Western European Union sitting in Paris. The Belgian Minister of Foreign Affairs, M. Paul Henri Spaak unfolded his ideas for breaking through the immobility of the European integration policy. At first sight these ideas did not seem to contain a well defined plan for a political union after the manner of the Fouchet-plan, which was developed during the years 1961 and 1962. This plan was the result of an initiative by President de Gaulle taken in September 1960. It provided for a system of ministerial commissions for foreign affairs, defence and cultural affairs under a superstructure of a Council of heads of state or prime ministers. Consultations on this plan were discontinued in July 1962, while awaiting the result of the negotiations on the adherence of the United Kingdom to the Common Market. Since that time they were never resumed, but France showed time and again that it deemed the expansion of the areas of cooperation between the Six of great importance, be it in a different manner than within the framework of the existing Communities. Those in power in France since 1958 had never shown a great liking for the transfer of national competences which was closely connected with those institutions. No expansion of the powers of the Communities in the field of foreign policy and defence was therefore to be expected. Nevertheless the pressure from Paris to arrive at some form of political cooperation increased constantly. This pressure was received so well in particular in the circles of the main German governmental party that Dr. Erhard, the Chancellor, made it known after the visit of the French head of state to Bonn in July of this year that the Federal Government intended to bring forward new proposals. This history by itself made it unlikely that Spaak's statement of September 9 was only a spontaneous improvisation. It is therefore not surprising that Erhard later acknowledged that he had been informed of Spaak's ideas as early as July. It was somewhat surprising that it should be Spaak who took the initiative for new plans at this moment. Throughout the year 1963 he stood up against the Fouchet-plan. He belonged to those who were of the opinion that nothing should happen after the failure of the British negotiations which might increase the political gap between the Six and the United Kingdom. After the election of the new Chancellor this point of view seems to have been accepted as well by the Federal Republic. Why should Spaak have changed his attitude? It may be that the *Economist* was right when it referred in its issue of September 19 to Spaak's discourse of January of this year before the Consultative As-

sembly of the Council of Europe, in which he pointed to the fact that the success of the Community was based primarily on the psychology of progress. Should the political differences within the Six become too strong, they might undermine the confidence in areas where clear advances had been reached. The motor of success might therefore be halted. There is certainly no reason to believe in a lessening of the differences since January of this year. On the contrary, the explicit desire on the part of the Federal Government to maintain and strengthen the ties which connect Europe with the United States has considerably cooled the close relationship between the partners to the Franco-German Treaty. It might be that this is the key to Spaak's appearance in W.E.U. Everyone who has followed the genesis of the European Communities knows the crucial importance of the French-German reconciliation for the political future of Europe. Even those who consider the separate alliance between France and Germany as a threat for democratic decision-making within the Communities will recognize that an increasing antithesis between the two major powers on the Western European continent would seriously affect the Communities. It is significant that the careful scanning of the chances for a political consultation without any specific institutional framework between the Six does not only appear in the speech by Spaak on September 9, but also in the more recent address of the Italian minister of Foreign Affairs Saragat. Saragat spoke of the necessity of a political clearing-house which might prevent the political tensions between the Six from becoming too dangerous. The result of all these plans is still totally unclear at the time of writing. According to Spaak a treaty should be concluded in the next three years or so, during which period a certain experience will have been made with these discussions by the heads of governments on political and defence affairs. This will enable those also involved to take into account the situation following the British elections, for the new British government will need time to overcome either opposition from the continent or its own hesitations, or perhaps a combination of both.

In the meantime the six governments demonstrate the difficulties involved in the consolidation of the European Community organs. The fusion of the executives of the Communities is retarded solely by the conflicting interests of Strasbourg, Luxembourg and Brussels in the choice of the seat(s) of the Community institutions. Should Brussels become the seat of the common executive (14 members during the first years, then 9 members) and of the European Parliament then Strasbourg and Luxembourg must be "compensated", because Strasbourg would no longer have the Parliament, nor Luxembourg the High Authority. A solution has not yet been found, but must indeed be

reached. An intelligent calculator who can juggle with services and offices, should be able to find a way out.

Much more difficult are the problems around the increase of the powers of the Parliament. In the first place more powers should be given to it for control of adoption of the budget. But the views of the six governments run far apart on the amount of strengthening they deem desirable. The Netherlands Ministry of Foreign Affairs has recently sent a memorandum to the Dutch Parliament in which the alternatives are clearly set out. This issue contains a critical analysis of these problems, which are both interesting from a constitutional and from a political point of view.

Fortunately there are some areas of Community law where the development is less hampered. In the field of cartel law the preparation of the important regulation which will enable the Commission to apply Article 85(3) E.E.C. to groups of cartel agreements progresses steadily. The technical difficulties seem to have been overcome. Only the political question remains whether a sufficient number of countries—regulations under Article 87 E.E.C. require a qualified majority for their adoption since January 1961—is prepared to accept an increase in the powers of the Commission in this important area of common policy.

Without any doubt a great amount of publicity will be given in the coming months to the Commission decision on the exclusive dealing agreement for Grundig articles in France between Grundig and Consten. The Court of Appeal in Paris suspended the proceedings in the case between Consten (exclusive sales agent) and U.N.E.F. (French seller of Grundig articles directly imported from Germany). This Review contained a commentary on this important decision.<sup>1</sup> This suspension took place after a communication by the Commission to the French government that it had started an enquiry pursuant to the complaint by U.N.E.F., that the agreement between Grundig and Consten violated Article 85(1) of the Treaty. The enquiry has now been completed and the Commission has formulated its opinion: the sole-agency agreement was found to be contrary to Article 85(1) and could not be exempted under Article 85(3). The long period of preparation is to some extent compensated by the very elaborate reasoning of the decision. A full comment on this important decision will appear in a later issue of this Review.

Those interested in public international law will have looked forward to the judgment of the Court of Justice of July 15, 1964 given on the request of the *Giudice Conciliatore* of Milan for interpretation of various provisions of the E.E.C. Treaty. The main reasoning of the judgment

1. 1 *C. M. L. Rev.* 1963-4, pp. 218-231 with annotation Robert.

concerns the question whether a national court must apply a subsequent law, which encroaches upon a provision of the E.E.C. Treaty. This question had been affirmed without any reservation by the Italian Constitutional Court in its judgment of March 7, 1964 (No. 14). The Court in Luxembourg arrived at a different conclusion, although it cannot annul national law directly or deprive it of effect.

This issue gives ample consideration both to the judgment of the Italian Constitutional Court and to the judgment of the Court of Justice of the European Communities. The importance of the problem dealt with in both cases warrants this attention. The maintenance of Community law by the national courts would be seriously affected if Community law could be superseded by later national laws of the member States. One may assume that the doctrine of the Court will henceforth govern legal practice in the six member countries.