SURVEY OF LITERATURE

General and Institutional

The crisis in the Communities is a subject on which interesting articles are still published. In *Wirtschaft und Wettbewerb*, 1966, No. 7/8, pp. 608-616 *Alfred Gleiss* defends the position, that a meeting of the Council wherein only five countries are represented, is not a mere "exchange of views". Decisions by simple majority vote and by qualified majority may be taken. According to the author the principles of the Treaty and an analogous interpretation of Article 148, para. 3 lead to the conclusion that even decisions for which unanimity is required, may be taken in the absence of a member State. Absence should not be regarded as a permanent veto. A member State that has not taken part in a decision, is still bound by it and an Article 169 procedure may be instituted.

Thomas Oppermann looks to the crisis in quite another way (*Archiv des Oeffentliches Recht*, Vol. 91, 1966, pp. 114-116). The fact that no procedure on the basis of Article 169 was instituted against France proves in his opinion that in the E.E.C., as in other international organisations, everything depends on the policy and the national interests of the member States. The author concludes that no special "European law" exists besides traditional public international law and public law.

A part of the long report of the Juridical Commission to the European Parliament written by *Dehousse* on the precedence of Community Law over national law is published in *Tijdschrift voor Bestuurswetenschappen en Publiekrecht*, 1966, No. 1, pp. 5-13.

In *Annales de la Faculté de droit de Liège* 1966, Nos. 1-2 *Dehousse* deals with the parliamentary procedure in Belgium for the ratification of the Treaty on the Merger of the Executives. The government has promised in Parliament not to ratify before agreement is reached on the composition of the new Commission.

A clear survey of the activities of the European Parliament in the second half of 1965 is offered by *Guy Feuer* in *Revue Trimestrielle de Droit Européen* 1966, pp. 267-287. In a systematical order the various topics are discussed, and attention is paid to the merger of the Communities. Since the Parliament will loose its voice in the budgetary procedure, which it had in the E.C.S.C. through the "Commission of Presidents", it has recommended a modification of the Articles 201 and 203 of the E.E.C. Treaty.

A. Lescar writes in a short article on the *decrèt* of April 3, 1958 that provides for internal coordination in France for the execution of the E.C.S.C., the E.E.C. and the Euratom Treaties (*Cahiers de Droit Européen* 1966, No. 5, pp. 514-518).

Louis Sizaret has paid attention to Article 65 of the Statute of European civil servants (*Revue Trimestrielle de Droit Européen* 1966, No. 2, pp. 181-189). The Statute provides here for regular adaptation of the salaries to the rising prosperity and costs of living. The wording of the provision as well as its application in practice are criticised.

The threefold character of the European Investment Bank as a commercial bank, a bank for development and a Community institution is the subject of an article by *P. Collet* in *Les Annales du Marché Commun* 1966, No. 4, pp. 37-38.

Council of Europe, Human Rights

In December 1965 Belgium extended its recognition of the jurisdiction of the European Court of Human Rights for a period of two years. *Ph. Monfils* discusses this Belgian declaration and the reason for the short period of the extension: fear for interference with the internal political and administrative structure of the country by a judgment in the language cases (*Annales de la Faculté de Droit de Liège* 1966, Nos. 1/2, pp. 215-219).

The consequences of the European Social Charter for the Netherlands and for

Europe are the subject of a note by *T. Koopmans* in *Sociaal Maandblad Arbeid* 1966, Nos. 7/8, pp. 447-450. The Charter is discussed from an almost philosophical point of view by *Th. Mayer-Maly* in *Juristische Blätter* 1966, Nos. 7/8, pp. 179-184.

P. F. P. H. Berckx pays attention to the European Convention on equality of national educations in *Tijdschrift voor Overheidsadministratie* 1966, pp. 185-190.

Free Movement of Goods and Persons

H. Preiser writes in *Tijdschrift voor Sociaal Recht* 1966, No. 1, pp. 1-16 on the Belgian system of licences, that are obligatory for employer and employee before an agreement may be concluded. The system dates from the pre-war crisis and has become obsolete. The author also goes into the discrimination between foreign workers in favour of those from other E.E.C. countries.

The *Revue du Marché Common* 1966, No. 93 mentions the many problems that have to be dealt with before a real customs union will be attained in the E.E.C. Most important are perhaps the numerous diverging national rules on the requirements that must be met by all sorts of products.

Agriculture

A comparative study of the financial aspects of the agricultural policy in the E.E.C. and in Britain is made by *A. Sauwens* in *Revue de Marché Commun* 1966, pp. 677-686. The author prefers the English system of deficiency payments for several reasons, but does not think that it would be a very suitable system for the Common Market (it may be doubted, however, whether the data on which this latter conclusion is based could not be interpreted in another way). Sauwens notices a mutual approach of the two systems in the developments of recent years and assumes that this development will continue in the future.

Competition

The E.E.C. Commission has asked a number of experts from the member States to advise on the question whether a right to compensation exists in the national law of these countries when the Articles 85 or 86 are violated. It turns out that such a right does exist in all six countries, but this principle is elaborated in different ways; accordingly the results are not always the same. The opinions were published in 1966; an abstract may be found in *Aussenwirtschaftsdienst* 1966, No. 12, pp. 239-242.

The sanctions of national law when the E.E.C. rules on competition are violated was the subject of an address, delivered by *Guy Schrans* and published in *Tijdschrift voor Privaatrecht* 1966, No. 3, pp. 359-389. Nullity, compensation, orders of court and penal sums are discussed and compared.

More than other periodicals *Cahiers de Droit Européen* publishes long articles in several instalments. *Jacques van Damme* has written the third part of his contribution on Articles 85 and 86 in issue No. 4 of 1966 (pp. 402-427). The practice of the Commission in granting exemptions under Article 85 para. 3 is analysed, and the civil law consequences of a prohibition are investigated. It concludes with a discussion of Article 86.

The economic aspects of the sole agency agreement are studied by *P. Düesburg* in *Wirtschaft und Wettbewerb* 1966, No. 6. The agreement may entail important advantages for the producer as well as for the dealer; the strongest party is often the dealer, especially when territorial protection is granted. It may be regretted that no attention is paid to the general economic consequences of sole agency agreements.

W. Dörinkel writes in *Neue Juristische Wochenschrift* 1966, pp. 1597-8 on a usual clause in contracts wherein an entrepreneur transfers his business to a successor. In most cases it is agreed that the transferor will not compete in any form with the new

firm. This agreement may be prohibited bij Article 85 para. 1; accordingly it would be advisable to apply for a negative clearance or an exemption.

Three exemptions granted by the Commission on the basis of Article 85, para. 3 (DRU-Blondel, Hummel-Isbecque, Maison Jallatte) are commented upon by *Jean Schapiro* in *Journal de Droit International* 1966, No. 2, pp. 336-346. Although the article was written before the Grundig Consten case was decided by the Court, it contains still useful information on the Commission's view on sole agency agreements without absolute territorial protection.

Just before the Court rendered its judgment in the Grundig Consten case *Souleau* discussed the Commission's decision and also the submissions by the Advocate General Roemer in *Recueil Dalloz*, 1966, No. 35, Chronique XIX, pp. 95-98. The author appears to have had a good presentiment of what the court was going to decide.

Economic Policy

B. Börner contributes in *Europarecht* 1966, No. 2, pp. 97-128 an article on the legal aspects of international payments and capital-transfers within the E.E.C. The author regrets that the favourable development of the E.E.C. has diminished the importance of this subject in the view of the general public and that, accordingly, legal articles on it are few. Article 106 of the Treaty deals with the problem. Börner investigates the meaning of this article for international payments and for transfers of capital, as well as for the Community internally, as for the relationship with third countries. He concludes among others that the words "connected with" in Article 106 should be interpreted widely; that alterations in the rate of exchange by a member State are not altogether excluded, and that the member States are not allowed to change the present international system of reserve currencies. The latter conclusion is based on Article 5, para. 2 of the Treaty, and seems rather debatable.

Only one Article, 103, in the Treaty has regarded the trade cycle policy. *Hermann Burgard* gave a thorough account of it in *Zeitschrift für die gesamte Staatswissenschaft*, April 1966. He describes the origin and the juridical and economic aspects of the article, its place in the context of the Treaty and, in more detail, the competences of the Commission and of the Council. He finally analyses also the Council's decision to institute the Committee for Trade Cycle Policy.

Within the E.E.C. the primary responsibility for regional development has remained, according to *P. Wäldchen*, with the member States (*Aussenwirtschaftsdienst des Betriebs-Beraters* 1966, No. 18, pp. 353-359). Nevertheless a need for coordination on a Community level exists, but this presupposes a common philosophy. The author studies the various possible methodologies, and includes at the end of his article a survey of the measures and methods of the national governments and the Community organs.

The *Revue Trimestrielle de Droit Européen* 1966, pp. 228-241 includes an article by *Dominique Carreau* on the units of account of the European Communities. The value of this unit depends on the value of gold and accordingly it does not fluctuate with the the rate of exchange. As a result the French contributions to the E.C.S.C. calculated in francs, became 20 per cent higher after the devaluation of the French franc. The monetary consequences of the system are far-reaching. Since the prices for agricultural products are fixed in units of account the author thinks that devaluation or revaluation of national currencies has become almost impossible.

Social Policy

Article 118 of the Treaty states that it shall be the aim of the Commission to promote close collaboration between the member States in the field of collective bargaining between employers and workers. *Georges Spyropoulos* has studied the opportunities that exist to harmonise collective bargaining (*Revue Internationale de droit comparé* 1966, pp. 19-55). Since neither employers nor workers are organised in European unions a

system of collective bargaining on Community level is not yet possible. But a Community commission composed of employers and workers could be created to make recommendations to be executed in the national collective bargaining process. The author indicates that the national systems of collective bargaining are somewhat similar, but some new developments impede a harmonisation on a Community level: collective bargaining is done more and more at the level of one enterprise, and the national governments become a stronger factor in the process.

"Towards a European social policy" is the title of a contribution by *Doreen Collins* in *Journal of Common Market Studies*, September 1966, pp. 26-48. The author offers an introduction to the aims and results of the social policy of the Community. The Treaty leaves the member States to a very large extent free in their system of social security, which, in the opinion of the author, impedes the Commission too much in the execution of its task in this field.

G. Lyon-Caen continues his chronicle on European social law in *Revue Trimestrielle de Droit Européen* 1966, No. 2, pp. 321-328. He first discusses the consequences of the articles on social law in the Treaty of Rome for French law, and goes on with a commentary on two judgments by the European Court: Hessische Knappschaft *v.* Singer (4 C.M.L.Rev. 1966-7, pp. 80-81) and Versicherungs Anstalt für Angestellte *v.* Dekker.

The *Tijdschrift voor Bestuurswetenschappen en Publiekrecht* 1966, No. 3, pp. 152-156 contains a short article by *François Duerinck* on the problems of sickness and invalid insurance for migrating workers.

Association

A clear survey of the negotiations on association between Austria and the E.E.C. is offered by *M. H. Fitz* in *Aussenwirtschaft*, June 1966. As to tariffs Austria took the position that it would abolish its tariffs on imports from the Community within five years, and that it would adapt its external tariffs to the E.E.C. external tariffs within two years. On the other hand it asked for immediate the abolition of the E.E.C. tariffs on Austrian products. Other questions to be settled are the problem of the agricultural products and the special neutral position of Austria.

Geatano Testa has made a study of the application of Articles 238 and 228 in concluding the association agreements with Greece, Turkey and the African states (*Cahiers de Droit Européen*, 1966, No. 5, pp. 492-513). It appears that the intervention of the member States in the process of concluding the agreements was not in conformity with the rules laid down by the Treaty. The same author has commented on the legal character of the association agreement with Nigeria in *Revue du Marché Commun*, 1966, No. 92, pp. 597-604. He disagrees with the arguments put forward to justify the signing of the agreement by the member States, instead of by the Community.

The most important articles of the agreement with Nigeria are analysed and compared with the Yaoundé agreement by *K. Wockenfoth* in *Aussenwirtschaftsdienst*, 1966, No. 13, pp. 256-7.

Case Law of the European Court of Justice and of National Courts

The last article in a series of three on Article 177 by *A. Pépy* was published in *Cahiers de Droit Européen*, 1966, No. 5, pp. 459-489. In the second article the author had dealt especially with the role of the national courts in this procedure (see 4 C.M.L.Rev. 1966-7, p. 112); here he pays attention to the rôle of the Court in Luxembourg. Noteworthy is the way the Court "reads" (or interpretes) the questions referred to it: it feels very free to assume that the national court has asked the question it should have asked. The binding force of the judgments, that have a declaratory character, is investigated; the author concludes that the wording of the answers is always very subtle and does not permit a general conclusion.

The second part of the report by *P. F. Ryziger* for the Union International des Avocats

on the application of Article 177 in France is published in *Sociaal-Economische Wetgeving*, 1966, Nos. 4/5, pp. 173-201 (for the first part see 4 C.M.L.Rev. 1966-7, p. 251). The author takes a clear position on some questions: *e.g.* arbitrators are a Court of Law within the meaning of Article 177 (see also Haardt, this issue, p. 442, who makes a different conclusion); the theory of the "acte clair" should be accepted, but only if the interpretation is clear in view of the text in all four languages, and the Commission should be empowered to ask for a preliminary ruling *in abstracto* if a national court refuses to refer a question to the Luxembourg Court.

In *Neue Juristische Wochenschrift*, 1966, pp. 1591-3 *A. Gleiss* and *W. Kleinmann* write on the second paragraph of Article 174, which provides that where the Court of Justice has annulled a regulation, it shall indicate those effects of the regulation that shall be deemed to remain in force. When taking a decision on this point the Court has to take into account whether the regulation has been in force already for a long time and whether it has been the basis for implementing measures. The Court has to choose between legality and legal security.

In connection with the judgment of the Italian Constitutional Court in the San Michele case (see 4 C.M.L.Rev. 1966-7, pp. 81-84 and annotation Berri, pp. 238-242) *Sergio Neri* has contributed in *Cahiers de Droit Européen*, 1966, No. 4, pp. 363-388 on the relationship between Community law and national law in Italy. The judgment is also annotated by *C. Piola-Caselli* in *Aussenwirtschaftsdienst* 1966, No. 12, pp. 237-9.

The Supreme Court of the Netherlands dealt with the relationship between national courts and the European Court in a judgment of December 22, 1965, *Beslissingen in Belastingzaken* 1966/135 with annototion by *Van Soest* (see also Advocatenblad 1966, No. 8, pp 403-405) An inhabitant of the Netherlands alleged on the basis of Regulation No. 3 that payments from Belgium were not subject to Dutch income tax. Van Soest criticizes the decision of the Supreme Court not to refer the question to the European Court because the court held that the litigation did not concern the "validity or interpretation" but the "application" of the regulation (see also Case Law, p. 444).

Euratom

A. Bekke pays attention to "joint enterprises" within the meaning of Chapter V of the Euratom Treaty (*Revue du Marché Commun*, 1966, No. 92). The status of "joint enterprise" may be granted to undertakings of outstanding importance to the development of the nuclear industry; till now only nuclear power stations have become joint enterprises. The Euratom authorities have a large discretionary power in granting the qualification. It turns out that the role and the size of the joint enterprises do not come up to the expectations at the time the Treaty was concluded.

Jean Hébert is the author of several contributions on Euratom and nuclear energy. In *Revue Trimestrielle de Droit Européen* 1965, No. 1, pp. 41-48 and No. 4, pp. 653-657 some legal problems related with the European cooperation in this field are discussed. In *Juris Classeur Périodique* 1966, No. 8 he deals with the responsibility for damage caused by nuclear reactions. This is also the subject of an article by *Just Gourrier* in *Revue Critique de Droit International Privé* 1966, No. 1, pp. 19-39.

The conclusion of treaties by Euratom is dealt with by *Jean Raux* in *Revue Générale de Droit International Public*, 1965, No. 4, pp. 1019-1051.

Florent Bonn has paid attention to the problem of the preservation of food by means of radio-active rays (*Revue du Marché Commun*, 1966, pp. 696-705). Since food is the most important object of radio-active contamination all member States of Euratom have very strict rules against the sale of food that is contaminated. This excessive caution, however, hampers scientific progress in Europe as compared with the United States and Russia.