

SURVEY OF LITERATURE

a. *Contents*

I. *European Communities*

1. General
2. Court of Justice
3. The relationship between Community Law and international law

A. *European Economic Community*

4. Customs Union
5. Agriculture
6. Competition
7. Taxation
8. Economic and monetary policy
9. Company law
10. External relations

II. *Council of Europe*

- A. General
- B. Human rights

b. *List of abbreviations*

A.Ae	— Ars Aequi (Netherlands)
A.J.C.L.	— American Journal of Comparative Law
A.J.I.L.	— American Journal of International Law
Ann.fr.dr.int.	— Annuaire français de droit international
A.W.D.	— Aussenwirtschaftsdienst des Betriebsberaters
B.B.	— Der Betriebs-Berater
Buffalo Law Rev.	— Buffalo Law Review
Cah.dr.europ.	— Cahiers de droit européen
Dr.Soc.	— Droit Social
E.A.	— Europa Archiv
EuR.	— Europarecht
Gaz.Pal.	— Gazette du Palais
G.R.U.R.Int.	— Gewerblicher Rechtsschutz und Urheberrecht— Internationaler Teil
Harv.L.Rev.	— Harvard Law Review
I.C.L.Q.	— International and Comparative Law Quarterly
J.C.P.	— Juris-Classeur Périodique (La Semaine juridique)
Journ.Comm.Mark. Studies.	— Journal of Common Market Studies
Journ.dr.intern.	— Journal du droit international
J.T.	— Journal des Tribunaux
J.Z.	— Juristenzeitung
M.D.R.	— Monatsschrift für deutsches Recht
New L.J.	— New Law Journal
N.J.	— Nederlandse Jurisprudentie
N.J.B.	— Nederlands Juristenblad
N.J.W.	— Neue Juristische Wochenschrift
N.T.I.R.	— Nederlands Tijdschrift voor Internationaal Recht
N.V.	— De Naamloze Vennootschap
R.C.A.D.I.	— Recueil des Cours de l'Académie de Droit Inter- national de la Haye
Rev. belge dr.int.	— Revue belge de droit international
Rev.crit.dr.int. privé	— Revue critique de droit international privé

Rev.crit.jur. belge	— Revue critique de jurisprudence belge
Rev.dr.int.	— Revue de droit international
Rev.dr.int. et dr.comp.	— Revue de droit international et de droit comparé
Rev.fr. de Sc.polit.	— Revue française de science politique
Rev.gén.dr.int.publ.	— Revue générale de droit international public
Rev.int.dr.europ.	— Revue internationale de droit comparé
Rev.trim.dr.europ.	— Revue trimestrielle de droit européen
Riv.Dir.Eur.	— Rivista di diritto europeo
R.M.C.	— Revue du Marché Commun
R.W.	— Rechtskundig Weekblad
S.E.W.	— Sociaal Economische Wetgeving
S.M.A.	— Sociaal Maandblad Arbeid
Sol.J.	— Solicitors' Journal
Stanford L.Rev.	— Stanford Law Review
T.P.R.	— Tijdschrift voor Privaatrecht
Tul.L.Rev.	— Tulane Law Review
T.V.V.S.	— Tijdschrift voor Vennootschappen, Verenigingen en Stichtingen
U. Pittsburgh L.Rev.	— University of Pittsburgh Law Review
Va.L.Rev.	— Virginia Law Review
W.R.P.	— Wettbewerb in Recht und Praxis
W.u.W.	— Wirtschaft und Wettbewerb
Zeit.A.O.R.V.	— Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
Z.H.R.	— Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht

I. EUROPEAN COMMUNITIES

1. General

G. Brown, "Aim: widened European Community", 7 *The Atlantic Community*, 1969, 287-322.

A lecture given in the House of Commons by Britain's former Secretary for Foreign Affairs. Brown proposes the organization of a broader European Political Community, since the EEC, because of the practice of the right of veto and its bar toward British membership, cannot lead toward this goal.

Jean Hasse, "Le livre blanc du gouvernement britannique sur la réforme de la sécurité sociale", (1969) *Dr.Soc.* 526-541.

The British White Paper of January 1969 concerning the reform of the British social security system. The author expounds the current system (the Beveridge Plan) and analyses the principles and application of the new proposals. This article will be continued in one of the next issues of this periodical.

G. Meier, "Der Schutz des Marktbürgers durch das Diskriminierungsverbot des Artikels 7, (1) E.W.G.V.", 133 *Z.H.R.* 1969, 61-100.

The author examines the impact of the prohibition against discrimination of Article 7, para. 1, of the EEC Treaty. In his opinion the legislative, executive and judicial powers of member States are bound by this provision which is to be considered as immediately applicable. National laws and administrative regulations lack binding force if they contravene Article 7, para. 1. If such laws and regulations are enforced appeal would lie with the domestic courts according to the normal judicial remedies available in the member State which

disregards Article 7, para. 1. This provision is not concerned with discriminatory treatment of foreigners by private individuals.

G. van Roon, "Engeland op weg naar Europa", 1969 *Internationale Spectator* No. 17, 1539-1557.

An account of Britain's growing orientation toward Europe.

E. Schulz, "Gedanken zu einer Europäischen Friedensordnung", 24 E.A. 1969, 589-599.

H. C. Wallich, "The U.S. and the EEC: a problem of adjustment", *Atlantic Community* 1969, 271-286.

The relationship between the United States and the EEC shows a lack of policy co-ordination. Conflicts and paradoxes, irritation and impasses are strewn all over the economic landscape. The economic difficulties have for the most part a common root: the growing problems of balance of payments adjustments in a world where the United States is no longer the sole large economic unit.

2. Court of Justice

H. H. Maas, "Decision of the Court of Justice of February 8, 1968", 17 S.E.W. 1969, 571.

An annotation on the Court's judgment in case 28/66 (*Dutch Government v. Commission of the EEC*) See 5 C.M.L.Rev. 1967-68, 476-478.

J. J. A. Salmon, "Quelques réflexions sur l'immunité de juridiction des fonctionnaires internationaux pour actes accomplis en qualité officielle", 5 Cah.dr.europ. 1969, 404-458.

The author reports the decision of the Court of Justice of July 11, 1968 (Case 5/68, *Sayag v. Leduc*), and the Judgment of the Belgian *Cour de Cassation* of February 1969. By the latter judgment the Belgian Court requested the Court of Justice to give a preliminary ruling on the expression "in the performance of their duties" as referred to in Article 188, para. 2, of the Euratom Treaty. In a long annotation Salmon discusses the problem of the immunity from suit and legal process of the Community officials and compares the prevailing situation in the E.C. with the approaches to immunity problems in other international organizations, in particular the United Nations.

A. de Vreese, "Beschouwingen bij enkele recente arresten van het Hof van Justitie van de Europese Gemeenschappen", 33 R.W. 1969, 497-516.

Report and Comments on Case 4/68 (6 C.M.L.R.Rev. 1968-69, 406-411), Cases 5/68 and 9/1969 (*Sayag v. Leduc*, see 7 C.M.L.Rev. 1970, 226) and Cases 2 and 3/69 (*Sociaal Fonds voor Diamantarbeiders v. S.A. Brackfeld and Chougal*, 7 C.M.L.Rev. 1970, 74-81).

3. The relationship between Community Law and national law

W. J. Ganshof van der Meersch, "De Belgische rechter tegenover het internationale recht en het gemeenschapsrecht", 33 R.W. 1969, 193-238.

The attitude of Belgian Courts toward international law and Community Law. The French text of this contribution has been published in (1968) J.T. No. 4671, 537-551.

P. Pescatore, "Gemeinschaftsrecht und Staatliches Recht in der Rechtsprechung des Gerichtshofes der E.G.", 22 N.J.W. 1969, 2065-2071.

Judge Pescatore explains in this Article (which is a German translation of his contribution in 1969 *Recueil Dalloz, Chroniques* 179 *et seq.*) that the Court of Justice aims to further the integration of Community Law and municipal law by way of its pronouncements under Article 177 of the Treaty. He deals more in particular with three aspects of this problem: the autonomy of the Community legal order; the direct effect of Community Law; the supremacy of Community Law over national law.

H. G. Rahn, "Der Bundesfinanzhof und das Gemeinschaftsrecht der EWG", 15 A.W.D. 1969, 341-346.

The author makes some remarks concerning the judgments of the *Bundesfinanzhof* of July 10 and July 11, 1968 (see 6 C.M.L.Rev. 1968-69, 414-419). The Federal Financial Court did not refer the cases before him to the Court of Justice for preliminary rulings in those instances. Rahn agrees with the German Court that there was no need to apply Article 177, but he concedes that it can be extremely difficult to ascertain whether the national court is confronted with a question that needs to be interpreted by the Court of Justice.

A. EUROPEAN ECONOMIC COMMUNITY

4. Customs union

F. Bonn, "Les entraves techniques aux échanges intra-communautaires", (1969) R.M.C. No. 125, 369-387.

This article deals in a comprehensive way with the problem of technical obstacles in the way of intra-Community trade. The author stresses the importance of the problem, gives a definition of technical hindrances and analyses the relevant treaty provisions which may be used for their elimination (delimitation of the scope of Articles 30-36 and Article 100). Extensive attention is paid to the General Programmes for the elimination of technical obstacles to intra-Community trade, which were approved by the Council on March 25, 1969 (J.O. 1969, C 76/1).

P. Daillier, "De quelques aspects de la politique d'harmonisation des législations douanières dans la CEE", 5 Rev.trim.dr.europ. 1969, 475-486.

P. Verloren van Themaat, "De opheffing van technische handelsbelemmeringen in de EEG en Benelux", 17 S.E.W. 1969, 486-497.

The elimination of technical obstacles to trade. Methods and techniques elaborated within the framework of the EEC and of the Benelux Economic Union.

5. Agriculture

S. François Donat, "Le plan Mansholt face à l'opinion", 12 *Problèmes de l'Europe* 1969, 12-27.

The author describes the main lines of the Mansholt plan on the reform of agriculture in the European Communities. He gives a survey of the press reactions concerning the proposals contained in the memorandum. These reactions range from overt contempt to enthusiastic approval and demonstrate that farming represents a way of living which can scarcely be compared with other occupations. The author agrees for the greater part with the analysis of the Mansholt plan and observes that the discussion on this memorandum between the citizens of the member States, has proved that there exists a European public opinion that will directly react to Community initiatives.

G. D. Gotschlich, "Der Europäische Agrarmarkt und die Beschlüsse des Ministerrates nach der Aberwertung in Frankreich", 15 A.W.D. 1969, 395-398.

The impact of the French devaluation on the operation of the common organization of agricultural markets. The measures taken by the Council at very short notice prove that this institution is capable, if the stakes are high enough, to cope effectively with very serious problems. The whole episode of the change in the French parity and the ensuing decisions constitute a step backwards but have not led to disintegration of the common agricultural policy.

6. Competition

D. Brault, "Les vues françaises sur la coopération entre entreprises au regard du Traité de Rome", (1969) R.M.C. No. 124, 409-420.

A study of French views on co-operation between undertakings and the compatibility of various forms of agreements and restrictive practices with the Community rules of competition.

A Deringer, "Les droits de la protection industrielle et commerciale et le Traité instituant la C.E.E.", (1969) R.M.C. No. 124, 325-333.

The author discusses the problem of possible inroads on the protection of commercial and industrial property by the prohibition of Articles 85 *et seq.* of the EEC Treaty. The territoriality principle in patent and trademark laws must be upheld if patents and trademarks are not being put to illegal uses.

R. Jaume, "Entente et coopération entre entreprises", (1969) R.M.C. No. 124, 317-324.

J. van der Meulen, "Enkele beschouwingen over de concentratiebeweging in de EEG", (1969) *Internationale Spectator*, 1489-1511.

E. Niederleithinger, "Deutsches Kartellrecht nach dem Farbenurteil des Gerichtshofes der Europäischen Gemeinschaften", 24 B.B. 1969, 1185-1194.

The author gives his views on the decision of the Court of Justice in Case 14/68 (*Recueil* XV, 1, 6 C.M.L.Rev. 1968-69, 488) and investigates the effects of this judgment on the power of national cartel authorities to initiate proceedings against cartels which fall under Article 85 of the EEC Treaty ("Zweischrankleer").

U. Schatz, "Epuisement des droits conférés par les brevets et contrefaçon", 5 Rev. trim.dr.europ. 1969, 449-462.

This article deals with the scope of the rights of a patentee or a licensee. The author compares the laws of the several member States concerning the permissible use of the patent and makes an attempt to define comprehensively when a patent right is exhausted. He suggests a few solutions to this problem which may be conveniently adopted in a convention establishing a uniform European patent.

A. Teichmann, "Die Zwischenstaatlichkeitslausel in Article 85, Absatz 1, E.W.G.V.", 19 W.u.W. 1969, 671-681.

"Teichmann examines the meaning of the criterion set forth in the "inter-state clause" of Article 85, para. 2. Trade between member States is affected whenever, on the market within a member State, an enterprise situated in another member State is excluded from competition. This exclusion can be the result of an agreement to which that enterprise itself is or is not a party. The restriction of competition in the relevant market resulting from that exclusion must be perceptible. The "notion" relevant market does not necessarily coincide with the territory of a member State.

7. Taxation

G. Meier, "Grenzen der Steuerhoheit der Mitgliedstaaten bei EWG-Importen", 15 A.W.D. 1969, 300-305.

An annotation on the Court's judgment of June 24, 1969 (Case 29/68, *Recueil* XV/5). The prohibition against discrimination in the imposition of internal taxation. Delimitation of the scope of operation of Article 95 and of Article 97 of the EEC Treaty. Member States' power of internal taxation and the judicial protection of the private individual.

8. Economic and monetary policy

R. Barre, "Die Währungspolitische Zusammenarbeit innerhalb der EWG", 24 E.A. 1969, 563-572.

Mr. Barre, vice-president of the Commission gives an exposé of the proposals of the Commission in the field of monetary co-operation. He underscores the need of proceeding with co-ordination between the member States of their short-term and medium-term economic policies. If the EEC is capable of framing a common monetary policy, she will be able to defend her legitimate interests and will become a centre of economic growth and monetary stability from which the whole world may benefit.

A. Bettencourt, "La politique industrielle de la CEE", 12 *Problèmes de l'Europe* 1969, 7-12.

W. Kou, "Die Kurzfristige Kredite der Geschäftsbanken in den Ländern der EWG und die Kreditpolitischen Probleme ihrer Kontrolle", (1969) *Schmollers Jahrbuch* 61-65.

A. Munchmeijer, "La nécessité d'une union monétaire européenne", 12 *Problèmes de l'Europe* 1969, 27-30.

9. Company law

Bokelmann, "Anmeldung und Antragung der Vertretungsbefugnisse von Geschäftsführern und Vorstandsmitgliedern in das Handelsregister nach neuen EWG-Recht", 22 N.J.W. 1969, 2120-2123.

J. Meyer-Ladewig, "Neue Vorschläge zur Lösung der Mitbestimmungsfrage bei der Europäischen Handelsgesellschaft", 15 A.W.D. 1969, 392-395.

10. External relations

Fuat M. Andic, "The development impact of the EEC on the French and Dutch Caribbean", 8 *Journ.Comm.Mark.Studies* 1969, 19-49.

An interesting article in which the author examines the economic structure and the position of the balance of payments of the different French and Dutch territories in the Caribbean. He concludes from his study, somewhat surprisingly, that the existence of a large EEC market has not been of any advantage to these countries. If the political ties between France and Holland and these overseas territories are severed, membership of CARIFTA and participation in the work of the Caribbean Development Bank would perhaps offer better prospects than developments through the Community agencies.

A. Dubois, "L'association de la Tunisie et du Maroc à la Communauté", (1969) R.M.C. No. 125-355-368.

Agreements were signed in Tunis and Rabat in the spring of 1969, creating associate membership of the EEC for Tunisia and Morocco. This article

outlines the origin and contents of these agreements, and the prospects they hold out. Dubois deplores the restricted scope of the agreements and the lack of any financial aid to the associated countries. He concludes that the Community ought to strengthen the relationship with the mediterranean countries so that it may contribute to improve the equilibrium of the economies of these countries.

R. Kraehe, "Structures et agents de l'assistance technique de la CEE", 5 Rev.trim.dr.europ. 1969, 187-218.

The author deals with the manner in which the development aid of the Community is being organized. Besides the European Development and a Commission Directorate-General for overseas development, the Community has called into existence an "Association Européenne pour la Coopération", incorporated under Belgian law. The international status of this body and its personnel is not quite clear.

II. COUNCIL OF EUROPE

A. General

H. Arnold, "Europäisches Uebereinkommen über die Staatenimmunität in Sicht", 15 A.W.D. 1969, 356-359.

A committee of experts of the Council of Europe has occupied itself with the drafting of a Convention on Immunity of States. This article describes the main features of the preliminary draft. A State party to the Convention will have to submit to the jurisdiction of the courts of a contracting State in a number of specified cases. According to the preliminary draft, enforcement of a judgment against a State can be sought in the courts of that State. It is expected that the preliminary draft will not be basically amended before it will be submitted to the Minister of the Council of Europe.

B. Human rights

V. Grementieri, "La Convention Européenne des droits de l'homme et le procès civil", 5 Rev.trim.dr.europ. 1969, 463-475.

The author analyses the meaning of Article 6 of the Rome Convention. This provision has as its purpose the guarantee of due process in the determination of civil rights and obligations or of any criminal charges. The article focuses on the requirements for a fair trial and a fair and public hearing within a reasonable time to parties involved in a dispute of a civil nature.

P. Maroy, "L'arrêt de Strasbourg du 23 juillet 1968", (1969) *Annales de droit* 169-203.

A report on the Decision of July 23, 1968 handed down by the European Court of Human Rights in the Belgian linguistic cases.

N. N. "Etude fonctionnelle des organes européens de protection internationale des droits de l'homme", (1969) *Revue de droits de l'homme*, 195-252.

This issue of the *Revue des droits de l'homme* is entirely made up of the papers and discussions of the Colloquium on the European Convention on Human Rights, which took place at Strasbourg on November 10-18, 1968.