

## SURVEY OF LITERATURE

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### b. *List of abbreviations*

A.Ae	— <i>Ars Aequi</i> (Netherlands)
A.J.C.L.	— <i>American Journal of Comparative Law</i>
A.J.I.L.	— <i>American Journal of International Law</i>
Ann.fr.dr.int.	— <i>Annuaire français de droit international</i>

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\* This classification of the subjects will also be used for the list of books appeared which follows the survey of literature. This list will be maintained throughout this volume even if there are no entries under particular headings.

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|---------------------------|--|
| 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—<br>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-<br>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.gen.dr.int.publ.      | — Revue générale de droit international public                           |
| Rev.int.dr.comp.          | — 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<br>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<br>und Völkerrecht    |
| Z.H.R.                    | — Zeitschrift für das gesamte Handelsrecht und<br>Wirtschaftsrecht       |

## IV. EUROPEAN COMMUNITIES

## A. COMMON SUBJECTS

## 1. General

C. Barbarella, "Le financement des activités communautaires par des ressources propres" (1970) R.M.C., No. 132, 195-201.

The replacement of the financial contributions of member States by the Communities' own resources. (Community resources are made up of the revenue from agricultural levies and customs duties, a percentage of the value added tax, and financial contributions of the member States.) The decisions of December 22, 1969, and April 22, 1970. An analysis of the scale of contributions of the member States in 1969, 1970 and 1971, and of the interim arrangements for the period from 1971 to 1974.

A. Chitti-Batelli, "L'unification politique de l'Europe et les étapes d'union politique étrangère commune", 13 *Problèmes de l'Europe* 1970, 7-14.

A pessimistic view of the possibilities for the development of Europe in the direction of a federation.

N. Condorelli-Braun, "Le patronat italien et l'intégration européenne" (1970) R.M.C., No. 131, 139-146.

A short study of the factors accounting for the rapid rise of Italy as an industrialized country. The role of the establishment of the Common Market which has led towards a more liberal commercial policy and the accelerated modernization of Italian industry.

K. von Dohnanyi, "Europa jetzt. Überlegungen zu einer europäischen Technologiepolitik", 25 E.A. 1970, 487-496.

Text of a speech by the German Secretary of State of the Ministry of Technology. A plea for a pragmatic approach to the problem of European technological co-operation. Explanation of technological objectives to be pursued on a Community level. Attack on the principle of "*juste retour*" and proposals for a better system of distributing the ensuing benefits among the participating nations.

B. van der Esch, "L'unité du Marché Commun dans la jurisprudence de la Cour, la bonne foi communautaire et le problème des politiques communes", 6 Cah. dr. europ. 1970, 303-313.

The Court's interpretation of the concept "unity of the Common Market" takes into account the existence of a type of "Community loyalty" which obliges the member States to exercise their reserved powers in such a manner that the unity of the Common Market is not put in jeopardy.

M. Fromont, "Der Rechtsschutz gegen Massnahmen der Verwaltung im Europa der Sechs", 4 EuR. 1969, 202-212.

An article on the manner in which legal protection is afforded to private individuals against administrative acts in the member States.

G. Holch, "Der Bundesrat zur Rechtsetzung der Europäischen Gemeinschaften", 4 EuR. 1969, 213-230.

By virtue of Article 2 of the German Act ratifying the EEC Treaty and the Euratom Treaty, the Federal Council (*Bundesrat*) formulates opinions with regard to Commission proposals to the Council of the European Communities. These opinions are considered as a means of influencing the German

Government's attitude in the Council. The review presented in this article covers the period from June 1967 to June 1969 and contains the opinions of the Federal Council concerning such problems as: delegation by the Council to itself and to the Commission; adoption of measures deviating from the Commission's proposals; the permissible scope of directives issued under Article 100; the inclusion of penal provisions in regulations; the relationship between Community Law and German constitutional law.

- A. Manin, "A propos des clauses de sauvegarde", 6 Rev. trim. dr. europ. 1970, 1-42.

The author analyses the nature, the scope and the effects of escape clauses which are found in treaties establishing international economic organizations. Reference is made to the Treaty of Montevideo establishing LAFTA, the EFTA Treaty, the EEC Treaty, GATT and the various treaties between the central American states concerning the setting up of a Central American Common Market. A comparison is made between escape clauses and several related concepts known under international law. Referring to the Vienna Convention on the Law of Treaties of May 23, 1969, the author discusses the differences between escape clauses and the notions of "reservations made to a treaty", "*force majeure*" and "*rebus sic stantibus*", and the *exceptio non adimpleti contractus*. Finally, questions relating to the setting up of adequate supervision machinery and its functioning are dealt with thoroughly.

- H. R. Rupp, "Die Grundrechte und das Europäische Gemeinschaftsrecht", 23 N.J.W. 1970, 353-359.

A critical commentary on the fact that the Communities are not formally committed to respect fundamental rights in the achievement of their objectives. The absence of solid democratic underpinning of the Community structure and the lack of a charter of fundamental rights explain why the development of the Communities is stagnant.

## 2. Institutional

- G. Lesort, "Les nouvelles responsabilités de l'Assemblée" (1970) R.M.C., 132, 189-194

A critical review of the agreement of April 1970 concerning the budgetary powers of the European Parliament. An assessment of the difficulties of interpretation of the new texts of April 22, 1970.

- R. Legrand-Lane and Elena Bubba, "L'élection du Parlement Européen au suffrage universel direct" (1970) R.M.C., No. 133, 231-239.

The authors analyse the origins of Article 138 of the EEC Treaty which provides for the drawing up of proposals for the election by direct universal suffrage of the delegates to the European Parliament. Several important paragraphs of the Parliament's draft Convention of 1960 on direct elections are discussed and a survey is given of the proposals in the various member States to organize direct elections of the national delegates to the European Parliament.

## 3. Court of Justice

- C. D. Ehlermann, case note, 5 EuR. 1970, 41-47.

An annotation on the Court's preliminary decision in Case 29/69 (*Stauder v. City of Ulm*). See 7 C.M.L.Rev. 1970, 342-343.

H. G. Schermers, case note, 19 A.Ae. 1970, 168-175.

An annotation on the Court's judgment in Cases 6/69 and 11/69 *re* French preferential discount rates (see 7 C.M.L.Rev. 1970, 479-489).

##### 5. *Relationship between Community Law and National law*

G. Bebr, "Les dispositions de droit communautaire directement applicable. Développement d'une notion communautaire", 6 Cah. dr. europ. 1970, 3-49.

The French version of an article published in 19 I.C.L.Q. 1970, 257-288, concerning the development of the concept of direct applicability of Community Law provisions (see 7 C.M.L.Rev. 1970, 497-498).

H. W. Daig, "Die Rechtsprechung des Gerichtshofes der E.G. zur unmittelbaren Wirkung von EWG-Bestimmungen auf die Rechtsbeziehungen zwischen Mitgliedstaaten und Gemeinschaftsbürgern", 5 EuR. 1969, 1-31.

A thorough article on the relationship between Community Law and national law. The Court's decision on the direct applicability of Treaty provisions directed at the member States. National authorities' freedom of choice in determining the manner in which the individual's rights, derived from Community provisions, will be safeguarded within the national legal order. The question of the rank of Community Law. Principle of the supremacy of Community rules over conflicting national law to be found in the Court's pronouncements. Only the Community legal order can definitively determine which of the Community's legal instruments supersede national law.

R. Kovar, P. Legarde, D. Tallon, "L'exécution des directives de la CEE en France", 6 Cah. dr. europ. 1970, 274-302.

The second of a series of articles on the execution and application of directives in the member States (see Kellermann in 5 Cah. dr. europ. 1969, 247-312 on the execution of directives in the Netherlands). The various categories of directives and their effect in France. State organs in charge of the execution of directives and the nature of the measures taken. Observance of time limits and material contents of the directives.

##### 6. *Adhesion*

J. D. B. Mitchell, "L'adhésion du Royaume Uni aux Communautés", 6 Cah. dr. europ. 1970, 251-273.

A moderately optimistic view of the possibilities of solving a number of legal and institutional problems concerning the British membership of the European Communities. Problems relating to the concept of the "sovereignty of Parliament", the dualistic tradition in Britain and the supremacy of Community Law. The advantages of great flexibility in "constitutional" legal thinking owing to the absence of a written constitution. Discussion of questions relating to the position of self-governing parts of the United Kingdom and to the procedures required to secure uniform application of Community Law.

P. Simonnot, A. Douglas-Home, L. Beaton, D. MacLachlan, in 8 *The Atlantic Community* 1970, 67-90.

Four shorter articles on different aspects of the UK's bid for membership of the European Communities. The papers deal with economic and financial matters (Simonnot), the prospects for the negotiations (Douglas-Home), the future of Britain's relations with the Commonwealth (Beaton)

and the possibilities of amalgamating the intelligence services of the member countries of an expanded Community (MacLachlan).

## B. EUROPEAN COAL AND STEEL COMMUNITY

M. Adler, "Specialisation in the E.C.S.C.", 8 Journ. Comm. Mark. Studies 1970, 175-191.

This study shows that important increases in the movement towards specialization expected to occur as a result of the establishment of the ECSC, have not taken place. Though intra-industry specialization has become greater, there is no evidence, contrary to the French apprehensions in 1952, that one single member State (Germany) has specialized in all steel products. Technological factors may account for this development. Incidentally, this may be reassuring for the applicant member States.

## C. EUROPEAN ECONOMIC COMMUNITY

### 1. General

A. André, "Article 189, Absatz 3 EWG Vertrag als politische Norm", EuR. 1969, 191-201.

A strict juridical explanation is not sufficient to elucidate the meaning of the terms "result" and "means" in Article 189, para. 3 of the EEC Treaty. Linguistic nuances and political factors determine the degree of abstraction in the definition of the "result" to be achieved. This definition, which reflects the outcome of the political balance of powers between the EEC and the member States, is in practice decided upon by the co-operation of Council and Commission.

W. Feld, "Political aspects of transnational business collaboration in the Common Market", 24 *International Organization* 1970, 209-238.

The nature and pattern of transnational business co-operation in the EEC. A description of the major objectives pursued by firms engaged in transnational business ventures. An assessment of the influence exercised by international firms on national governments' policy-making in the field of European integration.

P. J. G. Kapteyn, "De juridische consequenties van het einde van de Overgangsperiode in de EEG", 18 S.E.W. 1970, 203-224.

A survey of the legal consequences attendant on the expiry of the transitional period of the EEC (December 31, 1969). The author discusses the meaning of Article 8, para. 7, of the Treaty and examines the possibilities for instituting legal proceedings against the member States and the Community institutions in cases where they have failed to take the measures required for the setting in order of all that is involved in establishing the Common Market, as prescribed by Article 8, para. 7.

G. Marengo, "Les conditions d'application de l'Article 235 CEE", (1970) R.M.C., No. 131, 147-157.

An examination of the three conditions for application of Article 235 of the EEC Treaty, i.e. (a) the necessity to achieve, in the course of operation of the Common Market, one of the objectives of the Community; (b) to achieve this objective, action by the Community appears necessary; (c) the Treaty has not provided for the necessary powers of action. The relationship between the theory of implied powers and Article 235 is also considered.

Th. Oppermann, "Schutzklauseln in der Endphase des Gemeinsamen Marktes" 3 EuR. 1969, 231-239.

Apart from Article 226, the escape clauses provided for in the EEC Treaty (Articles 108, 109 and 115) can be applied after the transitional period has come to an end in cases where the functioning of the Common Market and the process of integration causes serious difficulties to the economy of a member State. It would not be wise to place an extensive interpretation on the Treaty's public order provisions in order to make up for the loss of the general safeguard clause of Article 226. When the existing safeguard provisions cannot be applied in specific situations, recourse should be had to Article 235.

G. Schrans, "Heeft het einde van de overgangperiode, ingericht door artikel 8 van het EEG-Verdrag, tengevolge dat sommige verdragsvoorschriften directe werking krijgen?", 18 S.E.W. 1970, 225-257.

A study dealing with the possibilities for nationals of the member States to claim rights which a national court must safeguard, as a result of the self-executing character acquired by certain Treaty provisions upon expiry of the transitional period (Article 8, para. 7 of the Treaty).

## 2. Customs Union

M. Fallet, "Die Sicherheitsleistung im Gemeinsamen Versandverfahren", 16 A.W.D. 1970, 214-218.

Some comments on the provisions of the regulations on Community transit arrangements regarding the obligation of carriers to give security when goods are shipped from one member State to another, via the territory of a third member State (J.O. 1969, L 77/1).

P. VerLoren van Themaat, "EEG-richtlijnen betreffende discriminerende aankoop-politiek overheidsinstellingen, discriminerende prijsvoorschriften en andere maatregelen van gelijke werking als kwantitatieve invoerbeperkingen", 18 S.E.W. 1970, 258-266.

Some critical remarks on two directives issued by the Commission on the threshold of the definitive period and designed to abolish a number of still existing measures of an effect equivalent to quotas, relating to (a) the reservation of national markets for the supplies to the central government, regional and local authorities and other public agencies (J.O. 1970, L 13/1), and (b) measures with effect equivalent to quantitative restrictions on imports which were not accounted for by other provisions adopted under the Treaty (J.O. 1970, L 13/29).

## 3. Agriculture

M. Melchior, "L'organisation des marchés agricoles de la CEE au stade du marché unique", 6 Cah. dr. europ. 1970, 127-153.

A comprehensive review of the main aspects of the common organization of agricultural markets in the Community.

G. Olmi, "Les décisions du 21 avril 1970 sur le financement de la politique agricole commune", (1970) R.M.C., No. 132, 202-215.

A description of the April 1970 decisions on the financing of the Community's agricultural policy. The allied problems of the Community's own resources and the increase in the powers of the European Parliament. Method of financing the expenditures of the European Agricultural Guidance and

Guarantee Fund. Expenditures under the Fund's Guidance section to be regulated in the framework of a new system of common activities and common financial responsibility in the field of a structural policy.

- A. Ries, "Vers la réforme de l'agriculture européenne", (1970) R.M.C., No. 132, 183-188.

The Commission Memorandum of December 1968 on the reform of agricultural structures in the EEC. Formal proposals from the Commission for action with respect to persons employed in agriculture and the restructuring of the markets and production of agricultural products. Costs of the measures to be shared by the member States and the Community. Estimated effects of the proposed measures in the period from 1970 to 1975.

#### 4. *Free movement of persons; establishment and services*

- J. P. de Crayencour, "La profession d'avocat et le Traité de Rome", (1970) R.M.C., No. 131, 158-168.

The author poses two questions with respect to the limited scope of the draft Directive of April 17, 1969 (J.O. 1969, C78/1) concerning the freedom for lawyers to provide certain services: no provision has been made for the right of establishment of lawyers and only a few activities of lawyers are earmarked for liberalization.

#### 6. *Transport*

- M. Sohier, "Aperçu du développement actuel de la politique commune des transports", 6 Cah. dr. europ. 1970, 154-184.

Without entering into details, the author sketches the elements of the Community's achievements in the field of transport policy (integration of the transports markets, organization and harmonization of the conditions of competition).

#### 7. *Competition*

- J. van Damme, case note, 6 Cah. dr. europ. 1970, 63-87.

A detailed commentary on the decision of the Court of Justice, in Case 5/69 (*Völk v. Vervaecke*) concerning the exemption from the prohibition of Article 85, para. 1, of sole distributorship agreements between parties whose influence on the market is insignificant (see 7 C.M.L.Rev. 1970, 81-86, note Steindorff).

- A. Deringer, case note, 16 A.W.D. 1970, 180-182.

Annotation on the Court's judgment in Case 43/69 (*Bilger v. Jehle*, *Recueil* XVI, 127).

- Y. Saint-Gal, "Aspects actuels de la réglementation de la concurrence et de la protection des droits de propriété industrielle dans le cadre communautaire européen", 6 Rev. trim. dr. europ. 1970, 43-67.

An article on the problem of the conflict arising between Community rules on competition and the member States' legislation on industrial property rights. Efforts to arrive at harmonization or uniformity of the rules on patents, trade marks and industrial drawings and models. Discussion of the Commission's report on the prevention of unfair competition based on a study made by the Max-Planck-Institute.



### 8. *Taxation*

A. Schulze-Brachmann, "Methoden zur Ausschaltung der wirtschaftlichen Doppelbesteuerung in den EWG-Mitgliedstaaten unter dem Aspekt des internationalen Kapitalverkehrs", 16 A.W.D. 1970, 289-296.

Some critical comments on the report presented by Professor Van den Tempel to the Commission of the European Communities, concerning the double taxation of distributed profits to shareholders.

A. J. van den Tempel, "Impôt sur les sociétés et impôt sur la réserve dans les Communautés Européennes", (1970) *La Fiscalité du Marché Commun* No. 39, 27-35.

Abridged reproduction of the author's report to the Commission on systems to prevent double taxation of dividends distributed to shareholders. Three main systems: (a) classical system (full double taxation of corporate profits distributed as dividends); (b) differentiated system (lower rates of corporate income tax on distributed profits); (c) compensation system (lower income tax burden on shareholders' dividend receipts). Recommendation to adopt the classical system in the European Communities.

Th. W. Vogelaar, "Steuerharmonisierung in der Europäischen Gemeinschaft", 16 A.W.D. 1970, 188-204.

Text of a speech by the Director-General, International Market and Harmonization of Legislation at the European Commission on tax harmonization in the EEC (an English version of this article has been published in 7 C.M.L.Rev. 1970, 323-335).

### 9. *Harmonization of legislation*

H. von der Groeben, "Die Politik der Europäischen Kommission auf dem Gebiet der Rechtsangleichung" 23 N.J.W. 1970, 359-364.

Text of an address delivered before the European Parliament on the Policy of the Commission with regard to harmonization of legislation.

### 10. *Economic and Monetary policy*

A. Kees, "Zur Strategie europäischer Konjunkturpolitik", (1970) *Integration*, 95-103.

A short history of the cyclical policy in the Common Market. The need for an "integration strategy" implies the co-ordination of the objectives of the cyclical policy of member States in a highly integrated Common Market. It also requires the creation of a central point for decision-making and the setting-up of an institute for research on questions of cyclical policy.

K. Klasen, "Die Verwirklichung der Wirtschafts- und Währungsunion in der EWG aus der Sicht der Deutschen Bundesbank", 25 E.A. 1970, 449-458.

Text of an address delivered on June 16, 1970, by the President of the German Central Bank. Exposition of the interim report of the Werner Committee containing proposals for the setting-up of an economic and monetary union. Defence of the German position in the Committee, *i.e.*, no widening of the fluctuation margins of the exchange rates of member States' currencies and no introduction of an exchange rate stabilization fund.

### 15. *European Investment Bank*

J. Licari, "The European Investment Bank", 8 Journ. Comm. Mark. Studies 1970, 192-215.

Description of the tasks and powers of the European Investment Bank. Discussion of the manner in which the Bank has performed its functions. Projects in many sectors of the economy in the Community have been financed with loans from the Bank. Commercial basis on which loans are granted calls forth criticism as the Bank's contribution to the financing of development projects should be made on a non-profit-making basis. The financial activities of the Communities are split up among too many organs and agencies. The author advocates reorganization on this point.

16. *Company law—Bankruptcy law*

A. Hirsch, "Vers l'universalité de la faillite au sein du Marché Commun", 6 Cah. dr. europ. 1970, 50–60.

An account of the draft convention based on Article 220 of the EEC Treaty concerning bankruptcy and allied proceedings. The starting point is the universal validity (within the Common Market) of an adjudication in bankruptcy. The author doubts whether this aim cannot be achieved by the adoption of a less ambitious guiding principle. He suggests giving an adjudication in bankruptcy a mitigated territorial effectiveness.

VI. COUNCIL OF EUROPE

b. *Human Rights*

"L'affaire grecque", 17 *Revue de droit contemporain* 1970, 121–157.

Abstracts from the Report of the European Commission of Human Rights of November 18, 1968, and the Resolution of the Committee of Ministers of April 15, 1970, concerning the Danish, Swedish, Norwegian and Dutch complaints against the Greek Government.

A. Toussaint, "Le rapport de la Commission européenne des droits de l'homme dans l'affaire grecque", 85 J.T. 1970, 369–375.

Same subject.

C. Daubie, "La Convention européenne des droits de l'homme et la raison d'état", 3 *Human Rights Journal* 1970, 247–276.

The author examines the relationship between the Convention and national sovereignty as based on the *raison d'état*. Notwithstanding certain inroads on national sovereignty (the right of individual petition, compulsory jurisdiction of the European Court of Human Rights) the States have retained a rather large measure of autonomy. However, the study concludes, the *raison d'état* in some areas has been effectively brought under legal control by the Convention machinery.

E. Schwelb, "The abuse of the right of petition", 3 *Human Rights Journal* 1970, 313–322.

Comments on the first case in which the European Commission on Human Rights has rejected the totality of a claim thereby penalizing the use of objectionable phraseology. According to the author neither the text nor the legislative history of the Convention's Article 27, para. 2, supplies a basis for the rejection of a substantive claim by way of disciplinary punishment. A trace of evidence to support the Commission's decision of May 24, 1966, can hardly be detected in any international instrument for the protection of human rights. It may be hoped that this decision constitutes a precedent without a future.