

## SURVEY OF LITERATURE

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### 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

\* This classification of the subjects is also used for the list of books appeared which follows the survey of literature.

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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       |

## I. INTEGRATION, ECONOMIC AND POLITICAL

Boyd France, "Washington's New Look at the European Community", 8 *Atlantic Community* 1970, 242-250.

In the seven years since Britain applied for membership of the European Communities, opinion on the merits of the EEC has changed greatly in the United States. Many Americans in and out of Government have come to feel in recent years that the US has less to hope for politically from the Community and more to fear from it commercially. Britain's acceptance of the Community agricultural policy in its present form is likely to entail a significant loss for US farm sales, which might prove a politically explosive threat.

N. J. Haagerup, "Nordek and Europe", 24 *Internationale Spectator* 1970, 801-814.

A survey of the attempts to achieve co-operation among the five Nordic countries, especially in the economic field. These countries are more than ever looking to the Common Market, but the "Nordek episode" has shown the attraction of alternative forms of economic integration.

Th. Jansen, "Zur Situation des Westeuropäischen Integrationssysteme. Aufriss einer Analyse", (1970) *Integration* 203-213.

Some reflections on the effects of European integration on the independence and sovereignty of States. The progress of integration and the development of a transnational society are responsible for the continuous erosion of the States' traditional powers to carry out their classic functions within their respective territories. The State is no longer a body in which all powers are concentrated. If it used to possess unlimited powers within a limited field, the State now exercises limited powers within an unlimited field of action (both functionally and geographically).

J. Linthorst Homan, "Which Europe", 9 *Journ.Comm.Mark Studies* 1970, 67-92.

The author argues that the Treaties of Rome were drafted with the awareness of all parties concerned that the Communities were not only conceived for economic and social purposes but that they had also political objectives. As a convinced federalist, the author praises the article of Paul Taylor in Volume VII of the *Journal of Common Market Studies* in which are analysed the views of older federalists, Gaullists, functionalists and neo-functionalists. Reviewing the book *Beyond the European Community* by Altig von Geusau, he rejects the latter's contention that from the outset there had been an agreed "assumption" among the Six to stay out of the political field. Von Geusau's functionalist Europe is in sharp contrast with the federalists' hope of extending European economic integration to the area of socio-political cohesion.

L. B. Miller, "Europe's futures—change and continuity?" 9 *Journ.Comm.Mark. Studies* 1970, 93-113.

Review article on four recent studies that suggest implications for policy debates on Europe's futures: 1. Calleo, *Britain's future*; 2. Pinder and Pryce, *Europe after De Gaulle*; 3. Layton, *European advanced technology*; 4. Buchan, *Europe's Futures, Europe's Choices*.

Schilling, "Dire ses quatre vérités à l'Europe", (1970) *R.M.C.* No. 136, 394-396.

An exhortation directed at the Governments of the member States of the European Communities to move ahead with vigour on the road towards economic union in Europe.

P. C. Schmitter, "Central American integration; spill-over, spill-around or encapsulation?" 9 *Journ.Comm.Mark. Studies* 1970, 1-48.

A comprehensive study of integration within the Central American Common Market. The intended expansion in scope and level of integration into an area of common policy ("spill-over") has not been effected but neither have regional authorities confined themselves to their original tasks ("encapsulation"). The author detects a "spill-around" pattern in the Central American co-operation, characterized by the extension of integration to independent efforts in different functional areas (scope), without the conferring of decision-making powers on collective bodies (level). At the same time, however, denouncing the "bluff, bombast and brinkmanship" which continuously spoil the political climate in Central America, he gives political integration no chance at all.

J. Thorbek, "Le Nordek", 6 *Cah.dr.europ.* 1970, 412-437.

A comprehensive study on the draft Treaty establishing a Nordic Economic Community (Nordek). After discussing the reasons for this attempt at Nordic economic integration (failure of EFTA to produce effective economic planning and co-ordination of policies) the author turns to the objectives of the Treaty and its institutional set-up. The latter is obviously much weaker than that of the EEC (no parliament, no judicial organ like the Community Court of Justice, decision-making by a Council on the basis of unanimity, no independent executive). Many of the aims of the Treaty are similar to those of the EEC Treaty. Owing to the weakness of the institutional arrangements, the author expects decision-making within Nordek (if it can ever be launched) to take place in the form of package deals more often than in the EEC.

M. S. Wionczek, "The rise and the decline of Latin American economic integration", 9 *Journ.Comm.Mark. Studies* 1970, 49-66.

Survey of activities of LAFTA, ECLA and CACM and analysis of the causes for the moderate success of these integration efforts. A stumbling block for LAFTA seems to be its too ambitious geographical scope, in which economies of all sizes and levels of development are included. The author foresees as the most probable development: economic co-operation on certain projects and the creation of various common markets among the middle-sized and small underdeveloped countries, which then could make arrangements between themselves and the big industrial countries (Argentina, Brazil and Mexico).

#### IV. EUROPEAN COMMUNITIES

##### A. COMMON SUBJECTS

###### 1. *General*

Cl. Champaud, "L'apport du droit communautaire au droit économique", 6 *Cah.dr.europ.* 1970, 557-567.

Not only has Community Law made an important contribution to the definition of the nature and the objectives of economic law, but it also has made it possible to specify the contents of this law within a liberal system. Community Law has also promoted the development of new legal techniques and procedures. The author concludes that economic law existed before Community Law came into existence but that the latter has raised it to the rank of one of the major social-economic disciplines.

A. Deringer and J. Sedemund, "Europäisches Gemeinschaftsrecht. Die Entwicklung bis Juni 1970", 23 *N.J.W.* 1970, 1488-1493.

A survey of the main developments in the Communities from March 1970

until June 1970. Subjects treated in this commentary are: the beginning of the negotiations for enlargement of the Communities; institutional questions (the Parliament's—disputed—power to have the final word on the Community budget in virtue of the revised text of Article 203 of the EEC Treaty, the legality of the management committee procedure); the economic and monetary union; the new regulations on the common commercial policy; agricultural policy; freedom of establishment, co-ordination of company law, etc.

A. Deringer and J. Sedemund, "Europäisches Gemeinschaftsrecht. Die Entwicklung bis September 1970", 23 N.J.W. 1970, 2149–2153.

Current developments in Community Law in the period from June 1970 until September 1970. Particular attention is devoted to the Court's case law in the area of cartel law (*Bilger v. Jehle*, Quinine cartels) and to the effectiveness of Community Law within the national legal order, including the legal protection afforded to private individuals affected by regulations or by decisions directed to member States.

W. Diebold, Jr., "Europa und die V.S., Perspektiven der wirtschaftlichen Beziehungen", 25 E.A. 1970, 597–608.

Strained relations between Europe and the US: the Community's agricultural policy, the American investments in Europe and the US balance of payments deficits. Newer problems are the non-tariff barriers, the multinational companies and their investments and the growth of Japanese exports. These problems can only be solved if the partners are willing to recognize each other's point of view.

U. Drobnič, "L'apport du droit communautaire au droit international privé", 6 Cah.dr.europ. 1970, 526–543.

A study on the impact of Community Law on the rules of private international law valid within the member States. The Communities have created their own rules of conflict (e.g. Articles 211, 215, 220 of the EEC Treaty). Member States' laws of conflicts have also been affected by Community Law either directly (Article 7 of the EEC Treaty), or indirectly (harmonization of laws, specification of grounds of public order justifying departure from Community rules).

G. Gozat, "L'activité des Communautés européennes vue à travers leur budget"; (1970) R.M.C. No. 136, 397–405.

Some technical aspects of the Communities' budget, including the research and investments budget of Euratom, the "working budget" of the ECSC and special sections of the budget (European Development Fund, Agricultural Guidance and Guarantee Fund). Discussion of the activities financed with revenue from budgetary sources. Finally, questions concerning the Communities' own resources and the budgetary powers of the European Parliament are reviewed.

M. J. Kuiper, "Financiering van het landbouwbeleid en eigen middelen van de EEG", 18 S.E.W. 1970, 615–638.

The new regulation on financing the common agricultural policy (Regulation No. 729/70, J.O. 1970, L 94) and the Council Decision of April 21, 1970, on the Communities' own resources (J.O. 1970, L 94). Query into the significance of Article 201 and the legal character of the Council decision which could only become operative after ratification by the member States in accordance with their respective constitutional rules.

R. Morawitz, "Die eigenen Mittel der Gemeinschaften", 5 EuR. 1970, 232.

The Communities' own resources and the meaning of Article 201 of the EEC Treaty which provides that the Council may "determine" the provisions which it will "recommend" member States to adopt in accordance with their respective constitutional rules.

P. Pescatore, "L'apport du droit communautaire au droit international public", 6 Cah.dr.europ. 1970, 501-525.

It may be too early to state that Community Law has perceptibly affected public international law. Nevertheless the author outlines various particularities of the Communities which constitute a challenge and perhaps a model for scientific and political thinking on international co-operation (e.g. the Community's original decision-making processes, the role of the independent executive organ, the methods and measure of legal protection, etc.). As opposed to the law of international co-existence and the law of international co-operation, the author is inclined to qualify Community Law as "the law of international integration".

P. E. Trousse and F. Rigaux, "L'interprétation uniforme des règles de droit uniforme", (1970) *Annales de droit*, 99-116.

The authors describe the manner in which uniform laws are made and how they are interpreted. They analyse the differences between unification and harmonization of laws and stress the need for uniform interpretation of unified or harmonized rules. However, changing societies require a flexible approach to interpretation of these rules. This flexibility is fully secured in the procedures for preliminary rulings in the European Communities and in Benelux.

## 2. Institutional

L. Janz, "Führen alle Wege nach Europa?", (1970) *Integration*, 183-192.

A description of the current decision-making process in the Communities and a discussion of the possibilities of improving the institutional arrangements. The author is in favour of conferring the executive power on the Commission and of investing both the Council and the European Parliament with the legislative function, the former representing the States and the latter the peoples of the European Communities.

J. J. Schwed, "Les questions écrites du Parlement Européen à la Commission", (1970) R.M.C. No. 135, 365-368.

The author explains why the Commission seems sometimes to be slow in answering written parliamentary questions and wonders why the members of the European Parliament do not use their right to ask oral questions. The possibilities for revision of the procedure of written questions are being studied.

P. Wendt, "Auskunftspflicht von Organen der E.G. gegenüber nationalen Gerichten und Marktbürgern", 16 A.W.D. 1970, 485-486.

The principle of collective decision-making by EEC organs is frequently deviated from, in particular when individual members of the Commission or senior officials have received mandate to take certain decisions on behalf of the Commission. Another novelty is the so-called "Agri-Telex Procedure", by which decisions outside any delegation are made without any member of the Commission having been involved in the drafting of the decision or without even having seen it. The private individual, however, cannot ascertain from the text published in the *Journal Officiel*, whether this illegal method of decision-making has been resorted to in a particular case. The author argues that a

private individual affected by Community acts should be given the right to receive all information allowing him to judge whether the act in question satisfies the procedural requirements of the Treaty.

### 3. *Court of Justice*

P. Cahier, Case note, 6 *Cah.dr.europ.* 1970, 576-584.

An annotation on the Court's decision in the consolidated Cases 6 and 11/69 of December 10, 1969 (*Re French preferential discount rates for export credits*). See also 7 *C.M.L.Rev.* 1970, 479 *et seq.*

S. F. Eynard, "L'article 169 du Traité de Rome; 12 ans d'application de la procédure d'infraction à l'égard des Etats Membres de la CEE", 10 *Rev.Dir.Eur.* 1970, 99-126.

A description of the procedure of Article 169 of the EEC Treaty. Statistics on the sort of questions brought before the Court under this provision and evaluation of the effectivity of the Commission's action under this article during the past twelve years.

L. Goffin, Case note, 6 *Cah.dr.europ.* 1970, 587-594.

An annotation on the Court's judgment in Case 9/69 (*Sayag* case; see also 7 *C.M.L.Rev.* 1970, 226-234).

R. Hellmann, "Nationale Souveränität und EWG-Vertragstreue", 25 *E.A.* 1970, 678-684.

A survey of the operation of the procedure of Article 169 of the EEC Treaty.

R. Knöpfle, Case note, 5 *EuR.* 1970, 255-266.

Annotation on Cases 6 and 11/69 (see above).

G. Nicolaysen, Case note, 5 *EuR.* 1970, 161-171.

Annotation on the Court's decision of December 12, 1969 in Cases 10/68 and 18/68 (*Società Eridania et al. v. Commission*; see also 7 *C.M.L.Rev.* 1970, 345-350).

H. G. Schermers, Case note, 19 *A.Ae.* 1970, 430-434.

Annotation on Case 77/69 (*Commission v. Belgium*; see 8 *C.M.L.Rev.* 1971, 79) and Case 31/69 (*Commission v. Italy*, see 8 *C.M.L.Rev.* 1971, 74).

### 4. *Sources of Community Law*

J. Mertens de Wilmars, "Het onderscheid tussen beschikking en verordening in het legaliteitscontentieux van de EEG", 25 *Tijdschrift voor Bestuurswetenschappen en Publiekrecht* 1970, 440-449.

Supervision of the legality of Community measures by the Court of Justice and the effect of the distinction between decisions and regulations on the admissibility of the various forms of appeal (Articles 173, 175, 177, 184).

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

W. J. Ganshof van der Meersch, "Le juge belge et le droit international", 6 *Rev. belge dr.int.* 1970, 409-461; published previously in 33 *R.W.* 1969, 193-238 (Dutch) and in (1968) *J.T.* No. 4671, 537-551.

The position of Belgian courts with regard to the application and interpretation of international law, and, particularly, Community Law. The author concludes this interesting study with an analysis of the Treaty providing for the creation of a Benelux Court of Justice.

H. P. Ipsen, Case note, 5 EuR. 1970, 243-248.

Annotation on Case 40/69 (*Hauptzollamt Hamburg-Oberelbe v. Firma Bollmann*) in which the Court confirmed that member States are deprived of any power to adopt measures susceptible of interfering with the operation of a regulation (here: Regulation No. 22) or of adding to it, if the scope and nature of the Community provisions show that unilateral State action (supplementation, national interpretation) is inconsistent with the system introduced by the Community measures.

J. V. Louis, "L'Article 25 bis de la Constitution Belge", (1970) R.M.C. No. 136, 410-416.

The new Article 25 *bis* of the Belgian Constitution expressly sanctions the possibility that certain powers of government can be conferred upon international organizations. The author compares the new provision with constitutional rules in other member States and makes a plea for additional constitutional reforms regarding the conclusion of treaties and the precedence of international law over domestic law.

G. Meier, "Gemeinschaftsrecht und mitgliedstaatliches Recht", 5 EuR. 1970, 323-333.

The Community legal order is not only an autonomous legal order which is also part of the member States' legal order in so far as the Community provisions are immediately applicable within the member States. It also operates to integrate the national legal orders through directives and decisions obliging member States to enact rules which constitute a common legal order of the member States.

J. Mertens de Wilmars, "Les enseignements communautaires des jurisprudences nationales", 6 Rev.trim.dr.europ. 1970, 454-469.

This article, a Dutch version of which appeared in 33 R.W. 1970, 1905-1916, deals with the co-operation of national courts and the Court of Justice in the application of Community Law and outlines the important role played by national courts and national law in the area of the law formed at the Community level.

P. Pescatore, "Das Zusammenwirken der Gemeinschaftsrechtsordnung mit den nationalen Rechtsordnungen", 5 EuR. 1970, 307-324.

Text of the speech in which the author presents a summary of the discussions at the fifth FIDE-Congress, held in Berlin on September 23-26, 1970, and an evaluation of the state of affairs in regard of the problems of co-operation between the Community legal order and the legal orders of the several member States (see also the Report on this Congress, in 8 C.M.L.Rev. 1971, 269).

G. Rambow, "L'exécution des directives de la C.E.E. en République Fédérale d'Allemagne", 6 Cah.dr.europ. 1970, 379-411.

A third contribution in the series on the execution and application of directives in the member States. Following the articles by Kellermann (in 5 Cah.dr.europ. 1969, 247-312) and Kovar, Legarde and Tallon (in 6 Cah.dr.europ. 1970, 274-302) dealing with the position in the Netherlands and France,



respectively, Rambow discusses this problem in the context of Germany. Problems considered include: the "intensity" of the norm contained in the directives (*i.e.* the extent to which a directive may go into details), the question of the direct applicability of a directive, constitutional problems (division of powers between the *Bund* and the *Länder*), form and procedure of implementation, time limits, the interpretation of the norms of the executed directive by German courts.

D. Schumacher, "Die Berücksichtigung nationales Recht durch Organe der E.G.", 23 N.J.W. 1970, 980-984.

Though in theory the Community has created a legal order quite distinct and separate from the legal orders of the member States, the Community organs cannot but take into consideration certain elements of the laws of the member States. The author attempts to find solutions for conflicts between the two orders, which can and do occur if the Court is to ensure that the law (including national law) is observed in the interpretation and implementation of the EEC Treaty (Article 164 of the EEC Treaty).

#### 6. *Adhesion*

H.-C. Binswanger and H. Mayrzedt, "Ne pas oublier les pays neutres dans la relance de l'intégration européenne", (1970) R.M.C. No. 137, 435-440.

It is not realistic to demand as a condition for adhesion of the neutral States (Switzerland, Sweden, Austria) complete acceptance of the "political objectives" of the Treaty of Rome. Possible co-operation with these States could be achieved by institutional separation of economic policy and of foreign and security policy, fields in which integration calls for quite different methods anyhow.

C. Ann Cosgrove, "Grossbritannien und die EG. Die Britische Diskussion über den Beitritt", (25) E.A. 1971, 55 *et seq.*

The debate in Britain on its application for membership of the Communities.

De Molènes Melchior, "Les négociations entre les Britanniques et les Communautés européennes, vues de Paris" 48 Rev.dr.int. 1970, 299-310

The causes of the change in Britain's attitude toward participation of this country in the European Communities, as seen from a French point of view. The importance of British membership transcends the simple need for equilibrium on the European scene. Enlargement of the Communities will promote world peace and stability.

F. de la Serre, "La Grande-Bretagne s'éloigne-t-elle de l'Europe?", 20 Rev.fr. de Sc.polit. 1970, 37-49.

Posing the question whether Great Britain is drawing away from Europe, the authoress observes that whereas the U.K. Government's determination to seek membership of the Communities appears to be firm, a current of opposition to entry is developing. A certain hostility based to a large extent on the fear of the financial consequences of membership is manifest in the attitude of the political parties, the unions and the public. Although this opposition is serious it seems to imply immediate economic preoccupations rather than fundamental antagonism to the principle of membership.

## B. EUROPEAN COAL AND STEEL COMMUNITY

H. Soell, "Zur Ermessensbindung der Kommission der Europäischen Gemeinschaften am Beispiel des EGKS-Vertrages", 16 A.W.D. 1970, 297-303.

The executive organ of the ECSC seems to have great freedom of appreciation in making a choice as to which of the eight objectives set out in Article 3 of the Treaty should receive particular emphasis in a given case. The author argues that the Commission commands very little discretionary power in this respect because the Court of Justice has ruled that the Commission's decision must reflect the outcome of an attempt to reconcile the objectives of Article 3. The Treaty itself, to a large extent, supplies guidelines for weighing the various interests involved against each other. Elements to be considered are: the functional unity between Articles 2-5; the need to promote the common interest, the requirement of minimal intervention (Article 5); the observance of general principles of law, in particular the lowest common denominator of fundamental rules valid in all member States.

## C. EUROPEAN ECONOMIC COMMUNITY

### 1. General

E. Cerexhe, "Les Communautés européennes au terme de la période transitoire", (1970) *Annales de droit*, 117-146

Taking stock of the achievements of the EEC at the end of the transitional period, the author examines in succession the measures taken by the Community in the field of the four freedoms, external relations, common policies and the progress made in respect of legal integration in the Community.

N. Macrae, "How the EEC makes decisions", 8 *Atlantic Community* 1970, 363-371.

A lively commentary on the decision-making process in the EEC with interesting remarks on the 1965 crisis ("the battle between the Emperor and the Pope").

J. Martens, "Die Rechtstaatliche Struktur der EWG", 5 *EuR.* 1970, 209-231.

The transfer of powers of enacting legislation to the Commission and the Council departs from the constitutional rules governing delegation of powers in the member States. As legislative powers in the member States are frequently delegated to the national executive organs and the national parliaments' primary task has become the controlling of the executive, especially in the economic field, the constitutional requirements concerning delegation seem overtaken by governmental practice and thus cannot be invoked to assert the unconstitutionality of the Community's structure. The legal order of the Community should not be explained by exclusive reference to national constitutional tenets.

G. Meier, "Der Gemeinsame Markt nach Beendigung der Übergangszeit", 23 *N.J.W.* 1970, 969-975.

Article 8, para. 7, and its effect on the establishment of the Common Market. The concept of Common Market and the direct applicability of directives after the expiry of the transitional period.

H. Schwaiger, "Zum Gründrechtsschutz gegenüber den Europäischen Gemeinschaften", 23 *N.J.W.* 1970, 975-980.

Like many other authors, mostly German, the author is preoccupied by the absence of a formal catalogue of fundamental rights to be observed by the Communities.

## 2. *Customs union*

E. C. P. van Ginkel, "La notion juridique de 'monopole national présentant un caractère commercial' dans l'article 37 C.E.E.", (1970) R.M.C. No. 133, 238-254.

An analysis of the first paragraph of Article 37 concerning state trading monopolies which must be progressively adjusted so as to remove any discrimination between nationals of member States concerning supplies or marketing. Delimitation and distinctions between the field covered by Articles 30-34 (quotas) and that subject to Article 37.

## 3. *Agriculture*

G. Chiniard and F. Giuffrida, "Mesures communautaires dans le secteur du tabac", Part I, (1970) R.M.C. No. 134, 288-299; Part II, *ibid.* No. 135, 341-348.

The establishment of a common market for unmanufactured tobacco products (Regulation No. 727/70, J.O. 1970, L 94/1). The problem of taxation of manufactured tobacco (Resolution of April 21, 1970). Adjustment of state monopolies in Italy and France (Article 37 of the Treaty).

J. F. Hochbaum, "Die Europäische Marktordnung für Wein" 46 *Zeitschrift für Zölle und Verbrauchsteuern* 1970, 193-203.

The Council Regulations No. 816/70 (establishment of a common market for table wine) and No. 817/70 (providing for the introduction of Community labels on wines satisfying Community quality standards (v.q.p.r.d., i.e. *vins de qualités produits dans des régions déterminées*).

M. J. Jacquot, "Pourquoi une action internationale dans le secteur des matières grasses", (1970) R.M.C. No. 133, 240-247.

The Community's position in the negotiations for an international agreement in the sectors of oil and fats.

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

N. Briguet, "Liberté d'établissement et libre prestation de services", (1970) R.M.C. No. 134, 311-318.

Survey of the 32 directives issued up to the end of 1969 concerning the implementation of the freedom of establishment and the free provision of services.

J. P. de Crayencourt, "La reconnaissance mutuelle des diplômes dans le Traité de Rome" (1970) R.M.C. No. 137, 447-464.

Analysis of Article 57, para. 1, and the methods to effect mutual recognition of diplomas. The most important of about twenty Commission proposals on the recognition of diplomas for various professions are reproduced in an annex (pp. 465-474).

C. Degand, "Le cinéma et la libre circulation de la main d'oeuvre en Europe", (1970) R.M.C. No. 136, 406-409.

C. Gavalda, "L'harmonisation des législations bancaires", 5 *Journ.dr.intern.* 1970, 5-19.

The failure of the Council to issue directives under Article 57, para. 2, and Title V of the General Programme, on the co-ordination of banking legislation. Freedom to provide banking services, according to the author, will evolve slowly because it must be achieved in step with a rather extensive co-ordination of monetary and economic policy within the EEC.

P. Kalbe, "Erste Vorschläge zur Verwirklichung der Freizügigkeit für die freien wirtschaftsberatenden Beuße", 16 A.W.D. 1970, 487-491.

The Commission's proposals for directives concerning the elimination of restrictions on the freedom of accountants to exercise certain consultative activities.

M. Simon-Depitre, "L'application en France des mesures communautaires en matière de liberté d'établissement", 59 Rev.crit.dr.int. privé 1970, 227-245.

A review of the French execution of Community measures in the field of freedom of establishment.

E. Suy, "De toelating en uitwijzing van vreemdelingen in internationaal en Europees recht", 7 Rev. belge dr.int. 1970, 484-497.

A study on the admission and expulsion of foreigners. The author discusses the pertinent provisions on admission of foreigners laid down in the framework of Benelux, the EEC and the Council of Europe and reports on recent case law applying those provisions. Concerning expulsion, reference is made to the European Convention on Establishment (1955), Protocol No. 4 to the Convention for the protection of human rights and fundamental freedoms and the EEC Treaty. Finally, the author stresses the importance of Council Directive No. 64/221 and the decision of the Belgian Conseil d'Etat, *Re Corveleyn* (see 7 C.M.L.Rev. 1970, 237 *et seq.*).

#### 5. Free movement of capital

C. Campet, "Le marché commun bancaire", (1970) R.M.C. No. 137, 441-446.

#### 7. Competition

W. van Gerven, "Over voorlopige of definitieve geldigheid en over nietigheid met of zonder terugwerkende kracht van kartelafspraken", 18 S.E.W. 1970, 351-363.

The problem of the provisional or definitive validity of cartel agreements and the retroactive effect of a declaration that the agreements are null and void. The author submits that only where the municipal authorities declare an agreement to be null and void should this nullity operate *ex nunc*. When the nullity is the result of a decision of the Commission applying Article 85, para. 1, the nullity should operate with retroactive effect (*ex tunc*).

K. O. Nass, "Probleme des europäischen Kartellverfahrens", 5 EuR. 1970, 100-134.

Dealing with the problems of the application of the Community rules of competition, the author discusses *inter alia* the relationship between Community and national anti-trust law. Separate chapters are devoted to: the application of German anti-trust law by German cartel authorities; application of European anti-trust law; application of European anti-trust law by German civil courts. The question whether the Community cartel policy contravenes German constitutional principles is answered in the negative. Lastly, some observations are made regarding the legitimacy of the Community policy in the field of competition.

J. Treeck, "Joint research ventures and antitrust law in the US, Germany and the EEC", 3 N.Y. U. Journal of International Law and Politics 1970, 18-55.

Through joint subsidiaries firms often achieve co-operation in the field of research and development (R & D). The author studies four aspects of the operation of such joint ventures, namely: the extent to which competition is

eliminated in the R & D sectors; the effect on the market position of the participating firms; the degree to which there is a "spill over" from R & D to other forms of co-operation; joint acquisition and exploitation of patents. The Commission grants exemption from the prohibition of Article 85, para. 1, when the restrictions on competition are indispensable to achieve effective co-operation. This policy corresponds with the practice of the German Federal Cartel Office. In contrast, the US courts must balance the positive and the negative effects of a joint venture against each other, requiring possible restrictions on competition to be offset by the positive results of a joint venture.

- P. Ulmer, "Europäisches Kartellrecht auf neuen Wegen?", 16 A.W.D. 1970, 193-198.

The Court's pronouncements (in the *Portelange* case and in the *Bilger* case) on the full effect of cartel agreements place the need for legal security above compliance with Article 85 and several provisions of Regulation No. 17. The author urges national courts to continue using the procedure of Article 177 of the Treaty to obtain clarification and, if possible, a revision of the Court's stand.

- P. Ulmer, Case note, 5 EuR. 1970, 248-255.

Annotation on the Court's decision in Case 43/69 (*Bilger v. Jehle*).

- H. W. Wertheimer, "Droit des marques; observations sous Tribunal de Breda, référés de 31 déc., 1968 et 1 avril 1969", 6 Cah.dr.europ. 1970, 438-472.

A comprehensive annotation on three decisions of the President of the District Court at Breda (the Netherlands) concerning complaints of international companies producing washing products against Dutch firms which imported and sold in Holland soap products, put in circulation in Germany and carrying the trademarks attached to the products by the German subsidiary of the international companies. Use of the trademark to stop imports into Holland was not considered in violation of Articles 85 and 86. The author concludes that if a similar case were to come before a court again, a different judgment will probably be given.

### 9. Harmonization of legislation

- G. Gosset, "Bases juridiques, justification économique et degré d'avancement du rapprochement des impôts directs dans le Marché Commun", (1970) R.M.C. No. 135, 349-364.

Harmonization of laws concerning direct taxation is to be based on Article 100 of the Treaty. The harmonization programme of the Commission, communicated to the Council on June 26, 1967, mentioned three groups of especially urgent problems: (1) concentration of enterprises; (2) free movement of capital; (3) writing-off policy. Review of these subjects and comments on the Werner proposal and the Commission Memorandum on industrial policy. Lastly, treatment of fiscal problems to be solved in connection with the creation of a European company.

- Anne and J. Limpens, "Les problèmes actuels du rapprochement régional des droits nationaux" 46 Rev.dr.int. et dr.comp. 1969, 217-242.

Unification and harmonization of laws in a regional context (Benelux, Scandinavia, EEC, Council of Europe). Much waste of time and effort could be avoided if every organization could be entrusted with unification projects suiting its needs and capabilities. The authors make suggestions for a better classification of "unifiable" fields of law and the settings in which the various problems could be tackled.

A. Schaub and J. J. Beuve-Méry, "Die Beseitigung der technischen Handelshindernisse zwischen den EWG-Mitgliedstaaten durch Richtlinien gemäss Art. 100 EWG", 5 EuR. 1970, 135-160.

The authors advocate that harmonization of laws should be effected not only by directives but also by regulations. The article essentially treats the practical consequences of the Council Directive of October 23, 1962 (J.O., p. 2645/1962) concerning colouring matters in food.

#### 10. *Economic and Monetary policy*

H. Burgard, "Einige Bemerkungen zu Artikel 106 EWG", (1970) *Integration*, 104-108.

A short study on the structure and legal character of Article 106 concerning liberalization of payments between States connected with the movement of goods, services or capital, and any transfers of capital and wages.

W. Schlichting, "Sur la voie de l'union économique et monétaire", (1970) R.M.C. No. 133, 255-263.

A discussion of well-known arguments for and against economic and monetary unity. Review of work on the co-ordination of member States' policies in these fields since 1958 in the framework of the various committees (Cyclical Policy Committee, Monetary Committee, Budgetary Policy Committee, etc.). The 1964 and 1969/70 Council debates and the consultations of the Ministers of Finance since 1959 are considered.

E. Thiel, "Überlegungen zur europäischen Währungs Kooperation", (1970) *Integration*, 214-222.

The memorandum of the Commission of February 12, 1969, started the discussion on systems of short-term and medium-term financial assistance for States with balance of payments difficulties. Commentary on the Werner proposals. Suggestion that the EEC is entitled to a special Community quota of the Special Drawing Rights of the IMF to support a member State in difficulties.

R. Toulemon, "Les idées nouvelles en politique industrielle", (1970) R.M.C. No. 136, 385-393.

Analysis of the Commission's memorandum on industrial policy of March 17, 1970, shows that this document consists of three parts: 1. new data about the industrial situation in the Community; 2. proposals designed to create homogeneous conditions for industry (harmonization of legal, fiscal and financing conditions in the member States); 3. original proposals for the acceleration of industrial progress in all sectors.

#### 12. *Energy policy*

NN, "La politique énergétique commune", (1970) R.M.C. No. 134, 300-310.

Historical survey of the treatment of energy problems in three different treaties, administered by three executives. The Protocol of Agreement concerning Problems of Energy of April 21, 1964 (J.O. p. 1099/64). The general principles of an energy policy as laid down in the document "First Orientation" adopted in 1969. Review of the situation in the sectors of coal, oil, gas, electricity and nuclear energy. Account of existing measures and outline of future action in the field of energy.

13. *Commercial policy*

J. F. Beseler, "Die Gemeinsamen Einfuhrregelungen der EWG", 16 A.W.D. 1970, 308-314.

An exposé concerning Regulation No. 1025/70 establishing a common system for imports from non-member States (J.O. 1970, L 124) and Regulation No. 109/70 relating to a common system applicable to imports from countries with a planned economy (J.O. 1970, L 19). See also Cae-One Kim in 8 C.M.L.Rev. 1971, 148 *et seq.*

J. F. Beseler, "Die Gemeinsamen Ausführregelungen der EWG", 16 A.W.D. 1970, 109-112.

The contents of Regulation No. 2603/69 (J.O. 1969, L 324) introducing a common system for member States' exports to third countries. See also Cae-One Kim in 8 C.M.L.Rev. 1971, 148 *et seq.*

14. *Social policy*

G. Schnorr, "L'apport du droit communautaire au droit du travail et de la sécurité sociale", 6 Cah.dr.europ. 1970, 544-556.

The points of contact and the interaction between the Community's social policy and the member States' labour and social security legislation. Identification of selected problems in the sphere of labour relations and social security within the Common Market.

16. *Company law—Bankruptcy law*

B. C. de Die, "Vennootschap als ondernemingsrecht", 18 S.E.W. 1970, 487-497.

The current reform of Dutch company law appears to introduce structural changes which are an important element in the development of this law into an industrial relations legislation, sanctioning present-day thinking on the role of capital, management and labour within joint-stock companies.

H. C. Ficker, "Zur Zusammenfassung europäischer Unternehmen", 23 N.J.W. 1970, 1569-1575.

Across-frontier co-operation and amalgamation of firms established in various member States encounters many problems for the solution of which several avenues are being explored. The author discusses the solutions suggested in the Commission's draft Statute for a European Company (merger, holding company, joint subsidiary) and the draft Convention based on Article 220, para. 3, of the Treaty. A lucid analysis is offered of other possibilities for encouraging industrial activities on a European scale (centralized management of a group of companies—"konzern" relationships). Finally, the problem of workers' participation and the anti-trust aspects of the various forms of industrial co-operation are dealt with.

P. Sanders, "De nieuwe structuren en de EEG", 48 N.V. 1970, 149-153.

One of the major innovations in the new Dutch company legislation is concerned with the composition and the authority of the supervisory board (Raad van Commissarissen) of joint-stock companies. The author describes the new system and compares the provisions on workers' participation in the management of companies in Holland, Germany and France, with the system elaborated by the Commission in the draft Statute for a European Company.

### 18. *Industrial property*

A. Braun, "La convention et la loi uniforme Benelux en matière de marques de produits", 85 J.T. 1970 No. 4697.

A. Deringer, "Fortschritte auf dem Wege zum Europäischen und EWG-Patent", 16 A.W.D. 1970, 204-207.

J. A. J. M. Geertman, "De eenvormige Beneluxwet op warenmerken", 48 N.V. 1970, 19-23.

W. L. Haardt, "De Benelux Merkenwet", 13 T.V.V.S. 1970, 161-167.

Like the three preceding articles, this study deals with the Benelux Convention on a uniform trade mark law, which has recently come into force in the three Benelux countries. See also on the same subject: J. P. van der Stock, 33 R.W. 1970, 1665-1676.

K. Haertel, "Die Entwürfe der Übereinkommen über ein europäisches System der Erteilung von Patenten und über ein Patent für den Gemeinsamen Markt", (1970) G.R.U.R.Int., 95-101.

Discussing the draft Conventions of 1969 concerning a European system for issuing patents and the creation of a European patent for the Common Market, the author concludes that adoption of these Conventions will simplify the acquisition of patents very considerably and put such patents on a par with other patents throughout the world, as far as their economic importance is concerned. See also A. Deringer, *supra*.

U. Schatz, "Die Erschöpfung des Patentrechts im Recht der Mitgliedstaaten der EWG und nach dem Vorentwurf eines Übereinkommens über ein europäisches Patent für den Gemeinsamen Markt", (1970) G.R.U.R.Int., 207-214.

The exhaustion of patent rights in the light of the laws of the member States and the draft Convention for a European patent for the Common Market.

### 19. *External relations*

H. G. Krenzler, "Die Beziehungen der EWG mit den Mittelmeerländern", 26 E.A. 1971, 139-148.

A survey of the economic and political relations between the EEC and the countries bordering on the Mediterranean. These relations are essentially based on partial and total association agreements as well as on preferential and non-preferential trade agreements. Though these agreements were subjected to heavy criticism in GATT, they encompass so much more than the projected system of generalized preferences that the author sees no reason to abolish them.

(1970) R.M.C. No. 134, 283-287 and (1970) R.M.C. No. 135, 337-340.

Two short articles on the commercial agreement between the EEC and Yugoslavia (J.O. 1970, L 58 and L 67), and between the EEC and Israel and Spain (J.O. 1970, L 183; J.O. 1970, L 182).

## VI. COUNCIL OF EUROPE

### b. Human rights

E. A. Alkema, "Vier protocollen bij het Europese Verdrag tot bescherming van de Rechten van de Mens geratificeerd door België", 34 R.W. 1970, 777-784.

Ratification by Belgium of four additional Protocols to the Convention for the protection of human rights and fundamental freedoms, namely Protocol



No. 1 (additional fundamental rights), Protocol No. 2 (jurisdiction of the Court to render advisory opinions), Protocol No. 3 (procedure before the Commission) and Protocol No. 4 (freedom of movement).

M. A. Eissen, "Convention européenne des droits de l'homme et Pacte des Nations Unies relatif aux droits civils et politiques: problèmes de 'coexistence'", 30 *Zeit. A.O.R.V.* 1970, 237-262 and 646-649,

The character of the European Convention and of the UN Covenant of Civil and Political Rights. The author indicates methods to prevent possible conflict in the application of these two documents.

"Human Rights, The European Convention and its national application", 18 *A.J.C.L.* 1970, 233-366.

Introduction by T. Bürgenthal; articles by Robertson (educational aspects), Pescatore (Human Rights in the European Communities), Daintith and Wilkinson (British reflections on the *Neumeister* and *Weinhoff* cases), Doebling (Human Rights and the West-German Constitution), Espersen (Danish views), Velu (Article 6 of the Convention in Belgian law), Khol (Human Rights in Austria).

Sean MacBride, "The European Court of Human Rights", 3 *N.Y.U. Journal of International Law and Politics* 1970, 1-15.

A short survey of the implementation of human rights in Europe by way of the European Convention and its institutions. Defects in the implementation machinery and reforms to be envisaged. Recent trends in the international protection of human rights in Asia, Latin America and the United States.

E. Schwelb, "The international protection of human rights: a survey of recent literature", 24 *International Organization* 1970, 74-92.