

## SURVEY OF LITERATURE \*

### I. INTEGRATION, GENERAL ASPECTS

G. Demez, "La Cour de justice Benelux", 12 C.D.E. 1976, 149-179.

R. Dobbelsstein, "Britain's European Policy and the Western European Union (W.E.U.)", 54 *Revue de Droit International et de Sciences Diplomatiques et politiques* 1976, 123-160.

C. Grati, "The 'europeanization' of Communism?", 55 *Foreign Affairs* 1977, 539-553.

In the communist world since 1917 a tendency on the part of the Russian communist party to complete domination is apparent, as well as a resistance on the part of various parties against this domination. Now a third tendency is becoming apparent, that of Eurocommunism, which is specially to be found in Italy, Spain and also France, but which also finds support in a number of East European countries. This article discusses three problems: 1. How pure is Eurocommunism in terms of Marxist theory? The author concludes that since the Second World War most West European parties have operated in a constructive way and with respect for human rights. 2. Can Eurocommunism be "exported" to East Europe? 3. What will be the reaction of the Soviet Union? The possibility of military intervention remains, but with diminishing likelihood.

Stanley Hoffmann, "L'évolution de l'Europe et la politique américaine", 41 *Politique Etrangère* 1976, 371-385.

M. Lvov, "The European Conference: Experience and Significance", 1976 *International Affairs* no. 4, 41-51.

Lazar Mosjow, "L'Europe et le monde après Helsinki", 29 *Studia Diplomatica* 1976, 95-105.

W. G. F. van Oosten, "Supranationaliteit: principes, paradoxen en competenties", 10 *Internationale Spectator* 1976, 612-618.

Th. H. Moran, "Multinational corporations and the political Economy of U.S.—European Relations", 30 *Journal of International Affairs* 1976, 65-79.

A short but interesting discussion of the European response to "le défi américain". The European countries have followed a policy whereby the emergence of "national champions" in leading, important industries is stimulated. Cooperation between these champions, however, has not proved easy, since each state wants to see a "juste retour". Discussion of the frictions between one U.S. and Europe which followed this during the monetary and energy crises, together with some recommendations to the U.S. as to how it could better control its transatlantic operating multinationals, complete the article.

\* See for the classification of subjects and list of abbreviations, 14 C.M.L.Rev. 1977, 241-243.

Michel Rocard, "French socialism and Europe", 55 *Foreign Affairs* 1977, 554-560.

The author, highly-placed in the French Socialist Party, proceeds from the assumption that the left will come to power in France next year. In relation to Europe, the emphasis will in the first place be laid on reduction and control of weapons and troops. As far as the EC is concerned: it is necessary, but so far has only brought about a capitalistic integration. France must be able, without interference from the EC, to build up a socialist society, for instance, by means of a right of veto. Europe still lacks an identity, and will acquire one not by the elimination of tariff barriers but by means of a constructive social policy.

A. H. J. Swart, "Het Benelux-Gerechtshof en het vertrouwelijk karakter van ministeriële beschikkingen", 52 *N.J.B.* 1977, 170-174.

R. Nael Tannahill, "The future of the communist parties of Western Europe", 139 *World Affairs* 1976, 141-155.

Discussion of the future policy of West European communist parties. Participation in coalitions (France, Italy) will integrate them further into the existing political system. The present tendency towards greater independence on the part of the communist parties in relation to Moscow will continue, and they will be seen to take more account of the realities of Western European politics (EC) and will operate within the national parliamentary systems.

John K. Wildgen en Werner J. Feld, "Communist Publics and Activist: Some implications for European Integration", 15 *J. Comm. Mark. Studies* 1976-77, 77-92.

The findings of this interesting research can be summarized as follows: "Institutional-affective" support for the EC increases with political activism; communist activists form no exception to this rule". "Utilitarian" support for the EC also increases with political activism, but decreases again at the highest levels of activism. Here communist activists in France and Italy form a clear exception: their "utilitarian" support is much lower than that of other party activists. These findings tend to justify the fears some people have about the "real intentions" of communist elites in France and Italy "Institutional-affective support" is a good indication of people's attitudes towards the day-to-day functioning of the EEC.

## II. EUROPEAN COMMUNITIES

### A. COMMON SUBJECTS

#### 1. General

F. Herbert, "Beknopt overzicht van de rechterlijke en academische samenkomst in het Hof van Justitie van de Europese Gemeenschappen te Luxemburg op 27 en 28 September 1976", 25 *S.E.W.* 1977, 97-105.

Report of the Luxembourg conference of September 1976 where a number of reports dealing in particular with interpretation methods were presented.

P. Karpenstein, "Die Entwicklung des Gemeinschaftsrechts", 11 *EuR* 1976, 172-183.

D. McLaughlin, "The Work and Aims of the Economic and Social Committee of the

EEC and Euratom", 15 J. Comm. Mark. Studies 1976, 9-29.

Description of the formation and tasks of the ECOSOC, which has gradually begun to play a modest but not insignificant part in the Community decision-making process. Of particular importance in this development was the granting of the right of initiative to the ECOSOC by the summit meeting of 1972.

## 2. Relationship Community/National Law

Ami Barav, "Some aspects of preliminary rulings in EEC law", 1977 E.L.Rev. 3-14.

This article investigates the distinction between preliminary procedures concerning the validity of community acts and these concerning a point of interpretation.

Y. Davras, O. Pirotte, "La cour constitutionnelle fédérale allemande, a-t-elle mis en danger la primauté du droit communautaire?", 12 R.T.D.E. 1976, 415-438.

A commentary on the decision of the *Bundesverfassungsgericht* of May 29, 1974, in which the court held that it was competent to exercise a control over Community Law insofar as the provisions relating to fundamental rights in the German Basic Law are concerned. On the one hand, the authors are critical of the judgment, for reasons of national as well as Community Law: in particular they find that it violates Article 177 EEC. On the other hand, the decision has positive aspects: in the first place, the court confirms its earlier very positive case law on the relationship between Community and national law. Further, the court recognises that Article 24 GG has the consequence that the German State is not exclusively competent within its own boundaries. Rather, it is a question of a "*souveraineté intégrée*" composed of national and Community elements. Finally, the decision denied the competence of lower courts to control Community Law in relation to fundamental rights, something which has occurred a number of times in the past.

A. Durand, "Restitution of Damages, national court or European court", 1 E.L.Rev. 1976, 431-444.

The author discusses the situation which can arise when a national decision (or failure to act) conflicts with valid Community Law, or where a correct national decision is based on an invalid Community act. Who is then responsible for the damage which arises as a result of this and before which court must the action be started? In some instances it appears necessary to commence actions at the same time before a national court and the Court of Justice, although in principle the double action is not regarded as desirable.

## 4. Institutional

R. Biegel, "Der EuGH als gesetzlicher Richter i.S. Art. 101 Abs. 1 Satz 2 GG im Vorlageverfahren nach Art. 177 EWGV?", 22 R.I.W./A.W.D. 1976, 413-416.

R. Burgert, "De nieuwe Europese Rekenkamer", (1976) *Openbare Uitgaven*, 149-159.

In July 1975 the Treaty was amended to provide for the creation of a European Court of Accounts, which will probably begin to function in 1977. Whether this will improve the situation will depend very much on the expected new financial regulation.

R. Bieber, M. Palmer, "A Community without a capital", 15 *Jour. Comm. Mark. Studies* 1976, 1-9.

After a short survey of the difficulties caused by the dispersion of the seats of the Community institutions and organs, the authors go deeper into the necessity of a European capital. In particular, the constant commuting of the European Parliament between Brussel, Luxembourg and Strasbourg, prejudices the development of a genuine parliament.

K. H. Buck, "Die Haltung von KPI und KPF gegenüber Direktwahl und Funktionen des Europaparlaments", 7 *Zeitschrift für Parlamentsfragen* 1976, 209-220.

Hubertus Dessloch, "Europäische Wahlen 1978?", 28 *Politisch Studien* 1977, 117-126.  
The preparations for direct elections in the Federal Republic.

P. van Dijk, "De Franse Conseil Constitutionnel over de grondwettigheid van de rechtstreekse verkiezingen van het Europese Parlement", 25 *S.E.W.* 1977, 186-191.

J. Feidt, "L'activité du Parlement européen en 1975", *R.M.C.* nr. 198, 1976, 330-346.

N. D. Gresch, "Die supranationalen Fraktionen im Europäischen Parlament", 7 *Zeitschrift für Parlamentsfragen* 1976, 190-209.

P. Gori, "L'avocat général à la cour de Justice des communautés européennes", 12 *C.D.E.* 1976, 375-394.

Discussion of the status and role of the Advocate-General at the Court of Justice. Comparisons with the functions of other institutions, e.g. *procureur-général* or *commissaire du gouvernement* often made by other authors, are discouraged. Some suggestions are also made with a view to increasing the role of the Advocate General in relation to Community case law.

Michael Palmer, "The role of a directly-elected European Parliament", 33 *The World Today* 1977, 122-130.

Palmer makes a number of suggestions—described by him as minimal—relating to the way in which the EP, once directly elected, could exercise its powers. On the *legislative* front even national parliaments are inactive, and on the Community level this would threaten the role of the Commission. A kind of right of initiative for the Parliament is, however, imaginable; this could proceed via a "private member's Bill" or on proposal from the Commission. On the *control* side, the Parliament could, together with the Court of Accounts, acquire a better hold on the implementation of the budget. Also, it could develop more its right to put questions. The strengthened party organisation in the Parliament should lead to a greater political control over the Commission and even its individual members. Further, the Parliament should attempt to make both the Council and Coreper more responsible. Here use of the hearing instrument would be fruitful.

G. Spénales, "Les elections du parlement européen", 29 *Studia Diplomatica* 1976, 427-443.

F. A. Wijsenbeek, "Europese partijvorming met het oog op de directe verkiezingen", (1976) *Nieuw Europa*, 114-124.

##### 5. Adhesion

Peter Hansen, Melvin Small & Karen Siune, "The Structure of the Debate in the Danish EC Campaign: A Study of an Opinion-Policy Relationship", 15 *J. Comm. Mark. Studies* 1976-77, 93-129.

Thorough analysis of the way in which the public, parliamentary elite and the media influenced each other in the campaign preceding the EC referendum. A clear refinement in the argumentation on both sides became evident, largely because of the interaction between people and parliament.

Henry Valen, "National Conflict Structure and Foreign Politics: The Impact of the EEC Issue on Perceived Cleavages in Norwegian Politics", 4 *European Journal of Political Research* 1976, 47-82.

In the Norwegian referendum campaign, political alliances were formed which cut right across traditional lines. This new division in Norwegian politics has had a destructive effect on the party system, which was also apparent in later elections.

Bo Sårilvik, Ivor Crewe, James Alt & Anthony Fox, "Britain's Membership of the EEC: A Profile of Electoral Opinions in the Spring of 1974—with a Postscript on the Referendum", 4 *European Journal of Political Research* 1976, 83-113.

A largely descriptive article on the ramifications of public opinion relating to EC membership. Not only the referendum itself, but the way in which the Wilson Government, over the heads of a majority in the Labour fraction and the party organisation, appealed directly to the electorate, forms a breach with normal British political practice.

##### 6. External relations, associations and development

A. Bleckmann, "Der gemischte Vertrag in Europarecht", 11 *EUR* 1976, 301-312.

Discussion of the legal status of international agreements concluded both by the Communities and the Member States with third countries. On the one hand, these agreements may fall within the exclusive competence of the Communities, in which case the reason for Member State participation may be the wish of the third country to make the latter also responsible for implementation, or the wish of the Member States to indicate their connection within the EC by letting the EC also sign the agreement. The opposite case, where the EC concludes an agreement falling within the competence of the Member States, can be explained by the fact that here it is a question, of "*punctuelle Vertragsdurchbrechung*". In view of the participation of the Community in the conclusion of the "mixed" agreements, the resort to Art. 236 is not necessary here. However, where the EC is not competent, or only partially competent, to conclude an agreement in a particular field, all Member States should ratify the agreement in order to bring it into force.

Fritz Fransmeyer, "Zum Stand der Wirtschaftspolitischen Beziehungen zwischen REW und EG", 32 *E.A.* 1977, 9-17.

Discussion of the moves towards formal contacts between Comecon and the E.C. Particular obstacles in the negotiations will be the most-favoured-nation and non-discrimination principles.

A. W. Koers, "Enige ontwikkelingen ten aanzien van de externe bevoegdheden van de EEG inzake de zeevisserij", 25 SEW 1977, 191-219.

Karl Unger, "Die EG und die Entwicklungsländer. Das Abkommen von Lomé als Grundstein einer neuen Weltwirtschaftsordnung", 22 *Blätter für deutsche u. internat. Politik* 1977, 301-317.

An attempt to determine whether, after 2 years in operation, the Lomé Convention really does amount to a first step towards a society based on the spirit of co-operation between industrialized and developing lands. On the basis of a neo-marxist analysis, the author reaches a mixed conclusion. Although he has a positive opinion on some aspects, he is still rather distrustful of the material motives which are behind the convention. For the foreign reader, it is particularly interesting to note the author's assumption that German and EC interests are identical, although he concedes that the Lomé Convention was the product of an internal EC compromise.

"Vers un nouveau partnership: l'accord cadre communauté Canada", 20 *Les Annales du Marché Commun* 1977, 3-7.

First of two articles containing quantitative material on the economic relationship EC-Canada, as background to the co-operation agreement concluded by them.

Wolfgang Vogel, "Abkommen der Europäischen Wirtschaftsgemeinschaft mit den Maghreb- und Maschrek ländern. Bilanz der globalen Mittelmeer-Politik der Gemeinschaft", 32 E.A. 1977, 53-60.

Discussion of the agreements concluded with the Maghreb lands (April 1976) and the Maschrek lands (Oct. 1976) in the light of the guiding principles for a Mediterranean policy formulated at the Paris summit of 1972, of which the most important are: extension of trade, development aid and stability. In the agreements, the EC renounces the usual reciprocity of trade concessions. First steps are also taken in relation to financial co-operation, and co-operation in matters of social security. The author places these treaties in the context of the general commercial policy of the EC, and distinguishes thereby policy which is directed to a particular area and general policy. The regionally-directed policy is more developed, though the more recent texts appear to be more reserved.

Steven J. Warnecke, "The United States and the European Community: The changing political and economic context of trade relations", 30 *Journal of International Affairs* 1976, 21-36.

A rather superficial article, which also contains some naive truths and oversimplifications.

## C. EUROPEAN ECONOMIC COMMUNITY

## 1. General

A. Bleckmann, "Considérations sur l'interprétation de l'article 7 du Traité CEE", 12 R.T.D.E. 1976, 469-482.

Analysis of the scope of application of the prohibition of discrimination on grounds of nationality laid down in Art. 7 EEC. Different treatment is only admissible if it is based on other, factual grounds than nationality alone, but these other grounds may not be in conflict with, the Treaty. Art. 7 forbids both direct and indirect discrimination in his conclusion, the author goes deeper into the question whether the Community has the competence at all to formulate general principles of law which are binding on the Member States.

## 2. Agriculture

A. Volk and W. Wallace, "Wie gemeinschaftlich ist die Fischerei-politik der Europäischen Gemeinschaft?", 32 E.A. 1977, 73-85.

The Community fisheries policy came into being at the impetus of 3 factors: 1) the exploitation, and conservation of fish stocks, 2) the conflicts of interests within and between the Member States, 3) external pressure, as seen in the unilateral actions of third States and in the negotiations concerning the law of the sea. The reactions of the EC show that it is better able to solve external than internal problems. A two-hundred mile zone has been created and negotiations with third States have begun, though progress to date is disappointing. The internal regulation of fisheries still gives rise to the greatest problems.

## 4. Company law

Ian Fletcher, "The proposed Community convention on bankruptcy and related matters", 2 E.L.Rev. 1977, 15-33.

A thorough discussion of the draft convention, based on Art. 220 EEC.

## 5. Competition and industrial property

W. Alexander, Note on Cases 51/75, *EMI v. CBS* and 119/75, *Terrapin v. Terranova*, 12, C.D.E. 1976, 411-455.

J. J. Burst, R. Kovar, "Sur une jurisprudence récente de la Cour de Justice des Communautés européennes en matière de propriété industrielle", 50 *La Semaine Juridique* 1974, 2752.

H. W. Daig, "Zum Begriff der 'aufeinander abgestimmten Verhaltenweisen nach Art. 85 EWG-Vertrag, unter besonderer Berücksichtigung des 'Zuckerurteils' des EuGH vom 16.12.1975", 11 EuR 1976, 213-237.

P. Eeckman, Notes on Cases, 41/75 and 119/75, 25 S.E.W. 1977, 131.

D. J. Gijlstra and D. F. Murphy, "Distribution systems and EEC competition Law the law as it stands", (1976), *Legal issues of European Integration*, 82-117.

Peter Hay, Dieter Oldkorp, "EMI/CBS and the rest of the world: trade mark rights and the European Communities", 25 A.J.C.L. 1977, 120-152.

V. Korvah, "Patents and Competition Law: Recent Decisions of the European Commission", 1 E.L.Rev. 1976, 185-197.

C. I. F. Leigh: D. Guy: "Exclusive Agency Agreements in the EEC", 1 E.L.Rev. 1976, 282-298.

J. Micó, note on *EMI Records Ltd. v. CBS U.K. Ltd.*, 11 J.W.T.L. 1977, 78-84.

Bryan Morris, "The Application of Article 36 to Intellectual Property", 1 E.L.Rev. 1976, 515-534.

Survey of the case law of the Court of Justice relating to intellectual and industrial property rights. The author reaches the following conclusions: In the first place, it is a question here of the creation and functioning of the common market, an economic unity, with as few obstacles to trade as exist within a Member State. For this reason, Art. 36 as an exception, must be interpreted narrowly. In the second place, Art. 36 can only be applied and explained in the context of the individual case. The case law makes it clear that not the existence of a right, but only its exercise, is affected by Community Law. A better distinction is the one made between the "specific object" of a right and its other characteristics. It is a pity that the Court, in defining the specific object of a right, has more regard for the procedural rights of the owner than the economic justification for the granting of property rights. In conclusion, it is increasingly clear that a Community measure to delimit the respective areas of the free movement of goods and of intellectual and industrial property rights is urgently necessary.

P. J. Slot, note on the *Sugar Cases*, 25 S.E.W. 1977, 62-86.

K. Toepke, "Schadenersatz bei EWG-Kartellverstößen", 22 R.I.W./A.W.D. 1976, 279-285.

Chr. von Bar, "Rechtsprechung des EuGH zum Warenzeichenrecht und Eigentums-garantie des Art. 14 GG", 23 R.I.W./A.W.D. 1977, 94-98.

Discussion of the *Hag*, *Terrapin* and *Centrafarm I and II* judgments, and their consequences for German trade mark law.

"Vereinbarkeit eines Vertriebssystems mit EWG-Kartellrecht, 23 R.I.W./A.W.D. 1977, 158-161.

Discussion of Commission Decision of 21.12.1976 in an Article 85 procedure (*Junghaus*), see 1977 O.J. h 30/11.

### 7. Economic and monetary policy

Jörg Beyfuss, "Aufgaben und Probleme einer europäischen Wirtschaftspolitik", 28 *Politische Studien* 1977, 127-134.

N. Vaulont, "Die Zollunion im Spannungsfeld internationaler Währungsverschiebun-



gen", 23 R.I.W./A.W.D. 1977, 74-80.

Analysis of the effect of recent monetary perturbations on the European customs union, and of the manner in which the European Unit of Account might be used to restore a measure of balance.

#### 9. *Energy Policy*

Wilfrid L. Kohl, "The United States, Western Europe and the Energy Problem", 30 *Journal of International Affairs* 1976, 81-96.

#### 10. *Environment policy*

H. H. Bungarten, "Europees Milieubeleid", (1976) *Internationale Spectator*, 669-673.

H. Booth, A. Green, "The European Community Environment Programme and United Kingdom Law", 1 E.L.Rev. 1976, 444-464 and 535-554.

Thorough survey of the Community action programme for the environment with reference to the relevant common law and statutory provisions in the United Kingdom. Attention is also given to the second action programme for 1977-1981.

#### 13. *Free movement of workers and social security*

P. Daillier, "Liberté d'accès aux activités professionnelles et droit communautaire. Le cas particulière des activités maritimes", 12 R.T.D.E. 1976, 441-461.

Discussion of the problems of free movement of persons with particular reference to the maritime sector. Although for a long time the application of the rules of free movement in this area was uncertain, since the judgment in Case 167/73 and others in the area of free movement, the community institutions can require a strict implementation of treaty provisions. The author anticipates, however, that the Member States in the Council will again try to create the necessary exceptions.

C. Tomuschat, Note on Case 48/75, *Royer*, 12 C.D.E. 1976, 394-411.

W. Wanders, "Gleichbehandlung und Leistungszahlung in der Sozialversicherung nach EWG-Recht", 11 EuR 1976, 313-333.

The author considers in the first place the legal basis and the personal scope of application of the Community measures in relation to social security of migrant workers. Then he goes deeper into the basic principles of the legislation, in particular the equal treatment of the migrant worker and his right to payment in the Member States of acquired pension and other rights. In connection with this second principle, special attention is also paid to the attempts to coordinate Member States' legislation in regard to the payment of children's allowances.

#### 14. *Freedom of establishment and freedom to provide services*

D. J. Devine, "Establishment and services in the European Community in the light of recent case law", 9 *The Irish Jurist* 1974, 294-314.

Odette Loy, "Le dynamisme de la Cour de Justice des Communautés européennes dans la libération d'établissement et des prestations de services", 102 *Journal de droit international* 1975, 728-752.

#### 18. *Jurisdiction and recognition of judgments*

Wolfgang Grunsky, "EWG—Übereinkommen über die gerichtliche Zuständigkeit und die Vollstreckung gerichtlicher Entscheidungen in Zivil- und Handelssachen in deutsch-italienischer Rechtsverkehr", 23 *R.I.W./A.W.D.* 1977, 1-10.

Particular attention is paid here to the bilateral treaty between Germany and Italy on the subject of jurisdiction and recognition of judgments, and to the lacunae which still remain after the EEC Convention.

Erste Urteile des Europäischen Gerichtshofs zur Auslegung des EWG-Gerichtsstands- und Vollstreckungsübereinkommens, mit Urteilsanmerkung von H. Linke, 23 *R.I.W./A.W.D.* 1977, 40-47.

E. Mezger, "Drei Jahre EG-Zuständigkeits- und Vollstreckungsübereinkommen in Frankreich", 22 *R.I.W./A.W.D.* 1976, 345-350.

#### 20. *Regional policy*

Dietmar Görgmaier, "Europa der Regionen: Zum Beispiel ARGEA1p, Probleme grenzüberschreitende Raumplanung in den Alpen", 28 *Politische Studien* 1977, 135-148.

M. Grant, "The European regional development Fund", 1 *Journal of Planning and Environment* 1977, 232-235.

Brief description of the operation of the European Fund for Regional Development, and of the procedure to be followed in the U.K. for requests for assistance from the Fund.

#### 21. *Social Policy*

P. VerLoren van Themaat, "Nogmaals het Defrenne-arrest: een juiste sprongmutatie in de rechtspraak?", 25 *S.E.W.* 1977, 90-97.

#### 22. *Taxation*

B. Bracewell-Milnes, "Tax credits under the proposed EEC Directive on Company Taxation, from bilateral to multilateral reckoning", (1976) *Intertax*, 277-284.

Discussion of the draft directive and its likely consequences. Both in regard to the form and extent of reckoning, the French system has served as a model. The discrimination in foreign relations can be solved in a number of ways. As well as bilateral reckoning, multilateral "clearing" is also possible.

### III. COUNCIL OF EUROPE

#### A. GENERAL

U. Wassermann, "Council of Europe: Products liability convention", 11 J.W.T.L. 1977, 192-197.

On 27-1-77 a draft Convention was submitted for signature to the Member States on the question of product liability in the event of personal injury or death. At the same time, a proposal for a directive was submitted by the Commission of the EC to the Council.

#### B. HUMAN RIGHTS

Anthony Morgan, "European Convention on Human Rights, Article 32: What is wrong?", 1 *The Human Rights Review* 1976, 157-175.

Whenever the European Commission for Human Rights does not succeed in bringing about a satisfactory settlement between parties to a dispute, the issue comes automatically before the Committee of Ministers, when within 3 months no appeal is made to the Court. The Committee then reaches a decision on the basis of Art. 32 of the Convention with a two-thirds majority as to whether there has been a violation of the Convention. The author comments on the fact that what is in fact a political organ—the Committee—has under this provision a legal function. He further considers whether cases of a particular kind come before the Committee. The most important question which arises is: what is to happen if the necessary 2/3 majority is not reached. This happened not long ago in the *Huber* case, and there is clearly a gap here in the treaty.