Chapter I

An American Lawyer Views European Integration—An Introduction

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I. A PERSPECTIVE

A. A "Prophecy"

The next few years will reveal whether the European Economic Community with its Common Market will in fact become "one of the most important undertakings of the Twentieth Century" as prophesied by a group of prominent American businessmen in 1959.¹ This is a hazardous prediction in a century which has already been rich in momentous events, and which, viewed from the mid-century vantage point, promises such important future developments.

If the Community becomes a reality in the image of the Treaty of 1957, a single market will be created within the territories of France, the Federal Republic of Germany, Italy, Belgium, the Netherlands and Luxembourg, comprising some 170 million people; this single market will result in rising living standards, rapidly growing productivity, and a more important role for the six countries in world trade. If the economies of the six Member States coalesce, a new and powerful economic entity of obvious economic and political importance will emerge. Should economic integration lead to political integration, the face of continental Europe would undergo a profound change—a change which would have world-wide repercussions.

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In the two years which have elapsed since the Treaty came into effect most of the steps envisaged by the Treaty have been taken in accordance with its timetable. Important questions have also arisen concerning the relationship of the Community to other Western European as well as non-European states.

B. A GLANCE AT HISTORY

The European Economic Community is an outgrowth of the European movement, a complex composite of political and economic forces which have come to the fore in strength since World War II. Europe, devastated and weakened by war and the loss of colonies, faced the two emergent giants, the United States and the Soviet Union. Its division by trade barriers underlined its weakness. Determined to build on pre-war ideas of a United Europe, on the feeling of the people that there must be no more internecine European wars and on a variety of special national interests favoring such a movement, a small group of individuals pressed for unification of Europe. NATO provided the defense shield. The Organization for European Economic Cooperation (O.E.E.C.) had paved the way in the economic field. This body, which before its reorganization had as members 18 countries of "Greater Europe," 2 was originally set up to help distribute the all-important Marshall Plan aid. When this task was completed, O.E.E.C. worked with substantial, but nonetheless partial, success to free intra-European trade from quantitative import restrictions. Through its European Payments Union it provided a European clearing house for multilateral settlement of accounts. Belgium, the Netherlands and Luxembourg (together referred to as "Benelux") agreed on a closer association in a customs union. The Council of Europe originally conceived of as a framework for a federated Europe provided a "European" forum for an organized debate by national parliamentarians of fifteen European states. Finally, in 1952 the Six of "Little Europe" (Benelux, France, Germany, and Italy) established the European Coal and Steel Community which represents the first serious effort to advance toward a federal structure on the Continent of Europe. Institutionally, the Coal-Steel Community represented a compromise

2 Austria, Belgium, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom. In addition the United States and Canada were associate countries, Yugoslavia was invited to be represented by an observer at meetings of the Council and of the subordinate bodies, and both Yugoslavia and Finland participated in certain activities of the Organization.
between the federalists who would subordinate national states to a European federal state possessing its own territorial sovereignty, and those who would not accept any limitations on the sovereignty of the Member States beyond revocable Treaty obligations directed at international cooperation within organizations such as the O.E.E.C.³

The next move was the 1952 plan for a "supranational" European Defense Community among the Six of "Little Europe" which envisaged a European Army. When it foundered in the French Parliament two years later, the cognate project for a European Political Community was also abandoned. Political integration, it was said, should be deferred until economic integration lays the necessary groundwork; economic integration must proceed by "sectors" within the national economies of the Six.

The movement was given new momentum by a variety of factors: the intensified efforts of the militant "Europeans" such as Jean Monnet and his Action Committee, the need for pooling national resources to develop atomic energy in Europe, and somewhat later, the Suez crisis which emphasized Europe's lack of economic, as well as of political, independence. The 1955 conference of the six Foreign Ministers in Messina established a group of governmental delegates and experts which produced the "Spaak Report," named after its distinguished Belgian chairman. On the basis of this report, approved by the Ministers in Venice in May 1956, an intergovernmental conference prepared the texts of two new treaties, one establishing the European Economic Community, the other the European Atomic Energy Community. The two treaties were signed in Rome on March 25, 1957. After rapid approval in the national parliaments, they went into effect on January 1, 1958.⁴

³ Robert Schuman, Preface, in Reuter, LA COMMUNAUTÉ EUROPEENNE DU CHARBON et de l'ACIER 7 (1953).
⁴ The Treaty establishing the European Coal and Steel Community (the E.C.S.C. Treaty) has been published in English translation by the High Authority of that Community. The Treaty establishing the European Economic Community (the E.E.C. Treaty) and the Treaty establishing the European Atomic Energy Community (the EURATOM Treaty) have been published in English translation by the Secretariat of the Interim Committee for the Common Market and Euratom in Brussels. The English text may be obtained from the Information Service of the European Communities, 220 Southern Bldg., Washington 5, D.C.

The national laws approving the E.E.C. Treaty are:

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C. RELEVANCE OF THE COMMUNITY FOR AMERICAN LAWYERS

These two volumes of essays are destined primarily for American lawyers. The European Economic Community and some of the concomitant developments are of considerable interest to an American lawyer for at least three reasons:

First of all, the American businessman has been increasingly interested in Western Europe. Rapid economic growth accompanied by rising purchasing power in that area has indicated attractive market possibilities. This prospect has been the primary reason for the dynamic upswing in American direct investment in Western Europe from about $1.7 billion in 1950 to an estimated $4.8 billion in 1959. The U.S. investment in the six countries of the European Economic Community amounts to about two-thirds of that in the rest of Western Europe (mostly the United Kingdom). However, the share of the Six has been increasing faster than the share held by the rest of Western Europe or, for that matter, by all foreign areas combined. The signing of the E.E.C. Treaty increased the attraction for American enterprises by creating a vision of a mass market within the territory of the Six similar to that of the United States. In fact, although new American investments decreased during the 1958 recession everywhere else in the world, they increased substantially in the Community countries.

The interest and involvement of the American businessman in Western Europe is growing then—whether he only sells his products, licenses his patents and trademarks, enters into joint ventures with local manufactures, or sets up his own plants in the area. His planning and his decision-making will have to adjust to the novel economic and legal framework of the Community. This in turn means that the American lawyer as his legal counselor must make the necessary adjustments in his own thinking.

The second reason why these developments are of concern to an American lawyer is because they have an impact upon the policies of the United States government. This is of importance not only to lawyers in government agencies and international organizations,
who deal with these matters professionally, but to all American lawyers, who, because of the influential role they play on the domestic scene, must keep abreast of foreign policy developments.

Since the end of the Second World War the United States government has advocated free trade on a world-wide nondiscriminatory basis. Despite the fact that the six Member States form a block whose members will grant each other tariff and quota preferences which they need not extend to it or to other non-member states, the United States has nonetheless supported the formation of the European Economic Community. It has been prepared to accept this discrimination not only in anticipation of an increased market for American goods but principally for political reasons. It has viewed the Community not as just a preferential trade arrangement, not as just a customs union authorized under the General Agreement on Tariffs and Trade (G.A.T.T.), but as an important step toward political unification of Europe. The United States has considered this unification necessary in order to provide a new framework for Franco-German relations and to preserve economic and political stability in Europe.

But other Western European countries—and most importantly the United Kingdom—fear that the successful creation of an integrated community will prejudice their own traditional trade interests in the community area and cause new American investments to concentrate there; they have therefore urged the formation of a larger free trade area which would include not only the six Community countries but all of the other members of the O.E.E.C. as well. The negotiations for the larger free trade area collapsed in 1958.

It is difficult to identify the principal reason for this collapse, but these reasons have been suggested: the reluctance as a matter of principle on the part of some Community members (particularly France) to open their national markets to goods from additional countries; the concern that the Community would be destroyed if it were "diluted" in a broader arrangement before its institutions are firmly established; the unwillingness of the United Kingdom to accept any limitation on its freedom to control its national tariff vis-à-vis the states outside the free trade area (presumably because of the Commonwealth preference arrangements); the United Kingdom's need to protect its agriculture; technical difficulties created by the untried free trade area concept; and finally, the suspicion on the part of some that the United Kingdom's primary purpose, in line
with its historic continental policy, was to prevent the emergence of a single powerful entity on the Continent.

After the negotiations had ended in a deadlock, the United Kingdom, along with Sweden, Denmark, Norway, Austria, Switzerland, and Portugal (the so-called "Outer Seven") initiated a Convention in November 1959 establishing a European Free Trade Area Association (E.F.T.A.). This Convention which was ratified in 1960 is to create a free trade area within the territories of the Seven, but it is devoid of any institutional, or other, elements of integration.

As a result of these developments the United States finds itself faced with two groups, the Six and the Outer Seven, which are not very friendly to each other and which as preferential trade groupings are inherently discriminatory against American-made goods. This unforeseen situation has occurred at a time when the U.S. balance-of-payments deficit has created a need to increase exports of American goods to Europe, when previously-existing grounds for discrimination against dollar goods based on shortages of hard currency have disappeared, when a coordinated Western effort on a far larger scale in aid of less-developed areas has become imperative, and when political unity within the Atlantic Community is as urgent as ever.

In the face of this situation, the United States took the initiative in January 1960 which led to the creation of a new forum for further study and negotiation concerning these complex questions.

A third reason justifying an American lawyer's preoccupation with the European Economic Community is this: the Community represents a new kind of organization. It is sometimes described as "supranational" because of the significant powers which the Member States have given to the Community institutions. The Community has the power to make Community law with direct and immediate impact upon the national laws of the six Member States and on enterprises in those States. It has a Community Court with the power to interpret this Community law and its interpretations bind national courts. And, finally, the Community envisages harmonization of the six national legal systems in those fields which affect the functioning of the Common Market. In the long run modifications of national law will therefore occur which will affect commerce and industry.

II. ESSENTIAL ELEMENTS OF THE EUROPEAN ECONOMIC COMMUNITY

This brief review will focus on the Community, but will make some reference to the European Free Trade Association (E.F.T.A.), since the Association is of obvious relevance to much that will be said.


When the Six established the Community, their aim was to expand their economies by increasing the effectiveness of their uses of national resources and to raise living standards; their ultimate aim was a coalescence of the six economies. The objective of the Seven in agreeing on the E.F.T.A. was firstly to enlarge trade among themselves and thus to compensate for any trade losses they may suffer in Community markets by remaining outside the Community; secondly, they hoped to strengthen their negotiating position vis-à-vis the Community.

The Six sought to achieve their objectives within a new extensive institutional framework in two ways: by establishing the so-called Common Market and by laying the foundation for the development of a common Community economic policy. The Seven of the E.F.T.A., on the other hand, sought to achieve their objectives by means of a free trade arrangement with little institutional machinery and a minimum of limitation on national policy-making.

B. THE COMMON MARKET vs. THE FREE TRADE AREA ARRANGEMENT

The Common Market of the Community has three main features:

1) In the first place it involves a customs union like that which has existed since 1950 among Belgium, Netherlands, and Luxembourg. Customs duties, import quotas and equivalent governmental restrictions upon the flow of goods will be gradually removed within the territories of the Six and a common external tariff on non-member goods will be progressively established. A common external tariff distinguishes a customs union from a free trade area such as the E.F.T.A. Thus within the E.F.T.A. customs duties and equivalent charges and quotas will be removed progressively on a time schedule substantially synchronized with that of the Community; but in the E.F.T.A. each of the seven members will retain its own
national tariff levels on non-member goods. In principle, agricultural products are subject to the tariff and quota provisions of the E.E.C. Treaty but are not within the reach of the comparable provisions of the E.F.T.A. Convention.

2) The second feature of the Common Market which distinguishes it from a simple customs union resulted from the conviction that free circulation of goods alone is not enough to ensure the most economical employment of labor and capital. The Common Market requires the removal of discriminatory governmental restrictions upon the movement of workers (so that they can move into areas of labor demand), and the removal of similar restrictions on the flow of capital and free access of individuals and companies to self-employed economic activities (so that individuals and companies may enjoy freedom of establishment and may freely supply commercial, industrial, and professional services across national frontiers). The E.F.T.A. Convention says nothing about the free movement of workers, apparently because the present national laws and international obligations of the Seven were considered adequate; although it views the prevailing international obligations with respect to the freedom of "invisible transactions and transfers" as "sufficient at present," the Convention contemplates possible future decisions of the E.F.T.A. Council in this field; and it contains a very flexible and qualified "national treatment" provision with respect to the right of establishment.

3) The third feature of the Common Market reflects the idea that effective employment of resources requires competition. Thus the Common Market includes the so-called "Common Rules" which are designed to maintain conditions of qualified free competition. Some of these rules will be enforceable by penalties against enterprises and others by proceedings against Member States. The rules prohibit specified restrictive agreements and practices by individuals or enterprises, some, but not all, governmental subsidies, dumping practices, protective taxes on imports and excessive drawbacks on exports within the Community. Public enterprises and state monopolies are to be governed by Treaty rules with certain qualifications. Indirect taxes are to be "harmonized." National laws which distort competition are to be modified so that the distortion is removed, and generally laws which have "direct incidence" on the establishment or functioning of the Common Market are to be "approximated."

There is, of course, little competition and extensive government
regulation in the field of agriculture and transportation. The E.E.C. Treaty recognizes this situation, but it provides that national regulation in these two vital areas is to be superseded by Community regulation and Community policy to be developed by the institutions of the Community.

The E.F.T.A. does not deal with transportation. Primary agricultural products (but not manufactured foodstuffs) are excluded from the provisions requiring the removal of customs duties and quotas and are to be the subject of “agricultural agreements” between members. Until the Community succeeds in the difficult task of formulating a common agricultural policy, the power of the Six to protect their agriculture, although it is subject to supervision by the Community institutions, does not, in effect, differ substantially from the power of the Seven.

No “approximation” or “harmonization” of national legislation is envisaged in the E.F.T.A. Instead of the fairly detailed “Common Rules” of the Community, the E.F.T.A. Convention contains broad and more or less general principles on restrictive practices, government export subsidies, public enterprises, dumping and the like. The violation of these principles may lead to a complaint by a member government before the Council of governmental representatives. The Council is to examine before the end of 1964 whether additional measures are necessary to deal with the effects of restrictive practices or dominant enterprises on trade between the members.

C. THE BASES FOR “COMMON POLICIES” OF THE COMMUNITY

The Common Market involves one single common external tariff against non-member goods. The Six transferred the control over this tariff to Community institutions and authorized the institutions to pursue a common commercial policy in relation to non-member states and to negotiate tariff agreements on behalf of the Community. This common commercial policy is to include uniform principles particularly in regard to tariff amendments and conclusion of tariff and trade agreements, alignment of measures of liberalization of import restrictions, export policy and protective measures such as those to be taken in cases of dumping and subsidies. Although the Community institutions will determine the tariff levels on imports from non-member countries, national authorities of the Member States will continue to collect the customs duties on these goods, and
the revenue from customs will continue to flow into national treasuries. The Treaty does, however, envisage the possibility of making customs revenues available to the Community to defray its expenses in lieu of direct financial contributions by the Member States. This substitution may be achieved by unanimous agreement in the Community Council of Ministers coupled with whatever implementing national action may be required under the constitutions of the Member States.

In sharp contrast to the Community arrangement, the E.F.T.A. members have retained control over their national external tariffs and commercial policies as well as their individual freedom to negotiate tariff agreements with third countries—subject, however, to consultation and complaints procedure in the event of trade deflections caused by differences in national tariff levels.

The Member States of the Community declared that their economic policies relating to cyclical boom and slump trends are a “matter of common interest” and agreed to consult on specific remedial measures. Moreover, the Community Commission may propose appropriate measures to the Council of Ministers; but it is only after the Council has unanimously agreed on a basic measure that it may issue implementing directives by a qualified majority. In March 1960 the Council of Ministers established a special committee on policy concerning economic trends and provided that the governments of Member States will keep the Commission informed of their projects which might affect economic trends. The E.E.C. Treaty provisions are substantially less specific than the corresponding provisions of the Coal-Steel Community Treaty, and they give no indication of the character and extent of “governmental” intervention by Community institutions which the Member governments may be prepared to accept in the event of economic strain.

The Six have retained separate budgets, currencies, central banks, reserves, and balance-of-payments. But they undertook in the Treaty to pursue an economic policy which would maintain sound currency while ensuring a high level of employment and price stability. They have accepted an obligation to coordinate their policies in order to achieve these “magic triangle” objectives. The coordination is to take place through the collaboration of governmental departments and central banks but the Community Commission may recommend to the Community Council of Ministers ways of bringing about such collaboration. A Monetary Committee helps to coordinate national policies in monetary matters but it has purely advisory
functions. The Six undertook further to treat their exchange rate policies as a matter of common interest and to accept national counter-measures, taken under the Community Commission's control, against unilateral alterations in exchange rates. Escape clauses and mutual assistance measures under the control of the Community institutions are also available to Member States which find themselves in balance-of-payments difficulties. In the present state of sound currencies and generally favorable balance-of-payments situation of the Member States, the objectives of coordination appear to be achieved; the test will only come if adverse changes occur in one or more of the Member States. But the fact that the Members have relinquished the right to re-impose restrictions and tariffs unilaterally should prove a powerful incentive to coordinate policies.

Apart from specific Treaty limitations (such as those concerning the free flow of capital) national policies regarding investment of public funds or the channeling of private investments will be circumscribed only to the extent that a common Community economic policy emerges by agreement among the members. The European Investment Bank, with a subscribed capital of $1 billion and established by the E.E.C. Treaty as a Community body, was conceived of as a supplementary source of capital patterned after the International Bank for Reconstruction and Development. Its establishment reflects the concern expressed during the negotiations that new investment capital will tend to move to those areas of the Community which are already industrialized, with the result that the less developed regions like southern Italy will fall still further behind.

In the field of social policy the Community members stated their intention to improve the working conditions of labor by means of gradual equalization in an upward direction. This result is to be achieved not only through the changes brought about by the advent of a Common Market economy but also through Treaty procedures and “approximation” of national laws.

In viewing the E.E.C. Treaty provisions in the area of economic, financial and social policy, it is apparent that the specific legal commitments of the Member States are quite limited. Yet the Community machinery offers ample potential for the development of common Community policies through Community institutions if the Member States should wish to utilize the institutions for this purpose. Should the Community institutions be allowed to make important economic policy decisions, a move towards political integra-
tion would appear unavoidable since economic policy cannot be formulated without making important political choices. However, there is no indication at this time that the governments are willing to take such a step. A unified policy is more likely to emerge as a result of national action taken in response to the economic realities of the Common Market than as a result of the decisions of Community institutions.

The E.F.T.A. Convention contains no reference to social policies nor to a common investment agency. It limits itself to providing for periodic consultations on economic and financial policies and for consideration of balance-of-payments difficulties in the Council. In general, the Council may hear complaints of member governments, recommend remedies and authorize suspension of benefits against any member government which refuses to comply with a recommendation. The basic philosophy of the E.F.T.A. is one of economic cooperation among independent states coupled with a minimum of institutional machinery and only such institutions as are fairly common in public international organizations.

D. THE TIMETABLE

Some of the Member States of the Community like France and Italy, which have a long-standing protectionist tradition, were concerned during the negotiations for the E.E.C. Treaty that their industries would suffer from the new competitive conditions. To cushion the anticipated impact of the changes envisaged by the Treaty it was agreed that the various steps toward the realization of the Community should only be gradually taken—this step-by-step progression to be effected in three stages over a longish transitional period of twelve to fifteen years. This meant that the Common Market could have been in full operation by the end of 1969, and, in any case, by the end of 1972.

One of the most interesting and unexpected later developments has been the demand by industrial groups in the Community that the transitional period be shortened. These groups have accepted the Common Market, have made their investment plans on the basis of a large market and now wish that large market to come into being as quickly as possible. Some of the industries which opposed the Common Market in the earlier stages now favor acceleration. One reason may be that they have concluded that their earlier fears of competition were groundless. Another reason which may be suggested, if one chooses to be cynical, is that industrialists have now made restrictive arrangements with their potential competitors in
the other Member States of the Community which will prevent competition, although this may be contrary to the Common Rules of the Community. It is certainly true that there has been a wave of industrial mergers and agreements for cooperation and specialization across national frontiers in the Community in anticipation of the larger market. The overriding factor favoring accelerated reduction of internal tariffs and quota barriers and the erection of a common external tariff has, however, been the prosperous state of national economies.

In May 1960 the Council of Ministers, acting as an intergovernmental conference of the Member States, approved a modified acceleration proposal of the Commission. According to this decision, the tariff reduction within the Community on industrial goods was to be increased by the end of 1961 from 30% to 40% and, subject to a further Council decision in the light of the economic situation, to 50%. The first step toward the establishment of the common external tariff was to be advanced from the end of 1961 to the end of 1960. Because the external tariff is calculated on the basis of the arithmetic average of the national tariffs of the Member States, however, the low-tariff Member States, such as Belgium and the Netherlands, would have to increase their current customs duties on some non-member goods to approach the new external tariff level. An acceleration would require a speed-up in such increases, which in turn would create problems not only for the Member States concerned but for non-member states (such as the United States) whose exports will be affected by such increases. To meet this problem the Council decided that for the purpose of calculating the adjustments in national tariffs involved in the first step toward the establishment of the common external tariff, that tariff be reduced provisionally by 20% for the benefit of goods from non-member states on the assumption that non-members will grant reciprocal concessions in the G.A.T.T. negotiations in 1961. This step was to stress the liberal trade policy of the Community towards the outside world. The Council decided further that all quantitative import restrictions on industrial products of Member States must be removed by the end of 1961, while such restrictions on non-member products were to be removed “as soon as possible” in accordance with the obligations derived from G.A.T.T. and in the light of recommendations by the International Monetary Fund. Special provision was made with respect to agricultural products.

In a simultaneous “declaration of intention” the Council affirmed its desire to hasten the application of the Treaty with respect to
social measures particularly concerning occupational training of workers, their freedom of movement, equal pay for men and women workers, and the adjustment in social security systems. The Council also indicated its intention to move forward correspondingly in the fields of competition, transportation, and right of establishment and to ensure progress in the economic development of the associated overseas areas. The Commission was directed to submit the necessary proposals. The Council stressed the liberal trade policy of the Community toward third countries and called for negotiations particularly with the E.F.T.A. countries with a view to reciprocal reduction of trade barriers on the basis of G.A.T.T. principles.

Despite the complexities and difficulties arising especially with respect to agricultural products it is quite likely that the Community schedule will be substantially accelerated.

E. The Geographic Scope of the Community

The E.E.C. Treaty applies to the European territories of the Member States and to a substantial extent to Algeria and to French overseas départements. The other overseas dependencies of the Member States located mostly in Africa are tied to the Community in a special “association.” The link between Europe and Africa involving territories almost ten times larger than the metropolitan areas of the Six and 55 million people is of obvious political significance. The tariff provisions governing the “association” are contained in the Treaty itself while the rules on import restrictions, right of establishment and financial assistance are included in a separate Implementing Convention annexed to the Treaty which is to be renegotiated in five years.

By virtue of this “association” the dependent territories will acquire free access for their products to metropolitan markets but may retain protection against the products of the Member States to the extent necessary for the development of their economies. Moreover, the Treaty established a Development Fund under the administration of the Community Commission to provide some $580 million for economic development of the overseas territories during the first five years. The rapidly evolving changes in the political ties between the Member States and their dependent territories have, however, already brought about modifications in the membership of the “association.”

If an overseas dependency associated with the Community becomes independent, its “association” with the Community terminates, as did that of the former French Guinea when it achieved
statehood. However, if such a newly independent state chooses to maintain a special relationship with a Member State, there appears to be no obstacle to a continuation of its “association” with the Community. There is a possibility that the new Malagasy Republic and Mali Federation, both former French dependencies, may choose this course.

The Community may negotiate an agreement of “association” with any third country, a union of states or an international organization. Such agreement is to embody reciprocal rights and obligations, provide for joint action and may or may not require a Treaty amendment.

Those independent overseas countries with which a Member State has maintained special relations have been invited to associate themselves with the Community. The negotiations for an “association” with one such country, Tunisia, appear to have been interrupted. Turkey, Greece, and Dutch East Indies (through the Netherlands government) have asked to be “associated” with the Community, and separate negotiations are in progress concerning association of each of the three.

As distinguished from “association,” full membership in the Community is open only to European states; admission to full membership can be effected only after the necessary Treaty amendment has been ratified by all Member States.

III. THE LEGAL FRAMEWORK OF THE EUROPEAN ECONOMIC COMMUNITY

A. The Treaty: A Quadrilingual Labyrinth?

The legal basis for the Community is a multilateral Treaty, a formidable instrument of 248 Articles with four Annexes, thirteen Protocols, and one Convention; another Convention relating to certain institutions common to the European Communities; and the Final Act concerning both the E.E.C. and Euratom Treaties with nine annexed Declarations. All these documents were drafted in the four official Community languages (Dutch, French, German, and Italian) and all four versions are equally authoritative.

Two members of the Paris Law Faculty disagree in their estimate of the E.E.C. Treaty. Professor Daniel Villey says:

[The Treaty] is interminable, complex, impossible to disentangle. This is not the form of the great texts which heralded and brought about the great transformations in history. . . . This then is how Europe—still in the proc-
cess of gestation—falls head first into byzantinism. . . . What is this mixed salad of eloquent declarations of principle, minute and at times ridiculously detailed regulations, platonic protestations of good intentions, technical rules of economic disarmament, pious wishes, principles and exceptions to principles and exceptions to exceptions? There is not an article affirming a proposition that another article hidden in another corner of the Treaty would not render almost meaningless. The judges of the Court of Justice better have their spectacles handy! The text which it will be their chore to interpret is a maquis, a labyrinth, a brain-twister, a puzzle. 7

On the other hand Professor Paul Reuter of the same faculty, a leading authority in the field of European integration, points out that despite the vastness of the subject matter the Treaty is not any longer than the Coal-Steel Community Treaty. He describes its text as terse and clear . . . without being sketchy. . . . [D]espite the resort to four languages . . . a comparison with the Havana Charter or with the General Agreement on Tariffs and Trade would redound to the advantage of the Treaty; only a few questions were resolved in too great a haste, . . . and thus are expressed in extremely defective formulae. . . . While not achieving the precision and clarity of the Treaty establishing Euratom, the Treaty establishing the European Economic Community reflects a certain conciseness. . . . 8

The exceptions, the escape clauses and safeguards written into the Treaty, particularly at the insistence of France, give an impression of undue complexity. But if one considers the novel character of the Treaty, its scope and the need to accommodate vital national interests, as well as the continental approach to constitutional documents, it would be naive to expect a simple instrument. The Treaty extends to all economic activities of a complex industrial society—with the exception of those activities which relate to coal, steel, and atomic energy, to the extent that such activities are regulated either by the Coal-Steel Community Treaty or by the Euratom Treaty. Article 232 of the E.E.C. Treaty seeks to avoid conflicts in the application of the three Treaties by providing that the E.E.C. Treaty does not "modify" the Coal-Steel Community Treaty or "detract

from" the Euratom Treaty. Consequently, the latter two have priority as leges speciales. On the other hand the broader E.E.C. Treaty as lex generalis would apply to coal and steel products and nuclear materials where it does not conflict with the other two Treaties. This formula, however, does not provide simple solutions to a number of problems concerning the relationships of the three Communities. For instance, while the E.E.C. institutions will have exclusive jurisdiction with respect to commercial policy toward non-member states, under the Coal-Steel Community Treaty the Members retain in principle their freedom to determine national commercial policies with respect to coal and steel. The Coal-Steel Community Treaty, however, confers on the Community institutions powers under specified circumstances to restrict imports and exports to and from non-member countries, to determine maximum export prices and minimum or maximum tariffs on non-member goods, and to review trade agreements concluded by the members with non-member countries. Thus coal and steel appear excluded from the jurisdiction of E.E.C. institutions over general commercial policy; yet as a practical matter such exclusion seems hardly feasible. The answer lies perhaps in coordinated action by the institutions of the two Communities. Special problems arise from the fact that the Coal-Steel Community Treaty, unlike the other two Treaties, does not apply to the overseas areas. Again, the E.E.C. Treaty prohibits certain restrictive agreements unless they are specifically authorized; the Euratom Treaty contains no corresponding provision. Thus such agreements concluded among enterprises engaged in the production of nuclear materials would be illegal unless authorized in accordance with the E.E.C. Treaty procedure. 8a

Obviously, problems of this kind will have to be considered on a case-by-case basis and, if necessary, resolved by the Community Court. In the long run the logical solution would be to replace the three Communities by a single Community.

B. THE LEGAL NATURE OF THE EUROPEAN ECONOMIC COMMUNITY

As suggested in the chapter entitled “The New Legal Remedies of Enterprises—a Survey,” the Treaty provisions range from policy declarations and obligations imposed upon Member States to “self-executing” provisions applicable to individuals and enterprises.

The Treaty confers upon the Community an international legal personality (including the power to enter into international agreements, diplomatic immunity for missions of third states accredited at the Community, and the like) as well as "domestic" legal personality (including such rights as the right to sue and hold property) under the laws of the Member States. Interestingly, the Treaty does not guarantee the Community immunity from judicial process: it may be sued in national courts of the Member States or, in specified circumstances, before the Community Court.

In its legal foundation the Community resembles other public international organizations such as the United Nations, which was also established by a multilateral treaty. Unlike the Coal-Steel Community Treaty which was concluded for a period of fifty years, and like the United Nations Charter, the E.E.C. Treaty was concluded for an indefinite period of time, and no provision is made for withdrawal. Presumably, however, the E.E.C. Treaty could be terminated by mutual agreement of the Member States. A Treaty revision requires ratification of the amendment by all Member States in accordance with their constitutions, but, by unanimous agreement in the Community Council of Ministers, the institutions may take action necessary to achieve the objectives of the Treaty even if the Treaty does not expressly grant the requisite power. The Member States retain, of course, their own international legal personality; moreover, their role in the selection of the principal personnel and in the functioning of the institutions is a crucial one. The Community is financed by contributions of its Member States and has no independent source of revenue at the present time. If a Member State violates a Treaty obligation, the matter can be brought before the Community Court for binding adjudication; but there is no general enforcement procedure available against a Member State. In many respects the Community therefore resembles a public international organization rather than a federal state based on a constitution.

It has been said that the Community is a "supranational," rather than an international, organization because it can have direct impact on individuals and enterprises, because important powers have been "transferred" to it irrevocably rather than merely "delegated," because important binding decisions can be taken by majority vote in the Community institutions, and because the institutions have the task of fostering the development of a common policy and of enforcing its impartial execution.
The Community has also been called a "union of states," "a partial federal state," "a partial economic state," "a functional federation," and it has been likened to the German Zollverein as it existed after 1867. The analysis of the institutional framework in the next chapter concerning the new institutions and the description of the sources of the Community law in the chapter on the new legal remedies of enterprises will suggest the conclusion that the Community is a body which is _sui generis_, defying classification in any existing categories.

C. THE TREATY AS A "CONSTITUTION" AND "STATUTE"

Whatever the label which is most appropriate for the Community, the techniques and procedures of the Community resemble in many respects those of the public law of a state—predominantly of administrative law, but also those of constitutional law—rather than those of international organizations and international law.

It may help to understand the character of the Community Treaty if it is compared with the United States Constitution, providing of course, that fundamental differences, not only in the legal foundation but particularly in the functions and objectives of the Community and of the United States, are kept in mind. Obviously no comparison is possible between the scope of the powers granted to the federal institutions in the United States—power to tax, power over defense and foreign affairs, over interstate and foreign commerce, over currency and post offices, immigration, citizenship—and of the powers granted to the Community. But the Constitution and the Treaty both establish institutions, define the mutual relationship of the institutions and their jurisdiction with respect to the Member States, and provide legal protection for states as well as individuals. In addition, however, the Treaty incorporates, in more or less general terms, substantive policies which in the United States would be contained not in the Constitution but in federal statutes.

For example, the Constitution grants to Congress the right to regulate interstate and foreign commerce and deprives the individual states of the power to impose import or export duties. Apart from certain principles concerning commercial policy derived by the courts from the commerce clause, American commercial policy is not defined in the Constitution but in federal statutes, such as the Tariff Act and the Reciprocal Trade Agreements Act, and is implemented by reciprocal trade agreements concluded with other nations.
The Treaty also prohibits internal customs duties and grants exclusive power over the external tariff to Community institutions; but, in addition, it establishes a detailed time schedule of steps that must be taken by the Member States in order to remove intra-Community tariffs and to set up a common external tariff. These obligations are relatively well defined, and their fulfilment is subject to the supervision of the Community institutions.

Similarly, the antitrust policy of the United States is defined in federal statutes rather than in the Constitution; the statutes are based on the very general grant of power by the Constitution to the Congress to regulate interstate and foreign commerce. On the other hand, the Treaty, in addition to granting certain powers to the Community institutions in the antitrust field, defines Community policy in some detail in the Common Rules and accords to the Community institutions the power to issue implementing provisions with penalties enforceable directly against enterprises.

The six governments obviously sought to include in the Treaty as much substantive content as they were able to agree upon. Some portions, such as those dealing with internal tariffs, are elaborated in great detail while others contain little more than vague directives requiring the institutions to evolve general programs or calling for action by Member States. In such fields as agriculture or transportation, these directives in effect call for continuation of the negotiations which were not completed in the Treaty. Some of the gaps were unavoidable since the Treaty in some respects deals with national policies dependent on factors that are neither predictable nor necessarily subject to institutional controls. Because of its general character the Treaty is often referred to as a _traité cadre_ or _traité institutionel_ as distinguished from the Coal-Steel Community Treaty, a _traité normatif_. Since the latter Treaty was limited in scope—covering only the fairly concentrated coal and steel industries—it lent itself to a more detailed and elaborate statement of policies and law.

One consequence of the general character of the Treaty is the difficulty of predicting the ultimate character of the Community. The second and related consequence is the importance of the role assigned to the Member governments and to Community institutions in filling in the gaps in the Treaty.

**IV. LEGAL PROBLEMS FOR AMERICAN LAWYERS**

The brief sketch of the Community's objectives, scope and legal basis drawn above leaves unanswered the question of the impact of
the Community on the concrete problems of an American lawyer advising a client who exports to, or does business, in Europe. The principal purpose of our book is to explore this question as far as it is possible at this very early date of the Community's existence. Only a few thoughts will be offered in this introduction in the hope that they will orient the reader before he embarks upon the detailed study of the various aspects considered in the individual chapters.

A. Exporting to the Community

If, for example, an American client has been exporting American-made goods to France, his lawyer will still have the problem, as the Community develops, of making sure that the client does as little as possible that would subject him to French tax laws or to the jurisdiction of the French courts. The French authorities will still collect customs duties and French import restrictions and other regulations and laws will still have to be observed. But there will be new problems.

As the tariff and quota barriers are progressively lowered within the Community the American exporter will be in an increasingly difficult position vis-à-vis his German competitor who exports a similar product from Germany to France unless, of course, steps are taken to reduce the customs duties against non-member goods also. By the end of 1969, and possibly earlier, German goods will move into France freely while American goods will face the common Community tariff and whatever quota restrictions may be left.

Neither this introduction nor the book itself purports to inquire into the economic impact of the Community upon American exports to the Community area. Estimates of this impact vary and in any event only a detailed product-by-product analysis would be of practical value. One view holds that only a slight fraction of American exports will be injured severely. If the forecasts of a steep increase in the growth rate within the Community prove correct (one estimate suggests that by 1975 the Six will increase their gross product by 120% and perhaps 150%), the increased demand for imported raw materials such as foodstuffs, fuel, and special machinery is expected to cause an increase in absolute terms of imports from non-

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10 The European Economic Community, Problems It Confronts, A Statement by C.E.P.E.S., op. cit. supra note 1, at 84.
member countries. But the share of non-members countries, including that of the United States, in the Community market in certain groups of products may well diminish,\textsuperscript{11} and there is concern that the evolving agricultural policy of the Community will restrict imports of American agricultural products.

Mr. Marc Ouin analyzes in his chapter the Treaty formula for the computation of the common Community tariff against non-member goods and the progressive steps to be taken toward the erection of this tariff. Since the completion of Mr. Ouin's study, the basic external tariff has been formulated except for a few gaps still to be determined.

A lawyer will also have to keep in mind that new procedural requirements exist—for instance, if American goods initially exported to France are to be re-exported to Germany during the transitional period while internal tariffs are being reduced but are still in existence. Moreover, the common Community tariff differs from the national tariffs not only with respect to the level of customs duties but also in its structure and headings. Finally, modifications will occur in the national customs laws and regulations of the six Member States since they are, in the words of the Treaty, to be "approximated," by the end of 1961.

The first 10 percent reduction in the internal tariffs within the Community has been made as prescribed by the Treaty. With some important exceptions, benefits of the first reduction have been extended voluntarily to all members of G.A.T.T. including the U.S.

Mr. Ouin also offers a detailed analysis of the Treaty provisions concerning the gradual removal of the quantitative import restrictions within the Community. The first two steps prescribed by the Treaty were taken on the specified dates and the Member States offered to extend certain benefits of the first step on the basis of reciprocity and—with certain reservations—to grant advantages "similar" to those involved in the second step, to all members of the O.E.E.C. The current trend towards an elimination of industrial (not agricultural) import restrictions in Europe—which certainly was not anticipated during the Treaty negotiations—may render moot the question whether the Members of the Community would infringe their G.A.T.T. undertaking by continuing to maintain quota restrictions against non-member goods despite their favorable balance-of-payments situation.

As far as the E.F.T.A. is concerned, the American client, export-\textsuperscript{11} Ibid. at 85.
ing for instance to the United Kingdom, will continue as before to face the national United Kingdom tariff, but here also his competitive position will become weaker, in relation for instance to Swedish exporters who will in due course introduce their goods into British markets unhampered by tariff or quota barriers. Because the different national tariffs will continue to exist, the E.F.T.A. Convention contains provisions intended to prevent the trade deflection which might occur if outside raw materials or semi-finished products could enter in large quantities the E.F.T.A. country with the lowest tariff and, after processing, move to the other Member States.

B. DOING BUSINESS IN THE COMMUNITY

The American client who thus far has exported his products from the United States into France may conclude that he should obtain a foothold within the Common Market for at least two reasons: first, because of the anticipated tariff disadvantages just mentioned and second—and probably more important—because he may have discovered that he can manufacture the same product at a substantially lower cost, for instance, in the Netherlands where labor costs are considerably lower than in the United States. In fact, he might calculate that the same product manufactured in the Netherlands will be competitive not only in the other Common Market countries to which it will move freely but also in the United States and perhaps in other markets thus far supplied from the United States—for instance those of Latin America.

Another client may have been doing business on the Continent for some time. He has a manufacturing plant in Germany and assembly plants in Belgium and in the Netherlands. In anticipation of the Common Market he sees little purpose in maintaining the assembly plants. He wants to liquidate the assembly operations and to expand his German manufacturing facility. This client may estimate that the E.F.T.A. will function at least for some time as a tariff grouping against both American and Common Market manufactured goods, and so he decides to establish a manufacturing plant also in Britain or to expand an existing British facility with a view to supplying the E.F.T.A. markets. British-manufactured goods, incidentally, will also benefit from the Commonwealth trade preferences if exported to Commonwealth countries.

Finally, still another client has manufacturing facilities in several European countries. He decides to simplify his line of products and to manufacture a standardized product in a single country for dis-
tribution in the entire Common Market area. This may require centralization of management and development of a “European” policy for investments, patent licensing, marketing and advertising.

Obviously some, if not most, of these situations will not become realities in the immediate future. But very little imagination is necessary to identify the legal problems involved in implementing the policy decisions of the client, if and when they are made.

The law at the basis of any legal advice on these problems will as before be predominantly the national law of the countries concerned: company law, tax law and tax treaties, patent and trademark law, the law of unfair competition, foreign exchange and credit regulations, labor legislation, and a host of other national laws and regulations. But as the client to an increasing degree comes to view the area of the Six as an economic unit, his lawyer (with the assistance of foreign counsel) must increasingly frame his advice in terms of the six (instead of one or a few) national legal systems—and, keeping in mind the E.F.T.A., perhaps in terms of the laws of other European countries as well.

In addition, new legal problems and new possibilities will arise for the client as individual provisions of the Treaty are applied. It would be unwise to expect far-reaching changes in the immediate future, but examples in seven areas dealt with in this book are suggested to illustrate the possible developments.

I) As Professor Conard and Mr. Nicholson point out in their contributions, the Council is to adopt by 1962 a general program which will ensure that nationals and companies of a Member State will not suffer discrimination by reason of nationality in regard to the freedom of establishment and to the supply of services in the other Member States. When this program is put into effect, an American subsidiary organized under German law and carrying on a bona fide operation in Germany should be able to establish itself in Belgium or sell its services there on the same basis as a Belgian company. This would still leave untouched the multitude of license and permit requirements and restrictions which condition access to industrial, business and professional activities for nationals and foreigners alike. But here also the Treaty calls for “coordination” with a view to making access to such activities easier. The obligations of the Member States in this latter respect are less precise and the exceptions and escape possibilities are many. The progress will, no doubt, be slow but a proposal for progressive action has already been developed by the Commission in cooperation with experts in the
national governments. For a long time to come an enterprise will be concerned primarily with the national laws of business organization explored by Professor Conard with the aid of advice from his expert consultants.

2) Will an American parent—given exchange controls—be able to transfer profits of its wholly-owned subsidiary in France to Belgium in order to invest them in a Belgian company? The Council of Ministers, by the end of 1960, is to adopt directives to remove restrictions on capital movement of this kind, and the Council has already adopted the first directive. Maitre Jeantet suggests, in his chapter dealing with French exchange controls, that the implementation of the Treaty will sooner or later result in virtually complete freedom of transfer of funds within the Community except in case of emergency—and the Community institutions will decide, subject to review by the Community Court, whether an emergency exists.

3) When the program for the free movement of workers is put into effect—and it is to be in effect by the end of the transitional period—a German manager or engineer employed by an American subsidiary will be freely transferable to a sister subsidiary in Italy. Again, an American subsidiary which faces a labor shortage in Germany will be able to recruit in the surplus labor pool in Italy, since German regulations must be adjusted to allow entry and employment of Italian workers in Germany without discrimination. The reverse of the coin is that the enterprise will not be allowed to fire these Italians because of their nationality when German labor later becomes available. Perhaps the most important regulation adopted by the Council thus far was designed to help labor mobility by making transferable social security rights acquired by a worker in one country when he moves to another country. As Professor Kahn-Freund points out in his chapter, whether these provisions and other measures including the special Social Fund for temporary unemployment assistance will in fact bring about large scale mobility comparable to that in the United States is an open question in view of differing European mores.

The Treaty anticipates that the substantial differences in social benefits and working conditions generally within the Community will be equalized upward by virtue of the normal operation of the expanded single market (for example, under collective bargaining pressures); but intervention of the institutions and harmonization of national laws is also contemplated as a secondary means of advancing this process. The scope of this intervention and the extent
of the modification of national laws cannot now be foreseen. Pointing to the great diversity obtaining in national laws and practices in the Six, Professor Kahn-Freund concludes that the immediate effect on the national laws in not likely to be striking. The tendency towards harmonization of the various legal systems, he feels, is unmistakable, but it is anyone's guess how far harmonization will go. In any event, for a long time to come the lawyer will have to continue to consult the national legal sources which Professor Kahn-Freund surveys in his contribution.

4) A similar conclusion is reached in the chapter by Dr. Van Hoorn and Professor Wright concerning tax problems facing American enterprises in the Community. The national tax systems manifest important differences predicated on historic forces which cannot be easily deflected. Nevertheless, the Council of Ministers has been given the power under the Treaty, on the Commission's proposal, to take measures to harmonize national indirect tax laws "in the interest of the Common Market"; and in response to pressures from industry, studies have already been instituted to determine ways of harmonizing turnover taxes.

5) Mr. Stephen Ladas, viewing the industrial property laws of the Six against the background of the emergent Common Market, foresees limited modification of the patent laws, but a substantial harmonization of trademark laws with the possibility, for instance, of a "European Community Trademark."

6) In conducting its foreign operations in the Community an American enterprise must comply with national legislation pertaining to restrictive practices and mergers in the Community countries. Some such legislation exists in three of the Six and the remaining three may be expected to adopt measures in this field in due course. Professor Riesenfeld discusses this national legislation and the new problems which the Treaty rules governing competition create.

7) Enforcement of Treaty rules is to be provided for by Council regulation establishing penalties for violations by enterprises. Problems of the legal protection of enterprises are considered in the chapter entitled "The New Legal Remedies—a Survey."

C. CONCLUSIONS

The preceding observations viewed from an American lawyer's standpoint suggest three conclusions:

1) A client's policy decisions will obviously not be determined solely or even preponderantly by legal or tax considerations; for in-
stance, a decision to locate in France rather than in the Netherlands might be dictated by an opportunity to buy into a going concern in France which is not available in the Netherlands. But it is obvious that as the area of the Six tends to become a single economic unit a comparative investigation of the national laws of the Six will be increasingly necessary as a basis for competent legal advice.

2) In due course the Treaty provisions and acts of the Community institutions will have some impact on national laws and on enterprises.

3) In the long run differences in national laws and regulations will tend to lessen, particularly where these differences distort competition or otherwise interfere with the proper functioning of the Common Market. One commentator would include here legislation in the field of commercial law, negotiable instruments, law of business associations, unfair competition, indirect and even direct tax laws and civil procedure. Although the Treaty confers substantial powers on the Community institutions in this field, there is no indication that the institutions will embark on a systematic effort to bring about a large scale assimilation of national laws. Instead, the Community Commission has proceeded, in cooperation with national officials, on the basis of a priority list which includes subjects where a disparity among the laws has already created or is expected to create practical problems and where pressures for action are exerted by trade organizations, by the European Parliamentary Assembly or by national governments. Studies and negotiations are in progress directed at assimilation of laws governing industrial property, indirect taxes, public bidding, sale of goods, health regulations, such as those governing contents and packaging of food products, safety regulations, and laws on recognition of foreign judgments and arbitral awards and some phases of company law. Such assimilation may be achieved by Council directives (particularly under Article 100) and by new international agreements.

V. A LONGER RANGE VIEW

A. THE COMMUNITY AND THE INVESTMENT CLIMATE

Although some of the Six, such as Belgium, have made more intensive efforts to attract American capital than have others, the climate for American investment has been generally favorable in
all the Community countries and the rate of return high. With the increased demand for capital necessary for the development of the Common Market there is little reason to anticipate any change. Dr. Hallstein, President of the Community Commission, addressed an American audience in the following terms:

It seems to me that our Community has received no more gratifying vote of confidence than American industry's rapidly mounting investment in the Common Market. I can assure you—and I wish to make this point emphatically clear—that we welcome this import of capital and know-how from America, and we hope in the future to see a reciprocal movement of European investment to your country. Not only is this good economics for all of us, but it is a great force for unity. The more our businessmen become partners—the more our economic eggs are scrambled—the greater will be the strength and solidarity of the Western World.18

The experts differ in their estimates of the role which American capital will play in the industrial growth of the Community. Pointing to the current drive of the Community industries to marshal their resources and streamline their facilities and methods, some believe that the American role, while substantial in absolute terms, will be no more than marginal in the context of the over-all development in the Community.

In any event, one problem deserves consideration from the longer range viewpoint of American enterprise. It is reflected in the very first "parliamentary" question addressed in the spring of 1958 to the newly organized Community Commission. The question was asked in the just-born European Parliamentary Assembly by M. Michel Debré, then a parliamentary representative and later the first Prime Minister of the French Fifth Republic. M. Debré pointed to the investment plans of foreign and particularly American companies seeking to take advantage of the Common Market, which in his opinion, if unsupervised, might cause economic as well as political and social unbalance. He inquired of the Commission whether "strict regulation" should not be considered on an urgent basis to ensure that all the Member States of the Common Market would share the benefits and burdens of foreign investment on an equal basis. The Commission replied:

18 Remarks by Walter Hallstein, President of the Commission of the European Economic Community, at the National Press Club Luncheon in Washington, D.C., on June 21, 1959.
The Commission favors maximum development within the Community of private investment originating in third countries and believes it necessary to avoid discouraging it; it is, however, conscious of the problems which may result from an excessive concentration of such investment in any one country or in any given industry. . . . 

The Commission went on to recall Article 72 of the Treaty which requires Member States "to keep the Commission informed of any movements of capital to and from third countries as are known to them" and authorizes the Commission to address to Member States appropriate "opinions." It indicated its intention to call promptly for the necessary information. "To the extent that investment projects known to it will call for concerted action," the Commission will issue opinions to governments and "seek, in accord with them, the bases for an effective collaboration." Since then the Commission has stated that it has completed the classification of capital movements and a study of methods of obtaining information concerning them and has invited the governments to supply it with specified information "known to them." The arrangement for the supply of information to the Commission is reported to be functioning regularly.

The implication of this exchange for long range investment plans of American enterprises is self-evident. Difficulties must be expected if an entire industry or an important part thereof in one or more Member States should come under American control. Similarly, problems would arise if American investment should tend to concentrate in one Member State at the expense of others with equal or more urgent capital requirements. It might be of interest to mention a few figures showing the relative level of saturation of the Community Members with American direct investment. In 1957, measured in terms of the relation of these American investments to the respective national incomes, the degree of saturation amounted in Italy to 1.1%, in France and in the Federal Republic of Germany to 1.2%, in Belgium to 1.9%, and in the Netherlands to 2.9%. These figures may be compared with 3.9% for the United Kingdom and 35.3% for Canada where the predominance of American capital has been the subject of considerable discussion.

B. THE UNITED STATES AND EUROPE

The re-emergence of Western Europe as an economic power of the first order has modified profoundly the relationship between the United States and Western Europe. The change from economic dependence to economic partnership requires adjustments in the forms of cooperation. The need for such adjustment was recognized at the Western Summit meeting at Paris in December 1959. The subsequent conference of Ministers of thirteen O.E.E.C. countries and the European Economic Community Commission led to the appointment of “Four Wise Men” who produced a report in April 1960 recommending a scheme for a reorganization of the O.E.E.C. The United States and Canada, which heretofore held the status of “associates” in the O.E.E.C. are to become full members of the re-modeled “Organization for Economic Cooperation and Development.”

The Report suggests as the first, and perhaps foremost, task of the organization continuous economic policy consultations to ensure coordination of national policies toward sustained economic growth under conditions of stability. The growing interdependence of national economies clearly requires coordination. The annual country review procedure developed by the O.E.E.C. under which each member submits its economic situation and policies to the examination of all its partners would continue to be the basis for the consultations.

It is logical that the new Western Europe must carry its share in what is perhaps the most vital undertaking of this century, the aid to developing countries. The Report recognizes the common interest in this “challenge of our time” and foresees that the Organization’s role will be to coordinate technical and financial assistance. The “Development Assistance Group” consisting of capital-exporting O.E.E.C. countries and Japan, which was formed in January 1960, would become affiliated with the Organization. It would seem to this writer that wise policy will seek to utilize existing instrumentalities such as the World Bank and the United Nations in which all the states concerned, including the developing countries and other non-European capital exporting states, are full participants.

In the trade field the Report notes that the O.E.E.C. has largely achieved its regional European objectives: “balance of payments difficulties have, in general, disappeared; external convertibility of the principal currencies has been restored; and the liberalization of trade in industrial products is almost complete.” Recognizing that
the context within which the O.E.E.C. operated has now changed, the Report recommends that the O.E.E.C. Code of Liberalization and the other O.E.E.C. decisions on commercial policy be terminated. However, the Report also suggests that commercial policy, as an element of general economic policy, will be within the responsibility of the Organization. The availability of G.A.T.T. as a permanent forum for trade matters is noted. Because it may prove difficult to transplant some of the O.E.E.C. methods to G.A.T.T. (such as the almost continuous confrontation of views of all interested members), the Report suggests that such methods might be adopted by the new Organization in considering "trade problems of a general and recurrent nature as well as for concrete problems causing special difficulties."

A draft Convention attached to the Report would retain in substance the institutional framework of the O.E.E.C., consisting of a Council composed of representatives of all member governments, a small Executive Committee, the Secretary-General with a Secretariat and certain subordinate bodies and agencies. In principle, decisions would require unanimous consent in the Council. The Convention is to enter into force not later than September 1, 1961, if by that time at least 15 signatories have completed the ratification or acceptance process required by their national constitutions.

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There is little question that the present division of Western Europe into two groups, the Community and the E.F.T.A., harbors seeds of discord and threatens the unity of the free world. Germany for economic reasons and France for reasons of political policy are likely to oppose further integration of the Six in the immediate future. Nevertheless, the continuing co-existence of the Community as an economic grouping of increasing economic impact and of E.F.T.A. must be anticipated. Since Greece and Turkey are in the process of associating themselves with the Community and Finland is gravitating toward the E.F.T.A., only Iceland, Ireland and Spain of the 18 members of the old O.E.E.C. remain outside the two groupings. An important problem will be, on the one hand, to prevent conflict between the two groups which could have grave political consequences and, on the other hand, of course, to avoid trade arrangements between them which would prejudice non-member nations. Some observers discern a trend in the United Kingdom toward accepting membership in the Community providing that the Com-
Community functions will be limited to those of a customs union. The fact that both the Community and the E.F.T.A. depend greatly on trade with each other as well as with the outside world holds promise of a satisfactory solution—a general reduction of trade barriers. Efforts to achieve such a reduction would be most effective in the Geneva forum of G.A.T.T., since that forum assures broad participation of free world countries. The negotiations for tariff concessions scheduled for 1961 offer an opportunity to lower tariff barriers against American exports to Europe before the effects of the regional groupings on trade patterns are felt strongly. The emergence of other regional trade groupings, one in Central America and the other in South America, underlines the necessity for strengthening G.A.T.T. as an instrument for increasing world-wide non-discriminatory trade.

The countries of the Warsaw Pact led by the Soviet Union have been engaged in a massive regional integration undertaking of their own designed to create "a socialist market" as a corollary of their drive toward large-scale industrialization. The free world must be prepared to continue to face unrelenting and increasing pressures from the East. For this, if for no other reason, the strength and unity of the free world remain the overriding policy goals to which regional interests must be subordinated.¹⁶

¹⁶ Portions of this chapter were included in an address delivered before the Institute on Legal Aspects of the European Community held by the Federal Bar Association in Washington, D.C., on February 11–13, 1960.