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LEGAL PROBLEMS OF THE EUROPEAN ECONOMIC COMMUNITY

by

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1. HISTORICAL BACKGROUND

1. The present status and importance of the Europen Economic Community (EEC) can best be explained by a short summary of the various attempts to achieve the economic recovery of Europe * to ensure not only a political stability within Europe but even to increase the political importance of Europe in the sphere of world politics.

2. Each of these three aims appeared to present almost unsurmountable difficulties, if we recall the economic, political and psychological situation of Europe at the end of World War II. Since that time «Europe» has been delimited in many ways, which would have appeared heretic to 19th century cartographers — and to General de Gaulle, who also today adheres to the classical view according to which the Ural Mountains form the Eastern border of the European continent.

3. It may well be said, that the economic condition of Europe, understood in this widest sense, was desperate in 1945. Most of its industrial areas had been devastated by seven years of ruthless warfare, many millions of its working population had been killed, many other millions had been deported or displaced as refugees, the population in the centre of Europe lived on starvation rations.

4. The political scene was dominated by resentment against the « agressor nations and their satellites » and by deep mistrust against their future intentions. Understandable as these sentiments were, a collective guilt theory, ostracizing and condemning — theoretically for ever — entire nations could not from a solid basis to ensure the political stability inside a political area of such sensitivity as Europe. For these reasons the Morgenthau Plan for the reconstruction of Europe soon proved impracticable.

(*) Thanks to the courtesy of the European Orgonisations and Communities concerned, English and French texts of most of the relevant documents may be consulted at the Library of the Law Faculty of Ain Shams University.

5. As far as the weight of Europe in world politics was concerned, it was as low as could be expected in view of its economic misery and political instability. When the divergencies between the leading powers of the victorious alliance became acute soon after the end of World War II it was clear, that the European States, whether they belonged to the group of the winners or of the losers, would not be able to play an independent political role. They became mere objects in the game of power politics played between the USA and the USSR.

6. The first initiative towards an economic recovery of Europe came from the United States. After several interim help measures the USA Secretary of State Marshall proposed in 1947 very substantial USA financial support (« Marshall Aid ») for a « European Recovery Program » based on a joint European reconstruction effort.

7. In view of its rivalry with the USA, the USSR prevented the States and areas occupied by Soviet troops from participating in these efforts. Thus, the old geographic notion of Europe was reduced to that of Europe to the West of the « Iron Curtain ». The area to the East of this line achieved its reconstruction without US aid. The mutual efforts of these States were given an organizational basis by the establishment of COMECON, on Jan. 29, 1949, as an international organization.

8. To the West of this line the remaining 16 European States, (Austria, Belgium, Denmark, France, Great Britain, Greece, Iceland, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Sweden, Switzerland and Turkey) soon to be joined by the Federal Republic of Germany established the Organization for European Economic Cooperation (OEEC) on April 16, 1948. Its organizational structure was simple. Its only organ capable of taking decisions was the Council, where the government of each State was represented by a delegate. All acts had to be approved unanimously. A State could, however, declare not to be interested in a certain matter, (e.g. Iceland in railway transport matters), then a decision accepted by all the remaining States was binding only on them but not on the « uninterested » member. While this unanimity rule corresponded to a pre -- World War I concept of international organizations the OEEC Convention improved on this pattern by providing, that « decisions » approved by the OEEC Council became *automatically* binding on its member States, without any need for ratification. However, such « decisions » could not reach the individual citizens of the member States. Even without ratification the member States were bound towards OEEC, but only to the extent, that they were bound to take the necessary legislative and administrative steps required to give full effect to the OEEC decision concerned.

9. It seems astonishing that an organization whose decisions required unanimous approval, could achieve agreement on the distribution of the Marshall Aid and on a co-ordination of the several national recovery programs. In parts, this was due to the moderating and persuading influence, which in the first years of the existence of OEEC was exercised by the USA, mostly behind the scenes.

10. In certain fields OEEC fulfilled the expectations of its founders. It achieved the gradual abolition of quantitative export and import restrictions (« quotas »). The rules to this effect were embodied in a « Liberalization Code ». OEEC helped to render European currencies convertible among themselves by the establishment of a sub-unit, the European Payments Union (EPU) on Sept. 19, 1950 superseded since May 5, 1955 (in force since December 27, 1958) by the European Monetary Agreement (EMA). OEEC promoted also the establishment of «European Companies», in order to concentrate capital, mostly belonging to State-controlled companies, towards the realization of aims beyond the financial or factual power of the several member States taken separately. Thus were established the Eurofima and Eurochemic Company, the latter within the framework of another of OEEC's sub-units, the European Nuclear Energy Agency (ENEA) established on December 17, 1957 by a decision of the OEEC Council.

11. OEEC failed however in another of its major aims. It did not achieve the reduction or abolition of customs barriers between its members. Moreover, its contribution towards a European recovery in other fields, i.e. towards the achievement of political stability inside Europe and towards a greater influence of Europe in world politics was merely indirect. Of course, the improvement of Europe's economic position helped towards the fulfilment also of these purposes, but it could not be enough in itself.

12. Various groups saw and see a chance of fulfilling these aims only in creating a « United States of Europe ». Only if the several European States abandon their rivalry, their sovereignties and their national egoisms by forming a single State will they be able to enjoy the influence, due to the economic, demographic and strategic importance of a bloc, which, if unified, would be the equal of the USA and of the USSR.

13. A first step in this direction was the establishment of the « Council of Europe » on May 5, 1949. Members of the Council of Europe are the following States : Austria (1956), Belgium, Cyprus (1961), Denmark, France, Federal Republic of Germany (1951), Great Britain, Greece, Iceland (1950), Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, Switzerland (1963), Turkey.

14. It possesses two main organs -- the Committee of Ministers, where each member State is represented by a cabinet minister and the Consultative Assembly composed of parliamentarians delegated by the parliaments of the member States. However, the powers of this Assembly are not identical to those of a parliament. It is limited to proposing initiatives and to give advice to the Committee of Ministers and to request informations from that Committee, as to the further fate of the imitiatives of the Assembly. Most of its decisions will be taken by a two-thirds majority.

15. In a way, the Committee of Ministers also is merely an advisory organ. Its most important role consists in the vote of recommendations addressed to the several member States. Such recommendations aim at promoting some aspect of the unification of Europe. They must be adopted unanimously by the Committee Such unonimity may be achieved like in OEEC (cf. nipra para 8).

16. The Committe of Ministers ha sa tendency to be cautious and somewhat sceptical as to the possibility to put Assembly recommandations into practice. This is easily explained by the fact, that the members of the Committee of Ministers will bear political responsibility in their own States. They thus know best the practical limits of pro-European initiatives resulting from the composition and mood of the several national parliaments. A Joint Committee endeavors but often fails to overcome divergencies between the views of the Assembly and of the Committee of Ministers.

17. The rôle of the Council of Europe has very altruistic. It often took some initiative towards the achievement of European unification. More often than not, however, such initiatives led to the establishment of new international or supranational organizations (cf. para 34). Other initiatives led to the conclusion of conventions among the several European States on such diverse matters as the mutual recognition of University degrees and legal aid in the criminal persecution of motor traffic offenders.

18. One of these Conventions merits to be singled out, as it led to the creation of institutions linked to the Council of Europa — the (European) Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and it Additional Protocols of March 20, 1952 and May 6, 1963.

19. Under an optional clause (Art. 25) of this Convention, accepted by Austria, Belgium, Denmark, Germany, Iceland, Ireland, Luxembourg, Netherlands, Norway and Sweden any person, including citizens of non-member States, may submit individual applications to a European Commission of Human Rights, consisting of independent legal experts. The

Commission investigates these applications. If it considers that the State concerned has violated the Convention it addresses a report to that effect to the Committee of Ministers of the Council of Europe. The Committee shall decide by a two-thirds majority whether it considers that the Convention has been violated and what further measures, if any, shall be taken in consequence thereof. (Art. 32).

20. With the exception of Norway and Sweden, the States enumerated above have however agreed, that the Commission as well as the accused Member State and the Member State whose national is alleged to be the victim may submit the case not to the Committee of Ministers but to the European Court of Human Rights and to abide by its decisions. (Art. 48).

21. Important as these activities are, it is obvious, that by themselves, they will not lead to the establishment of the United States of Europe. Hence the partisans of European Unity tried to utilize the Council of Europe as a launching platform for further more far-reaching initiatives. A minority of enthusiasts wanted to establish European unity in a single big jump ahead. It soon became evident, that such an initiative could only be realized by revolutionary means. While it might have won some popular support, it met with staunch opposition from the governments of all the member States, which were not ready to such a radical sacrifice of the sovereignty their States.

22. It was a more cautious view which prevailed. The governments hoped, at that time, to « integrate » Europe step by step. As a first step, they seized upon an unification of the European Coal and Steel Industry. The project, initiated by the French Foreign Minister Robert Schuman, fulfilled two further aims. By establishing a « common market » without any customs barriers as far as coal and steel are concerned it took over a task originally entrusted to OEEC. As we have seen OEEC, while successful in other respects, faild to abolish inter-European customs barriers.

23. On the other hand, the Suhuman Plan helped to solve a political post-war problem. At the end of World War II the most important German center of coal and steel production, the Ruhr area, had been placed under Allied control. In December 1948 the United States, Great Britain, France, Belgium, Netherlands, and Luxembourg established the International Ruhr Authority to control and decartelize the Ruhr industry and to impose export quotas of coal and steel, which at that time were scarce commodities. Although the Federal Republic of Germany cooperated with this Authority since November 1949, it seemed unrealistic to hope, that Germany would accept this discriminatory regime for any length of time. On the other

hand, Germany's Western neighbours felt uneasy at the thought to see the Ruhr industry return purely and simply to German sovereignty.

24. The solution suggested by the Schuman Plan consisted in submitting not only the German but also the French coal and steel industry to the control of a « High Authority » of independent experts. Thus, the sacrifice of sovereignty requested from Germany would be matched by analoguous sacrifices of its partners in this « coal and steel pool ».

25. The limitation of the projected Common Market to coal and steel rendered the project uninteresting to those OEEC countries which do not possess a sizeable coal and steel industry. Great Britain on the other hand, rufused to join the « pool », hesitating between its European and Commonwealth links. It was partly this British attitude, partly misgivings as to the political implications of the plan which induced Austria, Sweden and Switzerland to stay also away from the « pool » in spite of the importance of their steel industries.

26. Thus, when the Treaty establishing the European Coal and Steel Community (OEEC) was concluded on April 18, 1951 its membership remained limited to the « Six », France, Germany, Italy, Belgium, Luxembourg, and the Netherlands. On December 21, 1954 an Agreement of Association was concluded with the United Kingdom. This Agreement provides merely for mutual consultations. It has not had any practical significance.

27. The ECSC was the first of the European Communities, whose powers and internal organization are half-way between those of a classical international organization and those of a Federal State (cf. part III). To distinguish the ECSC from the classical type of international organization the Treaty itself coined the word « supranational » (cf. para 158).

28. With good will, there are quite some similarities to be found between the structure of ECSC and of a Federal State. The « High Authority » represents the interests of the Union. The « Council of Ministres » is the defender of the « State Rights » of the individual member States. An element of democratic control is represented by the Common Assembly and — on a corporatist basis — by the Consultative Committee. The Court of Justice fulfils the functions of a Constitutional Court. Moreover the ECSC can issue laws and orders directly binding on the citizens of the member States.

Thus, in the eyes of the partisans of European unity this treaty was not only valuable in itself, it could also be used as a nucleus for much

more ambitious purposes. Also from the economic point of view, the pooling of the coal and steel resources could only be considered as a first step towards a more perfect union. Economically, it does not make sense to pool merely two commodities. Thus, after the conclusion of the ECSC Treaty, several projects were developped to extend this common market to other fields like electricity, agriculture etc.

30. However, the next step was not in this direction. Political necessities somewhat similar to those leading to the establishment of the ECSC led to the fateful attempt to find a similar solution to the problem of the rearmament of Germany. Here, after the Korean war, the USA were bent to re-arm the Federal Republic. Germany's Western neighbours were again afraid of such a rearmament. In order to avoid unilateral controls which Germany would have resented as discriminatory the Pleven Plan proposed to integrate the various European armed forces.

In order to underline the idea, that the efforts to integrate various sectors of the activities of European States should all, in the long run, converge in the United States of Europe, the Treaty establishing the European Defence Community (EDC) of May 27, 1952 provided that the Common Assembly and the Court of EDC should be identical with those of ECSC. After all, a logical link can be found between the coal and steel industry, armements and defence forces. This attempt had the unfortunate effect to discredit ECSC especially in the eyes of the USSR as an allegedly military organization. However the proposed link became never effective. On August 31, 1954 the French Parliament refused to ratify the EDC Treaty, thus putting an end to the EDC project. It was replaced by the Western European Union (WEU) Treaty of October 23, 1954. The Six and the United Kingdom are members of WEU. The WEU has no supranational features. It merely coordinates the national defence forces of the member States.

32. Looking back, it does appear overambitious to have selected an integration of the armed forces as the next step, after the establishment of ECSC, towards a more perfect union. National sentiment and interests are too closely linked to the existence of such independent forces. Moreover, the very success of OEEC and ECSC had paradoxically contributed to a relative renaissance of national sentiment. As long as nearly all European States were in a miserable condition the sacrifice of sovereighty required by each step towards the creation of the United States of Europe weighed much less than after their successful economic recovery.

33. For the time being the still-birth of EDC put an end also to the project to establish a European Political Community. This project was elaborated by an « ad hoc assembly » consisting of the members of the Common Assembly of ECSC and 9 further parliamentarians, on March 10, 1953. It was based on a mandate given by Art. 38 of the EDC Treaty. This mandate provided steps towards a closer federation. The underlying idea was that the common armed forces should have common ideals and policies to defend and should have a larger economic basis than a common market merely of coal and steel. The project thus provided for a common foreign policy and a customs union, the latter to be achieved in several stages.

34. The failure of the EDC could have been fatal to the ECSC. A common market merely for coal and steel remains a torso.

It simply had to be completed in some direction or it would have fallen apart. In spite of the cooling-off of the pro-European sentiment a further effort was undertaken sice 1955 following suggestions first made by the Consultative Assembly of the Council of Europe. It led to the establishment of the European Economic Community (EEC) and of the European Atomic Community (Euratom) by two separate treaties signed on March 25, 1957 by the six members of the ECSC.

35. The EEC and Euratom have an almost identical structure. Both communities differ somewhat more from ECSC. The latter, established at the peak of pro-European sentiment, contains more apparently supranational features. We will see, however, that, in reality, the differences between the three communities are not very important.

36. In order to underline the integrationist effect, some institutions of the Communities are common to two or all of them. Thus the Assembly and the Court are common to all three Communtites, although their power varies slightly, when they act as institutions of ECSC on the one hand, or as institutions of EEC or Euratom on the other. Moreover, the Economic and Social Committee (representing the corporatist clement in EEC and Euratom) is common to the two latter Communities (Convention relating to certain institutions common to the European Communities of March 25, 1957).

37. The establishment of EEC created a much graver problem for OEEC than the establishment of a common market merely for coal and steel. EEC aimes at establishing a full customs union and to harmonize the economic activities of its member States also in many other respects.

38. The remaining members of OEEC did not intend to sacrifice their sovereignty to the extent necessary to join the EEC. In particular each of them wante to remain free to conclude trade agreements with third countries and to establish a customs tariff of its own. This was especially true of the United Kingdom, which did not want to abandon the customs preferences which it grants to Commonwealth members. It would have been possible to satisfy these wishes as well as the obvious desire of the remaining OEEC members to obtain customsfree access for their products into the EEC States as well as among the other members of the OEEC group.

39. An OEEC project to this effect provided, that the countries concerned should form « free trade area », which in turn would be associated with EEC. A free trade area leaves each of its members full freedom to establish its own customs tariff towards third countries, while it abolishes all customs barriers between the members of the free trade area. This could have the consequence, that goods imported from third countries would enter through the member country having the lowest tariff rate. From there, they would flood the rest of the area.

40. In order to overcome this difficulty, the partners of a free trade area that only goods accompanied by a certificate of origin established by a member country to the effect that the goods were a product of the country concerned should be allowed to circulate freely inside the area. A similar difficulty cannot exist in a customs union, which, by definition, has a uniform customs tariff towards third countries.

41. In the present case, Art. 238 of the EEC Treaty would have permitted to associate a free trade area consisting of the remaining OEEC countries with the customs union of the EEC. Goods coming from the free trade area would thus have been able to circulate freely also within the EEC, provided they were accompanied by a certificate of origin issued by another OEEC country. This project broke down when EEC declared, that a system providing for certificates of origin was unworkable.

42. On Jan. 4, 1960 Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom signed the Convention establishing the European Free Trade Association (EFTA). The structure of EFTA is rudimentary. Most of its powers are entrusted to a Council, where each member shall have a single vote. In certain cases, the Council may take majority decisions. The preamble to the EFTA Treaty declares that its partners want to pursue merely economic aims, while the preambles to the Treaties establishing the three Communities consider the economic union

merely as a means to a larger end — to a more or less rigid form of European integration (cf. para 53).

43. On April 9, 1961 Finland concluded a Treaty of Association with EFTA. Greece and Turkey, on the other hand, each concluded a Treaty of Association with EEC on July 9, 1961 and September 12, 1963 respectively.

43. (a) These various conventions reduced considerably the field of activities of OEEC. Therefore, by a Convention of December 14, 1960 it changed its name, membership and main objectives. It became the Organization for Economic Co-operation and Development (OECD). The old OEEC members were joined by the USA, Canada, Spain and soon also by Japan. The main objectives of OECD are now the promotion of world trade by international co-operation and the economic development of developping countries.

44. The rudimentary character of the EFTA Treaty is due to the fact, that the members of EFTA considered EFTA not so much as a permanent organization but rather as a means of bargaining in order to obtain better terms of admission to or association with EEC. This became evident, when the United Kingdom, the leading power among the EFTA States, asked for admission as a member of EEC. This, in turn, induced Austria, Sweden and Switzerland which, on account of their neutral status, could not join EEC as members, to apply for an association with EEC on December 15, 1962.

45. The British application for membership ran into trouble as the United Kingdom hesitated to cut its relations with the Commonwealth States. Thereupon, France in January 1963 forced EEC to break-off these negotiations.

46. This decision had two consequences. On the one hand, it forced EFTA to go ahead. Its relative success has proved in the meantime, that a free trade area like EFTA can be protected effectively by certificates of origin against infiltration of foreign goods via the member with lowest outside tariff. Confidence among EFTA members suffered, however, a severe shock, when the United Kingdom in November 1946, applied its 15% customs rise also against imports from other EFTA countries. Critics in EEC countries were fast to point out, that EFTA's limitation to purely economic aims and the weakness of the position of its Secretariat facilitated this step.

47. A second consequence of the French action of January 1963 was the delay of the association of 18 newly-independent African States with EEC. The territories which now had acquiered the status of sovereign States, had already been associated with EEC in their former quality as colonial or trusteeship territories. The access of these territories to independence made it necessary, to put their relation to EEC on a new basis. As France was anxious to see a treaty to that effect concluded, some of the smaller EEC countries delayed their agreement to the draft treaty in order to « punish » France for its attitude towards the United Kingdom. However, on July 20, 1963, the Treaty of Association between EEC and 18 African States was signed in Jaunde. It entered into force on June 1, 1964.

48. The existence of EEC itself was menaced in the autumn of 1964 due to a dispute between France and the Federal Republic of Germany over the modalities to extend the common market also to the field of agriculture. The principle of this extension figures in the treaty, which, however, sketches several alternatives for putting this principle into practice. This grave crisis has been overcome by a compromise, as already now all member States obtain such advantages from the existence of EEC, that it would not be in their interest to break it up.

49. We had pointed out before that many Europeans considered the establishment of ECSC merely as a stepping-stone towards the creation of the United States of Europe. We have seen, that the very incompleteness of the ECSC solution was utilized as an argument to promote further steps towards integration. After the miscarriage of the EDC plan these efforts concentrated on the promotion of economic integration. After the crisis caused by the extension of the common market to agriculture have been overcome, no further obstacle involving similar risks will be found on the way to complete *economic* integration. Of course, the EEC Treaty provides, on principle, that still other steps of economic integration will have to be taken, e.g. in the field of the « harmonization » of turnover taxes. moreover, the three Communities now working in the field of European *economic* integration should be merged into a single Community. These steps, however, will not present the same difficulties as those encountered in the field of agriculture.

50. Therefore, in the near future, the *economic* integration of the Six will be completed. According to the original planners of the treaties establishing the three European Communities the integrating effect of the treaties should however *not* be limited to the economic field. The failure of EDC casts some doubts on the correctness of this view. However, assum-

ing that they are right, whereto shall the integration proceed from there, i.e. from the economic field ?

51. The logical direction of future integration efforts would be an attempt to integrate the political attitudes of the member Staies especially in the field of foreign policy. However, there exist grave divergencies as to the ultimate aim of these efforts.

52. At the beginning of the movement for European unity all adherents of that movement agreed, that however distant, the ultimate goal should be the establishmet of the United States of Europe. The structure of the three Communities was tailored in view of this goal. The various efforts towards integration should be crowned by the creation of a common European fatherland, « une patrie, l'Europe ».

53. The desire to attain this ultimate goal is no longer as strong and as unanimous as in the past. The renaissance of European nationalism is a reality to be counted with. It has, however, evolved considerably from the merely negative attitude, which induced it to reject EDC. General de Gaulle is the spokesman of circles, not only found in France, which do reject the ideal of « une patrie, l'Europe » as unrealistic and which even declare it to be undesirable. They propose instead « l'Europe des patries », i.e. a European co-operation based not on the abandonment of the sovereignty of the several European States in favour of the « United States of Europe » but on a close alliance between sovereign European States.

54. The various efforts, which will be undertaken in Europe in the course of 1965 towards an integration in the political field should make a definite choice between these two alternatives. It is very unlikely that such a choice will really be made. If some progress can be achieved at all, it will be due to some uneasy compromise between these opposing views — and even such a compromise will be hard to find.

2. THE AIMS OF EEC

55. We will now leave the long-range political aims to their uncertain fate and concentrate on those aims, which find their expression in the articles of the EEC Treaty itself. Those of you, who are familiar with the Resolution of the Arab Economic Unity Council to establish the Arab Common Market of August 13, 1964 will find many analogies as to the aims pursued by EEC as well as by EFTA in the economic field.

56. Neither of these organizations wants to limit its activities to the establishment merely of a *customs union* or, in the case of EFTA, free

trade area. Of course, the gradual abolition of inter-common market tariffs, quantitative export and import restrictions and, in the case of EEC and of the Arab Common Market, the establishment of a *common customs tariff* towards third States are the most salient feature of these treaties.

57. However, a Common Market is more than a customs union. Ideally, it would require, that all economic activities could be carried out inside the entire Common Market area as if this area would be a single State.

58. The establishment of a common customs tariff requires the establishment of a *common commercial policy* towards third countries. ECSC left its member States at least formal autonomy to conclude commercial agrements with third States after they had internally been approved by ECSC (Art. 71 - 75). Pursuant to the EEC Treaty, however, such agreements shall be concluded by the EEC Council

59. The abolition, as between member States, of the obstacles to the *free movement of persons,* services and capital are another important feature of the Common Market. The free movement of persons involves much more than granting citizens of other EEC countries a right of entry (even this causes alien police problems) and a right to work (even if they should compete with unemployed local citizens). In order to make workers more mobile they must conserve in the entire EEC area their rights accruing from health and old age insurance, etc ...

60. Such freedom of movement of workers must be ensured, in order to counter-balance another effect of the establishment of the Common Market. Certain factories hitherto protected by high tariff walls against competition from other EEC countries, will be forced to close down. This is economically desiramble, if the same goods can be produced better and cheaper in another EEC country. However, workers hitherto employed in these factories must have a possibility to migrate to other EEC States, where their particular skill is required or to be retrained for other work to be found in their country of origin. A European Social Fund established by EEC will serve, inter alia, to supply financial support for such schemes.

61. Free movement of employees has a counterpart in the right of *free establishment* of employers, including companies constituted in accordance with the law of a Member State and having their seat inside the EEC area (Art. 58), even if controled by citizens of third counties. Furthermore Art. 220 requires the conclusion of inter-State agreements recognizing that such a company may transfer its seat from one EEC country to another without losing its legal personality.

62. *Free movement of services,* including those of the liberal professions, shall also be granted. Thus, a person or enterprise, while remaining domiciled in one State can exercise a gainful activity, e. g. carry out an order to build a factory, in another member State.

63. *Free movement of capital* poses more difficult problems. Even after the coming into force of the EEC Treaty the currencies of some member countries had to remain protected by exchange control regulations, which, of course, prevent any free movement of capital. The Treaty wants to abolish gradually all such restrictions between its members.

64. This involves a certain degree of *common exchange policies* towards third countries. Otherwise a person resident in an EEC State, which maintains strict exchange control rules towards third States, could evade these rules by availing himself of his right to export his capital first to another member State, having less severe rules.

65. Moreever, a completely free movement of capital presupposes the elimination of balance of payments difficulties, which in turn presupposes a *coordination of the economic policies* of the member countries. The powers of the EEC in this highly sensitive field are more or less limited to recommendations, reminding the member countries to observe their promise to collaborate in these matters. The relevant Art. 104 - 109 contain moreover a good number of special escape and emergency clauses.

66. A *common transport policy* shall ensure equality of treatment to all utilizers of transport facilities. Rates and conditions shall be equal in respect of the same goods conveyed in the same circumstances. There shall therefore be no discrimination on the ground of the country of origin or destination of the goods. As a rule, rates and conditions involving any element of support or protection in the interest of one or more particular enterprises or industries shall be prohibited.

67. The above mentioned aims are also those enumerated in the Resolution establishing the Arab Common Market. Another important aim of the EEC, however, finds no express parallel there. The EEC Treaty envisages also the establishment of a system ensuring that *competition* shall not be distorted in the Common Market. Such distortions can be due to very different factors.

Several enterprises may enter into a cartel. By allotting to each of them an area similar or even smaller than that of one of the member countries, all the advantages to be expected from the establisnment of a customs union could be nullified.

68. Almost the same effect could be obtained, if several enterprises instead of concluding a *cartel* agreement merge in order to form an enterprise dominating the Common Market area or parts thereof or if a single enterprise obtains such a *dominant position* in any other way. The EEC Treaty contains provisions against such practices, providing the imposition of fines and penalties on such enterprises.

69. A more delicate problem is raised by fiscal monopolies establish by a member State. The EEC (Art. 90) appears as hostile to them as the Arab Common Market (Art. 9). Such monopolies, by definition, will exclude all competition. On the strength of this argument it has been alleged, that the nationalization of the Italian electricity industry is contrary to the EEC Treaty. This industry was hitherto in private ownership, the various firms competing with each other. Should, however, the rules on competition be given preference over Art. 222 of the EEC Treaty, according to which « The Treaty shall in no way prejudice the system existing in Member States in respect of property » ?

70. Another distortion consists in *dumping practices.* Such practices are forbidden. Moreover, they have been rendered uninteresting from the economic point of view, as any goods exported from one member country to another may be re-imported into the first State free of all customs etc. charges.

71. State subsidies also contribute considerably to the distortion of competition. As a matter of principle such aids shall be forbiden. However, the EEC may grant exemptions under special circumstances e.g. aids to remedy damage caused by natural calamities or aids to promote the economic development of backwards regions.

72. Further inequalities in the economic conditions in the EEC States exist especially in the field of *taxation.* The grant of tax refunds shall be forbidden where they would have the same effect as the granting of outright subsidies i.e. where they are higher than the refund of the turnover tax imposed on similar transactions on the domestic market. Likewise, « import taxes » may not be used as a means to circumvent the prohibition to levy customs duties. Art. 99 contains basic rules for the future *harmonization of turnover taxes* and other forms of indirect taxations.

73. Also other logal and administrative rules having a direct incidence on the establishment and functioning of the Common Market will haveto be *approximated.* Rules distorting the conditions of competition in the Common Market will have to be eliminated.

74. The promotion of the *standard of living* of the workers is another aim of the EEC Treaty. Articles 117 - 122 providing for a *harmonization of the social legislation* of the member States. Certain principles are laid down in the treaty itself (equal pay for equal work as between men and women, paid holidays of equal length in all member States). Indirectly these rules prevent also a distortion of competition, which would result from a fall of social charges in one of the member countries considerably below the level maintained by the others.

75. Last but not least, EEC provides for an *association of overseas* countries and territories with a view to increasing trade and to pursuing jointly their efforts towards economic and social development. The member States contribute to a European Development Fund, which in five years shall distribute aids of 620 million $ and loans of 46 million $ to the 18 African States associated with EEC. They shall, moreover, receive loans of 64 million $ from the European Investment Bank, a subsidiary organ of EEC, originally established to promote backward areas in the member States themselves.

76. The aims of the Treaty shall be realized in stages. On principle, the transitional period shall extend over twelve years (i. e. 1958 - 1970). However, chances are good, that this period will be shortened. During this period, a State shall never fall back from a position already achieved or introduce new measures, (e. g. new or higher customs tariffs) incompatible with the aims of the Treaty. During the transitional period, Art. 226 offers a wide escape clause. Hitherto, this clause did not have much practical importance.

77. The principle of gradual progress towards the achievement of the aims of the treaty does not only apply to its material provisions, but also to its procedural rules. In the first stage, most decisions requirreol an unanimous vote. In later stages, however, even important decisions may be taken by a qualified majority vote.

3. THE INSTITUTIONS OF EEC

78. As has already been pointed out, the structure of the European Communities has intentionally been assimilated to that of a Federal State. Cum grano salis the institutions of the Communities can be assimilated

the Commission (High Authority)	to the central government of the Union.
the Council	to the « Second Chamber » (e. g. US Senate) defending State rights.

the Assembly the Economic and Social Committee / the latter is however *not* enumerated as one of the main institutions of EEC /	to means of democratic control
the Court	to means of judicial control

1. The Commission.

79. The Commission of EEC and Euratom, as well as the High Authority, their sister institution in the ECSC Treaty, represent the will of the Community as a whole. In each Treaty system this is the only institution which is present and works permanently at the seat of the Community. Each of these institutions is the executive organ of its Community. The extent of their powers in this field is not as dissimilar as one might think from a casual comparison between the powers of the High Authority of ECSC and those of the EEC Commission (Art. 155 ff)

80. The 9 members of the EEC Commission shall be independent experts. They shall be appointed by the Governments of the Member States acting in common agreement. (In order to underline its independence, the ninth member of the High Authority is not appointed by the Governments. He is co-opted by his colleagues pursuant to a complicated procedure cf. art. 10 ECSC).

81. All members of the Commission must be nationals of member States. Not more than two members may have the nationality of the same State. The member States shall not attempt to influence them in their tasks. To this effect the members of the Commission shall furthermore enjoy privileges and immunities.

82. In a way these provisions remind one of the position of a Secretary General of an International Organization. The EEC Commission is however more than a collective Secretary General. Any parallel to the « troika proposal » submitted by the USSR for the reform of the UN would be wrong. Each of the three « troika secretaries » would represent one of the blocs of the world, whereas the members of the Commission shall in no way represent their home country. The Commission takes its decisions by majority vote. Thus, none of its members is endowed with the veto power, to be given to the troika secretaries.

83. Moreover, the powers of the EEC Commission are wider than those given to the Secretariat of any International Organization. The

Commission as well as the Council may adopt regulations and directives and make decisions which are directly applicable within the legal system of each EEC member State. The Commission thus may create rights and duties for individuals, it may impose fines on them etc...

84. The rôle of the Commission seems however less important than that of the High Authority in the ECSC Treaty. Characteristically, Art. 9 para 5 and 6 of the ECSC Treaty provide that : They (i. e. the members of the High Authority) will abstain from all conduct incompatible with the *supranational* character of their functions. Each member State undertakes to respect this *supranational* character.

85. This, incidentally, are the only passages of the ECSC Treaty, where this word appears, which, in political discussions, served as the rallying-call of the pro-Europeans and, in scientific discussions, — was used to distinguish the three Communities with their very special features from other International Organizations. It is equally characteristic, that Art. 157 EEC repeats the text quoted above omittiny however the word « supranational ». This is in line with the other efforts of the drafters of the EEC Treaty to play down the supranational character of EEC. As far as a mere choice of words is concerned, the substitution of the colourless word « Commission » for the glamorous title of « High Authority » is similarily significiant of a change of spirit, due to the success of the attack of the opponents of EDC on this openly supranational organization.

86. The changes in accent, however, were not merely limited to such verbal niceties. Whereas in the ECSC Treaty most of the acts of ECSC are taken by the High Authority, Art. 145 EEC provides that the Council shall dispose of a power of decision. Art. 155 EEC granting a power of decision « of its own » also to the Commission is less categoric. Important acts of EEC are mainly reserved to the Council.

87. However, in reality, the High Authority is unable to perform many important acts, unless it has obtained the agreement of the Council. On the other hand, the powers of the EEC Council are limited by the fact, that in most cases the Council can act only on a proposal of the Commission. The right of initiative thus rests with the Commission, although the Council may request the Commission to submit proposals (Art. 151).

88. This fact increases the importance of Art. 149 para 1. According to this rule the Council may amend such a proposal of the Commission only by means of an unanimous vote, even where the Treaty provides that the Council may act by a majority vote. In other words, all the rules of

the Treaty authorizing the Council to act by *majority* vote on a proposal of the Commission authorize such a vote only if the Council is willing to accept the proposal of the Commission without any amendment. This leaves a considerable influence to the Commission.

89. The transfer of sovereign rights to the Communities caused serious misgivings especially as a part of the powers thus transferred were now exercised by independent experts. In this way, part of the powers in the field of economic policy, which hitherto had been exercised by the national parliaments, passed partly into hands which were entirely beyond such control. It is true, that most acts of the High Authority and of the EEC Commission are taken in co-operation with the Council. As the members of the Council are Cabinet ministers in the several member States the respective national parliaments may control (— and sanction) also their activities as members of the EEC Council, by a vote of censure in the national parliament.

90. The members of the High Authority and of the Commission, however, cannot be attained by this indirect means of control. In order to fill this gap, the Common Assembly, which nowadays prefers to be called European Parliament, has been given the right to pass a motion of censure on the activities of the High Authority and of the Commission. Such a motion requires a two thirds majority. If it is adopted, the members of the High Autority or of the Commission shall resign their office in a body.

2. The Council.

91. The Council shall be composed of Cabinet Ministers. We thus witness an institutionalization of summit meetings. The authors of the Treaty rightly hoped, that a meeting of the persons having the power of ultimate decision will be more fruitful, than a meeting of Civil Servants, who will always feel bound their marching orders.

92. The Council's main raison d'être is the protection of the individual rights and interests of the several member States. These States thus try to recover at least a part of the sovereign rights which they transfered to the Community, by means of their votes in this institution of the Community itself. Yet, the will of the member States will not be made felt exclusively through their representatives in the Council. We have seen already that the members of the Commission (as well as the judges and the advocates-general) shall be appointed by the Government of the member States acting in common agreement.

93. This is not merely a nuance, chosen in order to deprive the Council in its relations with these other institutions of the argument, that their members owe their post to a vote of the Council. The true reason seems to be the fear, that a Minister may overstep the instructions which his government had given him. A decision of the Council, where unanimity had been obtained only by such an act of indiscipline, would none the less be a valid unanimous decision of the Council. This explains, why also other decisions, e. g. the decision concerning the cnoice of the seat of the Community's institutions (Art. 216) are not taken by an unanimous vote of the Council, but by a decision of the Governments of the member States acting in common agreement.

94. In still more important matters neither the unanimous vote of the Council nor the unanimous agreement of the representatives of the Governments of the member States shall be sufficient. Thus, an amendment of the Treaty must be ratified by all member States in accordance with their respective constitutional rules. These treaty rules are due to the fact, that the naional parliaments were unwilling to entrust their most vital prerogatives to their own Governments.

95. At least during the first stage the rights of the individual member States were well protected even where the decision was simply left to the Council. During this stage most of its decisions, i. e. practically all decisions of any importance, had to be taken unanimously.

96. However, as we progress towards the full implementation of the Treaty, this protection lessens. Since the beginning of the second stage many important decisions can be taken by a qualified majority vote of the Council.

97. « Where conclusions of the Council require a qualified majority, the votes of its members shall be weighted as follows :

Belgium	2
Germany	4
France	4
Italy	4
Luxembourg	1
Netherlands	2

Majorities shall be required for the adoption of any conclusions as follows :

— twelve votes in cases where this Treaty requires a previous proposal of the Commission, or

— twelve votes including a favourable vote by at least four members in all other cases ». (Art. 148, para 2)

98. The idea behind this complicated provision is to make it impossible that one of the three major States may prevent a decision, when it stands alone or is supported merely by Luxembourg. On the other hand, the three smaller States can block a decision of the three larger States, unless the latter have the Commission on their side.

99. Unlike the Commission the Council cannot be the object of a motion of censure. In a way, this seems unjust, as behind the scenes the ECSC Council bears a good deal of responsibility for acts which formally appear to be acts of the High Authority. In EEC, the acts of the Council come so much into the limenight, that one could be led to believe that the Council rather than the Commission is the real governmental organ of EEC.

100. However, we have seen already, that these appearances are slightly misleading and that the Council is, at least, subject to an indirect parliamentary control exercised by the national parliaments of the member States. However, as far as the control by the Common Assembly is concerned, this control is limited to the Assembly's right to put questions to the Council. However, the Council, again unlike the Commission, is not obliged to answer such questions. Yet, even this limited right of the Assembly can produce certain effects. A refusal to answer may sometimes be as eloquent as an answer itself.

3. The Assembly.

101. The Assembly serves as a means of parliamentary control. It has assumed the title « European Parliament », although the Treaty calls it simply « (Common) Assembly ». This, in itself, is symptomatic of the opinion, which the Assembly has developped concerning its own rights and duties.

102. In spite of its self-made title the « European Parliament » is *not* a real Parliament — at least not yet. There is no doubt that it has one of the most important powers given to Parliaments. By a vote of censure it may force the government (i. e. the High Authority or the Commission) to resign. However, it lacks the other rights normally connected with the notion of « parliamentary powers » — the right to vote the budget (cf. Art. 203 para 4), to authorize the ratification of treaties and to initiate new legislation.

103. Yet, the Assembly tries to overcome this handicap by extending to the utmost the powers given to it by the Treaty and by filling gaps by reference to the « usual custom of national parliaments ». It thus has acquired the right to discuss and propose amendments to the draft budget, before the latter is approved by the Council. It uses its right to put questions to the Commission as a substitute for a right to initiate new legislation. The Assembly asks e. g. why the Commission had not made use of its own power to adopt regulations or of its power to propose such a course of action to the Council, in order to provide : (... here follows a text, which in a national parliament would be a draft law initiated by parliament).

104. The Assembly was less successful in enlarging its role in the field of the ratification of treaties. It had bitterly resented the fact, that when the Treaty of Association with Greece was concluded the Council had consulted the Assembly only after the Treaty had been signed, i. e. at a moment, where the consultation of the Assembly could hardly any longer lead to a modification of the Treaty. In order to make its voice heard at an earlier moment, the Assembly convened a meeting with parliamentarians o the 18 African States to discuss with them project of their association with EEC before the beginning of the real negotiations between these States an dthe Council and Commission.

105. The Assembly profits also from the rule, that pursuant to Art. 149 para 2 the Commission may amend its original proposal to the Council, « particularly in cases where the Assembly has been consulted on the proposal concerned ». Actually, Art. 149 para 1 (cf. supra para 88) will often lead to an impasse, when the Council on the one hand fails to agree on an unanimous amendment to the proposal of the Commission, while the proposal of the Commission fails to obtain the qualified majority required for its unamended acceptence. Yet, even in this situation, the Commission is not *bound* to change its original proposal in the light of the wishes of the Assembly. After all, the Commission must try to modify its proposal in such a way as to render it acceptable to the *Council.* Yet, the Assembly could sanction such a disregard of its wishes by a vote of censure — although no such vote was taken until now.

106. The Assembly consists of delegates elected by the national parliaments according to the following schedule

Belgium	14
Germany	36

France	36
Italy	36
Luxembourg	6
Netherlands	14

107. The number of delegates corresponds only very roughly to the population of the several member States. The national parliaments elect these delegates, taking — again very roughly — into account the composition of these national parliaments. They exclude those parties, which they consider anti-European, i. e. mainly the Communists and the Italian Neo-Fascists. The exclusion of those ideological opponents certainly contributes to the harmony and smoothness of the debates o fthe Assembly, but it gives to thes ediscussions a slight air of irreality.

108. Art. 138 para 3 and 4 envisage that, in future, the Assembly shall be elected by direct suffrage. However, the proposals to this effect after having been approved by the Council must be ratified by all the member States in accordance with their Constitution. Until now, the Council has not yet approved any such proposal.

109. These proposals pose some legal and political problems. If the members of the Assembly were elected directly by the population of the EEC member States it would be difficult to maintain the present disproportion in the national distribution of seats, or else, the vote of a Luxembourg voter carry 50 times as much weight as the vote of a citizen of the Federal Republic of Germany.

110. The Governments of the member States hesitate also for other reasons to carry out this promise of direct elections. An Assembly elected in this manner might not be satisfied with the — after all — modest rôle given to it by the Treaty. The reunion of the Etats — Généraux of 1789 is not the only historic example of an assembly considering itself authorized by its origin from popular suffrage to seize supreme power, wether or not such course would be authorized by the constitution under which it was convened.

111. Seen from this angle, it seems astonishing, that partisans of the creation of the United States of Europe also hesitate to press the cause of direct elections. However, participation in such elections presupposes, that the individual voter has positive feelings towards some conception of European unity. It would be a terrible set-back for this ideal in all its forms (« une patrie, l'Europe » or « Europe des patries ») is nationalist or other hostile propaganda would lead to massive abstentions in such elections.

4. The Economic and Social Cominittee.

112. Critics of West European classical parliamentary democracy have often regretted the fact, that economic interests sometimes find it difficult to make themselves heard in an arena conceived as a means to solve ideological rather then economic differences. In some countries, these interests will thus be reduced to voice their opinions by means of pressure groups or lobbies, i. e. they will have recourse to means outside the framework of the Constitution. In other countries efforts have been made to legalize and to constitutionalize these currents, usually by instituting a second chamber composed of representatives of various interest groups.

113. As the activities of the Communities lie in the economic field, it seemed reasonable to follow this second course. Thus, a Consultative Committee, including an equal number of a) producers, b) workers and c) consumers and dealers is attached to the High Authority of the ECSC. For EEC and Euratom the analoguous organ, common to them both, is the Economic and Social Committee. In view of the changed weight of the various institutions of these two Communities as compared to ECSC this Committe shall be consulted in the cases provided for in the Treaties not only by the Commission, but also by the Council.

114. The Consultative Committee of ECSC and the Economic and Social Committee are not enumerated as one of the « institutions » i. e. main organs of their Community. Their rôle is limited to giving advice. However, in certain cases, the Council or Commission will have to ask for the advice of the Committee before taking a decision. The Council or Committee are not bound to follow the advice of the Committee. The Treaty fixes moreover a time-limit fur the giving of such advice, the Committee therefore cannot even delay the decision concerned by drawing out the discussion on the advice to be given.

115. The members of the Economic and Social Committee shall be appointed by an unanimous vote of the Council. They shall not be bound by any mandatory instructions.

116. The number of members of the Committee shall be fixed as follows :

Belgium	12
Germany	24
France	24
Italy	24
Luxembourg	5
Netherlands	12

117. It will be somewhat difficult to ensure that this relatively small number of members will represent adequately the different categories of economic and social life and that moreober it will be composed of an equal number of employers and employees.

118. Additional difficulties result from the fact, that the matters to be covered by this Committee are much wider than in ECSC, which nevertheless conserves its own Consultative Committee. In order to overcome this difficulty the Economic and Social Committee may form specialised sections, especially in the field of agriculture, transport and atomic energy. These specialised sections report to the Committee, which, in turn, will have to submit their reports, together with its own comments, to the Council or Commission. These specialised sections may not be consulted independently.

5. The Court.

119. The Court ensures observance of law and justice in the interpretation and application of the Treaty. It fulfils this function by assuming the character of several types of courts.

120. Its first function may be compared to that of a *Constitutional Court* in a federation. Any member State which considers that another member State has failed to fulfil any of its obligations under the Treaty may refer the matter to the Court of Justice (Art. 170). The Court does fulfil this function not only on the inter-State level but also on the level between a State and the Community. Thus a member State can challenge before the Court the lawfulness of acts of the Council and of the Commission (Art. 173) On other hand, if the Commission considers that a member State has failed to fulfil any of its obligations under the Treaty, the Commission after a complicated preliminary procedure, may likewise bring the matter before the Court (Art. 169).

121. On a somewhat lower level, the Court also serves to settle disputes between the Council and the Commission concerning the attribution of their respective powers (Art. 173). The Assembly, however, may seize the Court only in order to complain of the inactivity of the Council or Commission (Art. 175).

122. A second function of the Court corresponds to that of an *Administrative Court* (Conseil d'Etat). It will declare null and void acts on grounds of incompetence, of errors of substantial form, of infringement of the Treaty or of any legal provision relating to its application, or of

abuse of power. Any natural or legal person (thus, not only citizens of EEC States) may appeal against a decision adressed to him or against a decision, which, although in the form of a regulation or a decision adressed to another person, is of direct and specific concern to him (Art. 173).

123. The Court does not only protect the individuals against *acts* of the EEC. It protects them also in cases where EEC failed to act although pursuant to the Treaty it would have been obliged to act (Art. 175).

124. The Court will not only annul illegal acts, but will also award compensation against EEC for damages caused by its institutions or by its employees in the performance of their duties (Art. 215).

125. The Court exercises also the function of a *Criminal Court* in so far as the imposition of fines may be entrusted to it in EEC regulations. In general however, the Court, acting as an Administrative Court, will merely adjudicate on appeals against fines imposed by the Commission.

126. The Court also acts as *Labor Relations Court* in lawsuits, which employees of EEC may bring against their employer (Art. 179), or where EEC tries to recover from a grossly negligent employee a part or all the compensation, which EEC had to pay to the victinm of his negligence.

127. Another important function of the Court finds no exact parallel in the domestic law of most States. In virtue of Art. 177 the Court has the exclusive right to interpret the terms of the treaty and to judge the validity and interpret any acts of the institutions of the Community, wherever these points become important in a lawsuit before a domestic court of last resort. In such a case, such a court shall interrupt its proceedings and submit this problem to the Court, which will solve the problem by means of a preliminary decision binding on the domestic court. Lower domestic courts may also request such a preliminary decision, but are not obliged to do so.

128. The great advantage of this system is to ensure a uniform interpretation of the treaty in the territory of all the member Countries — at least by their courts of last resort. These, however, are the only ones, whose decisions will really matter, as divergent decisions by such courts could undermine the homogenity of the Treaty. The system, however, is not yet perfect. Some courts of last resort have refused to request such a preliminary decision, stating that according to their interpretation the rules of the treaty do not intend to apply to the case before them. In these cases, the domestic courts concerned overlooked the fact, that even such a statement involves an interpretation of the Treaty.

129. The jurisdiction of the Court may moreover be enlarged by means of *compromisory clauses*. One of these clauses enables the Court to act like an *international arbitral tribunal.* In virtue of the terms of a compromise to this effect the Court may adjudicate disputes between member States (but not e. g. between a member State and a non-member State) « in connection with the object of the EEC Treaty ». (Art. 182) Such cases will be rare, as the Court — even without the acceptance of such a clause — shall have jurisdiction in disputes between member States alleging a violation of any of its obligations under the Treaty itself.

130. A larger scope of arbitral jurisdiction is given to the Court in virtue of arbitration clauses contained in a contract concluded, under public or private law, by or on behalf of the Community (Art. 181). This provision at least permits to fill a gap in the Treaty which does not provide for any suit by one of the Communities against the other. Yet, the delimitation of their respective competences might create legal problems.

131. Furthermore, this provision will enlarge the competence of the Court especially in respect to the relations between EEC and its furnishers (printers, booksellers, contractors etc.). According to Art. 183 cases to which the Community is a party shall not for that reason alone be excluded from the competence of domestic courts, except in the numerous above mentiond cases, where the Court shall have jurisdiction under the EEC Treaty. As the relations between EEC and its furnishers would not be covered by any of these articles, these relations would fall into the competence of domestic courts. However, according to Art. 1 of the Protocol on the Privileges and Immunities of EEC any judgment rendered by such a domestic court against EEC could only be enforced in virtue of a decision of the Court of the Communities. Thus, there is not much point for a furnisher of EEC to have recourse to domestic courts. In all probability, he therefore will be ready to accept an arbitral clause submitting his contract to the Court of the Communities.

132. The Court is composed of seven judges, appointed for a term of six years by the Governments of the member States acting in common agreement. The judges are assisted by two Advocates-General who are appointed in the same manner. It is the duty of the Advocate-General to present with complete impartiality and independence, « reasoned conclusions » on the cases before the Court ; i. e. he submits to the Court a draft of a decision, which the Court may accept or reject, but which, in any case, facilitates the work of the Court, as it offers at least a basis for discussion among the judges.

IV. CREATION AND ENFORCEMENT OF EEC LAW

133. The institutions of EEC have the task of ensuring by their actions the achievement of the aims laid in the Treaty. In spite of its 248 articles the EEC Treaty does not provide any detailed rules concerning the achievement of some of these aims.

134. In respect to agriculture e. g. the Treaty sketches out several alternative solutions, in other fields, e. g. sea and air transport (Art. 84) it contains practically no materiel rules, in other cases, e. g. anti-trust law (Art. 85 ff) and land transport it merely lays down very general rules, while details are reserved to enabling legislation to be enacted by the Council.

135. The Treaty thus leaves a wide field for « secondary legislation ». i. e. rules which will be based on a power given to an EEC institution (usually the Council acting on a proposal of the Commission and after consultation of the Assembly) by an article of the EEC Treaty. As it is the aim of such rules to complete the Treaty, they shall be applicable to the same extent and in the same way as the Treaty itself. The EEC Treaty (Art. 189 para 2) calls these rules « regulations » and provides that such regulations shall be binding in every respect and directly applicable in each member State.

136. This means that regulations shall be directly binding on the residents of the member States and that, at least according to the rules of the Treaty, regulations shall have priority over any past or future domestic legislation. As even secondary legislation of EEC shall have such force, the same must be true of the provisions of the EEC Treaty itself, on which they are based. The Treaty thus also creates rights and duties binding on individuals which these individuals can invoke before the Court of the Communities either directly or by means of a request for a preliminary decision of this Court in a lawsuit pending before a domestic court. Thus e. g. a Dutch citizen refused to pay what he considered to bo a new customs duty introduced by the Netherlands in violation of Art. 12 of the Treaty. Art. 12 does not say in so many words that it wants to grant rights to individuals. It merely forbids, that member States introduce new customs duties. In the proceedings brought against him in the Netherlands he requested a preliminary decision of the Court of the Communities. This Court decided in his favour. (Decision No. 26/62 of February 5, 1963 Aussenwirtschaftsdients des Betriebsberaters (AWD) 1963, p. 90).

137. As long as the institutions of the Community had not enacted the necessary enabling regulations in the field of antitrust law, there was much dispute, wether the principles laid down in Art. 85 would be self-executing, i. e. wether they intended to create rights and duties even without such enabling legislation. There was, however, no doubt, that they would be capable of creating such rights and duties enjoying priority over past or future domestic legislation if such an intention could be proved.

138. As far as the Treaty itself is concerned, this effect appears less shocking — from the point of view of the Constitutional law of the member States than in the case of the regulations enacted pursuant to the powers given by the EEC Treaty. After all, the Treaty itself had been ratified after having been approved by the national parliaments.

139. However, as far as regulations are concerned, Art. 189 para 2 claims for them the same status as far for the rules of the Treaty itself. Thus, such regulations should be able to annul prior legislation enacted by a national parliament. Yet, the regulation concerned has never received specific approval by any popularly elected body — the consultation of the Common Assembly having so little practical importance that it really cannot be considered as a satisfactory substitute.

140. Of course, the power to enact such regulations has been given to the Council by the Treaty and the Treaty itself has been approved by the national parliaments. Thus, it would appear at fisrt glance, that this power of the Council is similar to that of the national Governments to issue enabling ordinances on the basis of powers provided in a law. However, at least in the Federal Republic of Germany, the Government's power to issue enabling ordinances is very strictly limited. Such ordinances shall not be able to repeal any prior *laws* and the law, on which they are based, shall define the main lines of their content. As we have seen, EEC's power to issue regulations is not subject to similar limitations.

141. For all practical purposes these regulations have the same force as a domestic law. In reality, they are even superior to such laws, as they cannot be set aside by subsequent domestic laws without violating Art. 189 para 2 of the Treaty.

142. At the momoent, the German Federal Constitutional court has pending before it a request by the Tax Tribunal for the Rhineland and the Palatinate of November 14, 1963 (Aussenwirtschaftsdienst des Betriebsberaters /AWD/ 1964, p. 26 - 28) to examine, wether these wide powers can be reconciled with the rules of the Constitution of the Federal Republic of Germany — in other words, the Tax Tribunal believes, that the EEC Treaty itself and the regulations issued pursuant to it are unconstitutional.

143. This lawsuit has led already to heated debates amongst German lawyers, which mainly turn around the question wether the German legislators would be *capable* of repealing an EEC regulation by enacting legislation contrary to such a regulation. In the unlikely event that the Federal Constitutional Court should approve the views of the Tax Tribunal the German legislators would be confronted with this problem in earnest.

144. The radical pro-Europeans defend the view, that the German legislators would be *incapable* of enacting such legislation. According to them, Germany once and for all has transfered its sovereignty in the economic field to EEC, to the extent as this is requested by the EEC Treaty. This transfer of sovereignty includes the transfer of legislative powers. According to them, the nature of this transfer is not different from that of the transfer of sovereignty over a Province. Thus, after 1918, when Germany had transfered Alsace-Lorraine to France, the German legislators would have been incapable of enacting a law pretending to effect an agrarian reform scheme in Alsace-Lorraine. In the same way, after the transfer of sovereignty involved in the conclusion of the EEC Treaty, German legislatiors would be incapable of enacting legislation concerning the domains, where, by the Treaty sovereignty was transfered to EEC.

145. Personally I adhere to the more moderate view, that the German legislators still posses the power to enact legislation contrary to to EEC Treaty and EEC regulations. Such legislation would be valid in Germany, i. e. would be able to deprive EEC rules of their effect in Germany. However, in view of Art. 189 para of the Treaty the enactment of such legislation would constitute a violation of the Treaty, i. e. an international delinquency.

146. Another means to supplement the Treaty dose not raise such constitutional problems. Where the EEC Council or Commission merely wants to achieve a certain result, without intending to bind the States as to the form and means to achieve the concerned, they adress a *directive* to the member State or State or States concerned. The State concerned is bound to achieve the result desired by the EEC, it is however free in its choice of the means to achieve this result.

147. The powers of the Council and Commission of EEC are not restricted to the direct enactment of secondary legislation (by regulation) and to provoking domestic legislation having similar effects (by directives), They also possess powers similar to those of national administrations. They may issue *decisions*, which shall be binding in every respect for the adressees named therein. The adressee however, may seize the Court of the Com-

munities in its qualeity of Administrative Court, if he considers the decision to be illegal. Such decisions even may impose fines and penalities.

148. The Council and the Commission moreover, may issue recommendations and opinions which, however, shall have no binding force.

149. The decisions of the Court of the Communities as well as the decisions of the Council or of the Commission which contain a pecuniary obligation on persons other than States shall be enforceable in all member States.

V. THE LEGAL NATURE OF EEC

150. After having seen the structure and the modalities of functioning of the EEC we can pass a better informed judgment as to its legal nature.

151. The most fervent partisans of European unity maintain, that EEC is already a Federal State. According to their view the United States of Europe are already a reality. However, there are very serious objections to this view. First of all, the only « Federal » matter of this Federation would be those economic matters, where, according their views, sovereignty had been, transferd finally and irrevocably from the member States to EEC. In most Federal States, however, Federal matters include at least also the field of foreign policy and defence.

152. Moreover, as mentioned above, the transfer of sovereignty achieved by the Treaty, is not as final as the partisans of this view tend to believe. A unilateral act of domestic legislation contrary to the rules of the Treaty would be valid domestically, although it would constitute an international delinquency. The member States remain sovereign States. They have not become member States of a Federation and thus, by definition, lost their sovereignty.

153. A further proof of the fact, that the transfer of sovereignty envisaged by the Treaties establishing the three Communities in the last resort did *not* deprive the member States of their sovereignty under international law results from the first two amendments to the ECSC Treaty.

154. This Treaty provides two procedures of treaty revision. Theoretically it could be envisaged, that a document, concluded in the form of a Treaty could, by entering into force, ecquire the status of a Constitution of a Federal State, if the aim of the Treaty concerned was the establishment of such a Federation. If that would have been the case, the relevant articles

of the ECSC (Art. 95 and 96) would have corresponded to clauses of a Constitution concerning the adoption of amendments to that constitution. It is self-evident, that if the Constitution of a Federation is amended, the relevant clauses of that Constitution must be complied with — or else, we ought no longer to speak of a constitutional amendment but of a revolution.

155. Now, the first two amendments to the ECSC Treaty concerning the representation of the Saar in the Common Assembly and concerning the establishment of certain institutions common to the European Communities were *not* adopted in the manner provided by either Art. 95 or 96 of the ECSC Treaty. The six member States of ECSC prefered instead to conclude in each of these cases a new Treaty among themselves (Treaties of October 27, 1956 and of March 25, 1957). If they had considered the ECSC Treaty as the Constitution of a Federal State established between them, they would have been bound to amend it only in the way provided therein. Instead, the member States relied on the rule of public international law, that any Treaty which States have concluded among themselves, can at any time and for any cause be abrogated or amended by another treaty between the same partners. This attitude of the member States thus proves, hat they consider the treaties establishing the Communities as treaties and not as the Constitution of a Federal State.

156. If therefore the Communities are neither a Federal State nor a Confederation and if they do not the less bind their member States to certain common actions under the supervision of organs, some of which at least are independent of the orders of any one member State, they will have to be put in the same category with the other subjects of international law answering to that description — they will have to be considered to be international organisations.

157. Partisans of European unity however raise the objection, that these Communities establish closer links amongst the member States than most other international organizations. They enumerate as such differences the sacrifice of sovereign rights, the wider range of majority decisions, the larger possibility to review the acts of the Communities before the leatter's Court, the acceptance of the obligatory jurisdiction of this Court by the member States, the power to enact secondary legislation binding on member States and on individuals. It is especially this last feature, which according to me justifies the singling-out of the three Communities from the usual type of international organization.

158. I thus approve the practice, to speak of these Communities as « *supranational organizations* » rather than as « international organizations ». We must however be aware, that the word « supranational » is not very well chosen. Even the most modest intergovernmental international organization has a will independent from that of its member States. Thus, in a way, it is placed above its member States. Even the entry e. g. into the Universal Postal Union involves for the member States the sacrifice of some sovereign rights, in this particular case e. g. the right to determine freely the weight of a « normal » letter by somme other weight than 20 grams.

159. Also all other factors enumerated as justifying a distinction from ordinary international organizations may be found — at least in an embryonic Status — in some other organizations, which hitherto had allways been called « international organizations ».

160. A precedent may even be found for the right to issue directly binding orders and exercise jurisdiction over individuals. Such rights were exercised by the European Danube Commission from 1856 onwards — in gradually lessening degrees — until 1938.

161. It remains true, however, that the constituant documents of no other organization embody all these features together and give them so much weight. This fact puts the three Communities really into a category apart. We should not forget, however, that this special term «supranational» does not designate an organization, whose very essence is different from that of international organizations. The difference is one of degree and not of essence. If we would see things differently, we would make it much more difficult for international organizations, whose constituent documents contain some of the elements seemed characteristic of supranational organizations (although perhaps only in a very small scale) ever to attain the status of higher integration already reached by the three Communities.

162. Thus, supranational organizations may still be called international organizations in a larger sense although distinguished from international organizations in the more limited sense of the word by the fact that they have attained a higher degree of integration. To use a comparison — the relation of international organizations stricto sensu and supranational organizations would be that between an officer and a general.

VI. EEC AS A SUBJECT OF INTERNATIONAL LAW

1. International organizations as subjects of international law *

163. Having accepted the view that EEC is an international organization in the larger sense of this word we must conclude from there that EEC is a subject of international law. As a matter of fact international practice has long abandonned the old fashioned idea that sovereign States are the one and only subjects of international law.

164. We still find statement to this effect in some textbooks — yet, their authors make it quite clear, that they too do not want to deny that international organizations can have rights and duties under international law, which are different from those of their member States.

165. Therefore, the difference between the opinion of these authors and the predominant view is merely a difference in terminoloy. Nearly every body agrees, that the rights and duties which public international law attributes to international organizations are not absolutely identical with those which it attributes to sovereign States. The difference really turns around the point, wether one may call the bearer of the sum total of these rights and duties « a person under international », in view of the fact that the sum total of the rights and duties of an international organization remains below that attributed to sovereign States.

166. Let us use an analogy from domestic law. There, the protoype of a « Person » is the individual human being. Several such human beings may join to establish a corporation or association, i. e. an entity having rights and duties of its own, which are distinct from those of its members. Now, in domestic law such corporations or associations are called « juridical persons ». Yet, here too, we are confronted with the phenomenon that these juridical persons cannot exercise all the rights and must not fulfil all the duties which domestic law attributes to the individual human being, who is the protoype of a « person » in domestic law. A corporation cannot marry, a corporation is not subject to obligatory military service — yet, it is a person.

167. The same is true in public international law. Its prototype of a person is the individual sovereign State. Where some such States join to establish an international organization, they act in much the same way

(*) Cf. my article. The legal Pecsonality of International and Sepranational Oregenisations to be published in Revue Egyptienne de Droit International in December 1965.

as human beings, who form an association under domestic law. Here, too, we appear authorized to speak of the entity thus formed, i. e. of the international organization, as a « person » although this person does not exercise all the rights and is not subject to all the duties of sovereign States. Thus, as a rule, international organizations will not issue a currency of their own nor will they (except in are cases) be bound to render military assistance against an agressor.

168. Moreover, even the rights and the duties expressly allotted to an international organization in its constituant instruments may be utilized only to achieve the aims of the organization concerned. If they were to be used for other purposes, such acts would be just as illegal as « ultra vires » acts by a domestic corporation.

2. The case of EEC.

169. After this long introduction it seems easy to interpret art. 210 of the EEC Treaty : « The Community shall have legal personality ». Taken by itself it could be interpreted as merely stating that EEC shall enjoy legal capacity under the municipal law of the several member States. However, this rule forms the subject of Art. 211 and of Art. 6 para 3 of the ECSC Treaty. As to the problems raised by this rule cf. the last part of my lecture on private international law.

170. It results from a comparison with Art. 6 of the ECSC Treaty that Art. 210 of the EEC Treaty must be interpreted as a parallel to Art. 6 para 2 of the ECSC Treaty : « In its international relationships, the Community shall enjoy the legal capacity necessary to exercise its functions and to achieve its purposes ».

171. This interpretation is proved correct also by the practice of EEC. The Community exercises the active and passive right of legation, sending e. g. a mission to the United Kingdom and accepting permanent delegations accredited to EEC, e. g. from Austria. The Community has the right to conclude international treaties with member States and other States, cf. Art. 111, 113 and 114. The Community enjoys privileges and immunities in its member States etc...

3. EEC as a subject of international law in relation to third States.

172. Taken by itself, Art. 210 EEC can grant such a personality to EEC only as far as its relations with is member States are concerned. For third States, it would be ineffective as a res inter alios acta. This is all

the more so, as-seen from their point of view — they are at a disadvantage, if activities hitherto exercised by sovereign States are transfered by them to an international or supra-national organization.

173. If such an organization commits an international delinquency against the third State and if that State would be obliged to recognize the legal personality of the organization the third State would be confronted with a worse debtor than if the delinquent had been a State. The organization has no property nor any citizens abroad, thus it would be much less vulnerrable to reprisals than its member States would have been, if they had acted in the same way.

174. If a third State really would be obliged to recognize the personality of an international or supranational organisation merely on account of the fact, that it had been established as such, States planning a scheme of doubtful legality would be well advised to establish an international organization. This organization would do its dirty work for them. They would escape liability. The injured State would be reduced to invoke the liability of the organization. This State, however, would not have much chance to enforce its claim against the organization.

175. For all these reasons, third States would not be bound to recognize the personality of EEC. They would be entiled to disregard it completely. Let us illustrate this view by an hypothetic example. The EEC Commission could impose a fine for an alleged violation of the EEC anti-trust rules on a Swedish and a Polish and a Polish firm, which allegedly had concluded a cartel agreement in Stockholm likely to affect trade between EEC member States.

There exists a controversy among international lawyers, wether such extraterritorial application of anti-cartel rules is compatible with the basic principle of territoriality governing public international law (cf. my private international law lecture). If the Polish firm had a bank account in the Netherlands and if a Netherlands law officer obligs the Netherlands bank to pay from this account the fine imposed by EEC, then Poland could consider itself to be injured not by the EEC but by the Netherlands. As far as Poland is concerned, the EEC does not exist. The Netherlands could not even plead, that their representative in the Council had opposed this type of extraterritorial application but that he had been out-voted.

176. The legal situation exposed above changes of course, as soon as a third State, directly, or by implications recognizes the fact, that an international or supranational organization has been established, having rights and duties of its own, distinct from those of its member States.

177. Until the establishment of the EEC, this rule has not caused much difficulties. If a third State recognized an international organization, it was usualy on such good terms with the organization, that the State concerned was willing to take the risks involved in such a recognition. Volenti non fit injuria.

178. However, in the case of EEC, at the latest in 1970, third States, even those, feeling no particular sympathy towards EEC or its member States, will be confronted with the choice, of either having no trade agreements with the EEC area or of concluding such an agreement with EEC, there by recognizing the latter. Few States will be able to afford to be excluded from commercial treaty relations with such important a market as EEC.

179. To turn this difficulty, the Polish author Calus has made the suggestion, that Poland should consider EEC merely as « collective ambassador », acting on behalf of the six member States. This theory, however, fails to explain fully the fact, how this collective ambassador should represent the collective will of the member States, in those cases, where the decision of EEC had been the result of a majority vote.

4. EEC and other international organizations.

180. In economic international organizations EEC has hitherto not tried to replace the delegates of its six member States by a single delegate of its own. Here too, such other international organizations, are not obliged to recognize the legal personality of EEC. Moreover, the member States of EEC and EEC itself may find it to their advantage to have six votes rather than a single one.

181. This may be the place to underline that the efforts of the six EEC members as well as all efforts in other parts of the worldto establish « Free Trade Areas » or « Customs Unions » are in agreement with Art. 24 of GaTT, which expressly provides, that such cases constitue an exception to the generalization of the Most-Favoured-Nation-Clause, which otherwise is a cornerstone of GATT.

VII. ASSOCIATION WITH EEC

182. The failure of the British attempt to become a member of EEC renders it unlikely that other fully developped European States will soon become full members of EEC. This increases the importance of the possibility to become « associated » with EEC, i. e. to establish a relation

with EEC « embodying reciprocal rights and obligations, jointactions and special procedures » (Art. 238). As we see, the term « association » itself as well as the definition given in Art. 238 are pretty vague.

183. Three types of situations have receently led to negotiations concerning an association with EEC and to the conclusion of such treaties.

1. Projects of Association concerning the three neutral European States *

184. Even at that time, when most other EFTA countries applied for membership in EEC, the three neutral European States i. e. Austria, Sweden and Switzerland felt unable to act in this way. The EEC Treaty itself is conceived to remain in force even in time of war. In that case, it would be impossible for a neutral to be bound by majority decisions of an organization, which would be dominated by a majority of States, whose natural aim it would be to use EEC as an instrument of their war effort. The escape clauses of Art. 223 - 225 of the Treaty would be insufficient to allow the neutral States to pursue a neutral policy in such a contingency.

185. For these reasons the three States agreed, that they could not become members of EEC, but could merely be *associated* with it. In order to safeguard their neutral status they would require

a) a right to terminate the association in war-time.

b) not to apply even in peacetime such rules emanating from the EEC which, according to the jugdment of the State concerned, would compromise its neutral status.

c) to take minimum precautions in order to preserve vital supplies which will enable the State concorned to subsist if, in order to safeguard its neutrality, it would have had to terminate its association with EEC.

d) to preserve the right to conclude commercial agreements with third States. Thus, the abolishment of customs duties between EEC and the associated neutral State could not be achieved as a Customs Union but merely as a Free Trade Area. It would be the duty of the neutral State to prevent, by certificates of origin and other means, that goods it imports from third States would flow into the territory of the EEC member States or that the neutral State would gain some other undue advantage in this way.

(*) Cf. my article la neutralité autrichienne et les rlations de l Autriche avec les Communautés Européennes, Annuaire Français de Droit International 1963, p. 826-837.

186. Apart from these reservations, which are however important, the neutral States felt able to accept not only free trade with the EEC area but also the « secondary legislation » enacted by EEC.

187. The negotiations with Sweden and Switzerland are at a standstill. Those with Austria progress only very slowly. No outcome is yet to be seen.

188. Negotiations with Austria are complicated by the baseless allegation, that Art. 4 of the Austrian State Treaty of May 15, 1955 forbidding an Anschluss (political union) with Germany would prevent Austria from associting with EEC.

2. Association with Greece and Turkey.

189. We are on firmer ground as far as the associations with Greece and Turkey are concerned. These Treaties of Association have entered into force. They aim to facilitate by aids and preferential treatment (i. e. while the customs union will apply fully to Greek exports into the EEC area, Greece may maintain for the time being certain restrictions on its import from the EEC area) the development of these States to such an extent, that they gradually will attain a level, where they will able to become full members of EEC.

190. Thus the reason why these States have not become members are different from those of he neutral States. The neutral States do not aim to become members at some future moment. On the other hand, their industries are in a state of development, which would have enabled them to join the EEC immediately, if they had wished to do so.

191. The Treaties of Association with Greece and Turkey of July 9, 1961 and Turkey of Sept. 12, 1963 respectively establish each a small international organization of its own. Its members are, on the one side, EEC and its six member States, on the other side Greece or Turkey respectively. The main organ of this organization is the Council of Association. It consists of an equal number of Greek representatives on the one side, and of representatives of EEC and of its member States on the other. Decisions must be adopted unanimously.

192. The Council of Association will be the means, by which secondary legislation of EEC will be « imported » into Greece. Such import may consist of rendering the regulation concerned applicable as it stands or in a modified form. However, as Greece and Turky, by associating themselves with EEC, have not (yet) become members of EEC, they have no

seat or voice in the institution of EEC itself. They therefore cannot officially represent their views and interests, while an EEC regulation is in the process of being adopted by EEC. However, this will not exclude that already at that time contacts may be established on an unofficial basis.

193. Any dispute arising between the two sides shall be referred to an Arbitral Tribunal, which shall be composed of two arbitrators appointed by Greece and the EEC respectively. During the first stage of association, the umpire shall be appointed by the President of the Court of the Communities, during the second stage however he may be appointed by the President of the International Court of Justice.

3. Association with 18 African States.

194. The Treaty of Jaunde of July 20, 1963 associates 18 African States i. e. Burundi, Cameron, Central African Republic, Congo (Brazzaville), Congo (Leopoldville), Dahome, Gabon, Ivory Coast, Madagascar, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo, Tchad, Upper Volta to EEC. The area concerned had already been associated to EEC, while these States were still under colonial rule or under UN trusteeship. This status came to an end when the States concerned won their independence. It had been continued for some time on a provisional basis, the Treaty of Jaunde However gives a new legal basis to the relation of these Stes to EEC.

195. In its economic aspects and in its final aims this association is somewhat looser than that concluded with Greece and Turkey. It may be denounced by EEC, acting as a unit, in relation to any of the 18 States or by any of the 18 States, after six months notice.

196. The 18 States maintain their own tariffs towards third countries. They thus establish merely a free trade area between EEC and each of the 18 States. These States noreover may conclude free trade area agreements between themselves and also with third States.

197. The Treaty does not aim to be merely a preparatory step on the way to full membership of the 18 States in EEC. It aims none the less to liberate these States from the bad economic effects of monocultures. It wants to diversify the economy and to promote the industrialization of these States. For this purpose, these States shall receive from EEC itself (in addition to direct aids from EEC member countries) between 1964 and 1969 aids and loans of 730 million $ (cf. para 75). These States may maintain and even increase their customs duties on EEC goods in order to protect and promote their industry or to finance their products. The

only condition imposed by EEC is that these States shall not discriminate among EEC States, i. e. that they shall not grant special preferences to the former colonial power.

198. Industrial goods from the 18 States will participate in the reduction and final elimination of customs duties provided in the EEC Treaty. As far as agrarian products are concerned, the 18 States shall receive a certain preferential treatment as compared with other non-member States.

199. Just like in the case of the Association with Greece and Turkey the institutional provisions are based on absolute equality between EEC and the 18 States. The main organ of the Association is the Council of Association. Its decisions must be taken in common agreement between the representatives of EEC on the one side and the representatives of the 18 States on the other. It is left to each group to determine for itself how it will reach an agreement as to the attitude, which its representatives will adopt at the meetings of the Council of Association. This Council shall be assisted by an Association Committee, composed — on a lower level — in the same way as the Council itself. The Council shall have its own Secretariat.

200. Decisions of the Council of Association which must be taken unanimously shall be binding on its members. They shall not be binding on individuals, but the States shall be bound to enact the necessary enabling legislation.

201. The Council shall submit an Annual Report to a Parliamentary Conference, composed in equal numbers of delegates of the Common Assembly (i. e. the parliamentary organ o fEEC) and by delegates of the parliaments of the 18 States.

202. Disputes shall be settled by an Arbitral Tribunal. Before a dispute shall be submitted to the tribunal, it shall be submitted to the Council of Association, which shall try to conciliate the parties concerned.

203. The Arbitral Tribunal shall decide disputes between EEC or one of its members on the one side and one or several of the 18 States on the other side. Two of the arbitrators shall be appointed by the Council of Association upon the proposal of the EEC Council, two other upon the proposel of the 18 States. The fifth arbitrator shall be appointed unanimously by the Council of Association.