HARMONIZATION OF THE LAWS OF THE EUROPEAN COMMON MARKET COUNTRIES

Ten years ago, the foreign ministers of Belgium, France, the Federal Republic of Germany, Italy, Luxembourg, and The Netherlands, met in Rome to sign treaties creating the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM). These two Communities together with the European Coal and Steel Community (ECSE) established by a treaty signed in Paris on April 18, 1951 form the basis of what has become the European Common Market. The success of the Common Market is already an established fact, its influence is world wide and it has become the rallying point around which it is hoped that Europe can eventually be united politically. The distinguishing mark of the Common Market has been its growth; between 1958, the year in which the Common Market began, and 1966 its gross product increased in volume by 52 per cent compared with 44 per cent in the United States and 30 per cent in the United Kingdom; the Community is the world's largest trader, importing and exporting more than any other trading area or nation; its 1966 population of 184 million is only slightly less than that of the United States.

Nevertheless, the European Community is troubled by strains, and for its economic integration to be completely successful a considerable measure of harmonization of laws will be necessary. This does not mean uniformity, but rather involves the approximation of laws to eliminate those areas where disparity of laws creates practical problems which impede the establishment and efficient functioning of a common market. In other words, a total and radical political transformation is not anticipated.

In the field of law the Community postulates that legal decisions can no longer be considered in an exclusively national framework any more than can economic decisions. The underlying problem, however, is that the Common Market is not matched by a common legal and administrative system, and those in Canada who are interested in the problems of securing uniformity of law in a federal system can profit by observing the progress that Member States in the European Community have made in bringing about a greater harmony between their national laws.[1]

The first beginnings of effective negotiations toward a common market occurred in June 1955 when the foreign ministers of the six countries signatory to the European Coal and Steel Community

1. Supplement to EEC Bulletin No. 8. (1966) lists conventions, regulations, directives, and other legal acts which have as their object measures approximating legislation or creating European law. Some have been adopted, many are in preparation: 90 deal with competition, 60 with agriculture, 40 with freedom of establishment and service, 31 with social legislation, 21 with customs, 15 with transport, 2 with free movement of workers, and 2 with movement of capital.

resolved at Messina in Sicily to achieve a united Europe through the development of common institutions, the progressive amalgamation of national economies, the creation of a common market, and the gradual harmonization of social policies. A committee, set up under Belgian Foreign Minister Paul-Henri Spaak to investigate the problems involved, reported so favourably in April, 1956 that a convention to draft a European Economic Community Treaty was convened in Brussels in June. The report of the Spaak Committee, which became the working document for the drafting of the Rome Treaty, was concerned with the elimination of national laws and procedures which prevented the free movement of commerce; and where a distortion called for a harmonization of legal regulations or procedures in different countries the Committee recommended that the central organs of the Community would propose the required legislative changes. This recommendation led to the provisions contained in the Rome Treaty whereby some approximation of laws of Member States can take place. While the terms "harmonization", "equalization", and "approximation" appear in the Treaty without definition it is left to the Commission to narrow the legislative and administrative differences without in any way seeking complete uniformity.

To have varying rules govern transactions alike in every respect except that they take place in different states is cause for expense and annoyance. The situation would be impossible were it not that the underlying structure of the European Community was fashioned by six European States governed by civil systems. Nevertheless the European Community poses the problem as to how successful it will be in overcoming the difficulties that stand in the way of harmonization. To the Spaak Committee, the only politically feasible method of achieving desirable uniformity, (other than by throwing the burden onto the Community), was to induce Member States to legislate harmoniously on those portions of the law where uniformity was particularly desirable. Fortunately, among the Member States a sense of urgency has acted as a powerful motivating force to move things ahead. This sense of urgency was expressed in the *Sixth General Report on the Activities of the Community*, (June, 1963):

> Progress on the road to economic integration increases the inclination towards complete political union, and it provides increasingly cogent reasons for establishing such union. If these Communities should fail, the political Community would also be lost for our generation. On the other hand, as long as the Communities maintain their dynamism undiminished, there will still be a real chance for complete European Federation.

This general pressure towards achievement insists upon harmonization of law as part of the general Community program.

ii

Since the flow of decisions that were required in the three distinct but interlocked functional Communities could not be handled by the existing mechanism of Member States the Rome Treaty created a new set of institutions. A new political concept has been developed; on economic matters the absolute control of policy no longer lies with separate national institutions, and under the new arrangement a community viewpoint emerges distinguishable from an amalgam of the various national points of view. This principle is important because the criteria by which policy decisions are made is community rather than national.[2] The institutions for which the Treaty laid the basis were: three collegial executives — the ECSC High Authority, the Common Market and Euratom Commissions — independent of any government and acting in the interests of their Community; a European Parliament which by a two-thirds vote of censure, can force the High Authority or the Commissions to resign; three Councils of Ministers directly representing the Member States: and a Court of Justice to ensure the rule of law in the interpretation of the Treaty. (While the three components of the Community — European Coal and Steel Community, European Economic Community, and Euratom — are administered by separate executives, plans are now underway to not only fuse the three executives into a single body but also draft a single treaty to replace the Treaty of Paris and the Treaty of Rome.)

The institutional method of the Community has developed into a dialogue between an independent European body, the High Authority or the Commissions, responsible for suggesting solutions to common problems, and the governments of member countries which put forward their national viewpoints in the Councils of Ministers. This is a completely new approach. While it does not create a central government, it does result in community decisions being taken within the Councils of Ministers. In this way it is possible for the Member States to give up the national veto.[3] Previously international decisions broke down because nations could always withdraw their commitments whenever it suited them. This happened repeatedly not only in the League of Nations, but also in the United Nations.

When the Commission makes a policy proposal it is discussed by the Council of Ministers and sometimes by the European As-

2. Mayne, Richard, "How the Common Market Works". The Listener, November 1, (1962). See also: Noel, Emile, "How the European Community's Institutions Work". Community Topics 27. (1966) EEC Luxembourg.

3. Monnet, Jean. The New Unity in Europe. p. 1.

sembly. Appeal from any decision can be made to the European Court. In this way it is possible to get a greater public discussion of fundamental issues affecting large numbers of countries than has ever been possible in the past. The policy discussions on tariffs, energy, and agriculture, for example, have revealed to Europeans more of the basic facts of the policies of their own countries than they ever knew before. In a word, the Treaty is implemented by acts of the Community which consist of successive action by the Commission[4], the Economic and Social Committee[5], the European Parliament[6], and finally the Council.[7] The Commission has the responsibility of not only formulating and proposing measures to be decided by the Council but also proposing joint action with the Council. Proposals are first sent to the Economic and Social Council for advice, then they are deliberated by Parliament and finally brought before the Council.

If new legislation is required by Member States the European Parliament and the Economic and Social Committee must also be consulted. In other words, the Council alone cannot compel Member States to bring their legislative procedures into harmony. Since approximation is an invasion of the legislative authority of Member States, the provisions in the Treaty dealing with harmonization are necessarily a compromise between the rights of the Community and the Member States to legislate as they wish. It would appear that at this stage in the development of the Community, at least, that the aim is not uniformity as we understand it but rather general similarity. While a great deal of legislation will be required to implement the objectives embodied in the Treaty, nevertheless, it is more correct to think in terms of "approximation" and "harmonization" of laws to the extent necessary to establish a Common Market, than to anticipate a total and radical political transformation.[8] Article 3 of the Treaty provides for "the removal of differences in national laws so far as is necessary for the operation of the Common Market". Article 100 provides that the Council acting by means of a unanimous vote on a proposal of the Commission may issue directives for approximations. Before such action can be taken, however, provisions that require approximation must "have a direct incidence on the establishment or functioning of the

4. Article 155. It is important to emphasize the vital role of the Commission. Since it is independent of national control it gives the Community its essential momentum; consequently it is the operational key to the whole range of the Community's activities.

5. The Economic and Social Committee is a consultative body composed of representatives of industry, farming and trade unions which ensures that both sides of industry and other interests play their part in the development of the Community.

6. Article 137.

7. Article 145.

8. Thompson, "Harmonization of Laws", Journal of Common Market Studies, (1965), Vol. III, p. 302.

Common Market". Article 101 provides for a case where a state is unwilling to co-operate in harmonizing the laws. Since a directive of the Commission requires unanimity, a great deal of technical work must go into its preparation; consequently even though there are more than 40 committees sitting on various aspects of the laws the Commission wishes to harmonize, only a few directives under these articles have been issued.

It is apparent from the terms of the Rome Treaty that there are three basic categories in terms of the objectives of the Community scheme. First, a national treatment throughout the Community for nationals and companies of Member States, their goods and services, and for capital. Second, to put into effect common policies, and common rules and regulations in such segments of the economy as agriculture and transportation. (Progress will be made in these segments either by compliance with self-executing provisions of the Treaty, or by federal-type Community regulations which change national laws directly or by Community decisions, or directives which compel national states to adjust national laws through national law making bodies.) Third, approximation to the extent necessary for the functioning of the Common Market.[9]

The reduction of differences among the national laws of Member States is an integral part of the plan for the progressive blending of the national economies of the six Member States. As initiators of Community policy the common institutions have the legal power to order national governments to bring about adjustments in national legal systems. The Treaty of Rome has been described as an "outline" treaty since it confines itself to indicating the general outlines of Community policy leaving it to the institutions to fill in the provisions that are required. For example, in the case of *Humblet v. Belgium*,[10] in examining its power to annul legislative or administrative enactments of a Member State the European Court of Justice concluded that it lacked such power:

> The ECSC Treaty is governed by the principle of strict separation of powers between institutions of the Community and of the Member States. Community law does not grant to the institutions of the Community the power to annul legislative or administrative acts of Member States. Thus, if the High Authority believes, for example, that a Member State has violated the Treaty, it lacks the power to annul or void these provisions. Instead, the High Authority can only proceed in accordance with Article 88 of the Treaty by noting its violation and in conjunction therewith instituting the proceedings therein provided for, in order that the State involved repeal the acts in question.

9. Stein, E., "Assimilation of National Laws and European Integration", 58 A. J. I. L. (1964) p. 3.

10. 56 A. J. I. L. (1962) p. 541.

In dealing with Articles 100 to 102 of the Treaty the Commission has chosen three broad areas: first, the laws and regulations concerning foodstuffs, veterinary, phytosanitary matters, seeds and forestry; second, technical regulations to do with motor vehicles and tractors; third, laws and regulations on drugs and narcotics. Work in all of these areas is being done through working groups, and about 40 of such groups are active. The only directive so far deals with colorants that may be employed in foodstuffs. However, eventually the objective is the development of a food and drug law similar to the one in the United States.

iii

It is suggested that while this Treaty deals with matters in the field of economics the means by which they are to be carried out invoke political concepts.[11] The fact is that the signatories to the Rome Treaty were motivated not only to create a closer form of co-operation than the rest of Europe, but also to break away from the old inter-governmental relationships which had never operated successfully. At the same time the reduction of national disagreements which had led to two major wars was a factor uppermost in the minds of many. The Treaty of Rome is an international convention, a constitution and a code of rules, and a series of institutions was established to work out the policy. Throughout the Treaty there is a pervading difference of language and in many cases it will be necessary for the Community itself, either through the acts of the Commission, the Council or the Court, to state what the meaning in precise legal terms will be, or it will be necessary to reduce the legal obligations to precision by means of implementing regulations. The field of the Treaty is vast and its framework provides for international legislation on a plane which has never been seen before.

iv

The progress made by the Community in reducing internal tariffs and quotas reflects the desire of Member States to put through a program of harmonization. While the Treaty (Articles 19-22) takes away from national governments the control over the common external customs tariff and places it in the hands of the Council of Ministers, the legislative and administrative rules governing the procedure for the application of tariffs are essentially in the hands of Member States. To meet this, Article 27[12] of the Treaty requires Member States to approximate their legislative and administrative provisions in regard to customs matters. As in

11. Campbell and Thompson, op. cit., p. 1.
12. Supplement to EEC Bulletin No. 8, (1966).

other areas the effectiveness of steps to abolish internal frontiers depends on the readiness of national customs authorities to respect common principles and to apply the same rules in taxing goods. Acting under Article 27 the Commission has put through a program of harmonious rates. While the Commission can do no more than make recommendations the Member States have usually been willing to carry out the suggestions of the Commission.

In its Fifth Report[13] the Commission states that greater efforts towards approximation of customs legislation must take place. Differences in practice and procedures were being narrowed by the activities of a "Customs Committee which includes the directors of customs departments of Member Governments". In its Sixth Report[14] the Commission pointed out that in order to establish an effective customs union a "body of Community Customs legislation is needed".

On May 12, 1960 the Council of Ministers decided to shorten the stages envisaged in the internal tariff reductions and in the establishment of a common outer tariff. The fact that the Community has been able to bring about internal customs harmonization in advance of the time table laid down by the Rome Treaty is evidence of success in this area of the Community's activities. As of July, 1967 tariffs on nearly all industrial trade within the Community will have been cut by 85 per cent since the Common Market was established. Originally these tariffs were to have been eliminated over a three-stage 12-year transitional period but as a result of the stepped-up pace the Community is now scheduled to end all internal tariffs by July 1, 1968.

The elimination, as between Member States, of custom duties and restrictions springs from the classical theory of free trade expounded by Adam Smith — that the unhampered entrepreneur would ultimately work for the good of all and that trade expands as goods move from the efficient producer to market. The Great Depression, the preparation for World War II, and the maintenance of the war effort had engulfed all aspects of European economies. In Europe, as in other countries, governments became the biggest employers, the biggest customers and in Europe like everywhere else governments became responsible for full employment, monetary stability, and sustained growth; consequently, markets were often divided up by subsidies granted to home industries, by preferential tax systems, by custom tariffs and quota restrictions, and by special legal requirements. In addition restrictions placed on

13. Well, "A Handbook of the European Economic Community", Praeger, (1965), p. 112.
14. Well, Ibid., p. 116.

currency dealings prevented capital from moving where it could obtain the greatest return. Kitzinger points out that the whole economic theory of the Community is based on recognition of the economic importance of the political frontier, behind which totally different national policies are being pursued. It is thus not only State intervention at the frontier — custom duties and quantitative restrictions — which must be eliminated; but also the openings of frontiers, differences in national policies, laws and regulations, and all forms of discrimination according to nationality behind the frontier, must be ironed out in so far as they affect interstate commerce. Instead of the different component areas playing the economic game by totally different sets of rules, there must be a common set of rules for the whole market.[15] Since building a market meant eliminating internal barriers a large part of the building was really a job of knocking down. Knocking down, however, cannot be done all at once or confusion and disaster would follow; therefore, to avoid those dangers a transitional period was written into the Treaty.

V

In the field of agriculture the Community seeks to establish a common agricultural policy based upon three main principles:

> (i) To free trade in farm products so that they may be sold as freely throughout the area of the Common Market as they are within each country's domestic market.
> (ii) To provide market support for farm produce and to jointly subsidize the export of surpluses to non-member countries.
> (iii) To develop a common commercial policy for trade in agricultural products with countries outside the community.

Articles 38 to 47 of the Treaty lay down the exceptions to the general rules of the Common Market made in favor of agriculture. The part of the Common Market program which has given rise to the greatest difficulties is that which relates to this field of agriculture. Most farms in Europe are small — two-thirds are less than 25 acres in size — and because they are in need of modern techniques and up-to-date equipment they are not highly productive.[16] In the countries that make up the Community the internal market prices of agricultural commodities are supported by such devices as levies, duties, and quantitative restrictions on imports. Support prices differ widely and it is this question that has been a thorny problem particularly between France and Germany. For example, Germany is the biggest importer of wheat and the price there is

15. Kitzinger, U. W., "The Challenge of the Common Market", Oxford: Basil Blackwell, (1961), p. 19.

16. Sinclair, Sol, "Common Agricultural Policy of the EEC", Private Planning Association of Canada (1964) p. 45. See also: "Agriculture in the Common Market", Community Topics 21 (1965) EEC Luxembourg.

the highest in Europe. France on the other hand is an exporter and it is in the interests of French farmers to have the German price support lowered thus reducing the incentive of the German farmer to produce. Prolonged and difficult bargaining has finally resulted in the establishment of a single price for grain throughout the Community. This came into effect July 1, 1967. Agreement on this difficult question of a common agricultural policy was one of the reasons for de Gaulle's veto of British entry.

Of total wheat moving in world international trade the Common Market takes 15 per cent and the United Kingdom 20 per cent. In 1962 Canada supplied 24 per cent of the wheat imported by the Common Market and 25 per cent of the wheat imported by the United Kingdom. Wheat from Canada enters the United Kingdom free of duty but if Britain joins the Common Market she will ultimately be forced to tax Canadian wheat in order to protect French farmers. Despite the difficulties, the barriers to trade in farm products are being gradually abolished. For certain agricultural goods internal tariffs have been reduced to 35 per cent of their 1957 levels and for all other agricultural goods to 40 per cent of 1957 levels. Complete removal of all tariffs on internal trade products is scheduled for July 1, 1968. The setting of the common grain price was a step of immense significance. From July 1967 onwards, the whole Community for the first time constitutes a single agricultural marketing area; within this area grain prices fixed annually by the Council of Ministers in Brussels will be the same. On January 14, 1962 the European Agricultural Guidance and Guarantee Fund was established as the institution empowered to carry out the financial provisions of the common farm policy. The Fund is responsible for the costs of price support in the internal market and for the cost of subsidies for exports to non-market countries.

vi

> "None of our countries", the Spaak Committee reported, "can by itself afford the vast resources needed for the research and basic investment required for the technical revolution of the atomic age."

The business of Euratom is the peaceful use and development of atomic energy in the European Community. This includes research aimed at the efficient production of atomic energy, the supplying of raw materials for Member States, and the establishment of a common market for the free circulation of nuclear materials and equipment. Military uses of nuclear energy are excluded from the Euratom Treaty; the French insisted on this, while the Germans under the Paris Treaty of 1954 renounced the right to ever manu-

facture atomic weapons. The remaining four countries have never developed ambitions to do so.

In its first five-year program (1958-62) Euratom was preoccupied with the job of recruiting and training staff. These now number 2000 in research and 700 in administration. During this period a total of $215 million was appropriated to research. Euratom's program for the second five-year period[17] provides for almost double this expenditure and calls for an enlargement of the research staff to 3200. Money will be spent to expand the joint research centres in four Community countries. The financing of the research budgets, as well as the operational expenses of Euratom, are met by national contributions in proportions fixed by the Treaty. Since half of the power demands of the European Community are presently filled by coal, oil, and gas, and half by power generated by water, the preoccupation of Euratom with nuclear power research reflects Europe's realization that if growth is to continue, additional sources of energy must be developed. In its nine years of existence Euratom has allocated $32 million to participate in building power reactor projects.

In the field of energy other than atomic energy it is the objective to establish a common energy policy through the joint efforts of Economic Community, the European Coal and Steel Industry and the European Atomic Energy Commission. The objection is that such sources of energy as coal, oil, and atomic power will be developed in accordance with the Community's needs over the next twenty years. Harmonization of national legislation in these areas will be difficult.

vii

Transport in the Community is dealt with in Articles 74 to 84 of the Treaty which encompass transport by road, rail and water. Under these sections the Commission has authority to evolve a common policy. To be acceptable politically the Commission must satisfy not only groups pressing for the "organization of a single transport market",[18] through government intervention, but also those who desire a widening competition among the three modes of transport across national frontiers. Reconciliation is only possible, however, if a common policy includes an approximation of national regulations affecting the costs of production in the various transport industries.

17. "Euratom's Second Five-Year Research Program 1963-67", Community Topics 23 (October 1966) EEC Luxembourg.

18. Stein, "Assimilation of National Laws as a Function of European Integration", 58 A. J. I. L. (1964), p. 1.

The Commission's proposals in the first place call for a detailed enquiry into costs. In the second place they set a timetable for the gradual harmonization of taxes on vehicles and fuel, of certain aspects of national legislation relating to transport personnel, and certain insurance requirements. A common transport policy seeks the elimination of national discrimination in the use of transport facilities and provides for a free choice of transport facilities at the most economic rates. If Canadian, American and British experience in endeavouring to solve transport problems is any criterion, then negotiations will not be easy. Harmonization is technical and as a first step the Commission began a study of existing national legislation and administrative provisions. As a result of this the Commission laid before the Council proposals which outlined in a broad way a common transport policy designed to meet the Community's three main preoccupations in transport matters: integration, organization, and harmonization. However, the problem is a complex one since it affects national legislation in the fields of taxation, insurance and social policy.

viii

Articles 95 to 99 of the Treaty deal with indirect taxes and as a first step the Commission has undertaken a study of the national direct tax structure. Of special interest is the proposal drawn up for the harmonization of turnover taxes under Article 99 which provides for the harmonization of turnover taxes, excise duties, and other forms of indirect taxation. The present draft prepared by a special committee recommends an added-value tax on the French model. Until now, France is the only country with a value-added tax system, while other countries apply various forms of cascade taxes. Under the cascade system the whole value of the product at different stages of production is taxed, while under the proposed system only the value added at any particular stage is subject to taxation. It is hoped that national laws replacing former systems of turnover tax by a common system will be promulgated by 1968 and brought into force by 1970.[19] Harmonization of fiscal and monetary policies is a high priority task required to achieve the completion of economic union.

ix

With the gradual reduction or elimination of tariffs and quotas it was apparent that there were other obstacles than these to the expansion of trade. One of these "non-tariff" barriers was the restrictions which prevented establishment. This right of establish-

19. Thompson, Dennis, "The European Economic Community", 13 International Comparative Law Quarterly, (1964) p. 851.

ment is the right of the self-employed individual to move into any of the Member States and carry on an occupation or set up a business there. The Treaty envisages that nationals and companies of other Member States will be treated in the same way as local nationals and companies when they wish to establish themselves locally in non-salaried independent activities. Several directives are under way[20] and citizens of Member States are now admitted to other Member States subject to the right of refusal on the grounds of "public policy, public security, and public health". Companies also benefit and Article 52 of the Treaty requires the progressive abolition of existing regulations preventing free establishment while Article 53 prohibits the enactment of new restrictions.

X

In order to foster the harmonization of legislation as it affects competition the Commission has called for studies of existing national legislation, proposed multilateral conventions, prepared directives, and generally stimulated co-operation among the Member States. The following are a few of the areas being studied: patents and trade marks, unfair competition, public contracts, technical and administrative obstacles to trade, recognition and enforcement of foreign judgments, bankruptcy law and company law. Article 200 requires Member States to negotiate with a view to ensuring,

> ". . . the virtual recognition of companies . . . the maintenance of their legal personality in cases where the registered office is transferred from one country to another, and the possibility for companies subject to the municipal law of different Member States to form mergers".

The Community's objectives are not only to facilitate the activities of companies beyond national frontiers but also to encourage combinations and mergers which will enable firms to adapt themselves to the larger European market, to research and development, to technological progress, and above all to international competition.[21]

At present however, companies are faced with a number of obstacles which must be overcome by legal means. The underlying problem is that the single market is not matched by a single legal system. Three possible solutions suggest themselves: first Article 220 suggests that the problems caused by the autonomy of national systems can be solved by inter-governmental negotiations; the Treaty also provides for the elimination in each Member State of

20. Supplement to EEC Bulletin No. 8 (1966).

21. "Memorandum by the Commission on the Establishment of European Companies", Supplement to EEC Bulletin No. 9/10 (1966).

all differences of treatment between local and foreign companies so far as carrying on business is concerned; Article 54 further provides for an approximation of all laws where these prevent the functioning of the Common Market; second, the creation of a European company incorporated under a uniform company act to be enacted in all Member States; and third, the creation of a European company incorporated under European law by a separate convention under the Treaty of Rome.

Only two of these solutions appear to offer practical solutions: one would be the creation of a European company by a uniform companies act which would improve opportunities to establish and control subsidiaries. This would require the recognition throughout the Community of companies incorporated in any one of the Member States. Rights of both creditors and shareholders would be safeguarded and underwriting of securities could be facilitated; the other would be the creation of a company under European law. This would remove the difficulties which stand in the way of mergers. Share transfer would also be simplified. This new corporate form, however, rests on the solution of problems of a fiscal, financial and social nature. On April 22, 1966 in a memorandum submitted by the Commission to the Council it was proposed that any decision on a European company be deferred pending the results of studies now under way.

xi

In the same way it is hoped that as the result of meetings of under-secretaries of Member States organized by the Commission some degree of harmonization in the area of patents, trade marks and designs will be achieved. While the powers for protecting industrial property will probably remain in the hands of the Member Governments, it is possible that a new Community convention for a "European patent," which has been proposed by a Committee of experts, will be established alongside existing or modified municipal laws. If a European patent proved to be practical there is no reason why it should not in time become the only patent available in the Community and thus supersede national patents.[22] While conferences for the protection of "industrial property" have been regularly held in Europe under the Paris Convention of 1883 very little actual harmonization has taken place. However, it is possible that a change in conception in "industrial property" as a result of harmonization in other areas could lead to a Community convention for the protection of "industrial property."

22. Thompson, Dennis, "Harmonization of Laws", (June 1965), III JCM Studies, p. 306.

Some mention should be made of the efforts of business associations to adapt themselves to Common Market conditions. In Europe, trade associations play a more dynamic part in the determination of business policies than their counterparts in Canada do. In the last ten years many new Community trade associations have been set up, thus bringing together individual national associations. In other ways, too, industry, trades and handicrafts have applied a great many other forms of co-operation. These range from technical agreements to the grouping together of different enterprises in single countries.

Under the Treaty, restrictive trade practices and monopolies are barred as not being in the best interest of the Community. While these provisions are far-reaching it will be some time before their effects are felt. Nevertheless, setting out the rules of competition have made for a general improvement in business.

xii

Harmonization of commercial law should not present very great difficulties. When an international contract for the sale of goods is made the parties to the contract usually state the law which is to govern the transaction. However, it is the absence of such a statement which frequently gives rise to difficulties with regard to matters such as performance and payment. To overcome these difficulties a "Draft Convention of Uniform Law of International Sale of Goods" was prepared in 1956 and adopted by the European Community at The Hague in 1964. This code requires ratifying legislation in European States where it is applicable and it is hoped that it will come into force by May 1, 1968.

xiii

The social policies of the Community are concerned with employment, protecting workers, and the improvement of living and working conditions.[23] It is agreed that the progressive harmonization of the social system of Member States constitutes an important factor in the development of the Community. The objective is not to unify the various social systems but to progressively narrow the differences between States and generally to level the living and working conditions in an upward direction. By accepting the highest standards in each country there will be a levelling upwards which will ultimately produce a series of harmonized laws providing an unparalleled social welfare system.

23. Brown, E. D., "Labour Law and Social Security", Current Legal Problems, (1963) p. 178. See also: "Social Policy in the Common Market 1958-65", Community Topics 22 (July 1966) EEC Luxembourg. Also: "Social Security in the European Community", Community Topics 18 (June 1965) EEC Luxembourg.

In examining the achievements and shortcomings of the Community's social policy, Professor Sandri, Vice-President of EEC Commission says that when Community procedures have been laid down, greater progress has been made than in fields left to co-operation between the Member Governments.

In the area of wages and working conditions the Commission has set up working parties drawn from employers' and workers' organizations and these assisted by government experts meet and study problems on a regular basis. In this way it is anticipated that Member States will apply in accordance with national systems, appropriate procedures to ensure that labour legislation is harmonized. The first efforts of these working parties are being directed in the following three areas: equal pay for men and women, overtime pay, and equalization of paid holidays and vacations. Preliminary investigations revealed wide differences between Member States, and since many of these differences stem from differences in national fiscal policy, the harmonization of social changes will be a lengthy process.

The social policy of the Community is more concerned with employment than perhaps anything else. Article 48 of the Treaty requires the free movement of workers between Member States and Article 49 gives the Council power to make regulations for effecting this policy. The achievement of this objective requires close collaboration between the national labour administrations and calls for the progressive removal of policies and procedures restricting the movement of workers. For the most part workers can now move wherever they like within the Community. In order to assist Member States to bring their own employment policies into line the Commission has promulgated regulations on social security for migrant workers as well as regulations affecting health and welfare benefits. Similar benefits are also provided for seasonal workers. To date the working conditions of about two million persons have been improved by national harmonization of regulations covering migrant workers.

A further aim of the Community's employment policy has been the development of a common training policy, and in April 1963 "General Principles" of a common training policy were adopted. Under these guide lines an action program has been worked out and is being implemented. The problems of a common program for technical and vocational training are immense, not the least of which are the barriers of language and custom. Nevertheless, the results to date are encouraging. Re-training and re-employment have been undertaken by the European Social Fund. In the five

years ended December 31, 1965 more than 175 thousand workers have been retrained, 279 thousand workers re-employed and in these programs the Fund has been responsible for spending $32 million.

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In the event that Britain joins the European Community, she will become a party to the Rome Treaty.[24] Depending on the negotiations many of the economic obligations of the Treaty would probably be undertaken gradually according to a time table. In principle, Britain would have to accept the spirit of the Treaty and agree to be bound by the regulations in the same way as the present Member States are. At the time of the 1961-63 negotiations legal experts in Britain thought that the greatest change that would take place would be the adjustment of the British Parliamentary system into the semi-federal institutions of the Community. Since the Treaty and the regulations are directly applicable to the citizens of the Community, for the first time in modern history residents of the United Kingdom would be subject to laws not made in Parliament. Perhaps this is too legalistic a view, for in practice parliamentary legislation, particularly in commercial matters, has followed any international conventions entered into by Britain. On August 2, 1962 the Lord Chancellor (Lord Dilhouse) speaking in the House of Lords summarized the situation as follows:

> There is no possibility whatever that in the exercise of their powers, the organs of the Community could alter our criminal procedures, including the presumption of innocence or trial by jury. They could not affect our law of family relationships, of marriage and divorce, of landlord and tenant, of housing, of local government or police organization. Their effect on the ordinary law of contract and tort will be negligible. Community law does not affect the laws of the welfare State, nor does it take away the right of the legislature to nationalize industries. I venture to suggest that the vast majority of men and women in this country will never directly feel the impact of the Community-made law at all . . . With few exceptions, the obligations under the Community will fall directly only on industrial and commercial concerns, long-distance carriers, and persons or firms engaged in the export of agricultural products.

A recent report prepared for the Confederation of British Industries suggests that there would be a clear and progressive balance of advantage to British industry from membership in an enlarged European Economic Community. The authors of the report conclude that the long-term benefits would far out-weigh the short-run difficulties.[25]

24. The likely impact of Britain's membership in the European Communities on British Life and Institutions is effectively examined - "Current Legal Problems" (1963) Stevens.

25. "Editorial Comments", 4 CML Rev. (1966-67) p. 262.

Today we are witnessing in Western Europe the development of a new territorial and economic grouping. While the final political form is not clear and the degree to which European States will yield up their sovereign powers has yet to be determined, nevertheless in ten years Western Europe has moved towards a measure of unity not achieved since the days of the Roman Empire. A great deal of legislation will be required to implement the objectives embodied in the Treaty, but steady progress in harmonizing the laws of Member States is being made. There is no doubt that in the next five years there will be dramatic strides made in approximating laws in the fields of taxation and finance. But in the meantime gains are only made as the result of difficult and protracted negotiations. What we are witnessing in the Community today is step-by-step progress towards a federated Europe.

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