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THE SIGNIFICANCE OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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Few topics have been discussed more in the United States and Canada during recent months than the European Common Market. The mounting concern with the problems of the Common Market reveals a great variety of attitudes ranging from enthusiastic support to strong fears and plain confusion; this concern is also a most convincing evidence of the impact of the Common Market on world affairs.

John W. Holmes, the president of the Canadian Institute of International Affairs, wrote in the spring of 1962, that while undoubtedly the Common Market was making a significant contribution to the theory and practice of international collaboration, "there is some reason for misgivings, however, as to whether the result will be supre-nationalism or supernationalism."[1] He also observed that it was strange how few Americans had recognized "the deep-seated anti-American aspects of the European movement, the urge to be independent of American aid and policy, the bitterness at American anti-colonialism, and the anti-Coca Cola mystique."[2] In a speech in New Brunswick, Canada, in August of this year, J. Robert Schaetzel, U. S. Deputy Assistant Secretary for Atlantic Affairs, attempted to supply the answer to the question as to why the United States supported the Common Market. He stated that this support rested "on the solid basis of what we conceive to be enlightened American self-interest."[3] Mr. Schaetzel acknowledged, however, that the American attitude toward the Common Market, "while basically one of hopeful anticipation," was not "without a shadow of apprehension." He recognized the problem of a rather protracted transition period, but hoped to see develop out of the process of unifying Europe a new relationship across the Atlantic. He concluded his speech by stating:

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1. Holmes, **The Political Implications of the European Economic Community,** Queens Quarterly, p. 4 (Spring 1962).
2. **Ibid.**
3. Schaetzel, **The United States and the Common Market,** Dep't State

> The important thing is that an idea of unity has gained ascendency where disunity existed before. The idea has caught on at the moment when history needed it. If we Atlantic nations can continue on our present course, we can create a position of such overwhelming but constructive strength that peace can be achieved either by deterrence or by negotiation with the East.[4]

It is difficult to determine at this time how much of the pessimism of Mr. Holmes or of the optimism of Mr. Schaetzel will be borne out by future events. There is little question, however, that the economics of the United States and Canada, particularly as far as the agricultural segments in the North Central Plains are concerned, must face up to certain trade dislocations as the goals and objectives of the Common Market are being implemented. Futhermore, additional strains may be imposed on these economies when Great Britain and other West European countries such as Denmark and Norway obtain full membership in the Common Market within the next few years.[5]

There is also little question that in the shaping of future West European Community developments, regardless whether they are economic or political in nature and regardless whether they pertain to the internal or external relations of the Common Market countries, the Court of Justice of the European Communities will play an increasingly important role. Over the years this Court has assumed a role considerably exceeding that which was envisaged by the framers of the Treaties when they established this judicial institution. Yet, few American lawyers are fully aware of the significance of this Court. It is therefore appropriate and especially timely to take a look at some of the significant features of the Court and to draw attention to the implications of certain of its salient decisions and opinions.

I

The Court of Justice of the European Communities is one of the two major institutions which are common to the other-

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Bull. at 350-5 (Sept. 3, 1962).

4. **Id.** at 355.

5. For background information on this problem see Weiss, **The Signifi-**

wise separate three European Communities, namely the European Economic Community (EEC), the European Coal and Steel Community (ECSC), and the European Community for Atomic Energy (EURATOM). When the EEC, better known as the Common Market, and EURATOM came into being in 1958, the governments of the six states involved in this undertaking, West Germany, France, Italy, Belgium, Holland, and Luxembourg, deemed it advisable to give the three formally separate Communities a common Court and a common Parliament, possibly as a pledge of more unity to come. The Court as thus established, generally carried on the task and functions of the Court of Justice of the European Coal and Steel Community which had been in existence and functioning since 1953. It took over most of its predecessor's personnel, its localities, the greater part of its members, and its docket of nearly forty cases that were pending.[6]

The Court of Justice consists of seven judges appointed for a term of six years by the governments of the Member States and eligible for reappointment at the end of their term of office. They are assisted by two "advocates-general", also appointed for six years by the governments of the Member States, whose functions it is "to present publicly, with complete impartiality and independence, reasoned conclusions on cases submitted to the Court of Justice, with a view of assisting the latter in the performance of its duties. . . ."[7] The institution of the advocate-general is modeled after the Government Commissioner of the French Conseil d'Etat, the most important of the French administrative courts and the apex of the French administrative court system.[8]

The competence of the Court is quite extensive and the provisions granting jurisdiction to the Court are scattered throughout the three Treaties, the Statute of the Court, and

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cance of the European Common Market, Dep't State Bull. at 443-8 (September 24, 1962).

6. Donner, **The Court of Justice of the European Communities, The Record of the Association of the Bar of the City of New York,** at 232-43 (May 1962). Professor Donner is currently President of the Court. For details and functions of the Court see VALENTINE, THE COURT OF JUSTICE OF THE EUROPEAN COAL AND STEEL COMMUNITY (1955). In consulting this book, it must be remembered that it was written prior to the establishment of EEC and EURATOM.

7. Articles 32 ECSC Treaty and 11-13 of the Protocol on the Code of the Court of Justice, better known as its Statute; articles 165-7 EEC Treaty; and articles 137-9 EURATOM Treaty.

8. For additional information see SCHWARZ, FRENCH ADMINISTRATIVE LAW AND THE COMMON-LAW WORLD, at 23-41 and 138-9 (1954).

the Protocol on Privileges and Immunities. Basically, the function of the Court is to ensure the rule of law in the interpretation and application of the Treaties and the regulations for their implementation.[9] Starting from this principle, the Treaties provide that the Court shall rule on suits of Member States against each other, on those of the various institutions of the Communities against each other, and on appeals by staff members of the institutions against decisions concerning them. In addition, there are three features which make the Court quite unprecedented. These features are the right of appeal of private persons against the action (or inaction) of the executive bodies of the Communities; the right of those executive bodies to lodge a suit against Member States which are defaulting on their Treaty obligation; and the power of the Court to bind domestic jurisdictions in their interpretations and applications of the Treaties.[10]

This list does not exhaust the jurisdiction of the Court.[11] Even so, the list immediately calls attention to the fact that the Court is more than an international court in the strict sense. Indeed, the functions assigned to the Court justify its classification as an administrative and a "constitutional" tribunal[12] and for this reason it has been considered as appropriate to attribute to the Court a supra-national character.

To fully understand the significance of this wide-spread jurisdiction, some additional elaborating comments are in order. The executive bodies of the Communities, the High Authority of the ECSC and the Commissions of the EEC and EURATOM, are empowered to by-pass the governments and administrations of the Member States and to address their regulations and decisions directly to the national subjects. It is therefore only fair that, in turn, these individuals should

9. Article 31 ECSC; article 164, EEC; and article 134, EURATOM.
10. Articles 33-43, 89 ECSC Treaty; 169-84 EEC Treaty, and 141-155 EURATOM Treaty.
11. Valentine analyses the competence of the Court in great detail and classifies the various types of competence under ten categories (**Supra** n. 6 at 65-69).
12. A. Van Houtte **la Cour de Justice de la CECA, European Yearbook,** Vol. II, 183-210, particularly p. 187, note 2; also M. Lagrange, **The Role of the Court of Justice of the European Communities as seen through its Case Law,** and Paul Reuter, **Juridical and Institutional Aspects of the European Regional Communities,** both in 26 **Law and Comtemporary Problems** at 381-99 and 400-17 respectively, particularly 394, 395, 399, 403-5 (1961). Further **cf.** article 95 of the ECSC Treaty which requires the Court to render an advisory opinion on the "constitutionlity" of certain proposed amendments.

be entitled to lodge an appeal against those acts with the Court. According to the Treaties, private persons have a right to demand the annulment of individual decisions and recommendations affecting them on one of the following grounds: lack of legal competence; major violation of procedure; violation of the Treaties or any rule of law relating to their application; or "detournement de pouvoir" which the English text calls abuse of power.[13]

Whenever an appeal has been lodged against a decision or recommendation of the High Authority under article 33 of the ECSC Treaty, the Court "may not review the High Authority's evaluation of the situation, based on economic facts and circumstances, which led to such decisions or recommendations, except where the High Authority is alleged to have abused its powers or to have clearly misinterpreted the provisions of the Treaty or of a rule of law relating to its application." In the EEC and EURATOM Treaties, these restrictive words have been left out.[14] This does not imply, however, that under the latter Treaties the powers of the Court are more extensive than under the ECSC Treaty. The phraseology of the ECSC Treaty has been dropped because it expressed in an imperfect way something that was so obvious that it did not have to be said. The Court exercises only a power of legal control over the executive organs of the Communities. As long as these organs stay within the limit of the law, it is solely up to them to decide how they exercise their powers.[15]

The Coal and Steel Treaty permits private enterprises to appeal against inaction of the High Authority whenever this organ is required by the Treaty to issue a decision or recommendation and fails to fulfill such an obligation. In this way it has been possible for those, who thought the High Authority too timid in the use of its powers, to lodge an appeal even for inaction against their own national government.[16] The EEC and EURATOM Treaties leave this right in full to Member States and to other Institutions of the Communities; with re-

13. Articles 33 ECSC Treaty, 173 EEC Treaty, and 146 EURATOM Treaty.
14. See article 173, EEC Treaty, and article 146 EURATOM Treaty.
15. Donner, **supra** n. 6 at 236.
16. See **e. g.,** the Court's judgment in the case of Groupement des Industries Siderurgiques Luxembourgeoises v. The High Authority, Dec. Nos. 7/54 and 9/54, 2 **Recueil de la Jurisprudence de la Cour** (hereafter referred to as Rec.) 87 (1956).

gard to private persons, however, they restrict it to cases in which the executive organs have failed to address a decision to them. As a consequence, private enterprises are no longer allowed to file complaints in general with regard to an inaction of these organs.

Regarding the right of the executive bodies to submit to the Court their differences with Member States about the scope and nature of their obligations, the Treaties are not quite identical. The ECSC Treaty specifies that the High Authority, if it considers that one of the Member States fails to fulfill its obligation under the Treaty, shall take note of such a failure in a reasoned decision, which allows the State in question a period of time within which to execute its obligation. The State concerned may appeal to the Court, which then rules on the justification of the decision. If the appeal is rejected or if no appeal is lodged within two months, certain economic sanctions may be taken by the Community's executive organs against the State violating its obligations.[17] The other two treaties provide that the Commissions of the Common Market and EURATOM shall in like circumstances address themselves to the Member States. If the State fails to comply within a period laid down by the Commission, then the latter may refer the matter to the Court of Justice. If the Court rules against the State, its government shall take the measures required for the implementation of the judgment of the Court, but the two newer Treaties do not permit the application of economic sanctions.[18] Although this may be considered as a backward step, it must not be overlooked that the pressure of public opinion constitutes a most effective sanction, since none of the Member States would wish to be summoned before the Court by either of the Commissions to hear their action or inaction condemned in law.

The EEC Commission has begun to use its power in a very thorough way. Each time it discovers what it considers to be a contravention of the Treaties by the Member States, however unimportant, it sues those States in Court. In 1961 two actions were filed against the Italian government; one for restricting the importation of pigs and pork products,

17. Article 88, ECSC Treaty.
18. Articles 169, 171 EEC Treaty and 141, 143 EURATOM Treaty.

and the other for applying to imported radio parts a higher tariff than justified by the tariff existing on Jaunary 1, 1958, the date to be used for the calculation of the progressive tariff reductions. In both cases the Court found that those measures of the Italian government violated Italy's obligations under the Treaty.[19] A third case is still pending against the governments of Belgium and Luxembourg for levying a higher fee on import licenses for gingerbread than was permitted by the "stand-still" provision of the EEC Treaty.[20] A fourth case against the German Federal Republic for placing restrictions on the importation of beef has been dropped in April of 1962 after the Federal government rectified the alleged violation of the Treaty.

The purpose of the power of the Court of Justice to bind domestic jurisdictions in their interpretations and applications of the Treaties is to prevent six different interpretations of the Treaties by the national courts which could frustrate the goal of a Common Market under common rules. To avoid this consequence, the Treaties, particularly the EEC Treaty, provide that whenever questions concerning their interpretation are raised in a national court or tribunal of the last resort, such a court or tribunal shall refer the matter to the Court of Justice of the Communities. In such an event this Court is to give a preliminary decision about the interpretation to be adopted and the national court has to observe this decision in the ruling on the case before it. This joins the Court and the national jurisdictions into a common system for a common purpose.

A first request for a preliminary decision under the EEC Treaty provisions of article 177 reached the Court during its 1961-62 term. The Court of Appeals at the Hague suspended proceedings in a litigation involving the legality of an exclu-

19. EEC Commission v. The Government of the Italian Republic, Dec. No. 7/61, December 19, 1961, 7/V Rec. 633 (1961) and EEC Commission v. The Government of the Italian Republic, Dec. No. 10/61, February 27, 1962, 8/I Rec. 1 (1962). It is interesting to note that in the first case the Italian government had lifted the import restrictions before the Court pronounced its judgment. As a consequence, the Italian government contended that since the grounds for the suit had been removed, the Court should deny the admissibility of the suit. The Court held, however, that according to the Treaty the object of the suit was a request for a statement of the Court that a Member State had violated a Treaty obligation, and that it did not have to examine whether the State involved had carried out, after the filing of the suit, the measures necessary to rectify the violation of the Treaty.

20. Cases 2 and 3/62.

sive export sales contract under article 85 of the EEC Treaty which declares as void certain clauses in restraint of trade. It asked the Court of Justice for a ruling on the interpretation of article 85, which that Court pronounced on April 6, 1962.[21]

What are the powers of the Court to enforce its judgments? As has been pointed out earlier, in actions against the governments of the Member States only the ECSC Treaty provides for means of enforcing the Court's decisions which consist of the application of sanctions by the Community's executive organs.[22] Against defending parties other than the governments of the Member States, however, judgments of the Court can be enforced in all six countries. A party who wants a decision of the Court executed, can address itself directly to the national judiciary authority which verifies the authenticity of the Court's judgment; after authentication, it is executed in the same manner as national judgments.[23]

II

The procedure before the Court of Justice is divided into two stages. In the first stage the procedure is conducted in written form and usually involves the exchange of four briefs between the contending parties as well as the submission of documentary evidence and supporting papers or certified copies thereof. In the second stage the procedure is oral and includes the reading of the report presented by the reporting judge, as well as the hearing by the Court of witnesses, experts, and the legal advisors of the parties. The procedure closes with the presentation of arguments by one of the advocates-general in which this official presents in all impartiality his opinion on the points of law raised by the case and accordingly proposes the ruling he thinks appropriate.[24]

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21. Request for a Preliminary Decision presented by the Court of Appeals of the Hague in the case of Kledingverkoopbedrijf Co. de Geus v. (1) Robert Bosch Gmbh, (2) Willem van Rijn Inc., Dec. No. 13/61, April 6, 1962, 8/I Rec. 89 (1962). The Court interpreted article 85 as not voiding objectionable agreements **ex tunc** with the entry in force of the EEC Treaty. This decision may turn out to be one of the most significant judgments rendered by the Court since it involves for the first time the application of the important anti-trust clauses of the EEC Treaty. (**Cf.** Hermann Schumacher, **Die Durchfuehrung der Artkel 85 und 85 des Rom-Vertrages, Wirtschaft und Wettbewerb,** July/August 1962, p. 475-85.

22. **Supra** n. 19.

23. Articles 44, 92 ECSC Treaty, 187, 192 EEC Treaty, and 159, 164 EURATOM Treaty.

24. **Cf.** articles 21-28 of the Statute of the Court.

The Court is not obliged to follow the opinions of the advocate-general nor to give reasons for not doing so. As a matter of fact, the advocate-general does not participate in the judicial conference.[25] Nevertheless, even if his opinions are not followed, the functions of the advocate-general are important. During the hearing of the case, he can question witnesses as well as representatives and legal advisers of the parties.[26] Moreover, when one considers that the Court rules in the first, last, and only instance on cases before it, the advocate-general assists in clarifying the factual and legal aspects of the case, a function which normally is performed for other supreme jurisdictions by the lower courts. Thus the advocate-general provides a useful challenge for the judges of the Court with which they have to deal before pronouncing their final decision.

The deliberations of the Court are and shall remain secret.[27] When differences of opinion occur, a vote is taken and the opinion of the majority of judges is accepted for the judgment. However, the manner of voting is not indicated in the judgment which appears as a single uniform decision.[28] Professor Donner, the president of the Court, observed in a recent article that the exclusion of the possibility of giving dissenting opinions protects the independence of the judges. It forces the judges to work out an agreement on the wording of the decision and thus requires longer discussion in conference, but it ensures opinions that are understandable through out the Communities and contributes to the establishment of a common fund of legal notions and principles.[29]

A difficult problem in the procedure before the Court is the recognition of four official languages; French, German, Italian, and Dutch. The Rules of Procedure establish the basic principle that the plaintiff may select the language in which the case will be heard. However, if the defendant is not an institution of the Communities but a Member State or a natural or legal person of a Member State, the case is heard

25. Article 27, par. 2, of the Rules of Procedures of the Court of Justice, **Journal Officiel des Communautees Europeenes,** January 18, 1960.
26. Article 40, par. 4, and article 57 of the Rules of Procedure.
27. Article 29 of the Statute of the Court.
28. For details see article 27 of the Rules of Procedure.
29. Donner, **supra** n. 6 at 234.

in the language of the defendant.[30] Since the judges have not been chosen for the linguistic abilities, but for their knowledge of the law, all documents brought before the Court are translated in each of the three other official languages and during the oral procedure a simultaneous translation is provided. Futhermore, the judgments of the Court are published in all four languages, but only the copy in the original language used during the procedure before the Court is considered to be authentic.[31]

Although the Treaties do not provide for formal appeals against the judgments of the Court, a reconsideration of a judgment may be requested "on the grounds of discovery of a fact susceptible of exerting a decisive influence which was unknown to the Court and to the party requesting such reconsideration prior to the rendering of the ruling."[32] In addition, individuals and legal persons, as well as institutions of the Communities may institute "third-party proceedings to contest ruling which have been rendered without notification to them. . . ."[33] The Rules of Procedure of the Court narrow down the contest of a judgment by third parties, also called third party opposition, to those who have been affected adversely in their rights. Futhermore, contesting third parties must give reasons as to why they were not able to participate in the principal proceedings.[34]

Two judgments of the Court during its 1961-62 term dealt with the interpretation of the provisions pertaining to third party opposition.[35] The Court interpreted these provisions very narrowly and thus cut off the possibility of developing these provisions into instruments for liberally filing appeals against its judgments. In view of the far-ranging competence of the Court this may be regrettable; on the other hand, a wider interpretation of these provisions may greatly increase

30. Article 29, par. 2 of the Rules of Procedure.
31. Article 29, paragraphs 3-5, and article 30 of the Rules of Procedure.
32. Article 38 of the Statute of the Court. The request for reconsideration must be brought within ten years of the judgment and within three months of the discovery of the new fact.
33. Article 36 of the Statute of the Court.
34. Article 97, par. 1, of the Rules of Procedure.
35. Societe Breedband v. Societe des Acieries du Temple (formerly S.N.U.P.A.T.) v. The High Authority, **et. al.,** Dec. Nos. 42 and 29/59, July 12, 1962 (mimeo.) and The Government of the Kingdom of Belgium v. Societe Commerciale A. Vloebergh and the High Authority, Dec. Nos. 9 and 12/62, July 12, 1962 (mimeo.).

the business before the Court without however creating a true "two-tier" court structure.

III

Up to the conclusion of the 1961-62 term, which ended in the middle of July of 1962, the Court of Justice had issued 87 opinions. Three opinions were of an advisory character and involved the legality of certain proposed amendments of the ECSC Treaty under article 95 of that Treaty;[36] one opinion was the preliminary decision referred to previously; the others were rendered in the exercise of the Court's contentious jurisdiction. All but six of the opinions grew out of the ECSC Treaty; those remaining were the first litigations involving provisions of the EEC Treaty. In all decisions pertaining to contentious cases except three, the complainant was a government of a Member State, a private enterprise or an association of such enterprises, or an individual, while the defendant party was a governmental organ of one of the European Communities. The exceptions were two decisions in suits filed by the EEC Commission against the government of a Member State,[37] and a suit of an individual against the government of a Member State concerning the scope of immunity from local taxation enjoyed by the employees of the European Communities.[38] It is interesting to note that individuals and private enterprises freely instituted proceedings before the Court against the decisions of the executive organs of the Communities; on the other hand, actions instituted by Member States and executive organs of the Communities remained the exception. The main cause for this phenomenon lies in the fortunate fact that conflicts arising between the interests

36. Advisory Opinions of December 12, 1959, 5 Rec. 551 (1959); of March 4, 1960, 6/I Rec. 93 (1960); and December 13, 1961, 7/V Rec. 505 (1961). The Court has been very cautious and circumspect in the discharge of its responsibility to examine the "constitutionality" of amendments proposed by the executive organs of the Coal and Steel Community. The first two advisory opinions pertained to a proposed revision of article 56 of the ECSC Treaty bestowing upon the High Authority increased powers for making grants-in-aid in order to counter the effects of unemployment in the coal industry. Only after the initial objections of the Court to the proposed amendment were met in a revised proposal, did the Court approve the amendment. In the last Advisory Opinion, the Court did not consider a proposed amendment to article 65 of the ECSC Treaty to be compatible with the provisions of article 95. This amendment would have given the High Authority additional powers for granting exemptions to the anti-trust provisions of the Treaty contained in article 65.

37. See **supra** n. 13.

38. Hublet v. The Belgian State, Dec. No. 6/60, December 16, 1960, 6/II Rec. 1127 (1960).

of one or more Member States are rather infrequent, whereas the interests of different economic and social groups are more likely to clash.

What are the most significant implications of the Court's decisions and opinions? Of greatest significance appears to be the development of a strong and uniform rule of law among and within the six nation states that established the three European Communities. Although this rule of law is functionally limited to the economic sphere, its development has had important political consequences. National governments bow to the judgments of the Court and adjust their policies accordingly instead of basing the formulation of their policies solely on what they conceive to be their "national interests". This is demonstrated by the compliance of the Italian government with the judgments of the Court, discussed earlier, in which the Court declared that the Italian government had violated the EEC Treaty by imposing certain import restrictions on pork products and by levying higher customs duties on radio parts than allowed by the Treaty.[39] Another example is the series of decisions of the Court with respect to freight rates for coal within the territories of the Member States.[40] The decisions grew out of the very favorable special rates which the German railroads allowed for the transport of coal to certain German blast furnaces that were not advantageously located. The Lorraine steelworks, which depend on Ruhr coal, benefitted from this practice when they belonged to Germany but upon their return to France after World War I, they had to pay the much higher normal transport rates for Ruhr coal. Since the ECSC Treaty provides for the abolition of all discrimination in transport rates within the territory of the Communities and stipulates that special rates were only to be allowed with the consent of the High Authority, this institution decided to disallow part of the existing German rates but to permit continuance of others for a variety of reasons. Following this decision of the High Authority the Court was swamped with appeals against it, — appeals from the German government and German industries that the decision was being too rigid, and appeals from the

39. See **supra** n. 19.
40. See Government of the Federal Republic of Germany v. The High

French government and French industries that it was being much too soft. The Court, however, basically upheld the decision of the High Authority, although it did disallow two more of the special rates following the French recommendations. Following the pronouncement of the Court's judgments, the German government reconsidered its entire rate structure and introduced a general low freight rate for coal which was applicable to both internal and international traffic.

A second important consequence of the Court's activities has been the devlopment of a community-wide system of public law which will inevitably have a strong impact on the municipal law of the Member States. This is particularly obvious in respect to the self-executing provisions which the Treaties contain; to avoid proliferation of the interpretation of these provisions, the Treaties, as has been shown, make the Court of Justice the final arbiter for the determination of the meaning of ambiguous rules. But beyond that there can be little doubt that the case law built by the Court will induce the Member States to harmonize pertinent segments of their national laws, such as anti-trust statutes, either through multilateral conventions or parallel legislation. In this connection it should be also noted that article 3 h of the EEC Treaty recommends to the Member States the approximation of their respective municipal laws to the extent necessary for the functioning of the Common Market.[41] Thus a web of related laws is being spun which will enmesh the six Member States in such a manner that in the future armed conflict as a solution for the settlement of disputes will appear as an absurdity and an impossibility.

Up to the present, the Court has guided the governments of the Member States, the executive organs of the Communities, and the private enterprises, with a gentle and understanding, yet albeit firm hand, toward the attainment of the

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Authority, Dec. No. 3/58, March 8, 1960, 6 Rec. 117 (1960) and Dec. No. 19/58, May 10, 1960, 6/I Rec. 469 (1960); Barbara Erzbergbau **et al.** v. The High Authority, Dec. Nos. 3-18/58, 25 & 26/58, May 10, 1960, 6/I Rec. 367 (1960); and Chambre syndicale de la siderurgie de l'Est de la France **et al.** v. The High Authority, Dec. Nos. 26 & 36/58, May 10, 1960, 6/2 Rec. 573 (1960).

41. See also article 100-2 of the EEC Treaty which authorizes direct intervention by institutions of the EEC to reconcile the legislative and administrative rules of Member States under certain specified conditions.

economic goals and the implicit political objectives of the Treaties. Although primarily the guardian of legality in the application of the Treaties, the Court has not refused to exercise leadership when occasional timidity in the use of power on the part of the High Authority has made it necessary. As a consequence of this assumption of leadership voices have been heard who talk of the prospect of a "government by judges."[42] Although the judges of the Court of Justice naturally deny any interest in or aspiration for such a development,[43] there is little doubt that, as Mr. Lagrange, one of the advocates-general points out, the Court's role has been "more important. . .and. . .considerably different from that which had been visualized originally."[44] In this connection, it should be borne in mind that European jurists are well aware of and often inspired by the judicial statesmanship of John Marshall.[45] It is obvious, therefore, that the Court will be an influential factor in the future development of the internal and external relations of the European Communities and that the judges will play a significant role in giving direction to this development.

The role of the Court may become crucial in the future when the Communities will be enlarged by the admission of new members. The dynamic character of the European Economic Community has attracted governments of states, not only in Europe, but also in the Middle East. Greece has concluded an agreement with the EEC providing for full economic integration, but over a longer period than for the present members. Currently applications for full membership from Great Britain, Denmark, Norway, and Ireland are pending or are being negotiated. Israel has sounded out the Communities with regard to membership but has been ad-

42. Lagrange, **supra** n. 12 at 417. See also the complaints expressed by the "Committee of the Presidents" of the European Parliament in Parlament Europeen, Documents de Seance, **Rapport fait au nom du Comite des presidents,** June 25, 1962, paragraphs 93 and 99.

43. During conversations with some of the judges of the Court which the author had during a visit to Luxembourg in July of 1962, all insisted that they had only one function, namely the application of the law as found in the Treaties.

44. Lagrange, **supra** n. 12 at 416.

45. It is noteworthy that the Court of Justice has evolved a limited doctrine of "implied powers". See Federation Charbonniere de Belgique v. The High Authority, Dec. No. 8/55, Nov. 29, 1956, 2 Rec. 267 (1955-56) p. 304-5; also the critical comments of Maurice Lagrange, **Les pouvoirs de la Haute Autorite et l'application du Traite de Paris, Revue du Droit Public et de la Science Politique,** January-February 1961, p. 40-58, particularly 46-48.

vised that the present Member States are primarily concerned with the development of an European organization. Spain and Portugal have asked to join the Community as full members, and a number of countries are seeking an associate membership. There appears to be little doubt that some of the applicants will be admitted, provided they accept the provisions of the Treaties. This, in turn, will lead to an increased importance of the Court and to an extension of the framework of law which the Court has been constructing. Should, as Assistant Secretary of State Schaetzel appeared to anticipate, an Atlantic Community emerge in time from the growing European Communities, the process of legal "harmonization" may spread to an even larger area on both sides of the Atlantic.