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ART, THE ART MARKET AND 1992

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By 31 December 1992 the member States of the European Economic Community - currently Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, United Kingdom - have undertaken to establish a free internal market. The effort to achieve this goal began in 1985 with the Commission of the European Communities (European Commission) which adopted the objective of creating "a genuine single market of more than 320 million people, without barriers to trade or the free movement of capital, persons, services and trade"[1]. The political will to achieve this goal took legal form in the Single European Act 1986[2]. This requires a major effort by member States to harmonize legislation and administration on a vast variety of subjects. By the end of 1988 some 50% of the planned legislation had been agreed on. The Commission is to make a further report on the position as it was at the end of 1990[3]. Certain areas are proving difficult to deal with; among them that of the cultural heritage and the art market.

At this stage it is impossible to predict how movement of items of the cultural heritage within, from and to the Community will operate after 1992. There will not be free

1. Palmer, J. 1992 and Beyond (Commission of the European Communities, Brussels, 1989) 23.

2. (1986) 25 International Legal Materials 503

3. Op. cit. fn.1, 24.

trade in such items. The nature and extent of regulation depends on choices Community organs and member States make in the next 21 months. However, certain suggestions can be made on the basis of proposals issuing from the European Commission and the European Parliament.

EXISTING LAWS MAINTAINED

With the exception of Belgium, all member States of the Community currently have controls on the export of certain items of the cultural heritage but there are great variations in both the type of control and the items affected. Italy, for example, prohibits the export without a licence of objects of artistic, historic, archaeological or ethnographical interest except works of living authors or those less than 50 years old. The Netherlands subjects to Ministerial permission the export of protected objects placed on a list. The United Kingdom export controls apply to a wide range of material but a decision not to allow an export licence is normally subject to an offer by a public institution being made within a specified time for the purchase of the object. Failing such an offer, an export licence is normally granted. It will be obvious that if material can be got to one of the States with more lenient export laws or, in Belgium's case, none at all, then the chances of exporting it to a State outside the Community are greatly increased.

Even if the existing laws regarding movement of items of the cultural heritage within the EEC were left unchanged it would be impossible to predict with any accuracy what effect removal of customs control would have. There are statistics on the material seized by customs officers but these cannot indicate the volume of material that evades customs control. For example, it is reported that French Customs officials admit they probably catch only 8 to 10 per cent of art objects crossing the frontier illegally[4]. For small, portable works evasion is not so difficult for those prepared to take the risk of being caught. A number of novels have been written explaining how it can be done[5]. For larger items more ingenuity is needed but even there the risk appears to be low. What will change for some is the psychological element. Border control is a physical reminder that what one is attempting is contrary to law and carries with it the possibility of being caught. It is a deterrent for some people. On the other hand, some regard such laws as contrary to desirable free movement of cultural objects, therefore as bad and to be ignored. Nevertheless, once that physical presence of Customs control disappears, a potent sanction against unlawful export will also disappear.

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4. The ARTnewsletter, 8 January 1991, 6

5. For example: Lyall, G. Venus with Pistol (Pan, London, 1971); West, M. Masterclass (Arrow, London, 1989); examples also appear in Hoving, T.P.F. King of the Confessors (Simon and Schuster, New York, 1981)

Once unlawfully exported, the State usually has little opportunity of recovering the item. If the item comes from a private collection or an excavation its existence may not even be known to the authorities. Even if known, it may disappear into a collection in another State and only be seen at rare intervals, if at all. In those rare cases where the State does find the item, it will usually have to institute legal proceedings for recovery. If the State is not the owner of the item, its chances of recovery are small. Even as owner they are not great. It is not surprising that certain States, inheritors of great art wealth, are anxious as to the effect of the changes of 1992.

TREATY OF ROME

The above comments are based on the premise that the existing laws are not changed. This is unlikely to hold. State fears and the desire for uniformity have led the European Commission and the European Parliament to seek a new legal regime.

Any proposal for such a regime must be against the background of the Treaty of Rome[6]. Articles 30 to 34 of that agreement deal with the elimination of quantitative restrictions on trade between member States. For example, Article 30 states: "Quantitative restrictions on imports and

6. Treaty Establishing the European Economic Community 1957 (298 U.N.T.S. 11)

all measures having equivalent effect shall ... be prohibited ... ". On the other hand, Article 36 states that the "provisions of Articles 30 to 34 shall not include prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; ... the protection of national treasures possessing artistic, historic or archaeological value; ... Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States".

The Commission has expressed certain views as to the interpretation of Article 36.

> ... the concept of "national treasures possessing artistic, historic or archaeological value" cannot be defined unilaterally by the Member States without verification by the Community Institutions.... Article 36 ... which should be interpreted restrictively since it derogates from the fundamental rules of the free movement of goods - cannot be relied upon to justify laws, procedures or practices that lead to discrimination or restrictions which are disproportionate with respect to the aim in view.[7]

It will be obvious that this is a very restrictive view of the scope allowed member States under Article 36. The notion that the Article must be interpreted restrictively is a value judgment based on the over-riding weight given to

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7. Commission of the European Communities Communication from the Commission to the Council on the Protection of National Treasures Possessing Artistic, Historic or Archaeological Value: Needs Arising from the Abolition of Frontiers in 1992 (Doc. COM (89) 594 final, Brussels, 22 November 1989) 3

the free movement of goods. It depresses the values inherent in keeping an item within a particular State. It does not consider the fact that certain items are best kept in the one place for a number of very good reasons; in particular, that they could suffer damage if moved. Moreover, control over exports does assist in the control of archaeological excavations in that it makes the products of unlawful excavation less readily disposable. The reference to discrimination or restrictions "disproportionate with respect to the aim in view" begs the question of what is "disproportionate" when one is considering the fate of items of the cultural heritage - unique products of humanity's past that are not simply articles of commerce.

> It can be argued that Article 36 recognizes that items of the cultural heritage are not to be regarded in the same light as other articles of commerce; that free trade in such items is subject to overriding concerns of preservation and protection of those items as well as national interests.[8]

Moreover, it should be remembered that Article 36 of the Treaty of Rome is not a unique provision. It is the same as Article 20 of the General Agreement on Tariffs and Trade 1947[9] and has been incorporated in Article 20 of the Agreement between the European Economic Community and the Swiss Confederation 1972[10] dealing with trade and customs

8. O'Keefe, P.J. & Prott, L.V. Law and the Cultural Heritage: Volume III: Movement (Butterworths, London, 1989) 683

9. 55 U.N.T.S. 188

10. Office for Official Publications of the European Communities Collection of the Agreements Concluded by the

matters. Article 36 thus cannot be interpreted in isolation.

COMMISSION'S COMMUNICATION 1989

The Commission put forward the views set out above in a document[11] sent to the Council of Ministers in 1989. This is still the Commission's major communication on the topic. Speaking bluntly, the Commission's proposals are excessively bureaucratic and do not appear to have taken account of the most recent developments in control of trade in items of the cultural heritage and of the art market. There are many examples of sophisticated schemes in operation or proposed that could provide practical solutions to the Community's problems.

The Commission was clearly motivated to restrict as far as possible the number of objects covered by any Community measures.

> It should be stressed that the task is to determine the objects in respect of which monitoring procedures and controls may be established, and not the objects in respect of which Member States actually take measures for the "protection of national treasures" (export prohibitions and requests for return). Monitoring measures necessarily relate to categories or types of object, so that action can be taken in a limited number of cases.[12]

European Communities, Bilateral Agreements, E.E.C.-Europe, 1958-78 (European Communities, Brussels, 1978 - Vol.3) 18

11. Op.cit. fn. 7

12. Ibid. 7

The Commission proposed two limiting factors: the number of objects concerned should be proportional to the severity of the measures envisaged; the number of objects covered by a given measure should be commensurate with the aim of that measure. However, the Council of Ministers of Culture has ruled that it is up to each member State to define its own national treasures[13].

> Such definitions vary widely among the nations. The Netherlands, for example, so classify only 200 pieces; Germany has 500, while Italy claims at least 400,000.[14]

The central aspect of the Commission's proposal is the institution of an export authorization issued by the "Member state of origin". This would have to be presented when an item of the cultural heritage was put forward for export from the Community. Use of the phrase "Member state of origin" is unfortunate in that "State of origin" is used in the social sciences to denote that State which now occupies the place where the object was made. There need be no connection between the place where the object was made and where it now is. Recent drafts of international agreements have avoided use of the phrase by substituting such terms as "State of export". In order to determine the "Member state of origin", the Commission proposes the institution of a

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13. Conclusions of the Council of Ministers of Culture Concerning the Protection of National Treasures Having an Artistic, Historic or Archaeological Value after 1992

14. The ARTnewsletter, 11 December 1990, 5

"reference date". It would have to be shown that the object was in the State concerned on that particular date. For export to another member State of the Community, the Commission recommends a system of authorization to despatch. This would mean that the first State remains the "Member state of origin" and, if it were later desired to export outside the Community, that State would have to be requested for an authorization to export.

The Commission also contemplates the alternative "of mutual recognition by the Member States of the prohibitions and restrictions enshrined in their laws, with the result that they would have to apply such measures in their territory to national treasures belonging to the national heritage of the other Member States by returning such treasures where they have been unlawfully despatched"[15]. The Commission rightly points out that this would not be an easy matter to agree. Moreover, it would affect only significant works: "recognition would apply only in the case of the most important objects" and the requesting State would have to prove that the object "is genuinely important to the Member State of origin"[16].

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15. Op.cit. fn.7, 13

16. Ibid. 13,14

Another major proposal by the Commission is for the institution of an "identification sheet" to accompany each item of the cultural heritage provided they were not series manufactured objects. The sheet would commence with a declaration of the State where it existed on the "reference date" and all subsequent dealings would be recorded. The system could be either voluntary or compulsory. It is obvious, as noted by the Commission, that such a system would be enormously bureaucratic. Moreover, it would be open to abuse through fraud, particularly as it is proposed that endorsements would be made by "reliable persons".

The Commission also endorses the use of registers or inventories. At several points mention is made of the virtues of registers. However, the problems of developing registers have been realized in other quarters for many years. Chatelain has discussed the use of inventories in relation to stolen items of the cultural heritage.

> The highest level, which is intellectually the most tempting, is obviously a complete inventory of the cultural property existing in each country (this would automatically provide a complete inventory of the entire cultural property of Europe if the national inventories were complied on identical bases). This objective is not considered to be feasible, for reasons of logic, law and fact.[17]

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17. Chatelain, J. Means of Combatting the theft of and Illegal Traffic in Works of Art in the Nine Countries of the EEC (Study prepared at the Request of the Commission of the European Communities - Doc. XII/757/76-E) 49

Chatelain refers to the ill-defined categories of objects in the cultural heritage, the problem of making inventories of private collections and the lack of manpower and money.

GALLE REPORT

In April 1990, the President of the European Parliament announced that the Committee on Youth, Culture, Education, the Media and Sport had been authorized "to draw up a report on the movement of objects of cultural interest in the context of the single market". Known by the name of the rapporteur, the "Galle Report"[18], released in November 1990, contains a number of suggestions based on the Commission document discussed above. These have been incorporated in a Resolution of the European Parliament of 13 December 1990 which has been forwarded to the Commission, the Council and the member States of the Community.

The Report and the Resolution contain a large number of proposals - some of a basically legal nature. Mutual recognition of the laws in force in the member States is said to be a first step towards effective cooperation and coordination. The necessity for national law which will effectively indicate the content of the cultural heritage is stressed. Time bars in respect of offences such as theft of protected items should be abolished. But in addition, and

18. European Parliament, Session Documents, A3-0324/90, 28 November 1990

most significantly, both documents call on the Commission to propose that "the Community as such becomes a contracting party to the 1970 Unesco Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the 1985 Council of Europe Convention on offences relating to cultural property, and calls on Member States which have not yet done so to ratify those conventions".

1970 UNESCO CONVENTION

This last proposal is most significant. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 (referred to hereafter as the 1970 Unesco Convention)[19] is the major international agreement dealing with unlawful traffic in items of the cultural heritage. There are currently 69 States party to it. Although this is a significant figure, in practical terms there is a great imbalance. States of the world are commonly divided into "art-exporting" and "art-importing" States. The latter would include France, Germany, Japan, United Kingdom and United States. Only one of these, the United States, is party to the 1970 Unesco Convention and then only subject to far reaching reservations and understandings - so much so that one State, Mexico, has questioned whether it should be

19. 823 U.N.T.S. 231

regarded as a party at all[20]. Among the members of the European Community, only the following States are party: Greece, Italy, Portugal and Spain. These are commonly regarded as "art-exporting" countries desperately trying to protect the rich archaeological sites that lie within their borders as well as the contents of museums, churches etc. At the same time, with the exception of Italy, they constitute the poorer section of the Community. Consequently, a move to implement the 1970 Unesco Convention by the Community and all its member States would be very significant both for these States and those of the rest of the world.

Implementing the Convention

Equally important is the way in which the State which becomes party implements the Convention. The reason for this is that the Convention had a somewhat tortuous drafting history and there are conflicting opinions as to what some of the provisions mean or require of a State. Consequently, if the European Community itself and the member States become party to the Convention it is to be hoped that they will do so in a way that accords with the spirit of the Convention rather than take a stand that represents minimal possible compliance. Here they might pay attention to the legislation of Australia which became party to the

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20. Op.cit. fn.8, 776

Convention in 1990. That legislation was based on the Canadian Cultural Property Export and Import Act 1975 modified to take account of developments since that date. While not major players in the world art market, both Australia and Canada share features that make their experience significant. Both have indigenous populations - Aborigines (Australia), Indians and Innuits (Canada) - producing work prized on the international art market whether designed for that market or for their own use. Both have populations largely of European descent with significant cultural heritage material derived from that descent as well as material produced locally since European settlement. Both are transit States for material from other areas destined for the major art markets - Australia for material from the Pacific and Papua New Guinea, Canada for material from South America. Finally, both are federal States with, in a sense, some of the problems that the Community is now facing. In Australia, for example, responsibility for the cultural heritage generally rests with the states of the Commonwealth although the Commonwealth Government can deal with export under the foreign affairs power contained in the Constitution. Nevertheless, there was extensive consultation when it did legislate on export.

i. Control Lists

The Australian Protection of Movable Cultural Heritage Act 1986 operates on the basis of what is called a National Cultural Heritage Control List. Since Australia did not have an inventory of its movable cultural heritage, a decision was taken not to attempt such a listing, but to try and describe with reasonable precision certain categories into which all the really significant material would fall. Section 7 of the Act defines the movable cultural heritage of Australia as objects that are of importance to Australia, or to a particular part of Australia, for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons. Section 8 then provides for the establishment of the Control List which sets out in more detail what is meant by each of these categories. The Control List is contained in Regulations[21] made under the Act. The Australian scheme to this extent is thus like those existing in the United Kingdom and France in that the criteria for export is established by the Executive for the information and guidance of exporters[22]. The Control List is divided into two classes: A and B. Items in Class A cannot be exported; those in Class B can be exported subject to permit. Curators in the various collecting institutions were asked to establish lists of the very significant items

21. Statutory Rules 1987 No.149

22. Knapp, B. "Restrictions to the Importation and Exportation in the Art Trade" in Briat, M. (ed.) International Sales of Works of Art (Kluwer, Deventer, 1990) 11, 23

of Australia's movable cultural heritage and to try to formulate a description that would include them. Thirteen categories of significant material were thus established. These were the basis of the Control List:

objects of Aboriginal heritage which cannot be exported (Class A objects)

archaeological objects

objects of aboriginal heritage which can be exported subject to permit

archaeological and ethnographic objects of non-Australian origin

natural science objects

objects of scientific or technological interest

military objects

objects of decorative art

objects of fine art

books, records, documents, graphic material and recordings

numismatic objects

philatelic objects

objects of social history

Collectors, dealers, interested institutions and members of the public generally were consulted in order to establish the nature and volume of material being traded in each category. The list could then be adjusted so that, while all the really important items would be caught by the export control, the system would not be inundated with an unmanageable number of export applications. Refinements

were thus added to each category: some of the limits used were the age of the item, its value, rarity - the criteria varied for each category. For example, some have no age criteria (natural science objects of Australian origin). There is no exception for objects made by a living person in respect of objects of applied science or technology, although a similar effect is achieved by criteria requiring certain kinds of objects to have been made before a certain date (agricultural objects before 1920, objects of rail transport before 1930, air transport before 1950). The dates can thus be adjusted to cover particularly important periods of technological development without interfering with inventors' rights to freely sell and realize the profit of their inventions. The Control List is not intended as an immutable document but one that can and will change in the light of experience and new developments; if it seems that a particular category has been too broadly drawn it can be narrowed and vice versa. The Act establishes a National Cultural Heritage Advisory Committee whose functions include keeping these matters under review.

The concept of a Control List seems to be one that would be particularly apt in the Community context. Firstly, it allows the public to know with considerable precision what is protected. Secondly, it is flexible. The same general categories could apply to all States in the Community with each State establishing its own Control List based on the

general categories. It would even allow a two tier system to be introduced, one for exports from individual States of the Community, and another, more restrictive one, from the Community itself.

ii. Permits

All Class B objects can be exported subject to a permit. It is an offence to knowingly export such an object without a permit. Applications for a permit are sent to expert examiners who may recommend refusal of a permit if the object is considered to be so important that its export would "significantly diminish the cultural heritage of Australia" (s.10(6)). The expert's report is sent to the National Cultural Heritage Committee which sends it, with its own recommendations, to the responsible Minister. In Canada, where this system has been in operation for some 15 years, there are about 300 applications per year of which about 200 actually fall within the Control List and of these between 12 and 20 are actually stopped (about half relating to indigenous material). Permits can be issued subject to conditions eg. where it is desired to export a protected object temporarily. Certificates of exemption may also be granted eg. a dealer may wish to bring an object related to local history into the country for prospective sale but would want the assurance of being able to export if the sale did not eventuate.

Many member States of the Community operate a permit system of some sort. These could be standardized. Moreover, such a system could be introduced at the Community level for those items deemed to be prohibited exports from the Community. Not all States have the ability to impose conditions (eg. Austria and France) nor issue certificates of exemption but it is thought that both are useful devices for facilitating certain aspects of the art trade and at the same time bringing to light what is being transacted.

iii. No need for Customs checks

It must be stressed that the Australian and Canadian systems for implementing the 1970 Unesco Convention are specifically designed to operate independently of Customs control. In both cases it was emphasized that no increase in Customs surveillance was intended. If protected items were found by Customs then that was all to the good; but there would be no particular Customs emphasis nor Customs training in recognizing protected items. This of course is very relevant in the context of the European Community where the abolition of border controls is proving a major source of concern for many people.

Take exports first. Under the Australian legislation, export without a permit is not only an offence but, more significantly, results in automatic forfeiture of the item. This was inserted as a direct result of the decision of the

English House of Lords in Attorney-General of New Zealand v. Ortiz[23]. There a provision in the New Zealand Historic Articles Act 1962 was interpreted as meaning only "liable to be forfeited" and title passed to the New Zealand Government only after the goods had been seized by it. Under the Australian Protection of Movable Cultural Heritage Act 1986, forfeiture is intended to be automatic at the moment of export. That moment is specifically defined in the Act so that it occurs within Australian jurisdiction thus countering any argument that the Act operates extraterritorially. This means that the Australian Government, at least under its own law, is able to claim the item overseas as owner. Whether that claim would be enforced by foreign courts depends on complex questions of private international law which cannot be dealt with here. Suffice it to say that there is very good reason to believe that foreign courts would enforce the claim.

Application of such a forfeiture provision would improve the position of both the member States of the Community and that of the Community itself. If all the member States were to follow this line it would make it very difficult for anyone to claim that the title so gained should not be recognized. It does mean that States would technically have to take legal proceedings to enforce that claim but the possibility

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23. [1983] 2 W.L.R. 10

of losing title would act as a deterrent to people who might otherwise take the risk of unlawful export. It must be stressed that this is not intended as a punishment but rather a means of keeping items of the cultural heritage within the jurisdiction unless their export is permitted.

iv. Returns

There are two provisions in the 1970 Unesco Convention dealing with return of items of the cultural heritage. One is Article 7(b):

> The States Parties to this Convention undertake:
> ...
> (b)(i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;
>
> (b)(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property....

The second is Article 13:

> The States Parties to this Convention also undertake, consistent with the laws of each State:
>
> (a) To prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;
>
> (b) to ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;

> (c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;
>
> (d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should thereafter ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

Pursuant to these provisions, the Canadian Cultural Property Export and Import Act states that "it is illegal to import into Canada any foreign cultural property that has been illegally exported from" a "reciprocating State"(s.31(2)). A "reciprocating State" is defined as meaning "a foreign State that is a party to a cultural property agreement" (s.31(1)). Such an agreement is itself defined to mean "an agreement between Canada and the foreign State or an international agreement to which Canada and the foreign State are both parties, relating to the prevention of illicit international traffic in cultural property". Other parties to the 1970 Unesco Convention fall into this category. The Canadian legislation is activated by a request from the foreign government to the Secretary of State of Canada. The Attorney-General of Canada then "may institute an action in the Federal Court of Canada or in a superior court of a province for the recovery of the property" (s.31(3)). If the court is satisfied that the foreign cultural property was illegally imported into Canada, it may make an order ensuring return of that property (s.31(5)). Such return may be conditional on payment of compensation by the reciprocating State to a bona

fide purchaser for value, or any other person who has acquired valid title to the property without knowledge of the illegal export (s.31(6)).

The Australian Protection of Movable Cultural Heritage Act 1986 makes provision for forfeiture of an object if it is a protected object of a foreign country; has been exported from that country contrary to its laws and imported into Australia. Any person who imports the object with knowledge of those facts is guilty of an offence (s.14). On forfeiture, title to the object vests in the Commonwealth and the object is at the disposal of the relevant Minister who is obliged, under the Convention, to return the object to the requesting country. A requesting State has to be prepared, by the terms of the Convention, to provide compensation to an innocent purchaser. However, importers are unlikely to be regarded as "innocent" if they do not satisfy themselves that the export requirements of the appropriate foreign States have been complied with. Once again, the legislation is intended to operate with no increase in Customs surveillance. No action is taken by the authorities unless a request is received from a foreign government. On receipt of a request, details are circulated to the appropriate networks which will be expected to provide information in case the object comes to their attention. On receipt of information the police are empowered to seize the object.

Once again this method of implementing the 1970 Unesco Convention has considerable advantages for the European Community. It provides a means of retrieving material unlawfully exported through a procedure which is relatively simple to put into operation. Moreover, as noted, it operates without recourse to Customs procedures.

CONCEPT OF BONA FIDES

Mention was made above of the requirement that the requesting State pay compensation to a bona fide purchaser. This aspect of the 1970 Unesco Convention has caused dismay and apprehension on the part of many poor but "art-wealthy" States. They argue that they should not have to pay to get back items of their own cultural heritage and that, in any case, they cannot afford to pay. In the Commission's 1989 paper[24] there is reference[25] to the problem of the bona fide purchaser.

> With completion of the internal market, the question arises of the rights and duties of a person who purchases in good faith an object in Member State B that later proves to have been unlawfully exported from Member State A: his situation is comparable - but not necessarily identical - to that of the bona fide purchaser of a stolen object.

This is mainly a problem in the Civil Law systems, as the Common Law is concerned basically to protect the rights of

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24. Op. cit. fn.7

25. Ibid. 8

the owner. In the Civil Law systems the rule, speaking very broadly, is that the bona fide purchaser acquires good title after a set period of time - usually between three and five years from the date of purchase. The crucial issue is then the bona fides of the purchaser - how this is established and by whom.

UNIDROIT Draft

These questions have been taken up by the International Institute for the Unification of Private Law (UNIDROIT) which has produced, at the request of Unesco, a Preliminary Draft Convention on Stolen or Illegally Exported Cultural Objects[26]. That Draft has been written by an international group of jurists over a period of several years. It is to be examined by a group of governmental experts at a meeting in May, 1991. It may then be submitted to an diplomatic conference for adoption by States.

Although this UNIDROIT Draft is only about midway to becoming a Convention and the final version may well differ from what now appears, it is necessary to give an indication of what it proposes as this Draft is complementary to the 1970 Unesco Convention. It fleshes out a number of points that are only briefly referred to in the latter. As its name indicates, the UNIDROIT Draft deals with the

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26. UNIDROIT 1990 Study LXX - Doc.19, Rome, August, 1990.

restitution of stolen cultural objects and the return of illegally exported cultural objects. A cultural object is "any material object of artistic, historical, spiritual, ritual or other cultural significance" (Art.2). In respect of a stolen cultural object, the Draft is quite clear: the possessor "shall return it" (Art.3). There are time bars in that, firstly, any claim must be brought within three years from the date the claimant knew, or ought reasonably to have known, the location of the object or the identity of the possessor and, secondly, there is an over-riding time bar of 30 years from the date of the theft. On the matter of bona fides, for a possessor to obtain compensation, the onus is on him to prove the exercise of "necessary diligence when acquiring the object" (Art.4). Illustrations are given of what constitutes such diligence - the circumstances of the acquisition, the character of the parties, the price, whether any register of stolen cultural objects was consulted.

The Draft sets out a procedure for a State to follow when requesting the return of illegally exported cultural objects ie. "cultural objects removed from the territory of a Contracting State contrary to its export legislation" (Art.1). The innovative feature of the Draft is that it requires the requesting State to prove to the "court or other competent authority of the State addressed" "that the

removal of the object from its territory significantly impairs one or more of the following interests":

> (a) the physical preservation of the object or of its context,
>
> (b) the integrity of a complex object,
>
> (c) the preservation of information of, for example, a scientific or historical character,
>
> (d) the use of the object by a living culture,
>
> (e) the outstanding cultural importance of the object for the requesting State.

This qualification was inserted so that claims would be restricted to objects of significance: "the convention is not designed to apply to a mass of objects which could be termed cultural but are of much less importance, not only monetarily but culturally"[27]. If the requesting State proves that the object comes within one of the above categories the court or other competent authority is required to order return of the object unless it finds that the object is more closely connected with the culture of its own State (Art.6). Certain exceptions are created eg. the provisions on return do not apply to the works of a living creator or for 50 years following death (Art.7). Article 8 provides for the payment of "fair and reasonable" compensation unless the possessor knew or ought to have known at the time of acquisition that the object had been

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27. Prott, L.V. Commentary on the Preliminary Draft Unidroit Convention on Stolen or Illegally Exported Cultural Objects (Report Presented to Unesco, August 1990, Unesco Doc. CLT/CH/01/7.2/196.5.1).

illegally exported. It is unclear who has the burden of proving the possessor's knowledge.

> Opinions were divided during the sessions of the group as to whether the possessor or the requesting State should bear the burden of proving the possessor's knowledge. Ultimately, the problem was resolved in the sense that such evidence would already have been adduced by the requesting State under the preceding article and that it was therefore no longer necessary to deal with it in this article which is concerned only with compensation.[28]

It is difficult to agree with this assertion. The preceding paragraphs in no way appear to require the State to lead evidence on the state of knowledge of the possessor. The formulation adopted in Article 8(1) in fact would appear to require the possessor to show that he took steps to investigate the provenance of the object - preferably along the lines of a purchaser of a stolen object. Another innovative provision is that the possessor, instead of requiring compensation, may elect to return the object to the requesting State. There he may retain ownership of it or transfer title to a person of his choice who guarantees that it will not be again illegally exported. If this action is taken the State is prohibited from confiscating the object or taking any action to similar effect.

The above sets out the salient features of the UNIDROIT Draft. It is to be hoped that the European Community takes

28. UNIDROIT Secretariat Explanatory Report on the Preliminary Draft Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT 1990 Study LXX - Doc.19, Rome, August, 1990 at 33.

the innovative features of this into account when devising whatever system is to govern traffic in items of the cultural heritage within and without the Community after 1992. It is true that the provisions of the Draft may change as it is subjected to governmental review. Nevertheless, many of the existing provisions are significant indications of how implementation of the 1970 Unesco Convention could be fleshed out in conjunction with the systems used by Australia and Canada. In particular, the method of returning illegally exported objects and the criteria that must be met by the requesting State could form an effective compromise for both sets of States - those who want no provisions for return and those who demand it, in other words, the "art-importing" States as opposed to the "art-exporting" States. Furthermore, there are the provisions dealing with the bona fide purchaser - provisions that would once more flesh out the 1970 Unesco Convention and give greater protection to the cultural heritage.

EUROPEAN OFFENCES CONVENTION

Both the Commission and the European Parliament refer to another Convention - the European Convention on Offences Relating to Cultural Property 1985[29]. This is a creation of the Council of Europe. It was adopted by the Committee of Ministers on 18 January 1985 but has yet to come into force.

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29. E.T.S. No.119

It has been signed by six member States of the Council (Cyprus, Greece, Italy, Liechtenstein, Portugal, Turkey) but there have been no ratifications. Three member States must ratify before it can come into force.

A major reason for this lack of interest appears to be the Convention's complexity and, possibly, its effectiveness.

> On studying this Convention, one is struck by how little it actually achieves, particularly measured against what was at one time thought possible. The use of two categories for the items covered and the offences is a very useful device for achieving widespread acceptance of the minimum obligations. Over time States may come to accept the wider obligations but, once having taken action on a Convention, States are notoriously difficult to reinterest, particularly if legislation is required. The minimum obligations in respect of offences are indeed minimal and would most likely be fulfilled by most States already. The jurisdiction that a State is to take is broad and may be broader than some States currently claim. As we have said, a central aspect of the Convention is its provisions on restitution. The general obligation in this respect is no more than an undertaking to co-operate. The major notification provision only comes into operation if the State "thinks fit". Restitution under letters rogatory is subject to conditions laid down by the law of the requested Party. The enforcement of judgments is a useful development but it is debatable how far this goes beyond existing provisions in European law. Moreover, the core of the restitution provisions - Articles 7 and 8 - is subject to a wide exception (Art.27):
>
> > Any party may decide not to apply the provisions of Articles 7 and 8 either where the request is in respect of offences that it regards as political or where it considers that the application is likely to prejudice its sovereignty, security or "ordre public".
>
> In addition, Article 13 dealing with jurisdiction and Article 8(3) dealing with execution of judgments are both subject to reservation, i.e. a State when becoming

> a Party can indicate that it will not apply these provisions.[30]

Early drafts of this Convention contained provisions on the bona fide purchaser. However, objection was taken by some States and the provisions were dropped. One problem for the Civil Law States was that these provisions were of a civil nature while the Convention was seen as one in the criminal law field. In light of the lack of interest in the Convention on the part of States and the problems with its content it is surprising that the Commission and the European Community have recommended that the Community and member States should become party. One wonders if the major reason is that the Convention is just there and convenient.

EFFECT OF 1992

Within the Community

The above discussion shows that the effect of on the international art market of the free internal European Community market after 1992 is as yet impossible to gauge. The major Community organs - the Council of Ministers, the Commission and the Parliament - have so far given only very tentative indications of how they see trade in items of the cultural heritage taking place within the Community. It appears that each member State will have the power to decide what it wants protected by export prohibitions. There will be a system of export authorizations and the need for mutual

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30. Op.cit. fn.8, 681

recognition of export laws has been stressed. Ratification or adoption of particular Conventions is recommended. So far no content has been given to these proposals and content is the all important factor. As the previous pages indicate, there are a variety of ways in which the proposals could be implemented. Some more than others make for an efficient and effective system of protecting the cultural heritage of member States as well as forwarding the legitimate art market.

It must not be forgotten that there is a legitimate art market. No member State of the Community has expressed a wish to retain all items of the cultural heritage existing within its borders. There are good reasons for allowing the free circulation of certain items - eg. promotion of a national culture; development of tourism - just as there are good reasons for retaining other items. The crucial point is to find a balance. It may also be possible, using a blend of proposals, to create a two tier system - one for movement within the Community (ie. between the member States) and another for export from, or import into, the Community itself (ie. beyond the external borders). This would have considerable advantages in giving extra protection to particularly important material. It is already inherent in the Secretariat's differentiation between authorization for "export" and authorization for

"despatch" but needs to be more refined and widened in scope.

Eastern Europe

For States in Eastern Europe there are special problems with the coming of the free internal Community market. The countries of this region also all have provisions controlling the export of items of the cultural heritage however these may be defined. In addition there are two regional agreements bearing significantly on problems of movement of such items: the Agreement between the Socialist States on Co-operation and Mutual Assistance in Customs Matters 1962[31] (Article 8) and the Agreement between the Socialist States on Co-operation and Mutual Aid Concerning the Means of Detention and the Return of Cultural Property Illicitly Transported Across State Borders 1986[32]. Neither of these is of any current use for Eastern European States in dealing with member States of the Community nor are the latter likely to be attracted by anything in those Agreements which would persuade them to become party - even if they could. Some East European States are party to the 1970 Unesco Convention: Bulgaria, Czechoslovakia, Hungary, Poland, USSR, Yugoslavia. If the Community and its member States become party to that Convention, those East European States will be able to use the provisions of the Convention

31. (1962) Gesetzblatt der D.D.R. II 735

32. no official citation known

to obtain return of illegally exported material. How effective this would be depends on the terms in which the Convention is implemented. If those suggested in this paper are adopted, it could be quite effective.

In practical terms the Eastern European States are at considerable risk. Items of their cultural heritage are in great demand in the Community. They are desirable to collectors because they fall within the European tradition or are closely akin to it. The lure of cash payments in hard currency could lead to sales at prices low compared to the value of art in the Community. The only problem is in getting them across the borders from Eastern Europe but this does not seem to pose great difficulties. As things stand at present, the existence of border controls within the Community does provide some block on movement between the member States. Normally, there would be no legal obligation on Customs authorities to stop such movement but for some people it would be a psychological barrier. Possession of such an item, if found, could lead to embarrassing questions and interrogation as to where it had come from. Once the internal barriers within the Community come down this aspect will disappear. Moreover, even if an object is found it will be easily removable to another jurisdiction. States would have to move quickly to obtain restraining orders before the item was taken out of the jurisdiction.

Other Countries

For other countries similar problems will arise but probably not with the same immediacy as for those of Eastern Europe. Once again much will depend on the precise regime that is introduced. In some ways, if an external Community border along the lines illustrated is created this may make things easier.

BELGIUM-DENMARK-FRANCE-FEDERAL REPUBLIC OF GERMANY-GREECE-ITALY-IRELAND-LUXEMBOURG-NETHERLANDS-PORTUGAL-SPAIN-UNITED KINGDOM: FINAL ACT OF THE CONFERENCE OF REPRESENTATIVES OF THE EUROPEAN COMMUNITIES' MEMBER STATES WITH TREATY MODIFICATIONS CONCERNING COMMUNITY INSTITUTIONS, MONETARY COOPERATION, RESEARCH AND TECHNOLOGY, ENVIRONMENTAL PROTECTION, SOCIAL POLICY, AND FOREIGN POLICY COORDINATION*

[Done at The Hague, February 17 and 28, 1986]

Final Act

The Conference of the Representatives of the Governments of the Member States convened at Luxembourg on 9 September 1985,

which carried on its discussions in Luxembourg and Brussels and which met at the end thereof in Luxembourg on 17 February 1986 and in The Hague on 28 February 1986, has adopted the following text

I

Single European Act

II

At the time of signing this text, the Conference adopted the declarations listed hereinafter and annexed to this Final Act:

1. Declaration on the powers of implementation of the Commission
2. Declaration on the Court of Justice
3. Declaration on Article 8 A of the EEC Treaty
4. Declaration on Article 100 A of the EEC Treaty
5. Declaration on Article 100 B of the EEC Treaty
6. General Declaration on Articles 13 to 19 of the Single European Act
7. Declaration on Article 118A(2) of the EEC Treaty
8. Declaration on Article 130 D of the EEC Treaty
9. Declaration on Article 130 R of the EEC Treaty
10. Declaration by the High Contracting Parties on Title III of the Single European Act
11. Declaration on Article 30(10)(9) of the Single European Act.

The Conference also notes the declarations listed hereinafter and annexed to this Final Act:

1. Declaration by the Presidency on the time limit within which the Council will give its opinion following a first reading (Article 149(2) of the EEC Treaty)
2. Political Declaration by the Governments of the Member States on the free movement of persons
3. Declaration by the Government of the Hellenic Republic on Article 8 A of the EEC Treaty
4. Declaration by the Commission on Article 28 of the EEC Treaty
5. Declaration by the Government of Ireland on Article 57(2) of the EEC Treaty
6. Declaration by the Government of the Portuguese Republic on Articles 59, second paragraph, and 84 of the EEC treaty
7. Declaration by the Government of the Kingdom of Denmark on Article 100A of the EEC Treaty
8. Declaration by the Presidency and the Commission on the monetary capacity of the Community
9. Declaration by the Government of the Kingdom of Denmark on European Political Cooperation.

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*[Reproduced from the Bulletin of the European Communities, Supplement 2/86. The Single European Act reproduced at I.L.M. page 506 is an expression of the political resolve voiced by the Heads of State or Government, notably at Fontainebleau in June 1984, then at Brussels in March 1985 and at Milan in June 1985, to transform the whole complex of relations between their States into a European Union, in line with the Stuttgart Solemn Declaration of June 19, 1983.

[On February 27, 1986, Danish voters supported these reforms in a referendum, thus allowing Denmark to sign the Single European Act on February 28. Italy and Greece awaited the referendum results, at which time they joined Denmark in signing the document. It now goes to the twelve national parliaments for final approval.]

Declaration on the powers of implementation of the Commission

The Conference asks the Community authorities to adopt, before the Act enters into force, the principles and rules on the basis of which the Commission's powers of implementation will be defined in each case.

In this connection the Conference requests the Council to give the Advisory Committee procedure in particular a predominant place in the interests of speed and efficiency in the decision-making process, for the exercise of the powers of implementation conferred on the Commission within the field of Article 100 A of the EEC Treaty.

[I.L.M. page 511]

Declaration on the Court of Justice

The Conference agrees that the provisions of Article 32d(1) of the ECSC Treaty, Article 168 A(1) of the EEC Treaty and Article 140 A(1) of the EAEC Treaty do no prejudge any conferral of judicial competence likely to be provided for in the context of agreements concluded between the Member States. [I.L.M. pages 508, 510 and 516]

Declaration on Article 8 A of the EEC Treaty
[I.L.M. page 510]
The Conference wishes by means of the provisions in Article 8 A to express its firm political will to take before 1 January 1993 the decisions necessary to complete the internal market defined in those provisions, and more particularly the decisions necessary to implement the Commission's programme described in the White Paper on the Internal Market.

Setting the date of 31 December 1992 does not create an automatic legal effect.

Declaration on Article 100 A of the EEC Treaty
[I.L.M. page 511]
In its proposals pursuant to Article 100 A(1) the Commission shall give precedence to the use of the instrument of a directive if harmonization involves the amendment of legislative provisions in one or more Member States.

Declaration on Article 100 B of the EEC Treaty

The Conference considers that, since Article 8 C of the EEC Treaty is of general application, it also applies to the proposals which the Commission is required to make under Article 100 B of that Treaty.

[I.L.M. pages 511 and 512]

General declaration on Articles 13 to 19 of the Single European Act
[I.L.M. pages 510-12]
Nothing in these provisions shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.

Declaration on Article 118 A(2) of the EEC Treaty
[I.L.M. page 513]
The Conference notes that in the discussions on Article 118 A(2) of the EEC Treaty it was agreed that the Community does not intend, in laying down minimum requirements for the protection of the safety and health of employees, to discriminate in a manner unjustified by the circumstances against employees in small and medium-sized undertakings.

Declaration on Article 130 D of the EEC Treaty
[I.L.M. page 513]
In this context the Conference refers to the conclusions of the European Council in Brussels in March 1984, which read as follows:

'The financial resources allocated to aid from the Funds, having regard to the IMPs, will be significantly increased in real terms within the limits of financing possibilities.'

Declaration on Article 130 R of the EEC Treaty:

Re paragraph 1, third indent
[I.L.M. page 515]
The Conference confirms that the Community's activities in the sphere of the environment may not interfere with national policies regarding the exploitation of energy resources.

Re paragraph 5, second subparagraph
[I.L.M. page 515]
The Conference considers that the provisions of Article 130 R(5), second subparagraph do not affect the principles resulting from the judgment handed down by the Court of Justice in the *AETR* case.

Declaration by the High Contracting Parties on Title III of the Single European Act
[I.L.M. page 517]
The High Contracting Parties to Title III on European Political Cooperation reaffirm their openness to other European nations which share the same ideals and objectives. They agree in particular to strengthen their links with the member countries of the Council of Europe and with other democratic European countries with which they have friendly relations and close cooperation.

Declaration on Article 30(10)(g)
[I.L.M. page 518]
The Conference considers that the provisions of Article 30(10)(g) do not affect the Decision of the Representatives of the Governments of the Member States of 8 April 1965 on the provisional location of certain institutions and departments of the Communities.

Declaration by the Presidency on the time limit within which the Council will give its opinion following a first reading (Article 149(2) of the EEC Treaty)
[I.L.M. page 509]
As regards the declaration by the European Council in Milan, to the effect that the Council must seek ways of improving its decision-making procedures, the Presidency states its intention of completing the work in question as soon as possible.

Political declaration by the Governments of the Member States on the free movement of persons

In order to promote the free movement of persons, the Member States shall cooperate, without prejudice to the powers of the Community, in particular as regards the entry, movement and residence of nationals of third countries. They shall also cooperate in the combating of terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.

Declaration by the Government of the Hellenic Republic on Article 8 A of the EEC Treaty
[I.L.M. page 510]
Greece considers that the development of Community policies and actions, and the adoption of measures on the basis of Articles 70(1) and 84, must both take place in such a way as not to harm sensitive sectors of Member States' economies.

Declaration by the Commission on Article 28 of the EEC Treaty
[I.L.M. page 511]
With regard to its own internal procedures, the Commission will ensure that the changes resulting from the amendment of Article 28 will not lead to delays in responding to urgent requests for the alteration or suspension of Common Customs Tariff duties.

Declaration by the Government of Ireland on Article 57(2) of the EEC Treaty
[I.L.M. page 509]
Ireland, in confirming its agreement to qualified majority voting under Article 57(2), wishes to recall that the insurance industry in Ireland is a particularly sensitive one and that special arrangements have had to be made by the Government of Ireland for the protection of insurance-policy holders and third parties. In relation to harmonization of legislation on insurance, the Government of Ireland would expect to be able to rely on a sympathetic attitude from the Commission and from the other Member States of the Community should Ireland later find itself in a situation where the Government of Ireland considers it necessary to have special provision made for the position of the industry in Ireland.

Declaration by the Government of the Portuguese Republic on Articles 59, second paragraph, and 84 of the EEC Treaty

Portugal considers that as the change from unanimous to qualified majority voting in Articles 59, second paragraph, and 84 was not contemplated in the negotiations for the accession of Portugal to the Community and substantially alters the Community *acquis*, it must not damage sensitive and vital sectors of the Portuguese economy, and, wherever necessary, appropriate and specific transitional measures should be introduced to forestall the adverse consequences that could ensue for these sectors.

Declaration by the Government of the Kingdom of Denmark on Article 100 A of the EEC Treaty
[I.L.M. page 511]
The Danish Government notes that in cases where a Member State is of the opinion that measures adopted under Article 100 A do not safeguard higher requirements concerning the working environment, the protection of the environment or the needs referred to in Article 36, the provisions of Article 100 A(4) guarantee that the Member State in question can apply national provisions. Such national provisions are to be taken to fulfil the abovementioned aim and may not entail hidden protectionism.

Declaration by the Presidency and the Commission on the monetary capacity of the Community

The Presidency and the Commission consider that the provisions inserted in the EEC Treaty with reference to the Community's monetary capacity are without prejudice to the possibility of further development within the framework of the existing powers.

Declaration by the Government of the Kingdom of Denmark on European Political Cooperation

The Danish Government states that the conclusion of Title III on European Political Cooperation in the sphere of foreign policy does not affect Denmark's participation in Nordic cooperation in the sphere of foreign policy.

Single European Act

contents

His Majesty the King of the Belgians,

Her Majesty the Queen of Denmark,

The President of the Federal Republic of Germany,

The President of the Hellenic Republic,

His Majesty the King of Spain,

The President of the French Republic,

The President of Ireland,

The President of the Italian Republic,

His Royal Highness the Grand Duke of Luxembourg,

Her Majesty the Queen of the Netherlands,

The President of the Portuguese Republic,

Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland,

Moved by the will to continue the work undertaken on the basis of the Treaties establishing the European Communities and to transform relations as a whole among their States into a European Union, in accordance with the Solemn Declaration of Stuttgart of 19 June 1893,

Resolved to implement this European Union on the basis, firstly, of the Communities operating in accordance with their own rules and, secondly, of European Cooperation among the Signatory States in the sphere of foreign policy and to invest this union with the necessary means of action,

Determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice,

Convinced that the European idea, the results achieved in the fields of economic integration and political cooperation, and the need for new developments correspond to the wishes of the democratic peoples of Europe, for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression,

Aware of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order

more effectively to protect its common interests and independence, in particular to display the principles of democracy and compliance with the law and with human rights to which they are attached, so that together they may make their own contribution to the preservation of international peace and security in accordance with the undertaking entered into by them within the framework of the United Nations Charter,

Determined to improve the economic and social situation by extending common policies and pursuing new objectives, and to ensure a smoother functioning of the Communities by enabling the institutions to exercise their powers under conditions most in keeping with Community interests,

Whereas at their Conference in Paris from 19 to 21 October 1972 the Heads of State or of Government approved the objective of the progressive realization of economic and monetary union;

Having regard to the Annex to the conclusions of the Presidency of the European Council in Bremen on 6 and 7 July 1978 and the Resolution of the European Council in Brussels on 5 December 1978 on the introduction of the European Monetary System (EMS) and related questions, and noting that in accordance with that Resolution, the Community and the Central Banks of the Member States have taken a number of measures intended to implement monetary cooperation,

Have decided to adopt this Act and to this end have designated as their plenipotentiaries:

His Majesty the King of the Belgians,

Mr Leo Tindemans,
Minister for External Relations;

Her Majesty the Queen of Denmark,

Mr Uffe Ellemann-Jensen,
Minister for Foreign Affairs;

The President of the Federal Republic of Germany,

Mr Hans-Dietrich Genscher,
Federal Minister for Foreign Affairs;

The President of the Hellenic Republic,

Mr Karoles Papoulias,
Minister for Foreign Affairs;

His Majesty the King of Spain,

Mr Francisco Fernández Ordóñez,
Minister for Foreign Affairs;

The President of the French Republic,

Mr Roland Dumas,
Minister for External Relations;

The President of Ireland,

Mr Peter Barry, TD,
Minister for Foreign Affairs;

The President of the Italian Republic,

Mr Giulio Andreotti,
Minister for Foreign Affairs;

His Royal Highness the Grand Duke of Luxembourg,

Mr Robert Goebbels,
State Secretary for Foreign Affairs;

Her Majesty the Queen of the Netherlands,

Mr Hans van den Broek,
Minister for Foreign Affairs;

The President of the Portuguese Republic,

Mr Pedro Pires de Miranda,
Minister for Foreign Affairs;

Her Majesty the Queen of the United Kingdom of Great Britain and Northern Ireland,

Mrs Lynda Chalker,
Minister of State, Foreign and Commonwealth Office,

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

TITLE I

Common provisions

Article 1

The European Communities and European Political Cooperation shall have as their objective to contribute together to making concrete progress towards European unity.

The European Communities shall be founded on the Treaties establishing the European Coal and Steel Community, the European Economic Community, the European Atomic Energy Community and on the subsequent Treaties and Acts modifying or supplementing them.

Political Cooperation shall be governed by Title III. The provisions of the Title shall confirm and supplement the procedures agreed in the reports of Luxembourg (1970), Copenhagen (1973), London (1981), the Solemn Declaration on European Union (1983) and the practices gradually established among the Member States.

Article 2

The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission of the European Communities. They shall be assisted by the Ministers for Foreign Affairs and by a Member of the Commission.

The European Council shall meet at least twice a year.

Article 3

1. The institutions of the European Communities, henceforth designated as referred to hereafter, shall exercise their powers and jurisdiction under the conditions and for the purposes provided for by the Treaties establishing the Communities and by the subsequent Treaties and Acts modifying or supplementing them and by the provisions of Title II.

2. The institutions and bodies responsible for European Political Cooperation shall exercise their powers and jurisdiction under the conditions and for the purposes laid down in Title III and in the documents referred to in the third paragraph of Article 1.

TITLE II

Provisions amending the Treaties establishing the European Communities

Chapter I

Provisions amending the Treaty establishing the European Coal and Steel Community

Article 4

The ECSC Treaty shall be supplemented by the following provisions:

'Article 32d

1. At the request of the Court of Justice and after consulting the Commission and the European Parliament, the Council may, acting unanimously, attach to the Court of Justice a court with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding brought by natural or legal persons. That court shall not be competent to hear and determine actions brought by Member States or by Community institutions or questions referred for a preliminary ruling under Article 41.

2. The Council, following the procedure laid down in paragraph 1, shall determine the composition of that court and adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to that court.

3. The members of that court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the Governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

4. That court shall establish its rules of procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.'

Article 5

Article 45 of the ECSC Treaty shall be supplemented by the following paragraph:

'The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.'

Chapter II

Provisions amending the Treaty establishing the European Economic Community

SECTION I

Institutional provisions

Article 6

1. A cooperation procedure shall be introduced which shall apply to acts based on Articles 7, 49, 54(2), 56(2), second sentence, 57 with the exception of the second sentence of paragraph 2 thereof, 100A, 100 B, 118 A, 130 E and 130 Q(2) of the EEC Treaty

2. In Article 7, second paragraph, of the EEC Treaty the terms 'after consulting the Assembly' shall be replaced by *'in cooperation with the European Parliament'*.

3. In Article 49 of the EEC Treaty the terms 'the Council shall, acting on a proposal from the Commission and after consulting the Economic and Social Committee', shall be replaced by *'the Council shall, acting by a qualified majority on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee.'*

4. In Article 54(2) of the EEC Treaty the terms 'the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the Assembly,' shall be replaced by *'the Council shall, acting on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee,'*

5. In Article 56(2) of the EEC Treaty the second sentence shall be replaced by the following:

'After the end of the second stage, however, the Council shall, acting by a qualified majority on a proposal from the Commission and in cooperation with the European Parliament, issue directives for the coordination of such provisions as, in each Member State, are a matter for regulation or administrative action.'

6. In Article 57(1) of the EEC Treaty the terms 'and after consulting the Assembly' shall be replaced by *'and in cooperation with the European Parliament'*.

7. In Article 57(2) of the EEC Treaty, the third sentence shall be replaced by the following:

'In other cases the Council shall act by a qualified majority, in cooperation with the European Parliament.'

Article 7

Article 149 of the EEC Treaty shall be replaced by the following provisions:

'Article 149

1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal.

2. Where, in pursuance of this Treaty, the Council acts in cooperation with the European Parliament, the following procedure shall apply:

(a) The Council, acting by a qualified majority under the conditions of paragraph 1, on a proposal from the Commission and after obtaining the Opinion of the European Parliament, shall adopt a common position.

(b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

(c) The European Parliament may within the period of three months referred to in point (b), by an absolute majority of its component members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

(d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

(e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

(f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.

(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament

3. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures mentioned in paragraphs 1 and 2.'

Article 8

The first paragraph of Article 237 of the EEC Treaty shall be replaced by the following provision:

'Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.'

Article 9

The second paragraph of Article 238 of the EEC Treaty shall be replaced by the following provision:

'These agreements shall be concluded by the Council, acting unanimously and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.'

Article 10

Article 145 of the EEC Treaty shall be supplemented by the following provision:

'— confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament.'

Article 11

The EEC Treaty shall be supplemented by the following provisions:

'Article 168 A

1. At the request of the Court of Justice and after consulting the Commission and the European Parliament, the Council may, acting unanimously, attach to the Court of Justice a court with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding brought by natural or legal persons. That court shall not be competent to hear and determine actions brought by Member States or by Community Institutions or questions referred for a preliminary ruling under Article 177.

2. The Council, following the procedure laid down in paragraph 1, shall determine the composition of that court and adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to that court.

3. The members of that court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the Governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

4. That court shall establish its rules of procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.'

Article 12

A second paragraph worded as follows shall be inserted in Article 118 of the EEC Treaty:

'The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.'

SECTION II

Provisions relating to the foundations and the policy of the Community

Subsection 1 — Internal market

Article 13

The EEC Treaty shall be supplemented by the following provisions:

'Article 8 A

The Community shall adopt measures with the aim of progressively establishing the internal market over

a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 8 D, 8 C, 28, 57(2), 59, 70(1), 83, 99, 100 A and 100 B and without prejudice to the other provisions of this Treaty.

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.'

Article 14

The EEC Treaty shall be supplemented by the following provisions:

'Article 8 B

The Commission shall report to the Council before 31 December 1988 and again before 31 December 1990 on the progress made towards achieving the internal market within the time limit fixed in Article 8 A.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.'

Article 15

The EEC Treaty shall be supplemented by the following provisions:

'Article 8 C

When drawing up its proposals with a view to achieving the objectives set out in Article 8 A, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.

If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.'

Article 16

1. Article 28 of the EEC Treaty shall be replaced by the following provisions:

'Article 28

Any autonomous alteration or suspension of duties in the common customs tariff shall be decided by the Council acting by a qualified majority on a proposal from the Commission.'

2. In Article 57(2) of the EEC Treaty, the second sentence shall be replaced by the following:

'Unanimity shall be required for directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons.'

3. In the second paragraph of Article 59 of the EEC Treaty, the term 'unanimously' shall be replaced by *'by a qualified majority'*.

4. In Article 70(1) of the EEC Treaty, the last two sentences shall be replaced by the following:

'For this purpose the Council shall issue directives, acting by a qualified majority. It shall endeavour to attain the highest possible degree of liberalization. Unanimity shall be required for measures which constitute a step back as regards the liberalization of capital movements.'

5. In Article 84(2) of the EEC Treaty, the term 'unanimously' shall be replaced by *'by a qualified majority'*.

6. Article 84 of the EEC Treaty shall be supplemented by the following paragraph:

'The procedural provisions of Article 75(1) and (3) shall apply.'

Article 17

Article 99 of the EEC Treaty shall be replaced by the following provisions:

'Article 99

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, adopt provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market within the time limit laid down in Article 8 A.

Article 18

The EEC Treaty shall be supplemented by the following provisions:

'Article 100 A

1. By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following

provisions shall apply for the achievement of the objectives set out in Article 8 A. The Council shall, acting by a qualified majority on a proposal from the Commission in cooperation with the European Parliament and the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals laid down in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection.

4. If, after the adoption of a harmonization measure by the Council acting by a qualified majority, a Member State deems it necessary to apply national provisions on grounds of major needs referred to in Article 36, or relating to protection of the environment or the working environment, it shall notify the Commission of these provisions.

The Commission shall confirm the provisions involved after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

5. The harmonization measures referred to above shall, in appropriate cases, include a safeguard clause authorizing the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Community control procedure.'

Article 19

The EEC Treaty shall be supplemented by the following provisions:

'Article 100 B

1. During 1992, the Commission shall, together with each Member State, draw up an inventory of national laws, regulations and administrative provisions which fall under Article 100 A and which have not been harmonized pursuant to that Article.

The Council, acting in accordance with the provisions of Article 100 A, may decide that the provisions in force in a Member State must be recognized as being equivalent to those applied by another Member State.

2. The provisions of Article 100 A(4) shall apply by analogy.

3. The Commission shall draw up the inventory referred to in the first subparagraph of paragraph 1 and shall submit appropriate proposals in good time to allow the Council to act before the end of 1992.'

Subsection II – Monetary capacity

Article 20

1. A new Chapter 1 shall be inserted in Part Three, Title II of the EEC Treaty, reading as follows:

'Chapter 1
Cooperation in economic and monetary policy (Economic and Monetary Union)

Article 102 A

1. In order to ensure the convergence of economic and monetary policies which is necessary for the further development of the Community, Member States shall cooperate in accordance with the objectives of Article 104. In so doing, they shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ECU, and shall respect existing powers in this field.

2. In so far as further development in the field of economic and monetary policy necessitates institutional changes, the provisions of Article 236 shall be applicable. The Monetary Committee and the Committee of Governors of the Central Banks shall also be consulted regarding institutional changes in the monetary area.'

2. Chapters 1, 2 and 3 shall become Chapters *2, 3* and *4* respectively.

Subsection III – Social policy

Article 21

The EEC Treaty shall be supplemented by the following provisions:

'Article 118 A

1. Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while maintaining the improvements made.

2. In order to help achieve the objective laid down in the first paragraph, the Council, acting by a qualified majority on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee, shall adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.

Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

3. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent measures for the protection of working conditions compatible with this Treaty.'

Article 22

The EEC Treaty shall be supplemented by the following provisions:

'Article 118 B

The Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement.'

Subsection IV — Economic and social cohesion

Article 23

A Title V shall be added to Part Three of the EEC Treaty, reading as follows:

'Title V
Economic and social cohesion

Article 130 A

In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.

In particular the Community shall aim at reducing disparities between the various regions and the backwardness of the least-favoured regions.

Article 130 B

Member States shall conduct their economic policies, and shall coordinate them, in such a way as, in addition, to attain the objectives set out in Article 130 A. The implementation of the common policies and of the internal market shall take into account the objectives set out in Article 130 A and in Article 130 C and shall contribute to their achievement. The Community shall support the achievement of these objectives by the action it takes through the structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section, European Social Fund, European Regional Development Fund), the European Investment Bank and the other existing financial instruments.

Article 130 C

The European Regional Development fund is intended to help redress the principal regional imbalances in the Community through participating in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article 130 D

Once the Single European Act enters into force the Commission shall submit a comprehensive proposal to the Council, the purpose of which will be to make such amendments to the structure and operational rules of the existing structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section, European Social Fund, European Regional Development Fund) as are necessary to clarify and rationalize their tasks in order to contribute to the achievement of the objectives set out in Article 130 A and Article 130 C, to increase their efficiency and to coordinate their activities between themselves and with the operations of the existing financial instruments. The Council shall act unanimously on this proposal within a period of one year, after consulting the European Parliament and the Economic and Social Committee.

Article 130 E

After adoption of the decision referred to in Article 130 D, implementing decisions relating to the European Regional Development Fund shall be taken by the Council, acting by a qualified majority on a proposal from the Commission and in cooperation with the European Parliament.

With regard to the European Agricultural Guidance and Guarantee fund, Guidance Section and the European Social Fund, Articles 43, 126 and 127 remain applicable respectively.'

Subsection V — Research and technological development

Article 24

A Title VI shall be added to Part Three of the EEC Treaty, reading as follows:

'Title VI
Research and technological development

Article 130 F

1. The Community's aim shall be to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level.

2. In order to achieve this, it shall encourage undertakings including small and medium-sized undertakings, research centres and universities in their research and technological development activities; it shall support their efforts to cooperate with one another, aiming, in particular, at enabling undertakings to exploit the Community's internal market potential to the full, in particular through the opening up of national public contracts, the definition of common standards and the removal of legal and fiscal barriers to that cooperation.

3. In the achievement of these aims, particular account shall be taken of the connection between the common research and technological development effort, the establishment of the internal market and the implementation of common policies, particularly as regards competition and trade.

Article 130 G

In pursuing these objectives the Community shall carry out the following activities, complementing the activities carried out in the Member States:

(a) implementation of research, technological development and demonstration programmes, by promoting cooperation with undertakings, research centres and universities;

(b) promotion of cooperation with third countries and international organizations in the field of Community research, technological development, and demonstration;

(c) dissemination and optimization of the results of activities in Community research, technological development, and demonstration;

(d) stimulation of the training and mobility of researchers in the Community.

Article 130 H

Member States shall, in liaison with the Commission, coordinate among themselves the policies and programmes carried out at national level. In close contact with the Member States, the Commission may take any useful initiative to promote such coordination.

Article 130 I

1. The Community shall adopt a multiannual framework programme setting out all its activities. The framework programme shall lay down the scientific and technical objectives, define their respective priorities, set out the main lines of the activities envisaged and fix the amount deemed necessary, the detailed rules for financial participation by the Community in the programme as a whole and the breakdown of this amount between the various activities envisaged.

2. The framework programme may be adapted or supplemented, as the situation changes.

Article 130 K

The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary.

The Council shall define the detailed arrangements for the dissemination of knowledge resulting from the specific programmes.

Article 130 L

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible Community participation.

The Council shall adopt the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and the access of other Member States.

Article 130 M

In implementing the multiannual framework programme, the Community may make provision, with the agreement of the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Article 130 N

In implementing the multiannual framework programme, the Community may make provision for cooperation in Community research, technological development and demonstration with third countries or international organizations.

The detailed arrangements for such cooperation may be the subject of international agreements between the Community and the third parties concerned which shall be negotiated and concluded in accordance with Article 228.

Article 130 O

The Community may set up joint undertakings or any other structure necessary for the efficient execution of programmes of Community research, technological development and demonstration.

Article 130 P

1. The detailed arrangements for financing each programme, including any Community contribution, shall be established at the time of the adoption of the programme.

2. The amount of the Community's annual contribution shall be laid down under the budgetary procedure, without prejudice to other possible methods of Community financing. The estimated cost of the specific programmes must not in aggregate exceed the financial provision in the framework programme.

Article 130 Q

1. The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt the provisions referred to in Articles 130 I and 130 O.

2. The Council shall, acting by a qualified majority on a proposal from the Commission, after consulting the Economic and Social Committee, and in cooperation with the European Parliament, adopt the provisions referred to in Articles 130 K, 130 L, 130 M, 130 N and 130 P(1). The adoption of these supplementary programmes shall also require the agreement of the Member States concerned.'

Subsection VI — Environment

Article 25

A Title VII shall be added to Part Three of the EEC Treaty, reading as follows:

'Title VII
Environment

Article 130 R

1. Action by the Community relating to the environment shall have the following objectives:

(i) to preserve, protect and improve the quality of the environment;

(ii) to contribute towards protecting human health;

(iii) to ensure a prudent and rational utilization of natural resources.

2. Action by the Community relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements shall be a component of the Community's other policies.

3. In preparing its action relating to the environment, the Community shall take account of:

(i) available scientific and technical data;

(ii) environmental conditions in the various regions of the Community;

(iii) the potential benefits and costs of action or of lack of action;

(iv) the economic and social development of the Community as a whole and the balanced development of its regions.

4. The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures.

5. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the relevant international organizations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 228.

The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 130 S

The Council, acting unanimously on a proposal from the Commission and after consulting the

European Parliament and the Economic and Social Committee, shall decide what action is to be taken by the Community.

The Council shall, under the conditions laid down in the preceding subparagraph, define those matters on which decisions are to be taken by a qualified majority.

Article 130 T

The protective measures adopted in common pursuant to Article 130 S shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.'

Chapter III

Provisions amending the Treaty establishing the European Atomic Energy Community

Article 26

The EAEC Treaty shall be supplemented by the following provisions:

'Article 140 A

1. At the request of the Court of Justice and after consulting the Commission and the European Parliament, the Council may, acting unanimously, attach to the Court of Justice a court with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding brought by natural or legal persons. That court shall not be competent to hear and determine actions brought by Member States or by Community institutions or questions referred for a preliminary ruling under Article 150.

2. The Council, following the procedure laid down in paragraph 1, shall determine the composition of that court and adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to that court.

3. The members of that court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the Governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

4. That court shall establish its rules of procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.'

Article 27

A second paragraph shall be inserted in Article 160 of the EAEC Treaty, worded as follows:

'The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.'

Chapter IV

General provisions

Article 28

The provisions of this Act shall be without prejudice to the provisions of the Instruments of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities.

Article 29

In Article 4(2) of the Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources, the words 'the level and scale of funding of which will be fixed pursuant to a decision of the Council acting unanimously' shall be replaced by the words *'the level and scale of funding of which shall be fixed pursuant to a decision of the Council acting by a qualified majority after obtaining the agreement of the Member States concerned.'*

This amendment shall not affect the legal nature of the aforementioned Decision.

TITLE III

Provisions on European cooperation in the sphere of foreign policy

Article 30

European Cooperation in the sphere of foreign policy shall be governed by the following provisions:

1. The High Contracting Parties, being members of the European Communities, shall endeavour jointly to formulate and implement a European foreign policy.

2. (a) The High Contracting Parties undertake to inform and consult each other on any foreign policy matters of general interest so as to ensure that their combined influence is exercised as effectively as possible through coordination, the convergence of their positions and the implementation of joint action.

(b) Consultations shall take place before the High Contracting Parties decide on their final position.

(c) In adopting its positions and in its national measures each High Contracting Party shall take full account of the positions of the other partners and shall give due consideration to the desirability of adopting and implementing common European positions.

In order to increase their capacity for joint action in the foreign policy field, the High Contracting Parties shall ensure that common principles and objectives are gradually developed and defined.

The determination of common positions shall constitute a point of reference for the policies of the High Conracting Parties.

(d) The High Contracting Parties shall endeavour to avoid any action or position which impairs their effectiveness as a cohesive force in international relations or within international organizations.

3. (a) The Ministers for Foreign Affairs and a member of the Commission shall meet at least four times a year within the framework of European Political Cooperation. They may also discuss foreign policy matters within the framework of Political Cooperation on the occasion of meetings of the Council of the European Communities.

(b) The Commission shall be fully associated with the proceedings of Political Cooperation.

(c) In order to ensure the swift adoption of common positions and the implementation of joint action, the High Contracting Parties shall, as far as possible, refrain from impeding the formation of a consensus and the joint action which this could produce.

4. The High Contracting Parties shall ensure that the European Parliament is closely associated with European Political Cooperation. To that end the Presidency shall regularly inform the European Parliament of the foreign policy issues which are being examined within the framework of Political Cooperation and shall ensure that the views of the European Parliament are duly taken into consideration.

5. The external policies of the European Community and the policies agreed in European Political Cooperation must be consistent.

The Presidency and the Commission, each within its own sphere of competence, shall have special responsibility for ensuring that such consistency is sought and maintained.

6. (a) The High Contracting Parties consider that closer cooperation on questions of European security would contribute in an essential way to the development of a European identity in external policy matters. They are ready to coordinate their positions more closely on the political and economic aspects of security.

(b) The High Contracting Parties are determined to maintain the technological and industrial conditions necessary for their security. They shall work to that end both at national level and, where appropriate, within the framework of the competent institutions and bodies.

(c) Nothing in this Title shall impede closer cooperation in the field of security between certain of the High Contracting Parties within the framework of the Western European Union or the Atlantic Alliance.

7. (a) In international institutions and at international conferences which they attend, the High Contracting Parties shall endeavour to adopt common positions on the subjects covered by this Title.

(b) In international institutions and at inernational conferences in which not all the High Contracting Parties participate, those who do participate shall take full account of positions agreed in European Political Cooperation.

8. The High Contracting Parties shall organize a political dialogue with third countries and regional groupings whenever they deem it necessary.

9. The High Contracting Parties and the Commission, through mutual assistance and information, shall intensify cooperation between their representations accredited to third countries and to international organizations.

10. (a) The Presidency of European Political Cooperation shall be held by the High Contracting Party which holds the Presidency of the Council of the European Communities.

(b) The Presidency shall be responsible for initiating action and coordinating and representing the positions of the Member States in relations with third countries in respect of European Political Cooperation activities. It shall also be responsible for the management of Political Cooperation and in particular for drawing up the timetable of meetings and for convening and organizing meetings.

(c) The Political Directors shall meet regularly in the Political Committee in order to give the necessary impetus, maintain the continuity of European Political Cooperation and prepare Ministers' discussions.

(d) The Political Committee or, if necessary, a ministerial meeting shall convene within forty-eight hours at the request of at least three Member States.

(e) The European Correspondents' Group shall be responsible, under the direction of the Political Committee, for monitoring the implementation of European Political Cooperation and for studying general organizational problems.

(f) Working groups shall meet as directed by the Political Committee.

(g) A Secretariat based in Brussels shall assist the Presidency in preparing and implementing the activities of European Political Cooperation and in administrative matters. It shall carry out its duties under the authority of the Presidency.

11. As regards privileges and immunities, the members of the European Political Cooperation Secretariat shall be treated in the same way as members of the diplomatic missions of the High Contracting Parties based in the same place as the Secretariat.

12. Five years after the entry into force of this Act the High Contracting Parties shall examine whether any revision of Title III is required.

TITLE IV

General and final provisions

Article 31

The provisions of the Treaty establishing the European Coal and Steel Community, the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply only to the provisions of Title II and to Article 32; they shall apply to those provisions under the same conditions as for the provisions of the said Treaties.

Article 32

Subject to Article 3(1), to Title II and to Article 31, nothing in this Act shall affect the Treaties establishing the European Communities or any subsequent Treaties and Acts modifying or supplementing them.

Article 33

1. This Act will be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification will be deposited with the Government of the Italian Republic.

2. This Act will enter into force on the first day of the month following that in which the instrument of ratification is deposited of the last Signatory State to fulfil that formality.

Article 34

This Act, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish languages, the texts in each of these languages being equally authentic, will be deposited in the archives of the Government of the Italian Republic, which will remit a certified copy to each of the Governments of the other Signatory States.

In witness whereof, the Plenipotentiaries have signed this Act.

Done at Luxembourg, 17 February 1986, and at The Hague, 28 February 1986.