

ADDRESS OF MR GASTON E. THORN
PRESIDENT OF THE COMMISSION

GIVEN TO THE MEMBERS OF THE
INTERNATIONAL BAR ASSOCIATION

ON THURSDAY, 26TH JANUARY AT 6.30 P.M.

LADIES AND GENTLEMEN:

I WOULD LIKE TO WELCOME TO BRUSSELS ALL OF THE I.B.A. MEMBERS TAKING PART IN THIS SEMINAR. THE ORIGINS AND ACTIVITIES OF THE INTERNATIONAL BAR ASSOCIATION SPREAD FAR BEYOND THE BOUNDARIES OF EUROPE. I AM THEREFORE PLEASED TO NOTE THE GREAT INTEREST THAT THE INTERNATIONAL BAR ASSOCIATION TAKES IN THE COMMUNITY.

LEARNING AND DEBATING ABOUT THE COMMUNITY IS OF COURSE NOT JUST AN ACADEMIC EXERCISE. MANY OF YOU ARE ALREADY GRAPPLING WITH THIS NEW LEGAL ANIMAL IN TRADE NEGOTIATIONS, IN ANTI-TRUST SUITS AS WELL AS IN THE CORPORATE AND FISCAL FIELD. I WON'T ASK YOU WHAT KIND OF ANIMAL YOU THINK IT IS ! ALL I KNOW, AND YOU KNOW IS THAT IT IS ALIVE AND KICKING ! SLOWLY BUT PERCEPTIBLY, THE COMMUNITY IS HAVING AN INCREASING IMPACT ON ECONOMIC AND POLITICAL AFFAIRS. THROUGH THE COMMUNITY WE ARE IN FACT DEVELOPING RELATIONSHIPS WITH THE REST OF THE WORLD WHICH GO WELL BEYOND THE TRADITIONAL LINKS ESTABLISHED BY THE TEN MEMBER STATES. THIS IS, AFTER ALL, WHAT WE ARE TRYING TO ACHIEVE—SOMETHING MORE THAN WHAT WE COULD EVER DO SEPARATELY. ✕

YOU CAN MEASURE THE COMMUNITY'S INFLUENCE - TODAY AND THE CORRESPONDING NEED IT CREATES FOR MUTUAL UNDERSTANDING - AT THE POLITICAL AND ECONOMIC LEVEL AND IN STRICTLY LEGAL TERMS.

ON THE POLITICAL AND ECONOMIC LEVEL THE COMMUNITY AS SUCH IS OF GROWING IMPORTANCE AS A PARTNER AND NEGOTIATING BLOC IN INTERNATIONAL AFFAIRS. THE REGULAR DISCUSSIONS WHICH THE COMMISSION, FOR EXAMPLE, HAS WITH THE U.S. AND THE JAPANESE ADMINISTRATIONS CONFIRM THIS POSITION.

AND YOUR OWN VISIT IN ITSELF CONFIRMS THE COMMUNITY'S SIGNIFICANCE ON THE LEGAL LEVEL. AS I UNDERSTAND IT, YOU WILL BE HEARING TO-MORROW¹ IN DETAIL ABOUT THREE AREAS WHERE THIRD COUNTRIES CAN BE PARTICULARLY AFFECTED BY THE LAWS OF THE COMMUNITY :

¹ APPLICATION OF COMMUNITY LAW TO INDIVIDUALS AND ENTERPRISES -
ZUR HAUSEN - 10.45

- ANTI-DUMPING, WHICH NECESSARILY CONCERNS THIRD COUNTRY IMPORTS;

- COMPETITION, WHERE RECENT DECISIONS HAVE CONCERNED CASES AS EXOTIC TO US AS SWEDISH CASHREGISTERS, SWISS VITAMIN COMPANIES AND COLOMBIAN COFFEE;

AND

- CUSTOMS LAWS, ALSO, BY DEFINITION, CONCERNING EXCHANGES WITH THIRD COUNTRIES

SINCE TODAY AND TOMORROW YOU ARE DISCUSSING IN GREAT DETAIL THE WAYS IN WHICH COMMUNITY LAW IS CREATED AND APPLIED, I WOULD SIMPLY LIKE TO MAKE THREE VERY GENERAL POINTS ABOUT THE RELATIONSHIP BETWEEN THE COMMUNITY AND THE LAW.

FIRST OF ALL, I WANT TO STRESS THAT THE COMMUNITY IS A CREATION OF THE LAW, NAMELY THE TREATIES OF PARIS AND OF ROME.

INSTEAD OF GOING ABOUT IT IN WAYS IN WHICH STATES HAVE INFLUENCED EACH OTHER IN THE PAST, NAMELY BY WAR, FORCE, COLONISATION OR ANNEXATION, THE MEMBER STATES OF THE COMMUNITY CHOSE TO USE A LEGAL INSTRUMENT AS THE PEACEFUL MEANS TO BRING ABOUT THEIR INTEGRATION, NAMELY A TREATY BASED UPON THE PRINCIPLE OF LAW.

THE FOUNDING TREATIES ARE IN MANY WAYS LIKE THE WRITTEN CONSTITUTIONS OF OUR CONTINENTAL MEMBER STATES. HOWEVER, WERE THE CONSTITUTION OF A MEMBER STATE TO BE SWEEPED AWAY, THE MEMBER STATE AS AN INDIVIDUAL ENTITY WOULD PRESUMABLY CONTINUE TO EXIST. UNFORTUNATELY I DO NOT THINK ONE CAN YET SAY THE SAME FOR THE COMMUNITY AND FOR THAT REASON THE RESPECT OF THE RULE OF COMMUNITY LAW AND OF THE OBLIGATIONS CONTAINED IN THE TREATIES IS OF EVEN MORE FUNDAMENTAL IMPORTANCE IN THE COMMUNITY THAN IN THE MEMBER STATES.

I THINK ALL OF US MUST BE PARTICULARLY AWARE OF THIS TRUTH, AND IN PARTICULAR THOSE CHARGED WITH UPHOLDING THE LAW, - AND HERE I REFER BOTH TO THE COMMISSION,

ESPECIALLY ENTRUSTED BY ART 155 WITH ENSURING THE RESPECT OF THE TREATIES, AND TO YOURSELVES, IN YOUR DAILY ACTIVITIES OF COUNSELLING AND ADVISING YOUR CLIENTS.

SIMILARLY, ALL OF US MUST BE AWARE OF THE RESPONSIBILITY OF THE GOVERNMENTS, PARLIAMENTS AND COURTS OF EVERY MEMBER STATE TO RESPECT THE TREATIES AND, IN PARTICULAR, THE INTERPRETATIONS OF THEM GIVEN BY THE COURT OF JUSTICE.

MY SECOND POINT IS THAT, IN ADDITION TO BEING A CREATION OF THE LAW, THE COMMUNITY ALSO CREATES THE LAW. IT IS A SOURCE OF THE LAW.

DURING YOUR SESSIONS HERE YOU WILL BE DEALING IN DETAIL WITH THE DIFFERENT ASPECTS OF THE CREATION OF THIS LAW NAMELY :

- ASSISTANCE OF OUTSIDE EXPERTS¹ IN THE PREPARATION OF PROPOSALS

¹ DEVINE, 9.30, THURSDAY

- HARMONISATION METHODS²

- AND THE PROGRESS MADE IN SPECIFIC FIELDS - COMPANY
LAW, PRODUCT LIABILITY³, ETC;

AND I AM SURE YOU ARE ALL AWARE OF THE IMPACT OF THIS
LAW ON INDIVIDUAL CITIZENS.

WHAT I WOULD LIKE TO REMIND YOU OF, HOWEVER, ARE THE
DIFFICULTIES INVOLVED IN THE CREATION OF THE LAW BY THE
COMMUNITY, DIFFICULTIES WHICH HAVE AGAIN COME INTO THE
SPOTLIGHT AFTER THE ATHENS SUMMIT OF LAST MONTH.

UNDER THE FIRST COMMON MARKET TREATY, NAMELY THAT IN THE
COAL AND STEEL SECTOR, THE COMMISSION IS THE CENTRE OF
GRAVITY AND HAS BEEN ABLE TO TAKE, FOR EXAMPLE, A GREAT
NUMBER OF MEASURES TO CONTROL THE STEEL MARKET. HOWEVER

² SCHWARTZ, 8.45, THURSDAY

³ COMPANY LAW, 15.45, PRODUCT LIABILITY, 16.40

IN THE EEC, THE TREATY OF ROME IS CONSTRUCTED IN ANOTHER WAY AND HAS IN GENERAL GIVEN THE POWER OF DECISION TO THE COUNCIL OF MINISTERS.

ALTHOUGH THE COMMISSION IS INEXTRICABLY INVOLVED IN THE EUROPEAN COMMUNITY'S DECISION PROCESS, WITH EXCLUSIVE POWERS TO MAKE AND AMEND PROPOSALS, AND ALTHOUGH THE EUROPEAN PARLIAMENT IS CONSULTED ON MOST PROPOSED MEASURES, IT IS THE COUNCIL OF MINISTERS WHICH IN MOST CASES DECIDES.

IN MORE AND MORE CASES, HOWEVER, THE COUNCIL OF MINISTERS HAS NOT BEEN ABLE TO DECIDE :

- EITHER BECAUSE THE PRACTICE OF SEEKING A CONSENSUS AMONGST THE MEMBER STATES HAS BEEN SUBSTITUTED FOR THE TREATY PROVISIONS REQUIRING SIMPLY A MAJORITY VOTE;
- OR, INCREASINGLY, BECAUSE THE PRACTICE OF THE COUNCIL OF MINISTERS HAS BEEN TO "PUSH THE PROBLEMS UPSTAIRS", THAT IS, TO ASK THE EUROPEAN COUNCIL TO DECIDE.

THE FAILURE OF THE ATHENS SUMMIT LAST MONTH HAS ITS ROOTS IN THESE PRACTICES. ALTHOUGH SUCH SUMMIT MEETINGS OF THE HEADS OF THE MEMBER STATES ARE NOT FORESEEN IN THE TREATIES, THEY CAN FULFIL A USEFUL ROLE, PROVIDING NEW POLITICAL IMPULSES OR INDICATING AVENUES WHICH CAN BE FOLLOWED. INDEED IT WAS THE 1969 SUMMIT AT THE HAGUE WHICH LAID THE FOUNDATIONS FOR THE FIRST ENLARGEMENT OF THE COMMUNITY IN 1973 AND THE PARIS SUMMIT OF 1974 WHICH BEGAN THE PROCESS OF PREPARING DIRECT ELECTIONS TO THE EUROPEAN PARLIAMENT.

NO DOUBT ALSO A DECISION AT SUMMIT LEVEL WILL BE NEEDED TO CHANGE THE PRESENT RULES ON COMMUNITY FINANCING AND TO INCREASE ITS FINANCIAL RESOURCES.

HOWEVER, THESE EUROPEAN COUNCILS CANNOT USURP THE ROLE OF THE COUNCIL OF MINISTERS, NOR THAT OF THE COMMISSION. THE ATHENS SUMMIT SHOWS QUITE PLAINLY THAT THE COMMUNITY CAN GO FORWARD ONLY IF THE RULES OF LAW, NAMELY THE RESPECT OF THE PROCEDURES LAID DOWN IN THE TREATIES, ARE RESPECTED, THAT IS TO SAY PROPOSALS MUST COME FROM THE COMMISSION ONLY. (AT ATHENS A NUMBER OF MEMBER STATES

SUBMITTED VARIOUS CONFLICTING PAPERS). DETAILED DECISIONS MUST ALSO BE TAKEN AT THE APPROPRIATE TIME AND WITH THE MAJORITIES LAID DOWN IN THE TREATY BY THE COUNCIL OF MINISTERS, AND NOT PUSHED UPSTAIRS TO SWAMP THE SUMMIT IN A MASS OF DETAIL.

IN THIS CONTEXT WE WILL BE VERY INTERESTED IN THE COURT'S JUDGMENT IN THE CASE (13/83) BROUGHT BY THE PARLIAMENT LAST YEAR AGAINST THE COUNCIL OF MINISTERS - A "FIRST" OF ITS TYPE - IN RESPECT OF THE COUNCIL'S FAILURE TO LAY DOWN A COMMON POLICY IN THE FIELD OF TRANSPORT, A CASE IN WHICH THE COMMISSION HAS INTERVENED IN SUPPORT OF PARLIAMENT'S VIEW.

THIS BRINGS ME TO THE THIRD AND LAST ASPECT OF COMMUNITY LAW, THE JUDICIAL CONTROL, WHICH I HAVE JUST TOUCHED UPON, AS EXERCISED BY THE EUROPEAN COURT.

ONE SHOULD NOT FORGET THAT, COMPARED TO THE CLASSIC INTERNATIONAL ORGANISATIONS, THE TREATIES HAVE GIVEN A UNIQUE ROLE TO THE EUROPEAN COURT IN THREE WAYS :

FIRST, THE SCOPE OF THE SUPERVISORY POWERS WHICH IT ENJOYS; THE COURT CONTROLS THE LEGALITY OF ACTS OF THE INSTITUTIONS, ENSURES THE RESPECT OF THEIR OBLIGATIONS UNDER THE TREATY BY THE MEMBER STATES AND GIVES INTERPRETATIONS OF THE TREATY AND OF ITS SECONDARY LEGISLATION;

SECOND, THE "AUTOMATIC" NATURE OF SUCH JUDICIAL POWERS THAT IS TO SAY THAT IN SIGNING THE TREATIES THE MEMBER STATES SUBMIT THEMSELVES AUTOMATICALLY TO THE JURISDICTION OF THE COURT WITHOUT THE NEED AS IN OTHER INTERNATIONAL QUESTIONS FOR PRIOR AGREEMENT EACH TIME ON WHO WILL HAVE JURISDICTION;

THIRD, THE EXCLUSIVITY OF SUCH JUDICIAL CONTROL : UNDER ARTICLE 219 OF THE TREATY THE MEMBER STATES HAVE UNDERTAKEN NOT TO SUBMIT ANY TREATY DISPUTE TO ANY SETTLEMENT

METHOD OTHER THAN THAT OF THE COURT OF JUSTICE. THEY CANNOT THEREFORE TAKE THE LAW INTO THEIR OWN HANDS, NOR RETALIATE ONE AGAINST THE OTHER.

THE POSITION OF THE COURT OF JUSTICE HAS ALSO, HOWEVER, TURNED OUT TO BE SOMETHING OF A PARADOX IN TWO RESPECTS.

FIRSTLY, ALTHOUGH THE COURT WAS CONCEIVED MORE WITH THE IDEA OF CONTROLLING THE COMMUNITY INSTITUTIONS WHICH THE MEMBER STATES WERE CREATING IN 1957, IT HAS TURNED OUT TO BE MORE OF A CONTROLLING BODY OF THE MEMBER STATES BY VIRTUE OF THE MAJOR STEPS FORWARD TAKEN BY ITS JURIS-
PRUDENCE ON

- THE DIRECT EFFECT OF THE TREATIES AND OTHER INSTRUMENTS OF COMMUNITY LAW,
- ON THE PRIMACY OF COMMUNITY LAW, WHICH WILL TAKE PRECEDENCE OVER ANY NATIONAL LAW TO THE CONTRARY, AND
- ON THE CONFIRMATION OF VARIOUS SECTORS AS BEING EXCLUSIVELY WITHIN THE COMPETENCE OF THE COMMUNITY.

SECONDLY, ALTHOUGH VERY OFTEN IT IS THE LEGALITY OF ACTS OF THE COMMISSION WHICH ARE SUBMITTED TO THE CONTROL OF THE COURT OF JUSTICE (THE COMMISSION IS A REGULAR DEFENDANT, AND SOME OF YOU, I VENTURE, REGULAR COUNSEL TO THE PLAINTIFFS), THE COMMISSION IS MUCH MORE A FRIEND OF THE COURT, ESPECIALLY WHEN IT ASSUMES THE ROLE OF AMICUS CURIAE PURSUANT TO ARTICLE 177 - WHEN THE COMMISSION WITHOUT EXCEPTION SUBMITS ITS OBSERVATIONS ON THE PART OF COMMUNITY LAW WHOSE INTERPRETATION HAS BEEN REQUESTED BY THE NATIONAL JUDGE.

BY WAY OF CONCLUSION, I WOULD SIMPLY SAY THIS.

WE ALL REALISE THAT THE COMMUNITY CAN ONLY GO BEYOND THE PRESENT CRISIS IT IS EXPERIENCING AND PREPARE ITSELF FOR THE FUTURE IF THE GOVERNMENTS AND PARLIAMENTS CONCERNED SHOW THE NECESSARY POLITICAL WILL.

HOWEVER, THE COMMUNITY CAN ONLY CONTINUE TO FUNCTION DURING THIS CRISIS AND THUS BE ABLE TO MAKE PROGRESS IF ALL THOSE CONCERNED RESPECT THE RULES OF LAW WHICH THE TREATIES HAVE LAID DOWN.

THANK YOU FOR YOUR ATTENTION.