THE EUROPEAN ECONOMIC COMMUNITY: THE RIGHT OF MEMBER STATE WITHDRAWAL

I. INTRODUCTION

The Treaty of Rome,1 establishing the European Economic Community (EEC), does not provide for the withdrawal of a member state from the Community.2 Article 240 expressly states that the Treaty is "concluded for an unlimited period,"3 which implies that the Treaty creates a permanent organization.4 In addition, the EEC Treaty places permanent limitations on the sovereign rights of the member states.5 Given the perpetual tenor of the language of article 240, a difficult question arises concerning the ability and right

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The EEC Treaty went into effect on January 1, 1958, with the goal of establishing "an ever closer union among the European peoples . . . ." EEC Treaty, preamble, at 14. The Treaty was an attempt to foster European integration, economically, politically, and socially.


Throughout this Note, any references to the Treaty of Rome, the Treaty, or the EEC Treaty refer to the Treaty establishing the European Economic Community, unless specified otherwise.


3 EEC Treaty, supra note 1, art. 240, at 92.

4 Soldatos, supra note 2, at 257. See also D. LASOK & J. BRIDGE, AN INTRODUCTION TO THE LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES 24 (1973), who discuss the irreversible design of the EEC.

5 Costa v. ENEL, 1964 E. Comm. Ct. J. Rep. 585, 593-94, 3 Common Mkt. L.R. 425, 455-56. The court held that the EEC Treaty created a new legal system wherein each member state transferred part of its sovereign powers to the Community. As the Community has an unlimited duration, this transfer binds the member states by permanently limiting their sovereign rights. Id.
of a member state to defy the implications of article 240 and terminate its obligations under the Treaty.

To date, no member state has withdrawn from the EEC, but several have threatened to withdraw. For example, in February and October, 1974, the United Kingdom Labour Party issued Election Manifestos that mandated renegotiation of the terms of Britain's accession treaty with the EEC and a national referendum to determine Britain's continued membership. The EEC heads of state met in Dublin in March, 1975, to conclude the negotiations, after which the British cabinet voted by a majority of 16-7 that the United Kingdom should remain in the EEC. By national referendum of June 5, 1975, a 67.2% British majority voted for the United Kingdom to remain in the EEC.

Another incident of threatened withdrawal occurred during the 1981 national election campaign in Greece. PASOK, the Panhellenic Socialist Movement, included in its platform a promise to call a national referendum to determine the continued full membership of Greece in the EEC. Although PASOK won, the referendum is not likely to occur as long as Constantine Caramanlis remains president of Greece. A national referendum can be called only by the president, and Caramanlis is in favor of EEC membership.

Finally, the possibility of British withdrawal from the EEC may be an issue again due to Britain's high level of contributions to the EEC budget, the rising value of North Sea oil, and the decline

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6 Irving, The United Kingdom Referendum, June 1975, 1 EUR. L. REV. 3, 4 (1976). Great Britain had a conservative Tory government when Britain's accession treaty was concluded with the EEC. This treaty is cited in full, supra note 1.

7 Irving, supra note 6, at 4.

8 Id. at 3. Although a Labour government called the referendum and advocated withdrawal, the Labour Party was divided on the issue. Harold Wilson, a leader of the Labour Party, applied for British entry into the EEC in 1967 when he was prime minister. In the 1970 elections, he opposed the movement within the Labour Party that advocated holding a referendum on British membership in the EEC. After the Labour Party lost the 1970 elections, Anthony Wedgewood-Benn led a stronger movement within the Labour Party to call a referendum on EEC membership. Wilson feared this challenge to his party leadership, and when the Conservative government completed its negotiations with the EEC for British membership, Wilson became an anti-Marketeer himself. In 1974, a Labour government was elected and Wilson again became prime minister. On January 23, 1975, Wilson announced that a referendum would be held on renegotiated terms. Id. at 3-4, 8-9.


10 Muller, Yes to the Prospect of Allogi, TIME, Nov. 2, 1981, at 38.

11 Id.

12 Pluenneke, A Case for Britain's leaving the EC, BUS. WK., Mar. 10, 1980, at 43. The estimated 1980 net contribution of Britain to the EC budget was $2.7 billion, which was 60% of the total EC budget.

13 In 1975, when Britain began selling North Sea oil, the price was $12.30 per bbl. By 1980, the price had risen to $33.75 per bbl, for estimated total oil revenues of $3.1 billion in 1980.
of British industry. In 1981, the Labour Party promised that upon election of a Labour government, Britain would withdraw from the EEC without even holding a national referendum.

In light of these recurring threats, this Note will examine the right of a nation to withdraw from the EEC by analyzing the Treaty itself, interpretations of the Treaty by the European Court of Justice, the practice of member states vis-à-vis the EEC Treaty, and general rules of international law.

II. THE EEC TREATY

International agreements often provide for renewal at the will of the parties or for termination upon a certain date or upon the occurrence of certain events. For example, the treaty establishing the European Coal and Steel Community (ECSC) was "concluded for a period of fifty years from its entry into force."

The EEC Treaty, on the other hand, contains neither an express provision for termination nor an express right of withdrawal by

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14 Id. For example, the British share of auto sales in Great Britain was 40% in 1973 when Britain joined the EEC. By 1980, this percentage had fallen to 17%.

15 European Community: We'll Love You and Leave You, ECONOMIST, July 25, 1981, at 53. The Labour Party already has a plan by which to withdraw Britain from the EEC. This plan, devised by the national executive of the Labour Party, consists of a six step process:

1. Unofficial contacts, before the next British election, to alert other EEC governments.
2. Preliminary negotiations "within weeks of taking office" to establish a timetable for withdrawal.
3. An amending bill in the British parliament to remove the authority of EEC institutions within the United Kingdom.
4. Negotiations with the EEC to achieve a smooth withdrawal.
5. A transition period to follow an orderly disengagement.
6. The repeal of the 1972 European Communities Act by the British parliament.

Id. at 54. No British national referendum is mentioned in the process. The reason is that the Labour Party feels a Labour election victory would signify a mandate for withdrawal. Id.

16 On February 23, 1982, another incident dealing with EEC withdrawal occurred when Greenland voted to withdraw from the European Community. Greenland is not an EEC member state, but as a former colony of Denmark, Greenland had an affiliated status with the EEC. In a 1979 referendum, Greenland won local autonomy, and then in 1982, a 52% majority voted for Greenland to leave the EEC. The EEC response was to accede to Greenland's wishes. Wall St. J., Feb. 25, 1982, at 30, col. 3.

Greenland's reasons for leaving were a desire for lower food prices than those available through the Common Market, and a desire to exercise more direct control over local fish resources. However, Greenland must give up $25 million per year in loans and subsidies that it had been receiving from the EEC. Id.


18 ECSC Treaty, supra note 1, art. 97, at 227. Compare with EEC Treaty, supra note 1, art. 240, at 92, in which the drafters did not limit the duration of the Treaty. This supports a finding of intent to create a perpetual agreement. See Soldatos, supra note 2, at 257.
member states. As the *travaux préparatoires* of the EEC Treaty were not published, the reasons for the absence of a provision relating to withdrawal are uncertain.¹⁹ Three possible explanations have been suggested. First, negligence of the drafters may explain the lack of a withdrawal provision.²⁰ Second, the absence may reflect an intent by the drafters to preclude a right of withdrawal.²¹ Finally, the possibility remains that the drafters hoped to dissuade member states from withdrawing.²²

The first explanation is unlikely because the original member states rejected the French proposal that a right of withdrawal be included in the Treaty.²³ The second explanation similarly must be discredited because the Federal Republic of Germany specifically reserved the right to reconsider its participation in the EEC if reunification with the German Democratic Republic should occur.²⁴ Therefore, the third explanation may reflect most accurately the intent of the drafters, especially since article 240 manifests a desire for a Community of unlimited duration.²⁵

Several authorities adhere to the view that the treaties establishing the European Communities have placed Europe in an irreversible process of European integration.²⁶ This is consistent with the goal expressed in the Treaty's preamble to strive for "an ever closer union among the European peoples . . . ."²⁷ If the Treaty were intended to be of unlimited duration and to create an irreversible process of European integration, the right of a member state to withdraw from the EEC would be incompatible with such express goals.²⁸

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¹⁹ Soldatos, *supra* note 2, at 261.
²⁰ *Id.*
²¹ *Id.*
²² *Id.*
²⁴ 1 L. Constantinesco, *supra* note 2, at 182-83. The German reservation was placed in the minutes of the Treaty negotiations on February 28, 1957. The translated text reads as follows:

The government of the Federal Republic of Germany maintains the understanding that in the case of the reunification of Germany a re-examination of the treaties on the Common Market and Euratom will take place.

*Id.* at 183.
²⁶ See, e.g., *id.* at 259; D. Lasok & J. Bridge, *supra* note 4, at 24.
²⁸ See 6 H. SmIt & P. Herzog, *supra* note 17, at § 240.03.
III. THE EUROPEAN COURT OF JUSTICE

Three concepts express the position of the European Court of Justice:

A. Accession to the EEC is a permanent limitation of member state sovereignty. Upon accession to the Treaty of Rome, each EEC member state transferred certain rights and obligations from its domestic legal system to the EEC in order to form the Community legal system. When the member states transferred their sovereign rights in specified "limited fields" to the EEC, these rights were limited permanently.

B. The supremacy doctrine of EEC law makes the EEC Treaty resemble a constitution. The Treaty of Rome is different from a traditional treaty in that it resembles a constitution for the EEC. The basis of this theory is the concept of the supremacy of Community law over national law. As the EEC Treaty has no express

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29 "The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail." Costa v. ENEL, 1964 E. Comm. Ct. J. Rep. 585, 594, 3 Common Mkt. L.R. 425, 456. Presumably, unilateral withdrawal would be "incompatible with the concept" of the EEC and would not prevail against EEC law.

30 N.V. Algemene Transport-en Expeditie Onderneming Van Gend en Loos v. Nederlandse administratie der Belastingen, 1963 E. Comm. Ct. J. Rep. 1, 12, 2 Common Mkt. L.R. 105, 129. Costa v. ENEL, 1964 E. Comm. Ct. J. Rep. 585, 593, 3 Common Mkt. L.R. 425, 455. The sovereign rights transferred from the member states to the EEC are only those "arising under the Treaty." Supra note 29. The European Court also has stated that once these sovereign powers are transferred to the EEC, they cannot be withdrawn or restored to the member state "except by virtue of an express provision of the Treaty." Commission v. France, 1971 E. Comm. Ct. J. Rep. 1003, 1018, 11 Common Mkt. L.R. 453, 475. In other words, as long as an express provision restoring transferred rights does not exist in the Treaty, EEC membership and the member states' transfer of powers are permanent actions. It must be noted, however, that this case was an interpretation of the Euratom Treaty. As the EEC Treaty was founded in the same spirit and at the same time as the Euratom Treaty, it is probable that the European Court would interpret the EEC Treaty similarly.


supremacy clause, however, this concept is one of judicial creation. The apparent authority of the European Court to order national courts to consider EEC law supreme is to be found in article 189. The legal system created by the EEC Treaty is one that is "an integral part of the legal systems of the Member States and which their courts are bound to apply." EEC law cannot be overridden by existing or subsequently enacted laws of the member states, as such a possibility would undermine the character of Community law. In short, "where the Community is competent to act, its law is also supreme."

C. The EEC Treaty creates a new legal order. EEC law is neither international law nor constitutional law. Rather, the Treaty of Rome creates a third, new and independent "legal order" that occupies a realm between the two. Unlike the typical international treaty, execution of the EEC Treaty has been removed from the hands of the parties and placed within the authority of the EEC institutions. On the other hand, the Treaty is not a true constitution, because the "Community is not a 'state,' that is: neither a super-state nor a quasi-state nor . . . a federal state." Therefore, "[i]n contrast with ordinary international treaties, the EEC Treaty has created its own legal system . . . ."

The crux of these concepts is that the European Court interprets the Treaty as permanently binding on the member states.

34 Casper, supra note 33, at 6; Malawer, International Law, European Community Law and the Rule of Reason, 8 J. WORLD TRADE L. 17, 32 (1974).
36 Id., 3 Common Mkt. L.R. at 456.
37 Id. at 593, 3 Common Mkt. L.R. at 455.
38 Id. at 594, 3 Common Mkt. L.R. at 456.
39 Casper, supra note 33, at 11.
42 D. LASOK & J. BRIDGE, supra note 4, at 68. The governing bodies of the European Communities are the European Council, Commission, Parliament, and the European Court of Justice. See generally id. at 99-157 for an explanation of the functions and powers of these EEC institutions. Note that this source refers to the European Parliament by its earlier name, the European Assembly.
43 Dagtoglou, supra note 40, at 259.
44 Id. See Costa v. ENEL, 1964 E. Comm. Ct. J. Rep. 585, 593, 3 Common Mkt. L.R. 425, 455. Expressing this idea more clearly, Advocate-General Lagrange of the EEC stated that "the system of the Common Market is based upon the creation of a legal system separate from that of the Member States but nevertheless intimately and even organically tied to it . . . ."
45 Id. at 605, 3 Common Mkt. L.R. at 443.
If a member state passed legislation to withdraw from the EEC, EEC law would prevail over conflicting national legislation.46

IV. THE PRACTICE OF MEMBER STATES VIS-À-VIS THE EEC TREATY

The argument opposing the supremacy doctrine of the European Court focuses upon the status that each member state gives treaties vis-à-vis national legislation. A member state might attempt withdrawal by passing subsequent national legislation repealing the effects of the EEC Treaty for that nation. Although the EEC Treaty does not contain an express right of withdrawal, the power that each member state accords subsequent national legislation to override the binding effects of a prior treaty may determine a right to withdraw.

In six of the member states, the Treaty prevails over subsequent inconsistent national legislation. The constitution of the Netherlands expressly permits treaties and decisions made by international organizations to prevail over domestic laws and the constitution.47 In Luxembourg, case law apparently holds that treaties prevail over both prior and subsequent national legislation.48 Belgian courts have held that where subsequent legislation is inconsistent with the EEC Treaty, Treaty law must prevail.49 The Greek constitution provides that international conventions “shall prevail over any contrary provision of law.”50 Most authorities on the Greek constitution interpret this language to include both prior and subsequent statutes.51 The French Constitution of 1946, under which France ratified the EEC Treaty, provided that once ratified, a treaty prevails over prior and subsequent national laws.52 The 1958 constitution also gives treaties “duly ratified or approved” a status superior to national legislation, provided that the other

46 See id., 3 Common Mkt. L.R. at 456.
48 J. Lang, supra note 23, at 55; E. Stein, P. Hay, & M. Waelbroeck, European Community Law and Institutions in Perspective 95 (1976). Both sources make the same assertion but cite no Luxembourg cases as support.
49 Judgment of May 21, 1971, Cour de Cassation (Première Chambre), Belg., 11 Common Mkt. L.R. 330, 373.
51 Fatouros, supra note 50, at 503.
52 Const. of 1946, art. 26, 28 (Fr.). J. Lang, supra note 23, at 53, briefly discusses these provisions.
parties implement the treaty. The French Cour de Cassation has held that article 55 of the French constitution makes the EEC Treaty prevail over subsequent inconsistent French statutes, and that the reciprocal implementation clause does not apply to the EEC Treaty. This change in the constitution, therefore, has not altered the previous French position with regard to the EEC.

Finally, Ireland has an express constitutional provision permitting membership in the EEC. The constitution further provides EEC law the force of law in Ireland, and permits the State to enact laws and take measures necessary to fulfill the obligations of EEC membership. Similarly, the constitution provides for the invalidation of any legislation passed by parliament that is repugnant to the constitution. Interpreted together, these two provisions indicate that subsequent legislation repealing the EEC Treaty in Ireland would be repugnant to the constitution and would not prevail against the Treaty.

In three other member states, the status of treaties vis-à-vis subsequent inconsistent national legislation has been unclear. In West Germany, the German Constitution permits the transfer of sovereign powers to international organizations. The Federal German Constitutional Court has decided that a treaty, such as the EEC Treaty, concluded under article 24 of the constitution, prevails against subsequent legislation unless EEC law conflicts with a fundamental right guaranteed by the constitution. However, a more recent decision has gone even further by implying that EEC law now prevails over German fundamental rights. Conversely, in Denmark, EEC law is not assured absolutely of prevailing against national law. Under the Danish constitution, an international organization cannot be granted power to act contrary to the constitution. Nevertheless, a leading Danish scholar argues this constitutional

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53 Const. art. 55 (Fr.), relevant provisions reprinted in R. Pletcher & J. Usher, supra note 47, at 196.
56 Id.
57 Id.
61 Const. § 20 (Den.), relevant provisions reprinted in R. Pletcher & J. Usher, supra note 47, at 183. See also E. Stein, P. Hay, & M. Waelbroeck, supra note 48, at 97.
provision means that once parliament has delegated powers within a certain field to an international organization, parliament has precluded itself from legislating further within that field.\(^62\) The Italian Constitutional Court has avoided interpretation of the priority between EEC law and inconsistent national legislation, but has implied that EEC law will prevail except in the area of fundamental constitutional rights.\(^63\)

In the remaining member state, the Treaty does not appear to prevail against subsequent inconsistent national legislation. A constitutional doctrine exists in the United Kingdom that parliament has absolute sovereignty and cannot curtail, impair, or limit the powers of future parliaments.\(^64\) This doctrine prevents parliament from passing any laws that cannot be repealed.\(^65\) Therefore, it appears that the European Communities Act\(^66\) passed by parliament in 1972 cannot bind a successive parliament and could be repealed. Consistent with this argument, parliamentary debates about British accession to the EEC declared adoption of the EEC Treaty would not surrender the ultimate sovereignty of parliament, nor limit any of parliament's power to repeal the Act applying the Treaty.\(^67\) This viewpoint, however, does not give parliament a license to repeal the Treaty-enacting legislation at will.\(^68\) Unless

\(^{62}\) E. Stein, P. Hay, & M. Waelbroeck, supra note 48, at 97.


\(^{64}\) Feld, Legal Dimensions of British Entry into the European Community, 37 Law & Contemp. Probs. 247, 252 (1972).

\(^{65}\) E. Stein, P. Hay, & M. Waelbroeck, supra note 48, at 97.

\(^{66}\) European Communities Act, 1972, ch. 68, at 1947.

\(^{67}\) Feld, supra note 4, at 227. If this Act can transfer legislative sovereignty and establish a new legal order uniting the parliaments of England and Scotland, the U.K. parliament should have the same authority to transfer a portion of its legislative authority to the EEC to establish a new legal order of the EEC. See Feld, supra, at 253.


\(^{64}\) European Communities Act, 1972, ch. 68, at 1947.


\(^{65}\) But cf. Blackburn v. Attorney-General, [1971] 2 All E.R. 1380, where the plaintiff sought declaratory judgment on the effect of British entry into the EEC. The claim was that membership would amount to permanent surrender of British sovereignty, thereby binding later parliaments, which violates British constitutional doctrine. Id. at 1381. The court assumed that accession to the Treaty would place Britain on an irreversible course limiting its sovereignty. Id. at 1382. However, the court also noted that power concerning the treaties rests with the Crown and not with the courts. Id. Therefore, presumably parliament, rather than the judiciary, has the last word on the restraints placed on British sovereignty by the EEC Treaty.

parliament has compelling justification for its actions and the approval of the other member states, repeal of the Treaty would constitute a serious breach of international law and of the obligations assumed upon accession to the EEC.  

V. RULES OF GENERAL INTERNATIONAL LAW

The European Court interpretation that the EEC Treaty created a new legal order gives rise to several arguments concerning the law that should be applied to determine whether a right of withdrawal exists. If the Treaty rises to the level of a constitution as has been suggested,\(^7\) it can be argued that whenever a nation freely joins an international organization and accepts its authority, that nation knows the constitution of the organization, is aware of the obligations imposed by it, and for that reason should not be released from honoring the rule of *pacta sunt servanda*.\(^1\) If, on the other hand, the Treaty is regarded as an international treaty, the law of treaties would apply, thereby providing a right of withdrawal.\(^2\)

However, the EEC Treaty is not an ordinary treaty.\(^7\) Rather, the Treaty created a "new legal order of international law,"\(^7\) and this principle may exclude the applicability of the usual rules of international law dealing with treaty termination and withdrawal.\(^7\) The Treaty specifies that the methods provided in the Treaty for settling problems are exclusive,\(^7\) which would seem to disallow

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69. 243 PARL. DEB., H.L. (5th ser.) 421-22 (1962). In contrast, the combined provisions of §§ 2-3 of the European Communities Act imply that the courts are obligated to apply the decisions of the European Court of Justice in cases concerning EEC law, including its supremacy doctrine. D. LASOK & J. BRIDGE, supra note 4, at 228-29. It also has been argued that if parliament repealed the Act, the British courts would be obligated to enforce the legislation, even if it meant a violation of international law. Feld, supra note 64, at 253.

70. Bebr, supra note 32, at 261.


72. The Vienna Convention codifies most of the existing principles of international treaty law that grant a right of withdrawal. I. SINCLAIR, THE VIENNA CONVENTION ON THE LAW OF TREATIES 6 (1973). The pertinent provisions of the Vienna Convention that deal with treaty termination, denunciation, and withdrawal are articles 54-64. Vienna Convention, supra note 71, at 699-703.

73. See supra text accompanying notes 40-44.


75. 1 L. CONSTANTINESCO, supra note 2, at 182.

76. EEC Treaty, supra note 1, at 219, at 87.
recognition of any general principles of international law. Nevertheless, several international jurists contend that principles of international law codified in the Vienna Convention on the Law of Treaties are applicable to the EEC Treaty as they are to any other international treaty, and provide the EEC member states a right of withdrawal under the stipulated circumstances, even though the EEC Treaty itself does not provide such a right.\textsuperscript{77}

The EEC will recognize rules of general international law if they conform to the spirit of the Treaty and the interpretations of the European Court of Justice.\textsuperscript{78} Judges on the European Court often have interpreted and applied rules of general international law.\textsuperscript{79} On the other hand, the European Court does not apply general international law principles automatically and without distinction.\textsuperscript{80} For example, in Commission v. Luxembourg and Belgium,\textsuperscript{81} the European Court rejected an argument by the advocate-general on a point of general international law.\textsuperscript{82} Nonetheless, if a matter of Treaty withdrawal were to come to trial, the European Court could take jurisdiction under the powers granted by the Treaty.\textsuperscript{83}

Assuming that general rules of international law can be applied to EEC Treaty interpretation, perhaps some conclusions about a right of withdrawal can be drawn from the Vienna Convention on the Law of Treaties and other treaties that create international organizations and institutions but do not provide an express right of withdrawal.

A. \textit{Vienna Convention on the Law of Treaties}

In 1969, most of the existing rules of customary international law dealing with treaties were codified in the Vienna Convention on the Law of Treaties.\textsuperscript{84} The Vienna Convention is "an agreement among nations on the law governing the formation and operation of treaties, how they should be interpreted, amended and ter-

\textsuperscript{77} 1 L. CONSTANTINESCO, \textit{supra} note 2, at 180.
\textsuperscript{78} Soldatos, \textit{supra} note 2, at 269.
\textsuperscript{79} \textit{Id.} at 261, 266.
\textsuperscript{80} \textit{Id.} at 266.
\textsuperscript{82} \textit{Id.}
\textsuperscript{83} See EEC Treaty, \textit{supra} note 1, arts. 169, 170, 173, 175, 177, 219, at 75-77, 87. Contra Malawer, \textit{supra} note 34, at 35, who argues that because the treaty has no withdrawal provision, an issue concerning withdrawal may not be a matter of Treaty interpretation and therefore not within the jurisdiction of the European Court of Justice. In such a case, the International Court of Justice might hear the case. \textit{Id.}
\textsuperscript{84} Vienna Convention, \textit{supra} note 71, preamble, at 680.
minated and the rules governing their invalidity." As of December 31, 1979, only four EEC member states had ratified the Vienna Convention on the Law of Treaties. Additionally, the Vienna Convention "applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States." The Vienna Convention entered into force on January 27, 1980, which was years after the conclusion of the EEC Treaty. Still, the principles codified in the Vienna Convention represent rules of customary international law that were in effect when the EEC Treaty was concluded.

Article 56 of the Vienna Convention specifically addresses withdrawal from a treaty, such as the EEC Treaty, in which there is no express withdrawal provision. Article 56 recognizes an implied right of treaty denunciation or withdrawal even if one is not expressed in the treaty, provided that the intent of the parties, inferred from all relevant factors, indicates that the right should exist. More specifically, article 56 provides that without a provision regarding withdrawal, a treaty can be denounced only if (1) the parties intended to permit the possibility of withdrawal, or (2) the nature of the treaty implies a right of withdrawal. In either situation, the denouncing party must give twelve months notice of its intent to withdraw.

It is arguable that neither of these circumstances are applicable to the EEC Treaty. First, intent can be determined by the

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87 See UNITED NATIONS, MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITORY FUNCTIONS 597, 598 (1979) [hereinafter cited as MULTILATERAL TREATIES DEPOSITORY]. Three EEC nations have both signed and ratified the Vienna Convention: Denmark signed on April 18, 1970 and ratified on June 1, 1976; Italy signed on April 22, 1970 and ratified on July 25, 1974; the United Kingdom signed on April 20, 1970 and ratified on June 25, 1971. The fourth, Greece, ratified on October 30, 1974 but has not signed the Convention. Two other nations have signed without ratification: Germany (Federal Republic) on April 30, 1970, and Luxembourg on September 4, 1969. Id.
89 Vienna Convention, supra note 71, art. 4, at 682.
90 MULTILATERAL TREATIES DEPOSITORY, supra note 86, at 597. The EEC Treaty was concluded on March 25, 1957. See supra note 1.
91 Vienna Convention, supra note 71, art. 56, at 699. Other relevant provisions, which are discussed infra in text accompanying notes 132-34, 140, 154, and 162, include articles 54, 59, 60, 61, and 62.
92 Lissitzyn, Treaties and Changed Circumstances (Rebus Sic Stantibus), 61 AM. J. INT'L L. 895, 919 (1967). Lissitzyn discusses article 53 of the early drafts of the Vienna Convention, but article 53 corresponds to article 56 of the final draft.
93 Vienna Convention, supra note 71, art. 56(1), at 699.
94 Id. art. 56(2), at 699.
statements included in the travaux préparatoires and by the subsequent conduct of the parties. The travaux préparatoires of the EEC Treaty have not been published; but arguably, the intent of the EEC Treaty drafters was to exclude an express right of member state withdrawal in order to discourage the use of that option. Also, if membership in the EEC is permanent as expressed by the European Court of Justice, this further implies no intent for a right of withdrawal. Second, unless the parties indicate contrary intentions, a treaty of alliance is the type of international agreement that implies a right of withdrawal after reasonable notice is given. The EEC Treaty is not a treaty of this type. Also, a treaty establishing an international organization does not inherently imply a right of withdrawal. Therefore, it can be concluded that article 56 offers no right of withdrawal from the EEC.

B. Treaties Creating International Organizations

The EEC is neither a federal state nor a confederation. Rather, the EEC Treaty creates a new order of international law. The EEC is a separate supranational entity consisting of sovereign states governed by the Treaty and guided by the law of international institutions. As international law can be used to solve EEC

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93 Feinberg, supra note 71, at 219.
94 Soldatos, supra note 2, at 261-62. See also text accompanying notes 19-25.
97 Feinberg, supra note 71, at 217.
98 Dagtoglou, supra note 40, at 259, who argues that a state has a determinable territory, identifiable citizens, and "an unlimited field of activity"; whereas none of these characteristics apply to the EEC.
100 See supra notes 40-44 and accompanying text.
101 See D. LASOK & J. BRIDGE, supra note 4, at 23. This assertion does not attempt to equate the EEC with an ordinary international organization. The purpose of the EEC is to foster European integration. In contrast, ordinary international organizations promote international cooperation rather than integration.
problems when both EEC law and national law fail, international legal principles governing international organizations can provide analogies for determining the possibility of withdrawal from the EEC.

There are two prevalent views regarding withdrawal from international organizations. The first adopts the rationale that as treaties create international organizations, the law of treaties governs withdrawal. Therefore, membership termination is permissible even if such a right is not granted by the organization's charter. The second view asserts that the right to withdraw from an international organization exists only if it has been recognized, but that such recognition need not be expressed in the charter.

Most treaties establishing an international organization contain an express provision either permitting or forbidding withdrawal. Other treaties establishing international organizations are concluded expressly for an unlimited duration but still permit a right of withdrawal. This illustrates that a right of withdrawal could be compatible with a treaty of indefinite duration, such as the EEC Treaty.

The League of Nations provided its member states an express right of withdrawal; but its successor, the United Nations (UN), has no such provision in its Charter. A right of withdrawal was excluded purposely from the United Nations Charter to decrease the possibility that the right might be exercised. However, the UN was forced to draft an interpretative declaration on the matter of withdrawal, stating that withdrawal was permissible under “exceptional circumstances” and that the UN would not “compel that Member to continue its cooperation in the Organization.”

This right was exercised in 1965 when Indonesia announced its intent to withdraw from the UN. Although Indonesia specifically

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102 E. Stein, P. Hays, & M. Waelbroeck, supra note 48, at 19.
103 Id.
104 Stein, supra note 71, at 215.
105 Id. at 189. An example of such a treaty is the Articles of Agreement of the International Monetary Fund, opened for signature December 27, 1945, art. XV, 60 Stat. 1401, 1421-22, T.I.A.S. No. 1501, 2 U.N.T.S. 39, 94-96 [hereinafter cited as IMF Articles].
107 Feinberg, supra note 71, at 190.
108 Id. at 199.
109 Id. at 200 (quoting DOCUMENTS OF THE UNITED NATIONS CONFERENCE ON INTERNATIONAL ORGANIZATION, SAN FRANCISCO, 1945, Doc. 1086, 12/77, at 267 (1945)).
requested withdrawal, the UN Secretary-General did not recognize Indonesia's withdrawal. His response was worded as a recognition of cessation in cooperation with the UN, expressing the hope that in due time Indonesia would resume full cooperation. If the UN had recognized the withdrawal, Indonesia’s membership would have terminated and re-entry into the UN would have been possible only by a decision of the General Assembly upon the recommendation of the Security Council. Instead, because the UN recognized Indonesia’s actions only as a cessation of cooperation, Indonesia was allowed to resume its UN participation without any objections from the General Assembly when on September 16, 1966, Indonesia expressed the desire to “resume full co-operation with the United Nations.”

The International Monetary Fund (IMF) has an express provision that extends to members a right to withdraw or by which members can be compelled to withdraw; however, notice must be given to exercise the right to withdraw. A right of withdrawal was provided because the treaty placed considerable limits upon the previously held freedoms of the member states with respect to monetary matters. The IMF was new, untried, and experimental. It foreseeably could have developed into an undesirable experiment for some nations. Therefore, a right of withdrawal was included in order that a nation no longer desiring membership could withdraw at any time without the delay of troublesome procedures, and in order that other nations would be encouraged to risk the “experiment” and join, knowing their actions could be reversed. A member state, therefore, may withdraw from the IMF at any time and without stating a reason. Only three nations, Poland, Czechoslovakia and Cuba, have exercised this option to withdraw.

The IMF also can compel a member state to withdraw if that nation

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111 Id. at 666.
112 U.N. CHARTER art. 4, para. 2.
113 Schwelb, supra note 110, at 668-69.
114 IMF Articles, supra note 105, art. XV. The IMF is an intergovernmental organization of over one hundred states that regulates a code of good behavior in the sphere of international payments, lends resources to national monetary authorities to meet balance of payments deficits, and promotes international cooperation by providing counsel and technical assistance to its members. J. FLEMING, THE INTERNATIONAL MONETARY FUND: ITS FORM AND FUNCTIONS 3 (International Monetary Fund Pamphlet Series No. 2, 1964).
115 J. GOLD, THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL LAW 7 (International Monetary Fund Pamphlet Series No. 4, 1965).
116 Id.
117 Id.
118 Id.
119 Id.
120 Id. at 6.
fails to fulfill its obligations under the agreement. Whenever member states have failed to fulfill treaty obligations, however, the IMF has been reluctant to apply these sanctions in the hope that the nation in question would resume full observance of the treaty as soon as possible.

As a final example, the General Agreement on Tariffs and Trade (GATT) also contains an express provision for withdrawal. Any contracting party may withdraw from the agreement six months after written notice of withdrawal is sent to the Secretary-General of the United Nations. In addition, a member state “may separately withdraw on behalf of any of the separate customs territories for which it has international responsibility and which at the time possesses full autonomy in the conduct of its external commercial relations...” If a member state should fail to fulfill its obligations under the agreement, other member states have a right of self-help and may retaliate by withdrawing substantially equivalent tariff concessions. As well, a member state has no obligation to apply the agreement when dealing with particular acceding contracting parties.

VI. ANALYSIS: INTERRELATION OF INTERNATIONAL LAW AND THE NATURE OF THE EEC

The EEC Treaty has no express provision for termination, nor any express right of withdrawal by the member states. No directives or resolutions from the EEC legislative bodies exist concerning a right of withdrawal by a member state. Case law has dealt with the issue indirectly, noting that once a nation has joined the Community and transferred part of its sovereign powers to the Community, these powers can neither be withdrawn nor restored to the member state without the authority of an express provision in the Treaty. On the basis of these sources of EEC law,

121 IMF Articles, supra note 105, art. XV, § 2(b).
122 J. Gold, supra note 115, at 6-7.
123 General Agreement on Tariffs and Trade, done October 30, 1947, 61 Stat. A-11, T.I.A.S. No. 1700, 55 U.N.T.S. 194. GATT is an international agreement that stipulates the rights and duties among the participating nations with respect to trade and tariff concessions.
125 Id.
128 This assertion is made after an exhaustive review of indexes of EEC law.
it appears that a member state may not withdraw from its Treaty obligations.\textsuperscript{130}

Yet, the Treaty was not intended to be inalterable; it can be modified or annulled by agreement of all parties to the Treaty.\textsuperscript{131} If applicable to the EEC Treaty, the Vienna Convention also permits withdrawal from a treaty or termination of treaty obligations by agreement of all contracting parties.\textsuperscript{132} Commentaries of the Vienna Convention drafts stress that when a treaty has no provision for withdrawal or termination, unanimous consent of the parties must be obtained, because termination or withdrawal affects the rights of all parties.\textsuperscript{133} The Vienna Convention also grants a right of termination if the parties conclude a subsequent treaty incompatible with or intended to replace the first.\textsuperscript{134}

A. Arguments in Support of a Right of Withdrawal

Although the EEC Treaty provides no express right of withdrawal, and the European Court likely would interpret the Treaty to prohibit such action, several arguments can be advanced in support of a right of withdrawal when the Treaty is viewed in the context of general international law.

The first, and least supportable, of these arguments is for denunciation \textit{ad nundum},\textsuperscript{135} treaty denunciation made without any special reason. EEC law discredits this argument because arbitrary denunciation is incompatible with the general nature of the EEC\textsuperscript{136} and, more specifically, the implications of article 240.\textsuperscript{137}

The second argument asserts a right of denunciation when there has been a serious violation of the Treaty by a single member state.\textsuperscript{138} Most authorities insist that denunciation consequent to a

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\textsuperscript{130} See 6 H. SMIT & P. HERZOG, \textit{supra} note 17, § 240.03.

\textsuperscript{131} Soldatos, \textit{supra} note 2, at 258. EEC Treaty, \textit{supra} note 1, arts. 235, 236, at 91, provide for modifications of the Treaty. Article 236 grants a power to amend the Treaty, and article 235 gives the EC Council authority to assume powers not expressed within the Treaty in order to effectuate the objectives of the EEC Treaty. Both articles require a unanimous vote. \textit{Id.}

Consistent with the drafters' intent to foster irreversible integration, the Treaty can be terminated only if replaced by a new form of European integration. 6 H. SMIT & P. HERZOG, \textit{supra} note 17, § 240.04.

\textsuperscript{132} Vienna Convention, \textit{supra} note 71, art. 54, at 699.

\textsuperscript{133} U.N. \textit{TREATIES} \textit{CONFERENCE}, \textit{supra} note 96, at 69. The commentary of article 51 of the early drafts corresponds to article 54 of the final draft.

\textsuperscript{134} Vienna Convention, \textit{supra} note 71, art. 59, at 700-01.

\textsuperscript{135} Soldatos, \textit{supra} note 2, at 259 n. 14.

\textsuperscript{136} \textit{Id.} at 264.

\textsuperscript{137} 6 H. SMIT & P. HERZOG, \textit{supra} note 17, § 240.05.

\textsuperscript{138} Soldatos, \textit{supra} note 2, at 259 n. 14.
treaty violation can occur only if the violation concerns an essential provision of the treaty.\textsuperscript{139} The Vienna Convention on the Law of Treaties codifies this principle by permitting treaty termination, withdrawal, or suspension for a material breach of the treaty.\textsuperscript{140}

The EEC Treaty, however, stipulates that any disputes within the EEC arising from alleged Treaty violations should be settled through the dispute settlement methods established by the Treaty.\textsuperscript{141} The drafters of the EEC Treaty anticipated the possibility of Treaty infringements by member states and provided safeguards to remedy conflicts arising therefrom. First, the Treaty can be amended by unanimous action.\textsuperscript{142} Second, Treaty obligations may not preclude certain actions taken by a member state for the protection of its essential security interests.\textsuperscript{143} Third, articles 169 and 170 grant the complaining party, whether it be the European Commission\textsuperscript{144} or a member state,\textsuperscript{145} the power to sue the infringing nation before the European Court of Justice.\textsuperscript{146} That court has the authority to order the member state guilty of infringement or secession to comply with its treaty obligations.\textsuperscript{147} Many proceedings involving Treaty infringements have been brought before the European Court of Justice, but none have ended in withdrawal.\textsuperscript{148} However, if a member state chooses to refute the court's authority, the European Court has no power of sanction.\textsuperscript{149} The power of the court under article 171 is purely theoretical because the EEC institutions do not have the judicial power to enforce the court's decrees and compel the re-integration of the withdrawing state into the EEC.\textsuperscript{150} As a practical matter, if a member state were to ignore the European Court and continue to violate the Treaty for an extended period of time, the action probably would be treated as exclusion of the member state from the EEC.\textsuperscript{151} Otherwise, EEC Treaty violations should be resolved through the Treaty dispute settlement methods.\textsuperscript{152}

\begin{footnotesize}
\textsuperscript{139} Id. at 265 & n. 56.
\textsuperscript{140} Vienna Convention, supra note 71, art. 60, at 701.
\textsuperscript{141} EEC Treaty, supra note 1, art. 219, at 87.
\textsuperscript{142} Id., art. 236, at 91.
\textsuperscript{143} Id., arts. 223, 224, at 88. See also 6 H. SMIT & P. HERZOG, supra note 17, § 240.05[b].
\textsuperscript{144} EEC Treaty, supra note 1, art. 169, at 75.
\textsuperscript{145} Id., art. 170, at 75.
\textsuperscript{146} Id., arts. 169, 170, at 75.
\textsuperscript{147} Id., art. 171, at 75.
\textsuperscript{148} Id., arts. 223, 224, at 88. See also 6 H. SMIT & P. HERZOG, supra note 17, § 240.05[b].
\textsuperscript{149} EEC Treaty, supra note 1, art. 169, at 75.
\textsuperscript{150} Id., art. 170, at 75.
\textsuperscript{151} Id., art. 171, at 75.
\textsuperscript{152} See EEC Treaty, supra note 1, art. 219, at 87.
\end{footnotesize}
The third argument asserts a right of withdrawal as a consequence of serious national problems.\textsuperscript{153} The Vienna Convention allows withdrawal or termination when supervening events make execution of the treaty impossible, provided that the impossibility is not the result of a breach of treaty provisions.\textsuperscript{154} In contrast, the EEC Treaty drafters attempted to anticipate possible national problems and provide safeguards in the Treaty to remove obstacles to Treaty performance.\textsuperscript{155} First, if the national difficulties are the result of Treaty violation by another member state, recourse under the Treaty is provided through articles 169 and 170, instead of the safeguard provisions of the Treaty.\textsuperscript{156} Second, a list of specific Treaty provisions sets forth measures that can be taken in derogation of the Treaty when certain specified national problems conflict with Treaty compliance.\textsuperscript{157} Third, articles 223 and 224 also permit temporary derogation from the Treaty to resolve serious matters of national security, internal disturbances, war, and international obligations.\textsuperscript{158} Finally, the Treaty always can be modified.\textsuperscript{159} Only if these safeguard/relief provisions fail can it be argued that a serious national problem provides a right of withdrawal.\textsuperscript{160}

The fourth argument supporting a right of withdrawal is the principle of \textit{rebus sic stantibus}, which provides for treaty withdrawal or termination in the event a substantial change in circumstances occurs after the treaty comes into force, and the originally existing circumstances were an essential basis upon which the agreement was made.\textsuperscript{161} The Vienna Convention contains a provision similar in substance.\textsuperscript{162} This provision in the Vienna Convention was intended to apply especially to "perpetual" treaties, which have no provision for termination.\textsuperscript{163}

Despite recognition of this principle under rules of general international law, this argument might have difficulty passing legal muster in the EEC. First, the nation claiming \textit{rebus sic stantibus}
should attempt to resolve the problem using the safeguards provided within the EEC Treaty. Second, if the change in circumstances is caused by a breach of Treaty obligations, the injured member state cannot argue a legal right of withdrawal through rebus sic stantibus. Rather, claims involving breaches of the Treaty are settled by using the mechanisms of articles 169, 170, and 171. Third, rebus sic stantibus might not apply to EEC law at all. The dynamic character of the Treaty permits adjustment to change in circumstances by modification of the Treaty through the Council and EEC institutions. Then too, the EEC is required to settle all disputes using the procedures provided by the Treaty. Therefore, general rules of international law, such as rebus sic stantibus, do not necessarily present valid legal arguments in the EEC unless relations with non-EEC parties are at issue.

On the other hand, an anticipated change in circumstances was the justification for the German reservation of a right to withdraw from the EEC should the two German nations ever reunite. It has been suggested that this indicates an acceptance of the rebus sic stantibus principle in the EEC. It seems more likely that because West Germany reserved this right expressly, it was intended to be the exception and not the rule.

B. Arguments in Support of Nonrecognition of a Right of Withdrawal

The above arguments supporting a right of withdrawal are weakened greatly by an examination of the nature of the EEC as created by the Treaty. Withdrawal can occur legally only with the consent of all member states; and, until withdrawal is accepted by the other member states, the withdrawing member continues to be bound by its treaty obligations. The Treaty promotes a process of transforming the European member states into a “more
homogenous body politic."\textsuperscript{175} As long as a member state retains its sovereignty it can withdraw from the EEC and disobey the Treaty, whether its actions are legal or illegal.\textsuperscript{176} On the other hand, if the member state has become so enveloped in the process of integration that its economic structure and national interests are intertwined with those of the EEC, withdrawal may be impractical.\textsuperscript{177} Reliance upon the political and economic benefits accruing from decades of integration could yield detrimental consequences if a nation broke its EEC affiliation sharply and thereby suffered a sudden reduction in benefits.\textsuperscript{178} However, by not withdrawing, a nation can maintain the status quo within the Community and thereby stagnate the integration process.\textsuperscript{179}

Finally, two instances might permit acceptance by all member states of withdrawal from the EEC, even though the idea of withdrawal conflicts with the goal of European integration. Both are political considerations. The first would occur if the two German nations were reunited and Germany were to exercise its right to reconsider its participation in the EEC.\textsuperscript{180} The second example of permissible withdrawal would occur if a purely communist government were to come to power in a member state.\textsuperscript{181} The Soviet Union and most communist parties openly reject the EEC,\textsuperscript{182} and their ideologies conflict with those of the EEC. Therefore, if a member state were to turn to a form of communist government, it probably would be preferable to permit that nation to withdraw from the EEC rather than to allow the goals of that government to frustrate and undermine the economic goals of the EEC.\textsuperscript{183}

VII. SUMMARY AND CONCLUSION

The EEC Treaty is an agreement that promotes European integration between the member states.\textsuperscript{184} The Treaty does not provide a right of withdrawal, stating that the "Treaty is concluded for an unlimited period."\textsuperscript{185} The EEC legislative bodies have been

\textsuperscript{175} D. LAsok & J. Bridge, supra note 4, at 24.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} 1 L. Constantinesco, supra note 2, at 182.
\textsuperscript{179} D. Lasok & J. Bridge, supra note 4, at 24.
\textsuperscript{180} See 1 L. Constantinesco, supra note 2, at 182-83. See supra note 24.
\textsuperscript{181} 1 L. Constantinesco, supra note 2, at 182.
\textsuperscript{182} Id.
\textsuperscript{183} Id.
\textsuperscript{184} The EEC is to create "an ever closer union among the European peoples . . . ." EEC Treaty, supra note 1, preamble, at 14.
\textsuperscript{185} Id., art. 240, at 92.
silent on the issue.\textsuperscript{186} The European Court of Justice has determined that EEC membership entails a permanent transfer of sovereign powers to the EEC,\textsuperscript{187} which would imply no right of withdrawal.

International legal principles indicate that when a treaty establishing an international organization fails to provide for a right of withdrawal, the intent of the parties determines the existence of such a right.\textsuperscript{188} The intent of the Treaty drafters was to accomplish an irreversible process of European integration and to prevent obstacles to this process by incorporating safeguards into the Treaty to solve dilemmas among the parties that might otherwise give rise to withdrawal or termination as a possible solution.\textsuperscript{189} Based upon this intent, it appears that no legal right of unilateral withdrawal exists.

The EEC could follow a course similar to that of the U.N., if confronted with member state withdrawal, and treat the withdrawing state as temporarily ceasing participation in the Treaty. In certain situations, the Treaty handles problems that arise in just that manner by providing safeguard provisions that permit temporary noncompliance with the Treaty until the problem is solved.\textsuperscript{190} A caveat to this right is that an extended period of noncompliance probably would lead to exclusion from the Treaty.\textsuperscript{191}

Some member states consider a right of withdrawal inherent in the idea that sovereignty cannot be impaired;\textsuperscript{192} whereas, the European Court of Justice considers accession to the EEC to entail a permanent transfer of certain sovereign powers from the member states to the EEC.\textsuperscript{193} As a practical matter, if a member state were determined to withdraw, the EEC has no sanctions that can be applied to compel lawful compliance with the Treaty.\textsuperscript{194} Thus, from this point of view, it really is of no consequence whether a legal right of withdrawal exists. However, as another practical matter, a member state’s determination to withdraw may be more easily said than done. Years of integration in which a member state’s domestic economy and political structure have become inter-

\textsuperscript{186} See supra note 128 and accompanying text.
\textsuperscript{188} Vienna Convention, supra note 71, art. 56(1)(a), at 699. See also Feinberg, supra note 71, at 215.
\textsuperscript{189} 1 L. CONSTANTINESCO, supra note 2, at 182.
\textsuperscript{190} 6 H. Smit & P. Herzog, supra note 17, § 240.06.
\textsuperscript{191} See supra notes 64-69 and accompanying text.
\textsuperscript{192} See supra note 2, at 266.
twined with that of the EEC cannot be undone at will without
the risk of severe repercussions. It would appear that a member
state's withdrawal from the EEC and reversal of the process of
integration would necessitate the cooperation of the other member
states.

As a final practical matter, consent to withdraw might be re-
quired if the two German nations ever were reunited or if a purely
communist regime were elected in a member state. In such situ-
tions, a permissible right of member state withdrawal is conceiv-
able.

Creation of the EEC for an unlimited duration and the intent
of the member states to promote European integration express
the nature of the EEC. A right of withdrawal is incompatible with
this nature, other than the exceptions noted above, and therefore
a right of member state withdrawal does not exist in the EEC.
If a country were to withdraw from the EEC, "havoc could be caused
but the Community would not come to an end and the insitutions
would not cease to function." The perpetuation of the EEC as
implied by article 240 rests upon the guarantee of good faith in
treaty performance and "the political will of the member states
that the Community system shall succeed."

John A. Hill

195 See D. Lasok & J. Bridge, supra note 4, at 24.
196 1 L. Constantinesco, supra note 2, at 182-83. See supra note 24.
197 EEC Treaty, supra note 1, art. 240, at 92.
198 See id., preamble, at 14.
199 D. Lasok & J. Bridge, supra note 4, at 69.
200 Id. at 229.