

January 1983

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### Recommended Citation

Dominique Carreau, *Le droit de l'integration economique socialiste*, 12 *Denv. J. Int'l L. & Pol'y* 307 (1983)(book review).

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## Le droit de l'integration economique socialiste

### Keywords

Environmental Law, Jurisdiction, Comparative Law, International Trade, International Law: History

# BOOK REVIEW

## Le droit de l'intégration économique socialiste

*Reviewed by Dominique Carreau\**

R. BYSTRICKY, *LE DROIT DE L'INTÉGRATION ÉCONOMIQUE SOCIALISTE*; Sijthoff & Noordhoff, Leiden, The Netherlands (1979); available in the United States from Kluwer Boston, Inc., 190 Old Derby St., Hingham, Mass. 02043; \$48.00; ISBN 90-286-0339-5; xii, 471 pp.; footnotes, appendix, bibliography, index.

In *Le droit de l'intégration économique socialiste* Professor Bystricky critically analyzes the theory and practice of the socialist economic integration. Regional economic integration is a prominent feature of contemporary international relations. Small- or medium-sized nations form regional groups in order to create a large market for their goods. Producers capable of doing so will expand their production when such a market is available, and lower costs of production will result because of economies of scale. Therefore, more goods will be available in the regional market at lower prices, and the producers will be more competitive in the world market as well. Continental-size states such as Brazil, China, India, the United States, and the U.S.S.R., enjoy a marked advantage over smaller nations. For small- and medium-sized nations the choice is crystal clear—either they form regional economic groups with their neighbors or they will have no economic clout in the world. The framers of the post-World War II international trade charters fully recognized this choice and saw the necessity of regional economic groupings. Thus, article XXIV of the G.A.T.T.<sup>1</sup> expressly legitimizes international economic integrations, provided they take the form of either free trade areas or customs unions and that they adhere to certain principles designed to make them trade creating and not trade diverting.<sup>2</sup>

Regional economic integrations are numerous. No continent has remained unaffected by the move toward unification. Regardless of their

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1. General Agreement on Tariffs and Trade, Oct. 30, 1947, art. xxiv, 61 Stat. Pts. 5 & 6, T.I.A.S. No. 1700, 55 U.N.T.S. 187.

2. *Id.* The distinction between trade creating and trade diverting was made famous by U.S. economist Jacob Viner in the 1950's. See generally J. VINER, *THE CUSTOMS UNION ISSUE* (1950).

level of development or their domestic economic or political organization, most nations are members of some kind of regional economic group. However, not all economic groups are alike. In this respect, a basic distinction must be drawn between groups formed solely for economic cooperation and those which reflect true economic integration. True integration implies a surrender of sovereignty on the part of the group's members, whereas economic cooperation does not imply such a surrender of sovereignty. It is not surprising that relatively few regional groups based on the concept of strict economic integration between member states have been formed. Nations are usually reluctant to give up their sovereignty even if that surrender of power is limited to the economic sphere. Moreover, regional integrations cannot be exclusively circumscribed to economic matters, and the formation of any regional group entails obvious political consequences. It is no secret that the fathers of the European economic reconstruction after World War II desired a political integration of Europe as well as an economic one. In setting up economic integration institutions<sup>3</sup> they pursued the goal, some would say the dream, of political integration. They hoped that some sort of "United States of Europe" would evolve.<sup>4</sup> Ever since, within the European Economic Community (EEC), Member States and theoreticians have been divided over the issue of integration; some favor a "supranational" Europe, e.g., organized on the model of a federal state, and some favor a "Europe of States," e.g., an organization in which each member retains as many sovereign powers as possible.<sup>5</sup>

Eastern European socialist countries also formed a regional economic organization shortly after World War II<sup>6</sup> to help solve their economic problems. The organization, commonly known as COMECON,<sup>7</sup> was very inactive during the first two decades or so of its existence. The turning point for COMECON came with the adoption in 1971 of a voluminous "Comprehensive Program for the further deepening and perfecting of cooperation and development of the socialist economic integration between participating members."<sup>8</sup> Professor Bystricky's book, and this constitutes its principal merit, forcefully demonstrates the uniqueness of the socialist integration. COMECON is radically different from the EEC despite some outward similarities.

Professor Bystricky's main line of argument is that political considerations are responsible for the economic integration of socialist countries,

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3. Such institutions include EURATOM, the European Coal and Steel Community and the European Economic Community.

4. See W.F. FELD, *TRANSNATIONAL BUSINESS COLLABORATION AMONG COMMON LAW COUNTRIES: ITS IMPLICATIONS FOR POLITICAL INTEGRATION* (1970); R. PRYCE, *THE POLITICS OF THE EUROPEAN COMMUNITY* (1973).

5. See W.F. FELD, *TRANSNATIONAL BUSINESS COLLABORATION AMONG COMMON LAW COUNTRIES: ITS IMPLICATIONS FOR POLITICAL INTEGRATION* (1970).

6. R. BYSTRICKY, *LE DROIT DE L'INTÉGRATION ÉCONOMIQUE SOCIALISTE* 7 (1979).

7. This acronym stands for the Council for Mutual Economic Assistance.

8. R. BYSTRICKY, *supra* note 6, at 8.

while the Treaty of Rome<sup>9</sup> creating the EEC primarily relies on private economic forces and interests to achieve a "common market." Whether the factor responsible for integration is governmental fiat or private economic forces, economic and political factors cannot remain isolated. The author correctly remarks that the economic achievements of COMECON countries remain disappointing if compared to those attained in the West, while the EEC, albeit an economic success, has more or less come to a halt for lack of political will to achieve a greater degree of integration. Professor Bystricky attributes the impressive political achievements of the socialist community to the leadership of the Communist Party in each country. The Communist Party represents a real "supranational power" that is presently missing within the ten-nation EEC.

Among the main sources of COMECON regional law are the general laws of socialist construction which provide for the collective ownership of all means of production, strict economic planning, democratic centralism, state monopoly of foreign trade, and the dominant role of the Communist Party.<sup>10</sup> However, it is the Soviet Union's interpretation of socialism which is considered to be the true embodiment of these general principles. Thus, Professor Bystricky maintains that the COMECON structure is imposed on its member states by the Soviet Union in order to foster its own political and military interests, and that COMECON's general underlying principles conveniently aid the Soviet Union in dominating its smaller socialist partners. All deviations from the Soviet view of socialism may be crushed by relying on the omnipresent and pervading principle of "socialist internationalism." According to this principle, all national interests must be subordinated to those of the workers' international revolutionary movement.<sup>11</sup> Thus, when the so-called socialist "achievements" are threatened in a given COMECON member state, the socialist community has the right, if not the obligation, to intervene even by military means to protect such gains.<sup>12</sup> Hence, the Soviet interventions in Berlin in 1953, in Hungary in 1956, and in Czechoslovakia in 1968. COMECON members possess only a limited sovereignty which must bow in case of conflict to the general laws of socialist construction as these laws are superior to the national laws within the countries of the Communist bloc.<sup>13</sup> This position is maintained notwithstanding the recognized principle of international law of the sovereign equality of states. One can agree with the author when he points out that such a position is entirely incompatible with the present state of international law. However, it

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9. Treaty Establishing the European Economic Community, *opened for signature* Nov. 23, 1957, 298 U.N.T.S. 11.

10. R. BYSTRICKY, *supra* note 6, at 44-45.

11. *Id.* at 96-97.

12. *Id.* at 98.

13. *Id.* at 112. The substance of this doctrine was contained in a remark made by Leonid Brezhnev in 1968. Alluding to the Soviet invasion of Hungary, he stated: "The U.S.S.R. cannot be and will never be indifferent to the destiny of the socialist construction in other countries or to the cause of world communism." *Id.*

would have been interesting to raise the question of whether the limited sovereignty concept could be viewed as a norm of *jus cogens*. This would most likely be the socialist defense of this concept, but, in the mind of this reviewer, such an assertion cannot be legally argued with persuasion.

Finally, it is sometimes difficult to agree with all the conclusions reached by Professor Bystricky about the political and systemic aspects of COMECON. For instance, he states that "the law of the mightiest is the rule within the socialist community"<sup>14</sup> and implies that, in the years to come, COMECON's smaller members will actually have a status analogous to that of federated republics within the U.S.S.R.<sup>15</sup> These statements constitute unwarranted conclusions that cannot be accepted.

Professor Bystricky is more perceptive when he draws attention to the double-talk phenomenon which so puzzles Westerners and which mars their comprehension of socialist institutions. For instance, when one reads COMECON's constitutive instruments, one has the impression that what the framers had in mind was to create an institution based simply on cooperation among members rather than an institution with supranational organs whose purpose is economic and political integration. The author aptly demonstrates that the way COMECON actually operates is entirely different from the way its organizational instruments indicate it should operate, and that one should not be confused by the official terminology. Thus, a true integration is the purpose of COMECON, and its policies are founded on supranationality principles even though this concept was officially rejected by the Comprehensive Program of 1971.<sup>16</sup> To illustrate his thesis, Bystricky points out the fact that COMECON-created law is supreme over national law and sometimes becomes part of national law with no other action on the part of the country, that some important economic sectors are jointly planned, and that the unanimity required in the COMECON decisionmaking process progressively became fictitious and was phased out by the Comprehensive Program of 1971.<sup>17</sup> Furthermore, as noted above, the leading role of the Communist Parties and the common ideology in the COMECON nations together with the "socialist internationalism" principle are instrumental in developing a socialist community which does not recognize national boundaries, which is truly supranational. Thus, the author reaches the paradoxical, albeit accurate, conclusion that the Treaty of Rome creating the EEC enshrines a supranationality principle, but its working has consistently been blocked for lack of political will. On the other hand, COMECON's Comprehensive Program of 1971 officially rejects all supranational references, but, in reality, COMECON's evolution clearly shows that the socialist integration is guided by the principle of supranationality.

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14. *Id.* at 334.

15. *Id.* at 324.

16. *Id.* at 89.

17. *Id.* at 41-44.

Equally puzzling for a Western lawyer is the legal nature of recommendations adopted by COMECON organs. In theory, and in conformity with the commonly accepted rules of international law, they are not binding on member states. According to Bystricky, they are similar to international treaties or EEC regulations. To this reviewer, it would seem preferable to equate them to the Organization for Economic Cooperation and Development council decisions that bind interested members only. The fact is that COMECON recommendations constitute obligatory legal norms for participating Member States.<sup>18</sup>

Professor Bystricky's book provides interested readers with a precise and concise description of COMECON organs and accomplishments. Unfortunately, Professor Bystricky's treatment of East-West joint ventures is brief and superficial, particularly in view of the fact that these joint ventures represent one of the most promising modes of transideological cooperation. Perhaps this treatment of the subject reflects the author's deep-rooted feeling that economic integrations between socialist and capitalist nations are an impossible dream.

Finally, in his concluding remarks, Professor Bystricky touches upon a controversial topic. He states that the COMECON nations have not achieved true socialism but have only copied the Soviet Union's version of socialism which would be described by some as state capitalism and by others, including this reviewer, as the kind of oriental despotism analyzed by Karl Marx.<sup>19</sup> Bystricky's further criticisms of the socialist system and COMECON are equally unflattering. The tone is set, and it is not dispassionate.

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18. *Id.* at 34-40.

19. *Id.* at 338.

