Mr. President,
Mr. Dean,
Directors of the Europa Institute,
Mr. Advocate General,
Ladies and Gentlemen,

I feel greatly honoured to have been asked to contribute to the opening of a new academic year here at the University of the Saarland. For anyone involved in the European institutions, the Saarland has a special significance, since it lies at the heart of the region that inspired the first European Community, the Coal and Steel Community, forty years ago.

The University of the Saarland also has a special significance for me. As Professor Ress has told you, I went from the bar in Scotland to teach European Institutions at the University of Edinburgh. When I took that chair, it had been vacant for reasons of finance for four years, and I needed all the support I could get. Georg Ress was for me an untiring friend and supporter. For the help he gave me and for that support I would like to express my heartfelt thanks this morning.

One of our mutual pupils, a graduate of Edinburgh and Saarbrücken, now teaches European law at Edinburgh. One of my legal secretaries at Luxembourg teaches English law at Saarbrücken, and this lecture owes quite a lot to the researches of another Saarbrücken graduate who is working with us at the Court and has just been awarded the Certificate at the Europa Institute.
The opening of a new academic year is always a special time, both for teachers and students. It is a time of new faces, new problems, new subjects and new challenges. This is nowhere more so than in a place such as this: a place that lies at one of the crossroads of Europe where students from different countries and different traditions come together to study the legal and economic institutions that bind us together in a community of European peoples.

Three days ago, I attended the opening of the academic year at another, but very different German university: the Europa Universität Viadrina at Frankfurt/Oder. It too lies at one of the crossroads of Europe and, like Saarbrücken and Edinburgh, it brings together lawyers and economists from different countries and different traditions in a multi-national and interdisciplinary approach to the study of European institutions.

But Viadrina is multinational in a new sense. This year, only the second year of its existence, 35% of the students are Polish. And there is another great difference between Frankfurt/Oder and here: the frontiers at Saarbrücken are open, the frontiers at Frankfurt/Oder are not.

In order to come here today, I left Luxembourg soon after nine o'clock. I arrived here in less than an hour and a half. To make the same journey of the same distance from Poland to Frankfurt would probably have taken six hours, of which four would have been spent waiting in a queue at the frontier. If I had been driving a heavy lorry carrying goods from Germany into Poland with a view to going to Belorussia or Russia or to the Ukraine, I would have had to wait at the frontier for 29 hours. That is the average time that it takes to cross the frontier at the Oder. By contrast, heavy lorries carrying goods from France into Germany, from Germany into Luxembourg, or from Luxembourg into Belgium can pass the frontier without stopping.

The fact that the frontiers of Western Europe are open to the passage of people and trade, while those of Eastern Europe are not, is an achievement that we in Western Europe are in danger of taking for granted. Students from other European Community countries take it for granted that they can come to Saarbrücken to study and to pay the same fees as German students. Polish students who come to Frankfurt/Oder do not have that right.

In saying that, I do not minimize the generosity of this country which makes it possible for Polish students to study at Frankfurt. But we, at this end of Europe, are in serious danger, in all countries and at all levels of society, of taking the achievement of the European Community for granted. We are in danger of forgetting how difficult that Community was
to create. We are in danger of underestimating the effort of will, and the effort of mutual understanding and tolerance, that are necessary to keep it alive and working.

The reason, I suspect, is that the European Community is essentially a technocratic achievement, and technocratic achievements are, at the moment, unattractive. They inspire distrust rather than admiration.

Furthermore, the last two years have been years of disillusionment. Four years ago, Western Europe was striding confidently towards the Single Market of 1992. There was every reason to believe that the other Scandinavian countries, Switzerland and Austria, would join soon. Then the Wall fell and the communist empire collapsed. Truly, it seemed that we could say with Shelley:

"The world's great age begins anew,
The golden years return ...".

But that, alas, has been a fond hope of mankind that goes back to Virgil, the prophet Isaiah and beyond. It is a hope that has been consistently disappointed, and it did not take long for us to be disappointed too.

Now we find ourselves in the worst depression since 1930. The world trading system based on GATT is at risk. We know now what is meant in human and economic terms by the collapse of communism. A free market for the Mafia is not exactly what we had in mind, to say nothing of the horrors of Bosnia.

At home, the debate about the Maastricht Treaty and the problems of the European Monetary System have created new doubts and new tensions between the peoples of Western Europe. The EFTA-countries, the Scandinavian countries, and particularly Switzerland, are less enthusiastic. And, to put it bluntly, the political mood in all our countries is ugly. It is accompanied by widespread disillusionment, amongst ordinary people, with the policies, the parties and the basic institutions of modern democracy. Italy is only the most obvious example of that disillusionment. Such disillusionment is not wholly new, but it is more dangerous than many politicians seem to be prepared to admit. Nevertheless, we have been through periods of disillusionment before, and in many respects - disillusionment, uncertainty, threat of disorder - we are living in a world that is not very different from the world in which the European Community was born and through which it has had to live most of its life.
The Schuman Declaration of 9 May 1950, which began it all, made at the outset a point of fundamental importance: "Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity."

The Schuman Declaration led to the Coal and Steel Treaty and so led on to the Economic Community Treaty, the Single European Act, Maastricht and, from 1st November, European Union.

This progression from one stage to another, although it appears to be a logical development and one that could not have been avoided, was not self-evident and was not preordained. Each step required recognition of the concrete achievement represented by the last. And it is important to remember that there were failures and hesitations at every stage.

The concrete achievement of the Coal and Steel Community was, as Schuman intended, to make a further war between France and Germany not merely unthinkable but materially impossible by fusing the basic elements of industrial production as they then were. But it was followed, almost immediately, by failure of the project for a European Defence Community and a European Political Community.

There is a tendency nowadays to speak of the "founding fathers" of the Community as if they were a group of men sharing the same clear vision of where they wanted to go and how they wanted to go there. As an antidote to that view, let me quote three passages from the Memoirs of Robert Marjolin, a great European statesman, who was the leading French negotiator of the Treaty of Rome and later the first French Vice President of the EEC Commission:

"A number of idées-forces which, in preceding years, had ruled the thinking of those who regarded themselves as 'Europeans', were totally discredited, even for many of their advocates. One could no longer mention the subject of European defence, nor that of supranationality, European constitution, relinquishment or delegation of sovereignty, or even European institutions, without in most cases eliciting from the listener a wry smile of disappointment, scepticism or irony, and sometimes a sharp reaction, as though one had
suggested an abdication on the part of France, a renunciation of national independence, a total submission to a foreign will.\(^1\)

"Another factor which was very influential in France, and which dictated my attitude towards European institutions, was a gut reaction on the part of most politicians and government officials to any form of supranationality. The origin of this reaction was the quarrel over the European Defence Community. The rejection of the EDC was, by extension, rejection of all supranational institutions.\(^2\)

"It was essential to give the new treaty a purely economic character, ignoring the grand principles and political goals which in the years from 1950 to 1954 had fired the enthusiasm of the 'Europeans', but which in 1956 were arousing hostile reactions in large segments of public opinion.\(^3\)

Do you recognize the political atmosphere Marjolin describes? It is, I think, the very same political atmosphere in which we are living today. Grand ideas about European integration were not the flavour of the month in 1956 any more than they are now.

For most people now (and, after Maastricht, officially) the "European Community" means the European Economic Community. And yet Jean Monnet, the really convinced French European who is usually spoken of as the father of the Community, did not attach importance to the Economic Community. He attached far greater importance to the Atomic Energy Community which, like the Coal and Steel Community, is now almost entirely forgotten.

So the Economic Community, the European Community of today, was born in an atmosphere more of scepticism than of enthusiasm. It was seen as a necessary step but, if you like, a minimalist step in terms of what the real 'Europeans' wanted. And the same of course has been true, in each case, of the Single European Act and the Maastricht Treaty.

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It is also as well to remember that, throughout its life, the Economic Community has not been seen as a roaring success. In 1974, some 16 years after the beginning, the study group on European Economic and Monetary Union wrote this:

"...When one speaks of Europe, one is speaking essentially of a geographical entity situated somewhere between the USA and the USSR, composed of states which trade very actively with each other but which, in most cases, behave in national affairs and in world affairs each according to its individual leanings and affinities. ... The fact that for a number of years no significant progress has been made towards the unification of Europe means that the authority of the European institutions has been weakened and that they are no longer regarded as the prefiguration of the institutions which would watch over the destiny of a united Europe."\(^4\)

Marjolin was a member of that group. Twelve years later, in 1986, shortly before his death, he closed his thoughts on the future of Europe with the following words:

"Let us simply say, so as not to appear too pessimistic, that the Community has survived these last six years as it survived the preceding ten. A limited amount of progress has been made."\(^5\)

Three years after he wrote those words, we were in 1989, the year of euphoria that I spoke of. So, in the space of eight years from 1986 to today, we have gone from pessimism to euphoria and back to pessimism - I would say, back to normal in fact.

Now, if pessimism is normal, how is it possible for me to speak as I have done about the concrete achievements of the European Community? And if there have been concrete achievements, what is the secret of success?

First of all, the reality of the achievement. For this I adopt the words of the epitaph of Sir Christopher Wren in St. Paul's Cathedral in London: *Si monumentum requiris circumspice* (If you look for a monument, look around you).

\(^4\) Ibid., p. 362 (French edition, p. 357).
\(^5\) Ibid., p. 370 (French edition, p. 365)
I have mentioned the queue of lorries 5 km long on the border with Germany and Poland. It may seem perfectly natural to you, and particularly to those who are just starting here, that in Western Europe we should now, very substantially, be able to buy what we like, to go where we like, to live where we like, to place our money where we like, and so on. But that is neither natural nor inevitable in a world whose legal and political order attaches so much importance to the sovereignty and independence of the nation state.

Protectionism is a powerful political force. It is attractive as a political slogan and it is nearly always easier for the politician to give way to protectionist demands than to insist on freedom of trade and freedom of movement. Competition is harder for the businessman than protection, whether at home or abroad. As Adam Smith observed, producers call for regulation of trade in goods and skills in order to put an end, as much as possible, to "the troublesome competition of odious and disagreeable rivals."

The ingenuity of protectionism is inexhaustible. It is reflected in a huge variety of laws and regulations, many of them looking innocent enough, many of them said to be designed to protect consumers and to protect their health, but collectively making it difficult or even impossible for the manufacturer, the provider of services, the skilled craftsman, the professional man or woman, or anyone else, to operate in any country other than his own.

The Single Market which we have achieved is far more than a free trade area in any conventional sense. There is no historical precedent, nor any contemporary parallel, for a grouping of twelve highly diverse nation states which are prepared to tolerate - and I use the word 'tolerate' deliberately - freedom of trade in goods, including agricultural goods, freedom of movement of labour, freedom of movement of services and freedom of movement of capital.

Moreover, the fact that we have learned to tolerate these things, the fact that we have learned to resist protectionist pressures has produced a de facto solidarity, in Schuman's words, to a far greater extent than most people are prepared to admit. The reality now is that the foreign ministers of the twelve member states see each other more often than their own fellow ministers and cabinet colleagues at home.

The Community does operate as a single entity in many fields and, most significantly, is seen to do so by those who have to deal with it. During the Bosnian conflict the Community has been criticized for its failure to act as one. But that does not draw attention only to the failure. It also shows what other people have come to expect from the Community, even if it also shows how far we have to go. So, there is a real if limited achievement.

What is the clue to that achievement? What is the secret of the success? I would reply with four propositions, each of them a paradox.

The first paradox is that by concentrating on economic integration and leaving aside political integration, the authors of the EEC Treaty in fact set to work the most potent federative force of all. A great British constitutional theorist, James Bryce, said that every constitution has three main objects: first, to provide the framework of government; second, to provide due security for the rights of the citizen; and third, to strengthen the cohesiveness of the country.

As to the cohesiveness of the country, Bryce said that a constitution can achieve that in two ways. One is by setting to work the forces that bring people together, that bind them together. The other is by preventing those forces from working that keep people apart. He went on to say:

"The most generally available of these centripetal tendencies [the forces that bring people together] is trade, that interchange of commodities which benefits all the producers by giving them a market, all the consumers by giving them the means of getting what they want, all the middlemen by supplying them with occupation. A constitution can render no greater service to the unity as well as to the material progress of a nation than by enabling the freest interchange of products to go on within its limits." 7

The comparison is often made between the United States and the European Community. If one compares the Constitution of the United States and the constitutional charter of the Community (the Treaties), we find that the US Constitution has detailed prescriptions dealing with the political institutions of the Union. And yet, when it comes to integration, history shows us that the most potent impetus to integration - "that which has done more to knit the American people into an indivisible Nation than any other one force in our history,

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excepting only war—was enforcement of a clause some dozen words long: the commerce clause.

It took some forty years before the US Supreme Court, in *Gibbons v Ogden*, ruled that the commerce clause must be enforced and that there must be freedom of trade between the states. In our case, by contrast, our constitutional charter is short on political prescription, but is full of detailed economic prescription. That brings me to my second paradox.

The second paradox is that the Treaty of Rome has been successful precisely because it is technocratic and boring. It contains few ringing phrases and it says very little about the liberty of the citizen. But it does contain detailed rules for achieving an integrated economy. It is boring because it goes into highly technical detail as to how economic integration is to be achieved, by setting out the principles, the foundations, the policy and the institutions. It is highly pragmatic, leaving little to chance.

Insofar as it did leave matters to chance, then I come to my third paradox: that the process of integration owes most to the institution which people have noticed least, the Court of Justice. Marjolin's *Memoirs* mention it twice in passing; Monnet's *Memoirs* are more generous and give it 15 lines.

Detailed though the EEC Treaty was, it needed to be filled out by interpretation. And, at various key moments in the Community's history, it is the Court that has been called upon to decide in which of two possible directions the Community should go.

Critics of the Court say that it has been arrogant in extending its jurisdiction and introducing interpretations which are contrary to the intentions of the treaty makers. I think both propositions are wrong for a simple reason: that the Court can only give judgments in cases that are brought before it - in most cases because the point in issue has been raised in proceedings already in existence before a national court.

The development of Community law, for which people tend to give credit to the Court and for which, I must admit, the Court sometimes claims credit, is due not so much to us, the judges, as to the persistence of individuals who bring cases because they want to overcome protectionist methods and protectionist devices, because they want to resist unfair competition and because they want freedom to trade and to move.

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9 *Wheaton* 1 (1824).
Community law has been created, not only by stubborn companies like Rewe and Metro and GB-INNO, but also by stubborn individuals like Mr. and Mrs. Dassonville, Miss Defrenne and Miss Marshall. Miss Marshall and Miss Defrenne have probably done as much for the equal treatment of women as any politician or any judge.

But what has been possible for the Court through the efforts of these individuals, has been possible for a reason that brings me to the fourth and last paradox: that the Court has no power to enforce its judgments. Its judgments are obeyed not because somebody brings power to bear on somebody else to obey them, but because people are prepared to obey them.

Let me now briefly sketch how the Court has developed the ideas of the Community over the years since it began.

In 1962, a company called Van Gend en Loos was charged what they believed to be an excessive amount of duty for the import of a load of ureaformaldehyde - not, one would have thought, the makings of a great constitutional case. But it was, because the underlying question was: Are individuals and companies entitled to require from the Member States performance of the obligations that they undertook by the Treaty? The answer was Yes.10

Then, in the following year, an Italian lawyer called Costa refused to pay an electricity bill amounting, in modern terms, to about 3 DM. He refused, on the grounds that the nationalization of the Italian electricity industry was contrary to the Treaty. The question was: Are the member states entitled by legislation to change the rules which they have undertaken to accept in the Treaty? The answer was No.11

I think the answer in both cases was obvious. But it was not obvious at the time, and many people argued against it in both cases.

What has come from those two cases are the two fundamental doctrines of primacy and direct effect which have been at the heart of the federative effect of the Treaty. But, as I say, the cases arose in national courts in actions brought by private companies and individuals.

The same happened ten years later in two cases about provision of services in law courts and other tribunals: Reyners and Van Binsbergen. Mr. Reyners was denied admission to the Belgian bar because he was not Belgian, and Mr. Van Binsbergen was told he could not represent a client in the Netherlands because he lived in Belgium. (It was cheaper to live in Belgium.) In both cases, the problem was that, while the Treaty said that there must be freedom of establishment and freedom to provide services from the end of the transitional period (31 December 1969), the politicians had failed to bring into force the legislation which was needed.

The answer was that if the politicians had failed, then the Treaty must be given effect. The Court ruled that the rules of a treaty must take effect once the transitional period was over. From that point on, you have the end effectively of discrimination on grounds of nationality.

Then in the seventies there began a new task: the progressive dismantling, not of the obvious restrictions, customs duties and so on, but of all the hidden barriers to trade: the restriction on importing whisky into Belgium without a certificate of origin; the restriction on bringing into the Federal Republic of Germany an alcoholic syrup called Cassis de Dijon because it wasn't alcoholic enough. This surprising rule was said to be necessary for the protection of the health of the German citizen!

Of rather more concern to German citizens was the Reinheitsgebot. Well, that too had to go, but removal of restrictions can work in two ways: there is more German beer now sold in Britain than ever before, because we have learned that German beer, unlike British beer, is pure!

Those of you who are about to study Community law will have to read a whole series of cases in which the Court of Justice has had to deal with the various protectionist and other pressures which produce rules of that kind. Some of the rules have been seen to be justified, some not. I can't claim that the Court has always struck the balance in the way in which one might have liked it to do. There can always be two opinions.

But what is at issue here, and is at issue similarly in the field of freedom of movement of workers, of the professions and of services, is a practical question. It is a practical question that any community of nations has to answer if it wants to go further than a mere free trade area and if it wants to give wider rights to its citizens than they had before.

The practical question is how to strike the balance between, on the one hand, the independent legislative role of the nation state and, on the other, the opportunity for free trade, for freedom to provide services, freedom to live in other countries and freedom to work in other countries that people want. You have to strike that balance and the Court has had to define and refine the criteria by which the balance is to be struck: criteria such as proportionality, or the doctrine of "mandatory requirements" (exigences impératives) which came in with Cassis de Dijon.

At each stage, the Court has been trying to find a new legal basis to solve a political problem. Now, there are, of course, other ways of solving such problems. You can solve them by diplomatic negotiation, you can solve them by political discussion and you can solve them by legislation.

That is exactly what the opponents said should be done in the first case I mentioned, Van Gend en Loos. They said that Van Gend en Loos should not be able to challenge the customs duty in the Dutch court; they should get the Dutch to change their legislation and if necessary they should go to Brussels and get the Commission to do something about it.

There are some people, in my country in particular, who would prefer to go on in that way. The idea of a Europe of judges is not universally popular and in any event, it is not a universal panacea. Moreover, there are some questions that are political and you do not make them less so by giving them to judges to solve.

On the other hand, as the debates about Maastricht in this country have shown, some issues are so political and so divisive that they can only be resolved by an impartial arbiter whose verdict everyone is prepared to accept - if not with enthusiasm, at least with loyalty.

So I do not claim for the Court of Justice more than it can deliver. I do not suggest that it should try to do, or be asked to do, more than the Member States and their citizens are prepared loyally to accept.

But what I do say - particularly at a time of economic crisis, at a time of political disillusionment, at a time when there will be increasing pressure for protectionist measures, for protection of national industries, for protection of national interests - is that, at such a time,
we must cling firmly to the unifying forces we have. And these are: freedom of commerce, freedom of movement of people, free competition. We must ensure freedom of economic activity - freedom to trade and freedom to move - in the context of known laws impartially administered.

That, above all, is the achievement of the European Community, which we persistently undervalue.

May I conclude with a message to the students who are just about to start and those who are leaving?

Each generation succeeds to the mess created by the last. The world is both ugly and dangerous. Its problems will not be solved by slogans or by simplistic answers. Europe is diverse. Europe is composed of nation states with their own traditions of which they are proud, and rightly so. You cannot force them to live with each other. They must be persuaded that it is in their interest to do so.

To do that effectively, to persuade people what is their real interest, you must understand the forces that bring people together and the forces that drive them apart. Here, at this University, you have the opportunity to study those forces and to understand. We depend on you because Europe needs people like you who understand the problems, who do not want just to find the easy answer, but want in some fashion to achieve concrete results which will bring about solidarity between us.

My congratulations to those of you who have succeeded in going some distance along that road of understanding and my good wishes to those who are about to start.