prudence dont les grands principes sont communs aux douze pays. Une harmonisation n'est donc ni nécessaire, ni utile.

Il en resulte que la situation actuelle dans les douze pays ne porte aucune atteinte à la libre circulation des médecins ou des patients à l'intérieur du marché commun.

Les principes de la proposition de Directive doivent s'appliquer dans les cas où les prestataires supportent une obligation de resultat ce qui n'est pas le cas des médecins puisque la médecine concerne des etres humains avec la nécessaire part d'aléas qui en découle.

3. L'application des données actuelles de la science et les nouvelles possibilités de traitements peuvent comporter des risques susceptibles d'entrainer des dommages à certains patients-alors que le médecin n'a commis aucune faute. Une indemnisation éventuelle de ce "risque de société" ne saurait en aucun cas etre mise à la charge des médecins. Ce problème relève de la compétence de chaque Etat-membre.

12.5 Report on responsibility for defective services

(CP 90/105 Annex II)

Draft directive on the responsibility for defective services

A study of the text on the latest draft directive shows its relation to several capital dispositions of the directive of July 25, 1985 on "defective products". It is not acceptable that the health services are compared to the fabrication of industrial products; on the other hand, some dispositions taken from the directive of July 25 will lead professionals to practise medicine in such a way as to deprive patients from the advances of science, reducing in this way the possibilities of cure and survival.

The CP Jurists subcommittee rejects the idea of introducing in the present system of medical responsibility a legal concept of responsibility without guilt, or of objective responsibility, to be the basis of an obligation in the results: the medical act is not a service similar to commercial ones in everyday life, the main object of the draft directive. The doctor owes attention to his patient, not any type of attention, but conscientious, attentive, according with present knowledge in field science and medical ethics. There can be no question of "de-induvidializing" his responsibility.

Because of this, the Jurist cubcommittee of the CP advises the CP:

1. to reject the application of the the future directive to health field.
2. to avoid adopting a purely negative position. The stated objective of the draft text is clarifyring the existing differences between legislation and jurisprudence of the member states on responsibility of the service providers in case of damage caused by a defect of these services. The Jurists subcommittee proposes that CP conduct a survey among its members about the legislation and the jurisprudence relative to medical responsibility in each country in order to clarify possible disparities and to contribute to its approximation.
3. to submit for study the problem of the medical indemnization of the damage suffered by the victims in abnormal developments of the medical intervention. The Jurist subcommittee is at the disposition of the CP to advise its members when the procedure tending to the exclusion of the health of the future directive is started in the member states. This procedure implies a study in each member state of "the equitable distribution" in appropriate social institutions, of the charge of this risk that constitutes, according to the terms of the proposal, "a risk to the society" at the border of the uncertainty of science, which tends to attenuate each day the world scientific research.

12.6 Liability of defective products

Opinion from the Jurists Subcommittee Recommended to the Plenary Assembly concerning the EEC

Draft Directives on liability for Defective Products (CP 79/136)

Adopted at Copenhagen, November 1979

The Subcommittee of Jurists of the Standing Committee of Doctors of the EEC expresses the opinion with regard to the EEC Draft Directive on Liability for Defective Products that the doctor who prescribes a medicament or dispenses one in his practice to a patient can under no legal point of view be regarded as the producer of the medicament. The signature of the doctor on the packaging of the drug; placed there by the doctor where applicable for reasons of control on the basis of legal provisions, does not make the doctor a producer within the meaning of article 2, paragraph 1 of the draft directive. With such signature the doctor does not present himself vis-a-vis the patient (consumer) as the producer of the medicament, but simply complies with the legal duty to show his name. The same applies to the pharmacist who puts such an indication on the packaging of the drug.

The Standing Committee Subcommittee of Jurists expresses the opinion that a final wording of article 1, paragraph 2 should ensure that drug research and the testing of new medicaments is not harmed by excessive producer liability.