

'The limitations of sovereignty' from the Luxemburger Wort (9 August 1952)

Caption: On 9 August 1952, on the eve of the session inaugurating the High Authority of the European Coal and Steel Community (ECSC) in Luxembourg, the Luxembourg daily newspaper Luxemburger Wort publishes an article by Lambert Schaus, a former Luxembourg Minister, analysing the limitation of national sovereignty under the Schuman Plan.

Source: Luxemburger Wort. Für Wahrheit und Recht. 09.08.1952, n° 222/223; 105e année, édition spéciale. Luxembourg: Imprimerie Saint-Paul. "La limitation de souveraineté", auteur:Schaus, Lambert.

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A new political problem:

The limitations of sovereignty

An idea on the move

The European Coal and Steel Community is the first organisation that possesses, in the High Authority and in the Court of Justice, instruments that give it truly supranational powers, although those powers are limited as to the areas in which they apply and are defined by the actual terms of the Treaty. The six European states that voluntarily joined the Schuman Plan, with the consent of their parliaments, surrendered part of their national sovereignty in order to entrust it to the Community.

The Treaty establishing the European Defence Community was signed by the six countries of the Schuman Plan. The idea of creating a European political authority, no longer strictly specialised but with more general powers and responsibilities, is already beginning to take shape.

A vast wave of opinion is working on the propagation of these ideas and requires the urgent convening of a European constituent assembly.

In most countries in free Europe, the general public seems rather favourable to the idea of European unification and prepared to give up some national sovereignty in the international public interest. It is mostly the younger generation that seems to have accepted these ideas.

Some people criticise the public for not being sufficiently well-informed about all the details involved, for not understanding the difficulties standing in the way of the implementation of these generous ideas, and, mostly, of not realising all the possible consequences and repercussions. This criticism is well founded in part. But the implementation of the Schuman Plan, in spite of what appear to be insurmountable difficulties, has proved that European states cannot oppose these ideas in the long run, while the realities of world politics seem to have given Europe the alternative of unifying or of perishing.

Accordingly, most European governments concede in principle the idea of limiting national sovereignty with a view to creating supranational powers. The Council of Europe, representing the parliaments, has repeatedly proclaimed itself in favour of the institution of these authorities. In short, it is not the principle itself of limiting national sovereignty that is being discussed; people more or less disagree on the question of knowing which limitations, and to what purpose, some national sovereignty should be transferred to supranational authorities.

The legal point of view

The notion of national sovereignty, based on the idea of limitless powers or, at most, subject to self-limitation, has been abandoned in modern public law. Any international commitment necessarily involves a limitation of the sovereignty of the contracting states, to the extent that its clauses restrict the completeness of the rights which make up its pith and essence.

Even the simplest principle of a country's interdependence seems to be further negotiable only by the temporary and voluntary transfer of certain sovereign rights of state to an international organism by its abandonment, temporary and voluntary as well, to another state. It is true that the potential legal capacity to acquire rights and assume obligations at international level determines the state's independence, which is not diminished by limitations of the exercise thereof, which may be variable and qualified.

Legally, a limitation of national sovereignty in favour of a supranational institution is perfectly possible. Of course, it must be verified whether, in a given country, the existing constitution allows for such transfer of power. The six countries of the Schuman Plan had to examine this question when they approved the treaty.

Recent constitutions foresee, in the formal texts, the possibility of limiting sovereignty: in the Preamble to

the Constitution of the French Republic, proclaimed on 27 October 1946; in Article 11 of the Constitution of the Italian Republic, proclaimed on 27 December 1947; in Article 24 of the Basic Law of the German Federal Republic, proclaimed 23 May 1949.

The constitutions of the three Benelux countries date back to the 19th century, to the time when the idea of limiting sovereignty, according to current thought, could not have been foreseen. Nevertheless, the parliaments of these countries believed that the spirit and the letter of their constitutions would not prevent them from approving the Treaty establishing the European Coal and Steel Community. In the Netherlands, the procedure for constitutional revision is under way with a view to revising Articles 58, 59 and 60 of the Constitution and adapt them to present-day conditions, with the aim of joining other supranational bodies in the future.

In the Grand Duchy, in its recommendation regarding the Schuman Plan, the Council of State took the view that the notions of independence and sovereignty have evolved separately from the constitutional texts of Luxembourg; it concluded that, since a constitutional state has existed in Luxembourg for over a hundred years, it may give rise to a constitutional practice which might serve as a legal basis for approval of the treaty establishing the European Coal and Steel Community.

The political point of view

But the limitation of the rights of national sovereignty is not uniquely or even principally a legal issue. It is, above all else, a political problem; we must know if, in what measure and to what ends, the States wish to surrender national sovereignty.

According to our democratic concepts, the State is not an end unto itself. The final goal of the state organisation is the establishment of the public good; by this very fact, the powers of the State are defined with regard to the rights of individuals and natural communities.

But aside from domestic public good, there is the public good on an international scale. In many cases, the establishment of domestic public good may be a result of the supranational public good. If the State cannot attain certain necessary objectives on its own, it must seek to attain them on a supranational level; in so doing, it will remain true to its task.

Just as we do not wish for an all-powerful State domestically, we shall concede to a supranational authority only the powers truly necessary for it to establish the common international good.

Practically, we may thus foresee national sovereignty being abandoned in favour of a supranational institution, in certain economic matters, in matters of defence, perhaps even in matters of foreign policy itself, as long as it is required for the peaceful organisation of Europe and the World.

It is, moreover, interesting to note that the French, Italian and German Constitutions that foresee *expressis verbis* the possibility of sovereignty being limited in favour of a supranational body at the same time set out, at least in principle, the conditions and purposes for the granting of these limitations.

The countries of Europe are rich — too rich, some people think! — in traditions of which national sovereignty is the guarantor. Without sacrificing an entire inestimable heritage of spiritual and human values, we cannot surrender all these special characteristics and traditions. There must be a truly significant reason for us legitimately to ask a nation to surrender a part of its own life. An old continent such as Europe can no longer transform itself by following the example of new continents which are formed on bases that are essentially different. Moreover, we need to let history take its course; under the pressure of events, this historical evolution will take place more or less rapidly.

This does not mean, in a new Night of 4 August, purely and simply offering up a sacrifice of our rights of national sovereignty on the altar of an international community. But, to the extent that, and in the cases where, informed national interest, which is a tributary of the international common interest, urgently

requires it, we must resign ourselves to give up some parts of our national sovereignty and entrust them to international institutions.

Often, it is difficult for us to understand that politicians who, during the last war, fought bitterly for sovereignty and the independence of their Country, can now consent to giving up sovereignty. But we must realise that we defended not an abstract idea of sovereignty and independence but, first and foremost, the spiritual and human values guaranteed by sovereignty and independence of the State. If, at present, the effective guarantee of these same values requires us to give up some national sovereignty, political wisdom and wisdom itself dictate agreement.

The position of the small states

Certain limitations of national sovereignty currently appear to affect both large and small European states. However, it is mostly the small states that have shown hesitation in allowing themselves to become incorporated within federal or confederal communities. Certain international communities sometimes expressed surprise. However, these hesitations are not unfounded.

In an article that appeared in *Libre Belgique* (4 February 1952), Mr Paul Struye, President of the Belgian Senate, expressed himself as follows on this issue:

‘If large States, as we are told, are prepared to give up a lot of their sovereignty by putting it in the hands of a supranational authority, is it conceivable that a small country should hesitate to follow their generous example? All things considered, is not the sacrifice bigger or more worthy for a large power than for a State with limited interests?’

‘This point of view does not correspond at all with reality, any more than with what History teaches us. We are well aware that, in fact, the common authority will never succeed in imposing upon a large State a decision against which it would rebel. Small countries, on the contrary, are liable to be subjected thereto without appeal or care. Equality within small confederations that encompass States of very different powers is likely to remain purely theoretical.’

It is, therefore, quite fair for small states to demand effective guarantees for their legitimate rights and vital interests in the supranational institutions.

A charter of imprescriptible human rights has been established, and the United Nations has made itself the champion for the defence of these rights. Natural communities, peoples and nations also have imprescriptible rights; these rights must be respected, whatever the numerical strength of these communities. Without a real guarantee of these rights, reliable collaboration on the international scene will be impossible.

The appeal launched by an initiative committee of the European Movement in favour of the convocation of a Constituent European Assembly speaks of a limitation of sovereignty ‘on the basis of equality of rights and obligations.’ We must now ask for this equality of rights to be solidly enshrined in the future European constitution. The name of the future community is a side issue; in the end, it matters little whether it is called a federation or a confederation. It is essential that national sovereignties continue to be respected as much as possible and that the vital rights of all partners be guaranteed.

In the Europe of tomorrow, the small states will keep their *raison d’être*. Furthermore, the notion of ‘large’ is essentially variable, especially now. The size of a state should not be measured by the breadth of its territory, nor by the number of its inhabitants, but according to the state’s concept of its role and by the way it carries out its tasks. A state wins justification for its *raison d’être* to the extent that it can guarantee for its inhabitants human dignity, social justice and justice itself.