Pierre-Henri Teitgen, The Schuman Plan — Objectives and Institutions

Caption: In 1952, writing in the French magazine Notre Europe, Henry Teitgen, President of the Mouvement républicain populaire (MRP) (People's Republican Movement) and Vice-President of the French Council for a United Europe, outlines the role of the future institutions of the European Coal and Steel Community (ECSC).

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The Schuman Plan — Objectives and Institutions

by Pierre-Henri Teitgen

A rereading of the French Government's Declaration of 9 May 1950 is enough to put the Coal and Steel Community immediately into its proper context.

Reading it shows clearly that although the pooling of their coal and steel production by six European nations is a response to economic objectives, in the minds of its promoters the pooling and even the results of it were, from the outset, only a means of achieving, over and above their economic objectives, political ends.

The object is to set up an Authority which will bind the countries that sign the treaty and, as forerunner of a common supranational government, will constitute 'a first concrete foundation of a European federation indispensable to the preservation of peace'.

Although it is a striking image, the comparison with 'a first foundation' for the building of Europe does not really adequately convey the hopes vested in the community. The picture we ought to have before us is of a driving force. A foundation can sit around waiting for a long time, and what we are banking on is anything but waiting. The coal and steel industries, real key industries, are linked to most economic activities by so many close ties that before very long the work of the Community will force the signatory States into a common economic policy, in other words they will need to conclude a federal pact for a united Europe.

At the same time, the object is to 'bring about in practical terms' an initial Franco-German rapprochement and thus embark on finding a comprehensive solution to the German problem by incorporating Germany into Europe.

One objection was inevitable: is this economic achievement really the best way of bringing about the federation of Europe and a Franco-German rapprochement? Why take this oblique approach rather than going straight for the target?

Some people think the oblique way is the surest, and the people who drafted the French note of 9 May 1950 were very probably persuaded of it: their text is the living proof. Giving the States of Europe something to administer — better still, to govern — jointly is a sure way of getting them to set up a common government. There are edifying precedents. The Second German Reich was built up round the customs union of its States, its Zollverein, and for the purpose of administering its 'imperial territory' of Alsace-Lorraine.

One can, of course, also take the opposite view and believe that the place to start was with a government for Europe. But we then have to say that the facts of the situation, especially the hostility of the British and the Scandinavians, and the legitimate wish to leave the door open for them to join later, meant that the oblique approach had to be taken. The search for a compromise lying somewhere between French 'federalism' and (British) 'functionalism' is what led the Council of Europe to argue for the setting up of 'specialised Authorities'. The first of these specialised authorities is the Coal and Steel Community: it is the outcome of a historic process which dictated and now justifies its emergence. The upshot is that abstract reason has to reach an understanding with the necessities of History, and governments are seldom able to stick to this kind of abstract reasoning which oppositions so warmly welcome.

Whatever the case may be, what the Treaty of Paris of 18 April 1951 sets up is an Authority which is political in character, limited, geographically speaking, to the territory of the six signatory States and, in specific terms, to coal and steel, and representing a government with its various powers.

How is this Authority going to bring about the 'pooling' of coal and steel? Quite simply by establishing a single market — single because the six States in this area will now be only a single State — and, by eliminating all forms of discrimination, ensuring that freedom of competition will apply in that market. This means that, for example, customs barriers are to disappear, as well as levies on entry and departure, preferential treatment for different categories of purchasers depending on their nationality or their affiliation

to groups or understandings and, lastly, subsidies from the nation States.

It is odd that so many people contrived to imagine, and still imagine, that the Community can be compared to a cartel. The note issued to the press on 9 May 1950 explicitly declared that the planned organisation would have to ‘be the exact opposite of a cartel’. Whether from presumptuousness or Machiavellian expectation, the cartels didn’t believe a word of it. Their frustration explains some of the hindrances which have tried successively in all the signatory countries to get in the way of ratification.

However that may be, a cartel is always a private agreement designed to protect the undertakings of a particular occupation from competition. The way they operate is pretty well always the same: they fix the prices, set quotas on production and share out the orders or the markets. By these means they protect marginal businesses whose cost prices are too high, exposing them to the risk of going out of business, and enable the better placed companies to pocket genuine superprofits. The consumers, whether industries or private individuals, are always the ones who suffer the consequences.

The aim of the Community, however, is precisely to make sure that there is real freedom of competition, which necessarily tends to lower prices and favour consumption.

There is no denying, though, that even if interventionist practices in a profession can, through the setting up of cartels or any other course of action, end up by overprotecting businesses, which is damaging to competition, unbridled or unlimited competition can pose another danger: the risk that undertakings which are still useful will be ruined, that the most powerful interests will monopolise all the business, and at the end of the day that would not be in the interests of consumption either.

Hence, if the establishment of a competitive free market is still the basic guideline, the Authority will have to palliate its severities in the light of circumstances.

But more serious problems are bound to arise. For example, some undertakings will probably not be able to survive unless they are protected by their geographical situation at a distance from competitors who are paralysed by the transport prices they have to pay. Should these protections be maintained or done away with at the end of a transitional period? These are difficulties which cannot be dealt with by laying down the law rigidly. A great deal will have to be left to the Authority’s discretion. All that has been drawn up is a guideline set out in the second paragraph of Article 2, as follows: ‘The Community must progressively establish conditions which will in themselves assure the most rational distribution of production at the highest possible level of productivity, while safeguarding the continuity of employment and avoiding the creation of fundamental and persistent disturbances in the economies of the member States.’

If we want to be spared futile worries or unjust criticism, we should not forget that the Authority is under an obligation to concern itself with social repercussions and safeguard continuity of employment, as well as to respect the economic balance between the contracting States.

As I have said, to attain its goals the Treaty sets up a kind of supranational government.

Firstly, this government, as it should, comprises an executive body, the High Authority. This is not a Committee in which each country would have a representative. On the contrary, each of the members of this body is invested by all the countries which sign up; its mandate is not national but is exercised in the common interest and that makes the Authority supranational, which it also is in the sense that its decisions are binding on the Member States.

Its decisions are binding: but of course it only has powers to decide in its own area, that of coal and steel. The effect of this restrictive observation is that in questions closely linked to coal and steel problems, the Member States could indirectly thwart the Authority’s achievements.

Steps have therefore been taken to rank the Authority’s decisions according to how binding they are. They are of three kinds. First of all there are the decisions proper, which lay down the objectives to be achieved

and the ways of getting there. Then there are recommendations, which are compulsory only to the extent that they leave it up to the States to decide on the means and confine themselves to setting the objectives. Recommendations are, in fact, a way of reconciling, in the hypothetical situation referred to above, the powers of the States and of the Authority respectively without paralysing the latter. And lastly, the opinions are just requests, pieces of advice which go no further than that, with the Member States being left to assess whether it is in their interests to comply.

If we try to sort out from the great range of criticisms what, at the end of the day, can plausibly be worrying the hesitater, I think we come up with the following argument: 'How can a handful of people, to whom, what is more, we promise only to provide very small administrative services, possibly organise an area of the economy so bristling with difficulties, when we see the old States, equipped with powerful administrative departments which were "run in" to their tasks long ago, notching up just as many failures as successes in the action they take on the markets?'

There is some substance to this observation. So this is the time for saying that the Authority can only achieve what is expected of it if it carries out its work in an atmosphere of cooperation.

The various categories of interests concerned, and the six countries, will have to work together. This twofold cooperation is not only a pious wish; the Treaty calls for it specifically and organises it.

Cooperation with interested parties will be carried out by means of a 'Consultative Committee', consisting of an equal number of representatives of producer undertakings, employees of such undertakings and commercial users. This committee is actually better than an information body: its tripartite composition requires it to compare the interests involved itself and formulate reasoned opinions.

There is also a system for organising cooperation with the Member States. Precisely because the Community is expected to have fortunate consequences which will reverberate through the whole economy of the Member States, cooperation is clearly a necessity. The 'special Council of Ministers', to which each Member State will delegate its own Minister, will be the liaison and cooperation body.

Unless their hesitation is congenital, some hesitaters may find this calms their worries.

The Treaty establishes political control. The High Authority will have to report on its stewardship to a political assembly called the 'Common Assembly'. The members of this assembly, directly elected by the national parliaments, represent public opinion in the member countries and this assembly exercises its control in accordance with democratic principles. It votes by a majority of two thirds and can require the Authority to resign collectively.

In the present embryonic state of Europe it would have been difficult to create a genuine legislative power. Another point is that the Treaty is not just the Authority's constitutional law, it is also its law pure and simple: its aims and means are defined there. So the legislative work seems to boil down to virtually nothing, because the opinions the Common Assembly may be required to draw up at its extraordinary sessions cannot be regarded as real legislative work.

What is even more interesting to observe is that the Common Assembly, on the other hand, does possess a power which goes beyond the rules adopted so far. It can amend the Treaty. It 'represents' the Member States well enough to be able to amend their Treaty without their assistance and in their name. With one reservation, however: amendments may not relate to the constitutional rules and they have to be submitted to the Court of Justice to be checked for legality.

The Treaty, agreed for a period of 50 years, which is a very long time, at a time when the world, its needs, its possibilities and its structures are changing at headlong speed, could very well have run into unforeseen difficulties if there had been no possibility of making certain amendments.

That leaves the judicial power. It resides in a Court of Justice, our Council of State having served as the

model for its system of organisation.

The Court of Justice is supranational in the same way as the High Authority itself. Its members are appointed by common agreement and its decisions are enforceable on the six Member States. On appeals lodged either by the Member States themselves, or by the Council of Ministers, or by undertakings, the Court can annul decisions of the High Authority on grounds of lack of legal competence, misuse of power, infringement of the Treaty or infringement of an essential procedural requirement.

A noteworthy feature is that the Court's exercise of its power of judicial control can in certain cases take the form of collaboration.

For a government to invoke 'fundamental disturbances' caused to its economy by decisions of the Authority, it must first approach the latter to make it put a stop to the situation which is damaging its interests; but if the government concerned does not secure redress, it may ask the Court to rule on whether there are grounds for its complaint and, where it finds in the affirmative, the High Authority must take all necessary steps to give effect to the Court's decision.

A reciprocal encroachment of powers is, however, avoided and the Court, except in the case provided for above, cannot in any circumstances evaluate a situation from the point of view of 'economic facts and circumstances'.

Such an assessment remains within the exclusive competence of the High Authority.

This is a very succinct presentation of and commentary on the organisation of the Coal and Steel Community.

The Treaty does not claim to settle, here and now, and pre-emptively, difficulties which have yet to arise; it creates an instrument. The instrument appears to be sound and fit for purpose. How it performs is up to the workers.

Let no one protest: there is no way of creating Europe automatically. Europe will, of course, take shape through its structures; but it can only come to life by a willingness to show understanding and to work together.

What is a Coal and Steel Community today will one day be an agricultural products community, a transport community, an energy community. Some people imagined that the establishment of a federal government would arise out of a series of juxtapositions and the need for eventual coordination. But it is already clear that the implementing of the Coal and Steel Community will, of itself, drive the States which sign up to it into defining and implementing a common general economic policy. The establishment of a European army will make it even more imperative to define a common system of diplomacy. This has been grasped by the Strasbourg Assembly, which has advocated establishing a federal or confederal government as soon as possible.

Unless there is an abrupt reversion to the old ways of hatred and misery, our onward march towards Europe, the haven of our common salvation, can now only pick up more speed.