

Interview with Pierre Pescatore: composition and working methods of the Legal Group (Luxembourg, 10 September 2003)

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[Étienne Deschamps] This Legal Group, which was chaired by the Italian Ambassador, Roberto Ducci, was composed, one imagines, of various European lawyers. Who were the most memorable members of this Legal Group, and how, within it, were its tasks allocated among them?

[Pierre Pescatore] The advantage of this group was that it was homogeneous, and a spirit both of cooperation and complementarity quickly became established among us in such a way that each of us came into it with his own personality, and each played his own role. Our Chairman, Ducci, was an extremely sensitive Chairman in the way in which he approached issues and then drew his conclusions. I have a very clear recollection concerning this: when we discussed the very delicate subject of Article 177, namely the preliminary rulings, which constituted the great achievement of the judicial system, it was Ducci who found the right moment to declare the debate on the substance closed and the debate on the detail open. He did so while ensuring that the basic objective of this Article 177 was extremely clear, and it has not been questioned during the lifetime of the Community, but this is just one example.

As regards the delegations, I shall start with the largest and most important ones. I have already told you that the three lawyers in the German group were still suffering, to some extent, from the memory of the Second World War. It was 1956, and the Second World War had been over for only ten years or so. The memories were still vivid, so they were in a difficult situation, but they were willing to play their part, and they did so, particularly through Wohlfarth, the representative of the Ministry of Justice.

As for France, I have already explained the situation. Vedel was the titular delegate; however, he practically never appeared during our negotiations. I can recall only one day in early January 1957 when he appeared, and I can still remember very clearly the efforts that Gaudet — the Legal Service representative of the High Authority represented by Mr Spaak — the efforts that Gaudet had to make to persuade the great Vedel not to undermine all that our group had already approved. He succeeded, and Vedel never came back again. We were face to face with De Bresson, who was a very able negotiator, but I must say was not an easy negotiator. Personally, I was often in dialogue with De Bresson while the others were present, expressing the views shared by the five other negotiators on the general themes that were my responsibility.

For Italy there was Nicola Catalano, an Italian with all the extraordinary resourcefulness of the Italian legal spirit. As lawyers, they outflanked us on all sides. When it comes to inventiveness, there is no one like an Italian lawyer, but there I witnessed this inventiveness serving a worthwhile cause. Another point is that Catalano, having worked as an official of the High Authority's Legal Service before going back to the *Avvocatura dello Stato* and then returning to us as a negotiator, had a degree of independence and a particular friendship for me which helped me to be more at ease with the concept.

Then there was the Dutch member, Riphagen. Riphagen is one of the most intelligent men that I have had the good fortune to meet in my life. A penetrating intelligence. Riphagen had a profound influence on me, because he was the one who was the most inclined towards the fundamental principles of law and, above all, the structural principles. During the negotiations, Riphagen recommended that I should read certain books. I particularly remember a book written by a German lawyer who had sought refuge in America during the Second World War, Josef Kunz, entitled *Über die Staatenverbindungen*, about the pacts made between States and the means of organisation at inter-state level. He taught me the importance of what are called structural principles in law.

Before one can talk of the substance of legal norms, one must see what the structure is into which these norms are integrated. If a norm is integrated into a structure of separation of powers, into a democratic structure or into a federal structure, this can make a world of difference to the same texts and the same norms. As a result I was very sensitive, as he was, to all the structural issues in the Community, and I believe that, if the Community has become a really durable structure and capable of action, it is thanks to these basic principles. Here too I am again very worried that these structural principles have been called into question by things that I consider fundamentally nonsense and foolishness, such as subsidiarity, which is a

structural principle that is destructive, because it is destructural. We shared a vivid awareness of these issues.

Riphagen had yet another quality that I greatly admired: a capacity for prediction; for instance, when faced with a draft legal ruling that we were going to define, he would project it into the future and consider the possible consequences. As a result, his was a truly long-term view of law. If I may express or represent his role by means of an image, we were walking up a mountain path, a zig-zag path, and I had the impression, during these negotiations, that Riphagen was always one turning above us. While we were still climbing towards it, he already had a larger, wider and more profound view of the landscape than the rest of us. He spoke of that viewpoint to us, and that is another reason, together with his critical mind — he was an extremely critical reader of legal texts, instantly seizing the implications of each word, each sentence, each turn of phrase. His was a critical approach, but one that was constructive in these negotiations, and I believe that, if integration has gone ahead on a firm basis, it is thanks to him. Yet at the same time he was a man who was modest and who did not push himself forward. He later became a member of the International Law Commission of the United Nations and even President of the Iran–US Tribunal; both very difficult tasks that he carried out perfectly, but I think that he exhausted his strength in those posts. Sadly, he was lost to the Community because he had neither a career nor employment within the Community. But, going back to the negotiations, I believe that he was essential to them.

Then there was Yves Devadder, a man who was all kindness, very open, full of ideas too, rather like Catalano but in a quite different style, ever keen on the success of the negotiations, which were, after all, taking place during a Belgian Presidency. That made for a very good cooperative atmosphere. Then there were — this must not be forgotten — the two Community representatives, since there already existed a Legal Service in the Community. Firstly, there was Gaudet, as Director-General of the High Authority's Legal Service; a quite remarkable lawyer. He died recently. Later on I met him again in a different capacity, as President of the Court of Arbitration of the International Chamber of Commerce, in Paris. I realised that he had forgotten his past. He had forgotten his past. I tried to share certain memories with him, but he had only the slenderest recollections. I was deeply saddened by this, because he had been my idol. He was the guru that converted me, but I realised that the humble disciple was more faithful and persistent in his calling than his master.

Then there was Hubert Ehring, a German. Hubert Ehring suffered visibly from Gaudet's excessive dynamism in this period. Ehring was useful; he was a very competent lawyer, but I always found him in a situation that was a little ... how shall I put it ... he had somewhat of an inferiority complex in the presence of this exceptionally brilliant representative of the Community.