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LABOR AND THE SCHUMAN PLAN

*Gerhard Bebr**

THE European Coal and Steel Community of France, Germany, Italy and the Low Countries,¹ in full operation since May 1953,² is an unprecedented type of a supranational organization, unique in its institutions as well as in its means for creating a single competitive market for coal, iron and steel within the European territories of those participating states.³

Aside from the long term political objective of Franco-German rapprochement as the foundation stone for a future Western European political consolidation or even federation,⁴ the Schuman Plan encompasses economic as well as social aims.⁵ By establishing such a supranational market the Community seeks to rationalize and modernize the iron and steel production and lower their production cost, to expand the production in response to the so stimulated demand, and to stabilize and improve the working conditions in the heavy industry.

As a result of the new conception of the Community, the fundamental problems, whether political, economic or social, appear in a new relation and perspective, meriting their thorough examination from various aspects. The Community's institutional structure and economic objectives have been discussed at some length elsewhere. The present exposition endeavors to limit its scope to assessment of the Community from the viewpoint of labor.

To meet in a satisfactory manner the demands of labor, afraid of possible unemployment as a result of the common market and of the re-establishment of another international cartel, and to enlist labor's

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¹ For the English text of the Treaty, signed on April 28, 1951, see PRESS AND INFORMATION DIVISION OF THE FRENCH EMBASSY, TREATY CONSTITUTING THE EUROPEAN COAL AND STEEL COMMUNITY, (hereinafter cited as TREATY) together with ANNEXES, PROTOCOLS and the CONVENTION CONTAINING TRANSITIONAL PROVISIONS.

Because of the shortcomings of the English translation, frequent references will be made to the original French text of the Treaty published in LA DOCUMENTATION FRANÇAISE, Nr. 1489 (June 6, 1951).

For a detailed discussion of the Community's institutional structure and economic objectives, see Bebr, "The European Coal and Steel Community: A Political and Legal Innovation," 63 YALE L.J. 1 (1953).

² 2 JOURNAL OFFICIEL DE LA COMMUNAUTE EUROPEENNE DU CHARBON ET DE L'ACIER 112 (May 4, 1953).

³ Reuter, "La conception du pouvoir politique dans le Plan Schuman," 1 REVUE FRANÇAISE DE SCIENCE POLITIQUE 258 (1951).

⁴ Cf. the original proposal of Foreign Minister R. Schuman, 22 DEPT. OF STATE BUL., note, pp. 936-937 (1950).

⁵ TREATY, art. 3.

support for the Schuman Plan, the Treaty seeks to stabilize the labor market and offer adequate protection against unemployment,⁶ increase the wages up to the highest wage level in the Community,⁷ and to safeguard the labor interest⁸ by granting a certain degree of participation in some of the bodies of the Community.

Although the labor force employed in the heavy industry is numerically rather weak (amounting approximately to 1,750,000, i.e., 10 percent of the labor force of the member states),⁹ its highly specialized skill makes it undoubtedly vital for the modern industry. Its shortage resulting either from inadequate vocational training, or low wages, dangerous working conditions, obsolete technical equipment, inadequate housing,¹⁰ and not least of all, from fear of unemployment to which the steel industry is particularly vulnerable,¹¹ would seriously jeopardize the entire economic system.

Recognizing the importance of coal and steel workers and their problems, some individual states have already pursued a favorable social, wage and labor policy. The nationalization of the French coal industry¹² and the German law of co-determination authorizing the participation of the trade union representatives in the management of the heavy industry,¹³ are examples of legislation enacted to improve largely the position of labor.

However, its social progress stands a much better chance of being accomplished in a wider economic area, rather than along the strict

⁶ *Id.*, art. 2, ¶2, art. 56, and §23 of the CONVENTION.

⁷ TREATY, art. 3(e).

⁸ *Id.*, art. 18.

⁹ Quoted from HIGH AUTHORITY, REPORT ON THE SITUATION OF THE COMMUNITY 58 (Jan. 10, 1953).

¹⁰ *Id.* at 97-99.

¹¹ DAUGHERTY, DE CHAZEAU, STRATTON, THE ECONOMICS OF THE IRON AND STEEL INDUSTRY 5, 32 (1937). See also UNITED NATIONS, ECONOMIC COMMISSION FOR EUROPE, EUROPEAN STEEL TRENDS IN THE SETTING OF THE WORLD MARKET 29, 73 (1949).

¹² "Ordonnance portant l'institution des Houillères Nationales du Nord et du Pas-de-Calais," JOURNAL OFFICIEL 1876 (Dec. 14, 1944), 2079 (Dec. 25-27, 1944) and 402 (Jan. 28, 1945), SIREY, LOIS ANNOTEES 1726 (1945). "Ordonnance modifiant . . . l'ordonnance du Dec. 13, 1944, Oct. 12, 1945," JOURNAL OFFICIEL 6471 (Oct. 13, 1945), 6814 (Oct. 23, 1945), 6897 (Oct. 25, 1945). "Loi relative à la nationalisation des combustibles minéraux," JOURNAL OFFICIEL 4272 (May 17, 1946), SIREY, LOIS ANNOTEES 374 (1946). For further comments see Robson, "Nationalized Industries in Britain and France," 44 AM. POL. SCI. REV. 299 at 304 et seq. (1950); Pinkney, "The French Experiment in Nationalization, 1944-1950," in EARL, ed., MODERN FRANCE 354-367 (1951); J.C.B., "Nationalization in France," 2 WORLD TODAY (n.s.) 363 (1946).

¹³ BUNDESGESETZBLATT, Part I, 347 (1951). For further comments see "Employee Representation in the Coal, Iron and Steel Industries of the Federal Republic of Germany," 6 INDUSTRY AND LABOUR 137 (1951); Herschel, "Employee Representation in the Federal Republic of Germany," 64 INT. LAB. REV. 207 (1951); Weigert, "Co-determination in Western Germany," 73 MONTHLY LAB. REV. 649 (1951); P.S.J.C., "Managerial Revolution in Germany," 7 WORLD TODAY (n.s.) 249 at 257 (1951).

and narrow national lines, which is particularly true with regard to the maintenance of employment. Any failure to provide for social improvement would create not only a widespread dissatisfaction and antagonism among labor, but also conditions likely to be exploited by the Communists.

In view of the possible future alternatives, the framers of the plan recognized the gravity of the problem and included the necessary social improvement as one of the main objectives whose attainment could be greatly facilitated by a common action within the proposed scheme.

Save for the hostility of the communist party¹⁴ and its labor organization,¹⁵ the plan aroused considerable interest among the Western European trade unions.¹⁶ In view of the anticipated far-reaching effects of the proposed Community on labor, the trade unions were, at an early stage of discussion, invited to attend the constituting Conference and participate in drafting the Treaty. Thus labor became closely associated not only with the formulation of pertinent Treaty provisions dealing with wages and movement of labor, but also with the general institutional set-up of the Community.

I

Social Objectives of the Community

The improvement of the living and working conditions of labor is one of the fundamental objectives of the Community.¹⁷ Aside from the general economic improvement and prosperity anticipated as a result of a successful operation of the common market and likely to benefit the producer, consumer and worker alike, the Treaty also tends to promote the specific interests of labor by dealing with basic major labor problems such as maintenance of employment, protection of wages against exploitation, wage increase to the highest level in the Community, labor safety and labor mobility.

Maintenance of Full Employment. As full employment depends on the ability of maintaining a full capacity production of the coal and

¹⁴ EINAUDI, DOMENACH, GAROSCI, COMMUNISM IN WESTERN EUROPE 42-50 (1951).

¹⁵ LONDON TIMES, June 20, 1950, p. 4:1; Billoux, "Le Plan Schuman de Guerre," 27 CAHIERS DU COMMUNISME 28-34 (July 1950); joint declaration of the French and German communist controlled trade unions CONFEDERATION GENERALE DU TRAVAIL (CGT) and FREIER DEUTSCHER GEWERKSCHAFTSBUND (FDB), June 15, 1950, id., 91-94.

¹⁶ LONDON TIMES, May 29, 1950, p. 6:5 and July 3, 1950, p. 6:5.

¹⁷ TREATY, art. 3(e); Ministère des Affaires Etrangères, RAPPORT DE LA DELEGATION FRANCAISE SUR LE TRAITE INSTITUANT LA COMMUNAUTE EUROPEENNE DU CHARBON ET DE L'ACIER (hereinafter cited as Rapport) 130 (1951).

steel industries, any measure which attempts to stabilize the production level or minimize the effects of economic disturbances caused either by decline in demand or scarcity of necessary raw material is at the same time aiding labor in its struggle against the hazards of unemployment. The Community has a whole range of indirect measures at its disposal for combatting production slumps. In addition to conducting a regular survey of the market conditions¹⁸ which might warn of approaching economic crisis and afford adequate time for countermeasures, it assures a regular supply of raw material,¹⁹ regulates the flow of investments,²⁰ and imposes quantitative import or export restrictions in times of declining demand or scarcity in the Community,²¹ as the case may be. These are all measures intended to forestall dangerous slumps and maintain full production of which labor ultimately benefits.

The notable social progress in protecting labor, however, is to be found in measures which the Community is authorized to take, should it be unable to maintain full employment. In case of unemployment, the Community is concerned with the acute necessity of immediate financial assistance to the workers released as well as with the long term objective of finding and opening new productive activities either in the coal and steel industry or, if absolutely necessary, in other branches of industry, which would provide for them adequate productive employment.

The Community is authorized to grant the released workers non-reimbursable assistance, to be carried equally by the Community and the state in question, in order to cover unemployment compensation for those temporarily out of work, their re-installation expenses should they move after employment in another region, and even expenses of their retraining should there be a necessity of transferring those workers to a new field of activity.²²

This assistance is particularly important in the transitional period of 5-7 years²³ during which the necessary organization of the common market requiring the basic transformation of the national coal and steel

¹⁸ TREATY, art. 46, ¶3. For further comment see PIGOU & ROBERTSON, *ECONOMIC ESSAYS AND ADDRESSES* 38 (1931); UNITED NATIONS, *ECONOMIC COMMISSION FOR EUROPE, EUROPEAN STEEL TRENDS IN THE SETTING OF THE WORLD MARKET* 73-76 (1949).

¹⁹ TREATY, art. 3(a).

²⁰ *Id.*, art. 54. The Community's cooperation with the participating governments in influencing general consumption, especially by projects of public services, as provided by art. 57 of the Treaty is another measure for stabilizing production.

²¹ Cf. articles 58(1) and 74; 59(5) of the TREATY.

²² TREATY, art. 56.

²³ Section 1(4) of the CONVENTION CONTAINING THE TRANSITIONAL PROVISIONS; RAPPORT 81.

industries into one single economic unit may possibly cause some temporary unemployment. The readaptation of those industries through modification of production, or even closing of some of the uneconomical enterprises which, deprived of national trade protection are unable to compete, will naturally affect labor, although it is protected by the Treaty against the burden of readaptation through the Community's financial assistance and assurance of suitable reemployment.²⁴

Once the transitional period is over, however, the Community, as to specific provisions with regard to labor, limits itself to questions of technological unemployment only, i.e., an unemployment caused by "the introduction of technical processes or new equipment" which result in "an exceptional reduction in labour requirements" in the heavy industry causing unusual difficulties in reemployment of the workers released.²⁵

Although the conditions under which the Community aids the amelioration of the unemployment situation are in this particular instance rigid, the form and extent, as well as the beneficiaries of the assistance, are the same, i.e., non-reimbursable assistance for the workers, and loans or their guarantees to enterprises for productive projects within or outside the heavy industry.²⁶

Compared with the considerable concern over production, the Community's authority over employment matters is weak and rudimentary indeed, for it recognizes and deals with only specific types of unemployment brought about by technological development or organization of the common market, ignoring and leaving aside possible unemployment originating in other causes (e.g., declining demand, lack of raw material).

Wages. The authority over wages and social benefits of the coal and steel workers has been practically left to the member states²⁷ on the ground that since wages are an integral part of the entire economic structure, an authority of the Community over wages of the heavy industry would reach out to affect a large part of the whole economy. On the other hand, it was recognized that wage policy and

²⁴ CONVENTION §23(4, 5, 6).

²⁵ TREATY, art. 56, ¶1; RAPPORT, 125-126. Similarly, HIGH AUTHORITY, REPORT ON THE SITUATION OF THE COMMUNITY 94 (Jan. 10, 1953).

²⁶ Since a High Authority's loan, or its guarantee, facilitating such productive projects in other industrial branches than heavy industry is likely to affect the general economy of the state, the Authority needs a concurring vote of the Council of Ministers. Cf. art. 56, ¶2(b) of the TREATY, and §§23(3, 8) of the CONVENTION.

²⁷ TREATY, art. 68, ¶1; RAPPORT 132. See also Hallstein's remark in DER SCHUMAN-PLAN 17 (Frankfurter Universitätsreden, Heft No. 5, 1951).

its wage level are factors too relevant in matters of competition to be disregarded entirely in any effort attempting to establish a common, competitive market. To this extent the Treaty considers the wage level, relating it though almost exclusively to the conditions of competition only.²⁸ The Treaty views the wage level in terms of its bearing upon the conditions of competition.

The Community is authorized to intervene in matters of wages and make binding recommendations,²⁹ if it finds that the abnormally low prices of coal or iron and steel products are the result of wages fixed by an enterprise or government at a level which is far below the general wage level common within the region of a particular member state.³⁰ It is to be noted that any consideration of wages is prompted and conditioned by the existence of abnormally low prices made possible by underpaying labor considered underpaid in accordance with the usual wage level in the region. The Community would, however, be precluded from acting upon abnormally low wages if this exploitation would not at the same time be accompanied by and reflected in low prices as well. Should an enterprise maintain and observe the average prices of coal and steel and grossly underpay its workers, profiting thus even more, a strict interpretation of article 68(2) would prevent the Community from requesting a corresponding remuneration for workers.³¹

The anomaly of relating the Community's average price of coal and steel products to the local wage level of the various regions is justified by their different economic and physical conditions affecting the general wage level of the region and the entire industry located therein.³² In order to appraise the wage-price relationship properly and, furthermore, to avoid any disturbance of the general wage structure of the region, only the regional wage level can serve as a useful basis for this comparison.

The social concern for a proper wage policy is even more subordinated to the consideration of competition in article 68(3) ac-

²⁸ *RAPPORT* 134.

²⁹ As to the nature of the various acts of the High Authority see *TREATY*, art. 14. Recommendations are such decisions of the Authority which though binding as to the objectives to be attained leave the choice of appropriate means to the discretion of the individual enterprise or member state.

³⁰ *TREATY*, art. 68(2).

³¹ However, in accordance with *TREATY*, art. 46, ¶2, which states that "enterprises, workers, consumers and dealers, and their associations may present any suggestions or observations to the High Authority on questions which concern them," the labor force could call such a situation to the attention of the Authority.

³² *RAPPORT* 132.

ording to which the Authority has power to intervene if an enterprise decreases wages, lowering the standard of living, in order to carry out an economic adjustment or maintain its ability to compete. Under such conditions the Authority may address binding recommendation to such an enterprise to assure to the workers "compensatory benefits."

The Community becomes concerned about the wage level only on the conditions of the living standards decreased and of the competition affected. It would seem, however, that its insistence on granting such compensatory benefits—a vague term which might include a proper wage increase or decrease of working hours as well as increase in social benefits—would spur such an enterprise to attain the ability to compete either by improving or modifying the production, and to become thus economically prosperous and healthy, a development ultimately beneficial to the wage policy as well.

Certain exceptions to this rather static wage determination are made necessary by the general development of the national economies of the member states. Thus the Treaty considers a decrease in the cost of living a permissible ground for lowering the wage scale accordingly³³—a measure which evidently aims at maintaining the same level of *real* wage³⁴ under the changed conditions.

It would be equally inconceivable to block the member state in its efforts to attain an external economic balance either by financial and tax measures (such as devaluation or increased taxes) or by controlling and determining the wage policy, even though such all-encompassing measures were to affect the wage level of the heavy industry and lead to its decrease.³⁵ In this respect the state has a free hand and, as long as a large part of the economy is under its exclusive power, it cannot be otherwise.

Despite the professed objective of increased wages³⁶ and the obligation of states and enterprises to inform the Community of any notable wage decrease³⁷ as well as of the Community's right to "gather all information necessary to the appraisal of the possibilities of improving the living and working conditions of the labour force . . . and of the risks which menace such living conditions,"³⁸ the Treaty

³³ TREATY, art. 68(3)(c).

³⁴ RAPPORT 134.

³⁵ TREATY, art. 68(3a). See also sub-par. *b* and *d*. For further comment see RAPPORT 135.

³⁶ TREATY, art. 3(e).

³⁷ *Id.*, art. 68(4).

³⁸ *Id.*, art. 46(5).

takes a rather cautious and reserved stand on the question of wages. The Community lacks, at least formally, initiative for a constructive wage and social policy.³⁹

The aims of a general wage increase up to the highest level in the Community is motivated partly by the social policy consideration and partly by the desire to establish *relatively* equal conditions of competition, to which a comparative wage equality is indispensable.⁴⁰ This is, of course, an arduous task whose achievement is, first of all, preconditioned by a precise determination of *real* wages (i.e., including all social benefits accrued to the workers)⁴¹—a study presently undertaken by the High Authority. It might well be that at the end this examination will come forward and disclose such a considerable wage discrepancy due to different economic, social, and tax policies of the member states,⁴² that a relatively comparable wage level could be assured only by a certain modification, if not unification, of the existing social and tax legislation as well as of the economic policy so far pursued.

Movement of Labor. To assure a rational use of labor within the Community and to mitigate the dangers of employment, the Treaty establishes a pool of coal and steel workers of proven qualification and skill and nationals of one of the member states. Their movement over national boundaries will be free, subject only to common health requirements and public order, the nature and extent of which is to be agreed upon by the member states.⁴³ To facilitate this movement further, the Treaty not only guarantees an absolute equality of treatment as to wages and working conditions between a national or immigrant worker and retention of the claims to social benefits⁴⁴ but also entrusts the Community to perform the function of an em-

³⁹ Cf. the statement of the High Authority to the Commission of Social Affairs of the Common Assembly, rejecting its request for Authority's initiative in social and wage policy. Cf. COMMUNAUTE EUROPEENNE DU CHARBON ET DE L'ACIER, ASSEMBLEE COMMUNE, RAPPORT FAIT AU NOM DE LA COMMISSION DES AFFAIRES SOCIALES (Sess. Ord. 1953, Doc. No. 3) p. 11.

⁴⁰ RAPPORT 130-131.

⁴¹ HIGH AUTHORITY, THE ACTIVITIES OF THE EUROPEAN COMMUNITY, GENERAL REPORT 105-106 (April 12, 1953). See also the already published report of the High Authority, TABLEAU COMPARATIF DES CONDITIONS DE TRAVAIL DANS LES INDUSTRIES DE LA COMMUNAUTE (June 1953).

⁴² For this purpose, the High Authority established a Commission charged with the study of the tax systems of the Participating States. Cf. 2 JOURNAL OFFICIEL DE LA COMMUNAUTE EUROPEENNE DU CHARBON ET DE L'ACIER 33-35, arrêtés No. 1-53 and 2-53 (March 7, 1953).

⁴³ TREATY, art. 69(1, 2).

⁴⁴ Id., art. 69(4).

ployment agency to assist the workers and the coal and steel enterprises of the Community alike.⁴⁶

II

Participation of Labor in the Community's Institutions

To evaluate properly the role of labor in the Community, the participation of trade unions in its decision-making process must be considered and, therefore, a short description of its institutional structure is necessary. The common, competitive market is to be organized, maintained, and administered by the High Authority (the principal organ and guardian of the Community's interests) composed of nine members,⁴⁶ the powers of which are either absolutely independent of the member states⁴⁷ or shared with the Council of Ministers,⁴⁸ the main organ of governmental control in the Community.⁴⁹ To facilitate the function of the Authority and to afford an opportunity to the interest groups to voice their opinion, a Consultative Committee composed of fifty-one members equally divided among the representatives of producers, workers, consumers and dealers is attached to the High Authority.⁵⁰

Aside from the common decision-making process of the Authority and the Council, whose concurrence is necessary for the Authority's action where so prescribed by the Treaty, the safeguards against possible abuse of Community's powers is provided for by the Common Assembly, a representative body of people of the member states in general,⁵¹ and by the Court of the Community.⁵²

⁴⁵ Cf. art. 69(2) of the Treaty, the last sentence stating: "They [the member states] will also work out technical procedures to make it possible to bring together offers of and demands for employment in the Community as a whole." For the activities so far undertaken see, HIGH AUTHORITY, *THE ACTIVITIES OF THE EUROPEAN COMMUNITY* 103-104 (1953).

⁴⁶ TREATY, arts. 8 and 9.

⁴⁷ Cf., for instance, TREATY, arts. 47 (¶1), 49, 50(2), 54, 58(3), 59(6), 60(1, 2), 61, 62, 63, 65, 66, 67, 68(2, 3), 86 (¶4).

⁴⁸ Depending on the nature of the issue, the Authority needs for its action a concurring vote of the Council ranging from simple, absolute and qualified majority to unanimity. The Council's simple majority is requested in following instances: TREATY, arts. 58(1), 59(5), 74(3), 56 (¶b) and CONVENTION, §§23(3, 8). Consult also §§26(4), 29(1, 3) of the CONVENTION dealing with readaptation measures. A two-thirds majority is prescribed by TREATY, arts. 50(2), 88 (¶3), 56 and also CONVENTION, §23(6). Council's unanimity is requested by TREATY, arts. 54 (¶2), 58(3) and 59(6).

⁴⁹ TREATY, art. 26.

⁵⁰ Id., art. 18, ¶1. The Council of Ministers fixed the number of seats in the Consultative Committee at 51. Cf. 2 JOURNAL OFFICIEL DE LA COMMUNAUTE EUROPEENNE DU CHARBON ET DE L'ACIER 11-14 (Feb. 10, 1953).

⁵¹ TREATY, arts. 20-25.

⁵² Id., arts. 31-45.

The extensive powers of the Community likely to affect the labor force prompted the trade unions to press, during the drafting of the Treaty, for their representation on and participation in the principal organs of the Community, i.e., the Court and the High Authority. While in the first instance the effort failed, as to the High Authority at least an *informal* compromise was reached according to which one seat on the Authority was reserved for a trade union representative.

Thus, the participation of labor in the administration of the Community is formally recognized only in the Consultative Committee. Here membership is, however, equally shared by other interested groups of producers, consumers, and dealers and controlled by the Council of Ministers which has retained the right to determine the representative trade organizations. The trade organizations are merely entitled to draw up a list of candidates from which the Council may make appointments.⁵³

As a result of the merely advisory function of the Consultative Committee, the participation of labor therein is of limited nature also.⁵⁴ Although the Committee's opinions are not binding, the Authority is committed to consult with it and ascertain its views

⁵³ *Id.*, art. 18, paragraphs 2-4. The Council of Ministers determined the following representative trade organizations: *Germany*: Industriegewerkschaft Bergbau, Bochum (2 seats); Industriegewerkschaft Metall, Frankfurt/Main (2 seats); Deutscher Gewerkschaftsbund, Düsseldorf (1 seat). *Belgium*: Centrale Nationale des Employés de Belgique (CSCB) Bruxelles (1 seat); Centrale des Métallurgistes de Belgique (FGTB) Bruxelles (1 seat); Centrale Chrétienne des Métallurgistes de Belgique (CSCB) Bruxelles (1 seat). *France*: Fédération Nationale Force Ouvrière des Mineurs (CGTFC) Paris (1 seat); Fédération Nationale des Syndicats Chrétiens de Mineurs (CFIC) Paris (1 seat); Fédération des Métaux (CFIC) Paris (1 seat); Industrieverband Metall in der Einheitsgewerkschaft der Arbeiter und Angestellten des Saarlandes, Saarbrücken (1 seat). *Italy*: Federazione Italiana Metalmeccanici (CISL) (1 seat); Federazione Italiana Metalmeccanici (UIL) (1 seat). *Luxembourg*: Fédération Nationale des Ouvriers du Luxembourg, Esch/Alzette (1 seat). *The Netherlands*: Christelijk Nationaal Vakverbond (CNV) (1 seat); Katholieke Arbeidersbeweging (KAB) (1 seat). Cf. 2 JOURNAL OFFICIEL DE LA COMMUNAUTE EUROPEENNE DU CHARBON ET DE L'ACIER 12-13 (Feb. 10, 1953), giving also the names of representatives chosen by the Council. See also 6 CHRONIQUE DE POLITIQUE ETRANGERE 64-68 (Jan. 1953).

⁵⁴ Without drawing undue inferences, it is interesting to note that the labor representation in the ILO stands much more in the forefront in its operation than under the Coal and Steel Community. There the labor participates—together with the representatives of employers and governments—directly in the decision-making process of the General Conference, the main organ of the ILO. Cf. art. 3(1, 5) of the Constitution of the ILO; text reproduced in SOHN, CASES AND OTHER MATERIAL ON WORLD LAW 1196 (1950). It is, however, well to point to the essentially different purpose and powers of both organizations: while the ILO as a traditional intergovernmental international organization passes to the member states merely recommendations in the literal sense, the acts of the European Coal and Steel Community as expressions of supranational powers are directly binding on individual enterprises as well as on the member states. Cf. art. 14 of the Treaty.

whenever the Treaty specifically so prescribes.⁵⁵ A failure to do so would make the Authority's act deficient and subject to a review by the Court on an appeal of the Council, member state or an individual enterprise directly concerned.⁵⁶

To facilitate the advisory function of the Committee, and at the same time to provide an indirect protection of the various professional groups represented thereon and gain their confidence, the Treaty further commits the Authority to inform the Committee of all contemplated measures likely to affect them⁵⁷—such as investment policy or enforcement of anti-cartel and deconcentration provisions. Thus the Authority's policy is made subject to public scrutiny.⁵⁸

A unique feature of the Treaty is its attempt to assure a proper labor representation even on the national level. In order to qualify for a consultative status with the Authority in accordance with article 48 of the Treaty, the associations of producers seeking such a status must admit the workers' and consumers' representatives to participate in the leadership of those associations.⁵⁹ Although this is a mere statement of principle lacking any further elaboration of the criteria to be applied, nevertheless, it may, if reasonably implemented by the Authority, strengthen the participation of labor on the national and, indirectly, even on the Community's level.

III

Safeguards

The representation of labor, either formal or informal, on the various bodies of the Community is a general safeguard protecting the overall interests of labor employed in the heavy industry.

In its everyday operation, the Authority will have to rely heavily

⁵⁵ TREATY, art. 19, ¶1. The Authority is obliged to consult the Consultative Committee for instance in TREATY, arts. 46 (¶4), 53, 55(2), 56, 58(1, 3), 59(1, 5, 6), 60(1, 2), 61 (¶1), 62, 67(2, 3), 68(2), 95(¶1); CONVENTION §§24, 29(1, 2, 3). The obligatory consultation of the Authority with the Consultative Committee is a fundamentally different conception from that of the consultative status of non-governmental organizations "accredited" with the Economic and Social Council of the United Nations in accordance with art. 71 of the U.N. Charter. In this respect Krause's comparison in his "Betrachtungen über die rechtliche Struktur der Europäischen Gemeinschaft für Kohle und Stahl" in RECHTS-PROBLEME IN STAAT UND KIRCHE—FESTGABE FÜR RUDOLF SMEND 191 (1952) is erroneous.

⁵⁶ TREATY, art. 33.

⁵⁷ TREATY, art. 19, ¶2.

⁵⁸ RAPPORT, 53.

⁵⁹ For further comment see RAPPORT 54-55. See also COUNCIL OF EUROPE, CONSULTATIVE ASSEMBLY, COMMITTEE ON ECONOMIC QUESTIONS, REPORT ON THE EUROPEAN COAL AND STEEL COMMUNITY, DOCUMENTS, 3rd Ord. sess., part I, 452 (1951).

upon the cooperation of the associations of producers, workers, consumers and dealers which, together with the Consultative Committee, constitute the main link between the Authority and the individual enterprises and professional groups. To establish the broadest possible basis of cooperation, the Authority has the right to consult those associations as well as individuals associated with them,⁶⁰ which, in turn, have an equal right of submitting to the Authority their suggestions and observations,⁶¹ a right which might frequently function as an informal preventive measure.

The requirement for a good and reliable administration of the common competitive market and the necessity of an adequate individual protection need, however, more than mere consultation. For that matter the Treaty grants to individual enterprises and trade unions alike the right of appeal to the Court of the Community against the validity of specific acts of the Authority which injure their interests.

Any trade union, or for that matter any other association enumerated by article 48 of the Treaty, is entitled to challenge the validity of any individual act of the Authority even if it is not addressed to the association—as long as its interests are injured⁶² and the act itself is deficient.⁶³ In accordance with the Treaty, a labor association can contest an act of the Authority on the ground of its legal incompetence (e.g., lowering of wages of the coal and steel workers to which the Authority has no power), gross violations of procedural or substantive provisions of the Treaty (e.g., Authority's failure to consult the Consultative Committee where so prescribed),

⁶⁰ TREATY, art. 46, ¶1. According to the General Report of the HIGH AUTHORITY, THE ACTIVITIES OF THE EUROPEAN COMMUNITY 19 (April 12, 1953), the Authority has, up to April 1953, consulted "more than 500 persons—producers, workers, users and dealers—in meetings with Committees or special working parties, as well as at meetings of the Consultative Committee."

⁶¹ TREATY, art. 46, ¶2.

⁶² STEINDORFF, DIE NICHTIGKEITSKLAGE IN RECHT DER EUROPÄISCHEN GEMEINSCHAFT FUER KOHLE UND STAHL 21-23, 26 (1952).

⁶³ TREATY, art. 33, ¶1. The four types of legal deficiencies of the acts as set forth by the Treaty correspond to the traditional classification of the French administrative law, i.e., *l'incompétence, la violation formelle d'une règle de droit, le vice de forme, le détournement de pouvoir*. For further clarification consult WALINE, TRAITÉ ÉLÉMENTAIRE DE DROIT ADMINISTRATIF, 6th ed., 134-145 (1951); Josse, "Extension et limites des compétences du Conseil d'Etat sur les actes, sur les juridictions, sur les ordres," LE CONSEIL D'ÉTAT LIVRE JUBILAIRE 164-166 (1952); ROHKAM AND PRATT, STUDIES IN FRENCH ADMINISTRATIVE LAW 32-56 (1947); Letourneur and Hamson, "The Control of Discretionary Executive Powers in France," 11 CUMB. L.J. 258 at 266-267 (1952); Riesenfeld, "The French System of Administrative Justice: A Model for America?" 18 BOST. UNIV. L. REV. 400 at 424-429 (1938). For an exhaustive treatment of the appeal for annulment as provided by the Treaty see STEINDORFF, DIE NICHTIGKEITSKLAGE IN RECHT DER EUROPÄISCHEN GEMEINSCHAFT FUER KOHLE UND STAHL (1952).

or, finally, because of misapplication of power, i.e., use of power granted but for other purposes than set forth by the Treaty⁶⁴ (e.g., approval of an investment project and possible grant of loans for furthering productive activities motivated not so much by the pursuance of the Community's objectives as by a partial intention to assist a certain enterprise irrespective of the Community's interests).

Whether an interest was injured by an act addressed directly to the labor organization or not would appear as irrelevant as whether the act was, in its nature, an individual or general one.⁶⁵ In the first instance, a narrow interpretation would deprive a labor organization of the right to challenge an act of the Authority regulating in times of declining demand the production rate of an enterprise or ordering the separation of enterprises illegally concentrated contrary to article 66 of the Treaty, despite the possible harms to labor employed in them. The protection of interests is certainly the primary purpose of the appeal, and the kind of irregularity involved in the act of the Authority should be considered of secondary importance.

A more complex issue is the extent of injury required to justify an appeal. Technically, the Court will hardly be able to turn down an appeal a priori on the ground of the appellant's failure to show adequate extent of the interests injured. In practice, the determination of appellant's qualification will very frequently be possible only after a thorough factual examination by the Court. Many an act of the Authority will at least indirectly affect some enterprises and the workers employed in them. Will, for instance, an injured interest of a small number of miners be an adequate ground for a labor union's appeal against the action taken? This consideration comes close to the distinction of article 33 according to which professional associations may challenge *individual* acts of the Authority on any grounds of legal deficiency, while a *general* act may be challenged only if a

⁶⁴ Misapplication of power (*détournement de pouvoir*) is a more precise term than the general expression "abuse of power" actually including all four categories listed by art. 33. For a detailed discussion of the conception of misapplication of power see WALINE, *TRAITÉ ÉLÉMENTAIRE DE DROIT ADMINISTRATIF*, 6th ed., 142-145 (1951); Josse, "Extension et limites des compétences du Conseil d'Etat sur les actes, sur les juridictions, sur les ordres," *LE CONSEIL D'ÉTAT, LIVRE JUBILAIRE* 165 (1952); ROHKAM AND PRATT, *STUDIES IN FRENCH ADMINISTRATIVE LAW* 37-51 (1947); Riesenfeld, "The French System of Administrative Justice: A Model for America?" 18 *BOST. UNIV. L. REV.* 400 at 425 (1938); Vidal, "L'Évolution du détournement du pouvoir dans la jurisprudence administrative," 68 *REVUE DU DROIT PUBLIC ET DE LA SCIENCE POLITIQUE EN FRANCE ET A L'ÉTRANGER* 275 (1952).

⁶⁵ For criticism of art. 33, ¶2, L'Huillier, "Une conquête du droit administratif français: le contentieux de la Communauté Européenne du Charbon et de l'Acier," 14 *RECUEIL DALLOZ; CHRONIQUE* 65 (April 2, 1953).

misapplication of power is involved. However, this distinction between individual and general acts loses much of its validity and meaning, because article 33 fails to require as a condition of appeal that the individual act be addressed to the appellant in question. If a party may appeal an act which is not even addressed to it, it would seem equally reasonable to admit an appeal against a general act on the broad grounds of an individual act as well.

In the absence of any practice and lack of Court's jurisprudence, no definite answer can be offered, but it seems sound even here to proceed liberally and with an adequate degree of flexibility which would afford a maximum protection.

A significant question is whether the enterprise or professional associations have a right to claim some of the actions of the Authority prescribed by the Treaty. Can, for instance, a labor association ascertain against the Community as a matter of right the maintenance of employment or grant of unemployment assistance for its workers released as a result of new technological development reducing the labor requirement of the heavy industry? Although the Treaty does not speak in terms of rights of the participants under the Community's jurisdiction, yet the fact that some obligations and duties are imposed on the Community in general, and the Authority in particular, assures the enterprises and the professional associations of a right to claim under specific conditions certain action which, according to the Treaty, the Authority is committed to take.

As interest can be injured by inaction as well by action, the labor associations (and equally other professional associations and enterprises) are granted the right to bring to the attention of the Authority its failure to make decisions or recommendations explicitly required by the Treaty (e.g., failure to grant financial assistance to released workers in accordance with article 56), or actions which are merely within the Authority's discretion, if such an omission constitutes a misapplication of power⁶⁶ (e.g., refusal to finance new and productive activities motivated by the intention of the Authority to protect other branches of industry). Should the Authority even then continue to disregard its failure, such inaction is considered, after two months, an implicit negative decision, against which an appeal to the Court is permissible.⁶⁷

⁶⁶ TREATY, art. 35.

⁶⁷ *Id.*, art. 35, ¶3. Cf. RAPPORT 36.

Conclusion

It is evident that the Community pursues primarily economic aims, dealing with social objectives as a secondary matter, which even in its limited scope may be of considerable importance in the future. The success of the Community, particularly the success of maintaining full employment and improving the living and working conditions of the workers would have a psychological effect whose political implications would be of no small consequence. It would demonstrate the soundness of the new supranational institution as a more proper means for attaining the widely sought economic and social ends which would help to foster the confidence of labor in the operation of the Community.

From the viewpoint of labor, the Community established in many respects new labor relations, which put the worker in an unprecedented position toward his employer. The worker's supranational protection against his employer as well as against the dangers of unemployment, the supranational cooperation in the Consultative Committee of trade unions among themselves and with the associations of producers as well, which protect the labor interest of the entire Community—to name only a few and the most striking examples—are entirely new features in labor relations.

In many respects, it is felt, the Treaty might have gone further: it might, for instance, have granted the Community more initiative in matters of social policy as for example in the case of wage policy where powers over wages per se would have been perfectly justified and feasible. Similarly, a broader grant of unemployment assistance would have been appropriate.

As to the safeguards and remedies available to professional associations of article 48, directed exclusively against the acts of the Authority only,⁶⁸ the trade unions are in no position to challenge the acts of their own states, even if they violate the provisions of the Treaty specifically dealing with labor and are injuring their interests. This is a somewhat peculiar situation, particularly in view of the fact that the Treaty is a part of the legal system of the member states superseding in specific instances the provisions of their municipal laws. However, at this stage of development it would have been hardly acceptable to grant professional associations as well as enterprises the right to challenge the validity of such acts of member states,

⁶⁸ Cf. TREATY, art. 33, ¶2 with art. 38.

a right which would conceivably strengthen the observation of the Treaty.

This criticism does not intend to belittle the efforts made. The novelty of the approach, by and large lacking adequate support of experience, accounts for the cautious and reserved attitude which the Treaty has shown on these and similar issues.

Should the Community prove to be a success it could not fail to inspire further consolidation of Western Europe and promote the formation of the proposed European political authority,⁶⁹ able to deal with the economic and social problems more extensively than is presently possible within the framework of the European Coal and Steel Community. Such aims can, however, be achieved only on the condition that European integration ceases to be considered a mere temporary expediency and the unslackened efforts at it continue, undisturbed by any temptation held out by the changing course of Soviet policy.

⁶⁹ AD HOC ASSEMBLY INSTRUCTED TO WORK OUT A DRAFT TREATY SETTING UP A EUROPEAN POLITICAL COMMUNITY, DRAFT TREATY EMBODYING THE STATUTE OF THE EUROPEAN COMMUNITY, Doc. 15 R, adopted by the Ad Hoc Assembly in Strassbourg, March 10, 1953, reprinted also in INTER-PARLIAMENTARY UNION, CONSTITUTIONAL AND PARLIAMENTARY INFORMATION, 3d Series, No. 14, pp. 52-101. Cf. also COUNCIL OF EUROPE, CONSULTATIVE ASSEMBLY, INTRODUCTORY REPORT BY THE COMMITTEE OF JURISTS ON THE PROBLEM OF A EUROPEAN POLITICAL COMMUNITY, 4th Ord. Sess. [Doc. SG (52)2, 1952].