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THE COMMITTEE OF PERMANENT REPRESENTATIVES

Address

to the Institut d'études européennes
of the Free University of Brussels

by

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1. To speak of the Committee of Permanent Representatives is an undertaking at once attractive and hazardous, particularly for an official of one of the Commissions. There are many sides to the Committee: dozens of people are present every week at one or other of its meetings. But can they claim to know what it really is and which of its appearances disguises it the least? The Committee opens its doors wide to representatives of the Commissions and does not stint them its attention. But who, in Community circles, has not heard at one time or another undertones of reserve or expressions of disquiet concerning the Committee's alleged encroachments on the prerogatives of the Commissions or strained relations between them? Finally, the Committee - and this is one of its strong points - works discreetly: in a Community which is like a "sounding board" it is almost surrounded by a veil of mystery. Power may delight in publicity, but is not mystery the companion of influence, which itself is near to true authority?

Is it permissible to violate the holy of holies? Is there not a risk of partiality and even more of banality? I fear that I am embarking on a foolhardy enterprise. My only hope is that the University, which is prepared to welcome every audacity, may also be full of indulgence, at least so long as we are not facing one of its examinations.

2. The subject of the supplementary course organized this year by the Institut d'études européennes is the respective role of the Community institutions and national institutions in the development of the Communities. In this respect the Permanent Delegations, the Permanent Representatives and the Committee which brings them together are an

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excellent choice. Here, more systematically and continuously than anywhere else, national concerns daily make their weight felt in Community affairs and Community affairs influence national affairs. We no longer have merely meeting and confrontation of national and Community administrations, but, at a level which is already political, the synthesis and further progress of the Community on which the Council and the Commission must set their seal begin to take shape and are sometimes put into effect.

Along the line of study proposed for us we will first examine the organization of a Permanent Delegation, its role and that of its head, the Permanent Representative. While analysing the structure and functions of a national service we will simultaneously discover the chief actors at work in the Committee of Permanent Representatives. We will then study the Committee's rules of procedure and this will lead us to consider two other factors: the Chairman (and the Secretariat-General which assists him) and the habitual guest - the representative of the Commission. Finally, we will endeavour to bring out the Committee's methods of work and define its role in the development of the Community.

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I. PERMANENT REPRESENTATIVES AND PERMANENT DELEGATIONS

3. Unlike the Treaty of Paris, the Treaties of Rome expressly provided that the Council might establish a "committee composed of representatives of Member States" to aid it (Article 151 EEC, and 121 Euratom). Although this does not follow from the text, the negotiators were in no doubt that the Member States would have to maintain permanent delegations in the place where the Institutions were set up (as is the case, moreover, with a great number of international or European organizations) and that the Committee in question would consist of the heads of these delegations⁽¹⁾.

For the latter also this was a means of prolonging and perpetuating beyond the signing and entry into force of the Treaties that rather extraordinary "club" which the Committee of Heads of Delegations under the chairmanship of M. Spaak had formed during the negotiations, and which had been both a meeting place of authorized and faithful spokesmen of the six Governments and a group of militants (even of "accomplices") dedicated to a vast and noble political undertaking. After 25 March 1957, the "Interim Committee", on which the same men were practically all to be found, maintained this spirit. Familiarity with this background is necessary for a proper understanding of the Committee of Permanent Representatives.

4. What the delegations to the Community, their size and their level were to be nevertheless remained ill-defined⁽²⁾ and a matter for national

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(1) This point was expressly specified in the explanatory memoranda to the Rome Treaties presented by the German and Luxembourg Governments (see Houben - Les Conseils de Ministres des Communautés européennes, p. 143 and note 85).

(2) The Rome Treaties, in particular the Protocol on privileges and immunities, make no express reference to permanent delegations or representation. In the absence of any agreement as to the headquarters - there were only provisional "places of work" - the only available basis was Article 10 of the Protocol, which mentions in general "representatives of the Member States taking part in the work of the Institutions", in so far as this Article is interpreted widely, as it is by the Belgian Government, which furthermore considered that the "customary privileges, immunities and facilities" provided for in the same Article 10 justified its according diplomatic status to members of the Permanent Delegations other than that of Belgium.

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decision. It was the Conference of Ministers of Foreign Affairs meeting in Paris on 7 and 8 January 1958 to install the institutions which had to clarify this point.

The communiqué published after this Conference stated that "the Ministers of Foreign Affairs had recognized the advisability of appointing permanent representatives to the Communities as soon as possible".

This text is interesting for more than one reason. From the legal point of view it is not an act of the Council pursuant to Article 151 EEC (121 Euratom). The decision to set up permanent delegations to the Communities is a purely national one, and it was at an inter-governmental meeting that the Ministers of Foreign Affairs concerted and co-ordinated the national measures which each of them was to have his Government enact.

From the political angle the wording used and the name chosen imply - as is confirmed by the minutes of the Conference - that the representation would be at a very high level, and this was to be extremely important for its later role. By conferring ambassadorial "rank and prerogatives" on its Permanent Representatives, each of the six Governments merely drew the logical conclusion from the arrangement agreed on. Without going into historical byways, it is reasonable to think that this passage in the communiqué of the six ministers was introduced and finalized more especially at the initiative of the members of the Interim Committee, some of whom were, moreover, to become the first Permanent Representatives.

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The position of the Permanent Representatives

5. However, this may be, the Governments were later to confirm the importance they attached to these new "Permanent Representatives" in a manner striking for anyone with a feeling for the significance of administrative movements. One sure sign among others is the subsequent career of those who were the first Permanent Representatives. Two of them (M. de Carbonnel, France, and M. Cattani, Italy) were appointed Secretary-General in their respective ministries of Foreign Affairs, two have become State Secretaries (M. Lahr, Germany and M. Gorse, France) while M. Linthorst-Homan (Netherlands) was co-opted as a member of the High Authority of CECA.

For understandable reasons I will confine my remarks to the past, but all those who are familiar with the Communities have been able to judge the audience which the Permanent Representatives enjoy with the Governments and high-level administrations of their countries. The importance which each Government attaches to the Communities and the quality of the representatives appointed to Brussels have combined to give the Permanent Representatives an outstanding position in relation to their national authorities, comparable in their sphere of competence with that of the heads of the chief diplomatic missions of the member countries.

6. Another factor was to help increase the importance of the Permanent Representatives - the duration of their tenure of office. At present (April 1966) the Permanent Representatives of Luxembourg and Belgium have actually held their posts for nearly eight years, those of France and Italy for five years and the Netherlands

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Representative for three years, after his sole predecessor had occupied the post for five years⁽¹⁾. Only the Permanent Representatives of Germany have changed relatively more frequently.

These few facts are more than fortuitous or trivial details. The relevant texts or the Treaties fix a framework and lay down limits. Once this is done each Institution is largely what those composing it make of it, and its development long bears the mark of the first personalities who modelled it. This is a commonplace as regards the European Executives. Whatever be the differences of nature and powers which would make any comparison hazardous, how can it be ignored as regards the Permanent Representatives and their Committee?

Organization of the Permanent Delegations

7. As we have already noted (sec. 4) the installing of a Permanent Delegation and the appointment of a Permanent Representative are national acts which do not need any sanctioning by the Community. The "Permanent Representative with the European Communities" is not, as might be believed from the terminology used, external to the Communities. He represents a Member State of the Communities. He is situated within the Community system. Although located "with" certain Institutions (the Commission for instance) he participates fully in the work of the Council and its organs. The increasing number of permanent delegates (and delegations) with international organizations has now made this category of functions traditional in the diplomatic service.

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(1) Dates when appointments as Permanent Representatives with the Communities took effect:

M. Borschette (Luxembourg) 9 December 1958

M. Van der Meulen (Belgium) 15 January 1959

M. Venturini (Italy) 16 May 1961

k. Boegner (France) 26 June 1961

M. Linthorst-Homan (Netherlands) 12 May 1958 to 31 December 1962

M. Spierenburg (Netherlands) since 1 January 1963.

M. Van der Meulen was already exercising the functions of Permanent Representative in the summer of 1958 and M. Linthorst-Homan had been directing the Netherlands delegation since January 1958 (after being a member of the "Interim Committee"). M. Borschette was previously assistant to Ambassador Schaus, who was previously Ambassador to the King of the Belgians and head of the Luxembourg delegation during the Rome Treaty negotiations and in the Interim Committee, then Permanent Representative with the Communities. M. Schaus was appointed member of the EEC Commission on 18 June 1958 and M. Borschette then became interim Permanent Representative until his official appointment as Permanent Representative in December 1958.

We have used the expression "Permanent Representatives with the European Communities". In fact this refers only to the two "Brussels" Communities, EEC and Euratom. Belgium alone, in the early months of 1958, had a different representative with each of these Communities. Subsequently, in January 1959 on the occasion of a new appointment, it designated a single Permanent Representative like the other Member States. M. Van der Meulen, the holder of this post, is also Belgian member of the ECSC Co-ordination Committee.

The appointment of a Permanent Representative (and the departure of his predecessor) is simply notified to the President of the Council by the Foreign Minister of the Member State. In some cases the same notification is sent to the Presidents of the Commissions and in others it is the Secretary-General of the Councils who officially informs these of the communication to the President of the Councils. No letters of credence are handed over. The new Permanent Representative merely makes courtesy visits to the Presidents of the Commissions, to his colleagues, and to the leading Community personalities.

8. The Permanent Delegations have progressively become larger and more complex. Only the Luxembourg Delegation has kept its staff small (three persons, except when Luxembourg is in the chair at the Council). The others have 20 to 25 officials exercising functions of responsibility.

Each Government has appointed a deputy Permanent Representative who relieves the Permanent Representative of some of his tasks and replaces him in his absence. We will see below (sec. 25) that this development has influenced the workings of the Committee of Permanent Representatives itself.

Each Government has organized its Permanent Delegation according to its own methods. Some common features can, however, be noted.

The rank of the deputy Permanent Representatives has been raised. In general, when the Communities began, they were Counsellors of Embassy, but in three Delegations they are now Ministers Plenipotentiary.

Except in the case of Germany, the nucleus of each Permanent Delegation consists of officials of the Ministry of Foreign Affairs (and, where appropriate, of External Trade). In most cases both the Permanent Representative and his deputy belong to this Ministry. Each Delegation then has a considerable group of officials from the Ministries of Economics and Finance (or of the Treasury).

The German Government in its Delegation maintains a strict balance between Foreign Affairs and Economics, corresponding to the division of responsibilities in the Federal Government in Common Market matters. A tradition has grown up that the Permanent Representative shall be

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a high official of the Foreign Affairs Ministry and his deputy of the Ministry of Economics.

All the Permanent Delegations apart from that of Luxembourg, also include one or more officials representing the Ministries of Agriculture, Transport and Social Affairs (or Labour). Overseas development questions are dealt with by officials of the Ministry of Foreign Affairs (or of Economics in the case of Germany).

Thus, around a nucleus of officials of general competence who deal with political, institutional or procedural questions, each delegation includes officials specialized in each of the main sectors of the Common Market's activity. (We will look at the case of Euratom below). Although not "experts" in the strict sense of the term, these officials are in a position to follow the work of the Council and of the Commission in detail.

9. A few special features must be noted in the case of Euratom. The Permanent Representative of Luxembourg is also the "qualified representative" with the Commission in accordance with Article 133 of the Euratom Treaty. Belgium has given the high official responsible for Euratom matters the second rank in its Permanent Delegation immediately after the Ambassador and before the deputy Permanent Representative.

The other Member States have nominated an official in their Delegation with special responsibility for Euratom matters. Sometimes he is from the Ministry or specialized agency of the Government concerned, and sometimes he is a civil servant from the general list.

Role and functions of the Permanent Delegations

10. In 1958 the Permanent Representative could be presented as "the servant, the eye and the ear of his Government"⁽¹⁾. This elementary definition is far removed from the present situation, which is much more diversified.

To facilitate their presentation we will arrange the functions of the Permanent Representatives and their services in three main categories:

- (a) Liaison between national administrations and Community institutions and mutual supply of information;
- (b) Participation in working out and co-ordinating national attitudes;
- (c) Direct participation in the work of the Community institutions.

Liaison and information

11. The liaison function was primordial when the Permanent Delegations were set up and it is still of cardinal importance. As we saw in Section 8, the different Delegations were organized to ensure this liaison and the mutual exchange of information which flows from it with maximum efficiency. This liaison is maintained chiefly with the Commission, but is also provided in different forms with the European Parliament.

The Permanent Representative himself maintains contact at political level with the Commission and its members. This includes in particular official steps by the Ambassador to give the most authoritative expression to his Government's concerns. It should also include more

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(1) Handelingen Tweede Kamer der Staten-Generaal II
10 December 1958. p. 454 (quoted by Houben - op. cit. p. 142,
note 87).

informal talks by which the parties can be mutually informed of each other's thinking or interests. Although it is recognized on all sides that such direct exchanges can be very profitable, it must be noted that they are rare.

The heavy diaries of engagements of the Commission members and also of the Permanent Representatives who must in particular attend long weekly meetings (sec. 26) and make frequent journeys to the capitals of their countries, leave hardly any time for such exchanges, and this is true even of contacts between Commission members and Permanent Representatives of the same nationality, despite previous personal relations which could smooth the path.

12. It is therefore especially with the Commission's departments and with the private offices of Commissioners that the Permanent Delegations establish regular liaison useful to both sides. Through its "specialists" the Permanent Delegation is in a position to obtain precise and detailed information on the intentions of the Commission and of its departments and on the progress of their work for passing on to the responsible home department. The Commission departments for their part benefit by having a partner to hand who, even if not an "expert", is sufficiently well informed to guide them as to the views of his Ministry.

This official liaison can be multilateral. At the initiative of the competent Commission member or Director-General, meetings are held with officials from the six Permanent Delegations specialized in certain matters (social affairs or transport, for instance).

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Finally, it would be naïve to ignore or underestimate the more or less personal "informal" contacts which the officials of the various Permanent Delegations have with their compatriots - and often former colleagues - in the Commission or the private offices outside the official chain of command. Such contacts are often useful and lead to more direct information and greater mutual understanding. In particular they can help to get Commission proposals or concepts more readily accepted by national government departments. On the other hand they can also involve the risk that a department or the Commission itself may be influenced unilaterally.

Should we dramatize such a situation or be shocked by it? It must first be recognized that the Governments and their Representatives are resolved to honour their obligations, particularly to respect the European nature of the Commission (Article 157(2) EEC and 126(2) Euratom) and of its services. The Commission for its part has always taken national interests into consideration without, however, renouncing its independence and its impartiality for this reason, and its example has been understood by its staff. To this must be added the guarantees of all kinds provided by an integrated administration and a collegial Commission.

Although the risk is inevitable it thus remains limited. In a living and expanding Community the advantages of this minor form of dialogue outweigh the drawbacks. Practice confirms this analysis and I think I can claim that the impartiality of the Commission's departments is nowhere doubted.

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13. This improved system of information is sometimes a source of difficulties. The Permanent Delegation, because it is better informed and more alert than any other Government service and because it closely follows the actions and initiatives of the Commission, more easily picks out what may be foreign to the views of its Government or correspond to an extensive interpretation of the texts which lay down the Commission's prerogatives. The Permanent Delegation looks on things with a friendly but scrutinizing eye - and it sometimes weighs heavily on the Commission or its departments. Why should we hide the fact that this can be a cause of ill-humour or even of strain?

I am nevertheless inclined to consider in this case and in other similar ones which we will see below (see 43 in particular) that such strain is a natural consequence of the dynamism of the Institutions. If good will exists on both sides, and if the Commission knows how to assert its personality, vigilance does not become tutelage, but, on the contrary, acts as a stimulant. I think that this is the lesson of eight years' experience.

14. Liaison with the European Parliament and its Committees is a relatively simple matter in comparison with what we have just described. Each Permanent Delegation keeps itself abreast of the work of the Parliament and its Committees, and the Secretariat-General of the Councils contributes effective technical aid. Most of the Permanent Representatives visit Strasbourg several times a year on the occasion of the colloquy between the Institutions or of the statements by the President of the Council and thus enjoy the advantage of direct contacts. Relations with members of Parliament of their nationality are not systematically organized by the Permanent Representatives. At most a few isolated examples could be mentioned of information provided with a view to a specific debate, but no general conclusion can be drawn from these.

Internal co-ordination and the elaboration of national points of view

15. More discreet, but politically more important, is the part played by the Permanent Delegations in internal co-ordination and in working out national positions.

The development of EEC has lent special stress to the need for co-ordination felt by all the Governments. A growing number of Ministries and their departments are involved in the workings of the Communities. If the Commission itself sometimes finds it difficult to co-ordinate all the action undertaken in its name, what is to be said of the national administrations, which must cope with so many calls from Brussels at the same time as with their own numerous and sometimes more immediate tasks?

Different countries have found different solutions: in France, strong centralization around a Secretariat-General attached to the Prime Minister's office; in Belgium, action by a deputy Minister for European Affairs who co-operates with the Foreign Minister; in Germany and the Netherlands, co-operation at the top in the one case through the group of four State Secretaries⁽¹⁾ or in the other through an Inter-ministerial Council; in Italy, more empirical methods still. In every case the Permanent Delegation has a considerable role to play. It alone has an overall view of the situation and can seize immediately on all the different connections interwoven between the Commission, the Council, their agencies and the national administrations. It can also feed regular information to a centralizing national service, ensure special diffusion to services likely to be associated, alert the co-ordinating Ministry, point to analogies and adduce precedents.

(1) i.e. the State Secretaries in the Ministries of Foreign Affairs, Economics, Finance and Agriculture.

16. In order to acquire and retain such a position the Permanent Representatives early insisted (with the agreement and support of their Governments) that all correspondence and communications between the Institutions and the national capitals should go through them. This presented no difficulty as regards the Council, but the arrangements were harder to work out for the Commissions, which wanted to be able, when necessary, to turn directly to the competent Government authorities. A fairly flexible system was finally adopted. In some cases the Permanent Representative is dealt with direct, in others the Delegation is simply a relay, a "letter-box" and sometimes it is informed simultaneously of correspondence sent direct to the capitals.

This concern of the Permanent Representative reappears in the first point of the resolution on relations between the Council and Commission, commonly known in French as the "heptalogue", adopted by the extraordinary session in Luxembourg on 28 January 1966, which expresses the hope that before adopting important proposals the Commission would establish certain contacts with the Governments "through the Permanent Representatives". I do not know whether any authentic interpretation of these few words exists. A reasonable one from the point of view of the Commissions would doubtless be that such contacts are organized with the knowledge of the Permanent Representatives so that, where necessary, they can collaborate in them and thus satisfy the concern just mentioned.

17. Beyond this administrative task the Permanent Delegation also helps to work out its Government's position on various matters. Like a traditional diplomatic mission it acts first of all by reports and dispatches. More perhaps than other Heads of Mission, the Permanent Representative can make personal contacts and take direct action in the capital. He goes there regularly, in some cases weekly, and takes part or is represented in the chief departmental meetings there. He sees that

the competent Ministers are directly informed and personally receives directives or guidance from them. His strong position, which we have pointed out in sec. 5, lends full value to his presence. And since he is intimately involved in the life of the Communities and conscious of their needs and demands, which have in a way become his own, he is often not far removed from acting as "ambassador of the Community" to his Government or, more exactly, since the Community is not external to the Member States, as an effective defender of the Community interest when a national attitude is being decided on.

Participation

18. It is with these activities and these responsibilities in mind that the third function of a Permanent Delegation, its participation in the work of the Institutions, must be evaluated. Here the chief emphasis is on the Committee of Permanent Representatives.

Like the Council which it is instructed to assist, the Committee has a Community task to fulfil. The dual responsibility which falls on the Ministers and which the wording of the Treaty well expresses - to be "representatives of the Member States" and to be "members of the Council" i.e. of a Community institution (see Article 146, first and second paragraphs, EEC Treaty and 116, first and second paragraphs, Euratom Treaty) is also assumed by the Permanent Representatives. The nature of their functions and the level of their responsibilities are such that they must be fully conscious of the ambivalence of their position. We will see how this can be reflected in the workings of the Committee (sec. 51).

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19. Participation is not limited to the work of the Committee. Members of the Permanent Delegation are present in practically all the other committees and working parties meeting under the aegis of the Council. In some cases they make up the whole Government Delegation (for instance the General Affairs working party and the Commercial Counsellors working party). In other cases they direct the Government Delegation, but most often, they merely form part of it. In the expert working parties convened by the Commission, (as in the Management Committees) the "specialists" of the Permanent Delegation sometimes join the national experts from the capitals (in this case usually in order to keep abreast of the progress of studies).

Like the Permanent Representative himself, all the officials of the Delegation therefore experience at their level this feeling of a dual responsibility, both national and Community. Maybe they are conscious more completely and at an earlier stage of what tomorrow's reality will be in each of our countries and their administrations when the Community has become so firmly established that many decisions will have to be made or national attitudes adopted only in the light of their effects on Community policy or on Community measures already enacted.

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II. LEGAL BASES AND WORKING RULES OF THE COMMITTEE OF PERMANENT REPRESENTATIVES

20. All that we have just noted concerning the position and role of the Permanent Representatives and their staffs will help us to understand better how a body of such importance and with such great authority as the Committee of Permanent Representatives has been able to develop on a very narrow institutional basis.

As already indicated in section 3, the Rome Treaties mention a "committee composed of representatives of Member States"⁽¹⁾. However, contrary to what they stipulate in other cases (Monetary Committee, Consultative Committee on Transport, etc.) they do no more than foresee the possibility of establishing this committee. It is Article 16 of the Council's "Provisional rules of procedure" which sets up the Committee in question, defines its terms of reference and the principal rules for its operation.

21. The decision to establish the Committee was made at the first session of the Councils on 25 January 1958. Save for a few details of wording, we find in this decision the terms of reference which the Committee still has: "to prepare the work of the Council and to carry out tasks entrusted to it by the latter" - terms of reference to be reiterated in Article 16.

At the request of President Hallstein, and with the consent of the whole Council, the President of the Councils (M. Larock, Belgian Minister of Foreign Affairs) had specified that the responsibility for decisions to be taken by the Councils was to remain entirely with the Ministers themselves. The Committee of Permanent Representatives therefore had no powers of decision of its own. This point was to be specified again when the Councils, at their session of 18 March 1958 drew up the French text of their provisional rules of procedure.

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(1) Article 151, second paragraph EEC, 121, second paragraph Euratom:

"The Council shall adopt its rules of procedure. These rules of procedure may provide for the establishment of a committee composed of representatives of Member States. The Council shall determine the task and competence of that committee".

(The other versions and, consequently, the final form of the regulation were adopted at the following session on 15 April 1958).

The detailed explanation given by the President of the Councils is a clear interpretation of the Treaty provisions concerning the Council⁽¹⁾ and has never been called into question since, either by the Member States or, of course, by the Commissions. Its scope goes beyond the Committee of Permanent Representatives. In general it rules out any possibilities of the Councils delegating their powers of decision to subsidiary bodies. The same requirement applies moreover to the Commissions, except where the Treaty specifically states otherwise. This decision was of great importance for the whole later development of the Communities. From the outset, in relation to this point of procedure, the political character of the Institutions, both Councils and Commissions, was affirmed. It was at the political level that decisions had to be taken after discussion between Ministers and Commission members. Although, as we shall see below (section 46 sqq) the Commissions later accepted simplified procedures, they always maintained intact their right to bring up any question within their competence in the Council itself.

The Committee of Permanent Representatives is therefore not a Committee of "deputies" for the Ministers, and the services it renders to the Council and the Community are perhaps the greater for this. The Ministers have to commit themselves personally on the problems it singles out and this personal commitment has been one factor in the Community's dynamism.

22. After the Conference of 7-8 January 1958 the President of the Councils, on 17 January 1958, arranged a meeting of the "qualified representatives" of the Member States to prepare business for the

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(1) And in particular Articles 148(1) EEC and 118(1) Euratom.

first Council meetings. This meeting was considered later in the Council as a meeting of "Permanent Representatives in a temporary capacity". Afterwards, from 25 January onwards, it was followed by regular Committee meetings.

Article 16 of the rules of procedure does not, however, speak of a "Committee of Permanent Representatives", it does no more than repeat the Treaty expression, "Committee composed of representatives of Member States". This detail illustrates the remark already made on the national character of the appointment of the Permanent Representatives (sec. 4). Each Member State remains free to appoint its "representative" in the Article 16 Committee and is not legally obliged to entrust this function to its Permanent Representative. This is so true that two countries (Luxembourg and Belgium) expressly confirmed in 1958 and 1959 that their Permanent Representative would speak for them in the Article 16 Committee.

The Treaty on the merger of the Executives will modify this situation. In Article 4 it speaks of "a committee composed of the Permanent Representatives of the Member States ...". When this Treaty comes into force, not only will the Committee of Permanent Representatives be established by the Treaty itself, but the appointment of Permanent Representatives will be made pursuant to the Treaty and not to an intergovernmental agreement like that of 8 January 1958. The position of the Permanent Representatives and of the Committee itself will be strengthened by this circumstance although it should not, however, modify the nature of the latter's powers. The merger Treaty (Article 4) in fact exactly reproduces the wording of Article 16(2) of the Council's rules of procedure and when it was being negotiated the Governments expressly reiterated the "clarifications" given in 1958 (sec. 21) and confirmed by practice since that date.

23. The Committee of Permanent Representatives may be seen as a body common to the two Councils of EEC and Euratom. The distinction which is always maintained between EEC Council sessions and Euratom Council sessions has never been applied in official documents concerning the Committee of Permanent Representatives or in the functioning of

working parties set up by this Committee to deal with problems concerning the two Communities (General Affairs Working Party, Budget Committee, etc.). Without prejudging the possibility of controversies it may be noted that this point will be definitely confirmed once the merger Treaty comes into force.

The chair in the Committee is taken by the Permanent Representative of the Member State occupying the chair at the Council, and the same six-month rotation therefore applies. "Except where the Council decides otherwise", the Commission is invited to be represented in the Committee (Article 16, para. 4 of the rules of procedure of the Councils). At the very time when it decided to set up the Committee, on 25 January 1958, the Council moreover emphasized that close co-operation was to be the rule between it and the two Commissions.

24. In fact the Permanent Representatives fairly frequently have "internal meetings" to which the Commission representatives are not invited. Sometimes these are Committee meetings in the real sense to prepare the "internal" deliberations of the Council which will be held without the Commissions (for instance to fix the provisional estimates of Council expenditure or the salaries and allowances of members of the Executives). In most cases these are not meetings of the Committee itself but of representatives of member Governments, concerned for example to prepare business for the Conference of Representatives of Governments of the Member States or to carry out an instruction from this Conference (appointment of members of the Executives, for instance, or problems relating to the entry into force of the merger Treaty).

Finally, there may be a few cases which are less clear-cut ... For reasons of principle the Commissions have always taken care to be effectively represented, since their participation in the Council and its organs is one of the essential elements of the Community system. The few problems which have arisen since 1958 have always been settled without too much difficulty through the good offices of the Committee Chairman.

25. The expansion of EEC activities and the increasing number of Council meetings were to lead in 1962 to important changes in the Committee's working methods. Already in the preceding months the Committee had arranged meetings of the deputy Permanent Representatives to prepare some of its politico-technical discussions complementary to the studies of the working parties which we will discuss below (sec. 27). These working parties were to "break away" at the beginning of 1962. No second committee or subordinate committee was created. The agenda of the Committee of Permanent Representatives was divided into two parts: the "first part" is dealt with by the deputy Permanent Representatives and the "second part" by the Ambassadors. The distribution of items between the two parts is left to the discretion of the Chairman of the Committee, although each Permanent Representative may demand that a point entrusted to the deputies be dealt with in the "second part".

In practice the Ambassadors reserve for themselves all problems of great political moment. They are also particularly interested in questions of external relations. The deputies settle not only questions of procedure and "current affairs" but all matters relating to the development of the Community the technical difficulties of which are greater than the political ones. Like those of the Ambassadors, their conclusions go direct to the Council.

The first meeting of the "deputies" under this new arrangement took place on 16 January 1962. After four years of practical use the system has proved effective and satisfactory for all concerned, including the Representatives of the Commissions.

26. The activity of the Committee of Permanent Representatives is considerable. A few figures will illustrate it in striking fashion.

The Committee sits practically every week, apart from those periods of the year when Community activity slows down. Since 1962 each of these weekly meetings has lasted two days (one for each "part") and sometimes longer.

In all there were 107 session days in 1962, 108 in 1963; 120 in 1964 and 106 in 1965⁽¹⁾. To this we must add several extra days devoted to "internal" meetings (sec. 24).

These numerous days of discussion are also long days. Committee meetings generally begin about 10.00 a.m. and often go on until nearly 8.00 p.m. with one break between 1 and 3.00 p.m.

In addition to Committee meetings, either the Permanent Representatives or their deputies - and sometimes both - are present at all Council sessions, which themselves are long and frequent (65 days in 1962, 66 in 1963, 67 in 1964 and 36 in 1965).

We need hardly say that every Committee meeting requires minute preparation, nor need we enumerate all the other tasks of a Permanent Delegation (Chapter I). The personal effort made by the Ambassadors and their close collaborators is particularly heavy. The share of the Permanent Representatives in the great mass of work which, since 1958, the progress of the Community has required of all those who have been associated with it is certainly far from being the smallest.

27. A study of relations between the Committee of Permanent Representatives and the other committees and working parties under the Council gives a better idea of the Committee's functions.

A first group of working parties consists of those which the Committee itself set up (Article 16(3) of the rules of procedure of the Councils: [the Committee] "may set up working parties and give them certain tasks in preparing or studying matters of its choice").

After a period of trial and error the Committee reorganized these working parties early in 1962. It set up about 15 permanent working parties among which all questions within the competence of

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(1) Corresponding to 44, 40, 42 and 42 meetings for each of these years.

the Communities are allotted with the exception of those for whose study special arrangements have been made⁽¹⁾.

As a general rule any new question referred to the Council is automatically sent to the competent working party by the Chairman of the Committee of Permanent Representatives. The Committee only handles it on a report from the working party and it reaches the Council's agenda only when the preparatory work in the Committee has been concluded. This is without prejudice to the right of every member of the Council or of the Commissions to ask at all times for a point to be placed on the Council agenda or studied immediately by the Committee of Permanent Representatives itself. Such procedures are applied for questions which are of real political importance or specially urgent.

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- (1) Apart from the special Committee on Agriculture and the Article III Committee (dealt with separately in secs. 29 and 30) the "permanent" working parties are at present as follows:

External relations working party;
Working party on commercial policy questions;
Permanent working party of commercial counsellors;
Working party on association with non-member countries;
Working party for the co-ordination of export credit insurance;
Working party on financial questions;
Working party on economic questions;
Working party on atomic energy;
AAMS-OCT working party (Associated African and Malagasy States - Overseas Countries and Territories);
Budget Committee;
General Affairs working party;
Information working party.

In addition to these "permanent" working parties the Committee sets up ad hoc groups for the study of any particular question whose importance and scope extend beyond the province of one of the "permanent" working parties and which it is advisable to deal with from a general angle rather than entrust to several working parties. Present examples are the "Algeria-Morocco-Tunisia" and the "Austria" working parties. In 1965 working parties on patents and posts and telecommunications also met.

All these working parties place a fairly considerable technical apparatus at the disposal of the Committee of Permanent Representatives. Numerous national experts or delegates take part in them, without counting officials from the Permanent Delegations themselves. All this machinery could have a paralysing effect were it not for the intense activity of the Institutions and particularly of the Committee itself (sec. 26).

28. There remain the Committees set up by the Treaty or by the Council's own decision. It has sometimes been necessary to define the respective positions of the Committee of Permanent Representatives and of these "special" Committees.

As regards the Committees competent for economic and financial policy (Monetary Committee, Short-term Economic Policy Committee, Medium-term Policy Committee, etc.) no serious problem has so far arisen. These Committees are within the ambit of the Council and the Commission but enjoy fairly wide autonomy. On the other hand, once they have communicated their opinion to the Institutions they no longer have any direct part in the institutional procedure. It is quite possible, however, that adjustments will be necessary in the future when the Council's activities in the long or short-term economic policy fields increase. The need to improve methods of work in these fields became apparent as soon as the Council began regularly to debate economic policy. The Committee of Permanent Representatives was empowered to take the necessary action at the Council session of November 1964.

29. The special Committee on Agriculture and the Article 111 Committee also occupy a non-subordinate position alongside the Committee of Permanent Representatives.

It was the Government representatives meeting in the Council, who, in Article 5(4) of the decision of 12 May 1960 on the speedier implementation of the Treaty, laid down that the Council should immediately set up "a special committee to prepare its decisions in the field of agriculture".

The terms of reference given to the special Committee were therefore the same in its field as those of the Committee of Permanent Representatives ("to prepare business for the Council"). True, the special Committee's powers were limited to preparing the decisions of Council meetings on agriculture, but since it is not possible to distinguish between different types of Council and, a fortiori, to establish degrees of importance between them, in the event the special Committee was not subordinated to the Committee of Permanent Representatives.

The technical nature of the subjects dealt with by the special Committee for long prevented any overlapping of competence. After the first important developments of the common agricultural policy, an adjustment nevertheless became necessary. At its session of 1-2 April 1963 the Council confirmed that the special Committee was competent to examine agricultural questions and the Committee of Permanent Representatives to prepare all matters submitted to the Council. It noted that Commission proposals on agriculture could have other aspects to them besides the purely agricultural ones for which the special Committee was competent, and could therefore be examined by the Committee of Permanent Representatives. The opposite might be the case for general economic proposals with agricultural aspects to them.

This arbitration, which without establishing any subordination nevertheless gave the Committee of Permanent Representatives a higher "rank", has been applied on several occasions without any difficulty.

We may quote as examples of agricultural questions dealt with by the Committee of Permanent Representatives the arrangements to be applied to oleaginous products from the Associated African and Malagasy States (end of 1963), the amendments made early in 1965 to improve the effectiveness of Regulation No. 23 on fruit and vegetables, the discussions at the end of 1965 on reference prices for sweet oranges and, lastly, the great problem of the financing of the common agricultural policy (1965/66).

30. The situation is rather different as regards the Article 111 Committee. In conformity with Article 111(2) EEC, the Committee is appointed by the Council to "assist the Commission" in negotiations on the common customs tariff - negotiations which the Commission conducts "in consultation" with the said Committee.

The Article 111 Committee therefore has a function of its own with the Commission, in which the Committee of Permanent Representatives has no say. However, for practical reasons, the latter was called upon to take part in preparing the Council's discussions on the tariff negotiations. On several occasions it even reported direct to the Council.

So, since the end of 1963, the Committee of Permanent Representatives has been systematically preparing the Council discussions on the Kennedy round, using as a basis the reports of the Article 111 Committee. It thus maintains intact in this field the prerogative which the Council regulation gives it.

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III. THE CHAIRMANSHIP, THE SECRETARIAT-GENERAL OF THE COUNCILS AND THE REPRESENTATIVES OF THE COMMISSION

31. When discussing the Committee's rules of procedure we saw the influence of two other actors along with the Permanent Representatives themselves: the Chairman of the Committee and the Representative of the Commission. I would now like to describe their role as factors of understanding and Community progress whatever be the differences in their methods and resources and in the institutional basis of their activities.

The Secretariat-General of the Councils is another element, more in the background perhaps, but equally useful and important. At the same time as it gives general assistance to the Committee it helps the Chair particularly and may also act under the aegis of the latter. Its role will therefore be examined along with that of the Chairman.

A. The Chair and the Secretariat-General

32. As we have seen, the Chairman of the Committee of Permanent Representatives is the Permanent Representative (and the deputy Representative during the "first part") of the Member State holding the chair at the Council (sec. 23). This chairmanship is exercised for a period of six months, during which the Permanent Representative is replaced at the head of his country's delegation in the Committee by the deputy Permanent Representatives or by a leading official of the Permanent Delegation.

Does this system make for impartial chairmanship? True, the temptation exists to take advantage of the facilities of the chair, but let him who has never sinned in such office throw the first stone. ... After eight years' experience we can answer this question in the affirmative.

First of all, at the Community's rate of progress, the six months' period proved sufficient for getting things done, while being too short to allow of abuses.

Furthermore, the factor of continuity mentioned in sec. 6 above has once again helped to establish a "style" of Chairmanship. Ambassador Borschette, Permanent Representative of Luxembourg, is at present in his third year as Chairman. Ambassadors Van der Meulen, Boegner and Venturini have each already twice occupied the chair.

To define this "style" I would say that the Chairman desires that his period of office should be marked by some noteworthy Community advance and knows that to be active and fruitful it must be imbued with a Community spirit. He must therefore - within limits - "keep his distance from his own country's delegation, which for its part feels that it should be specially conciliatory. Although this balance is perhaps easier to find when a "small" country is presiding, it has nevertheless been achieved by each chairman in accordance with his own temperament.

33. The Chairman can call on the services of the Secretariat-General of the Councils, whose aid further strengthens the Community nature of his office.

The Councils' rules of procedure say practically nothing about the functions and responsibilities of the Secretariat - stating merely that "the Council shall be assisted by a Secretariat". The Council furthermore leaves the Secretary-General complete freedom in running the Secretariat, trusting in his independence and impartiality. Being thus placed in a very loose legal framework, but involved in all that happens within the Communities, the departments of the Secretariat-

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General have gradually developed a team spirit, a joint feeling for their duties and responsibilities. They are the servants of the Councils, but they also feel themselves the servants of the Communities, and this dual loyalty inspires the reflections and suggestions they submit to the Chair, independently of the outstandingly effective technical aid they supply to the Committee.

34. The rules of procedure do not give any indication as to the functions of the Chairman of the Committee, and what they lay down regarding the powers of the President of the Council is purely formal. The constant presence of the Ambassadors in Brussels and the frequency of Committee meetings have considerably enhanced the position of the Chairman of the Committee. Apart from the conventional task of seeing that discussions are properly conducted, his responsibilities may be placed under three heads:

- (i) He organizes the work of the Committee and of the working parties subordinate to it;
- (ii) He looks to liaison and contacts;
- (iii) He is at once a driving force and a mediator.

Organization of work

35. We have already pointed to some of the responsibilities of the Chair: to remit a question to a working party, to distribute business between the two parts of the Committee meeting. More generally the Chairman draws up the Committee's agenda and co-ordinates the programmes of the various subordinate working parties so that priority matters are dealt with expeditiously (all these working parties, like the Committee itself, are presided over by representatives of the State in the Chair at the Council, and this facilitates co-ordination).

Of course the choice of priorities does not depend on a unilateral decision by the Chair: each delegation and the Commission has its say. However it is seldom that there is any discussion at a meeting on a detailed working programme - or if so it is a sign that a crisis is beginning or that a crisis is ending. By hearing the opinions of his colleagues and the Commission, the Chairman can in normal times use his tact and wisdom in finding arrangements acceptable to all parties. Moreover certain priorities are automatic. For others the Chairman's political judgment will avoid much controversy that leads nowhere.

The weeks just past have supplied a further proof of the political responsibility thus assumed by the Chair. It was on the wise leadership of the Luxembourg Chairman that the Member States relied to ensure the execution of the decisions of January 1966, i.e. to reconcile respect for a given priority and parallel action on different problems. Events have already proved that this was the right method - and it was doubtless the only one possible.

36. The Chair convenes the Committee and the working parties just as the President of the Council convenes the latter. This factor played a certain role during the Community crisis in 1965: the Chairman of the Permanent Representatives Committee maintained the meetings which he had already convened and the President of the Council fixed the date for the session of 26 and 27 July and the following ones without any express agreement of the other members being necessary.

However, the Chairman must convene the Committee (or its "permanent" working parties) if any delegation asks him to do so, even though, as the Permanent Representative of a country, he is opposed - and even strongly opposed - to holding a meeting. This is not a purely theoretical point: a case of this kind actually occurred, and the Chairman in office, after reflection, settled it in this way.

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Liaison and contacts

37. The Chairman's role in maintaining liaison should not be underestimated. He is the obvious person to talk to and a natural adviser who is heeded as much by his colleagues and the Commission as by many third parties outside the Institutions. I will confine myself to a few examples.

It has become a tradition for the President of the EEC Commission to receive the Chairman of the Committee of Permanent Representatives each week. This meeting, which is always fairly long, affords an opportunity to exchange information or impressions on important current or future business, to discuss difficulties and possible solutions, and, where appropriate to co-ordinate the efforts which the Chairman of the Committee and the Commission will make in their respective fields to bring about any necessary decision: the procedure is discreet but extremely useful.

The Commission representative in the Committee of Permanent Representatives is also in constant touch with the Chair either directly or through the Secretariat, in particular in the search for a satisfactory settlement to the numerous problems of organization and co-ordination posed by the participation of the Commission and its departments in the Committee's work.

In dealing with his fellow Committee members, the Chairman has a feeling for unformulated desiderata and requests. He knows where attitudes are reserved. He knows how to take account of and interpret remarks made in confidence. On many matters he can foresee what the consensus in the Committee is likely to be and make the necessary conciliatory moves to enable this orientation to emerge. He is a link, a mediator and a guide, and he knows how to use the marvellous instrument of procedure in a meeting of diplomats to soothe ruffled tempers and compose divergent views.

The Chairman also plays a special part in relations with the Associated States (the African and Malagasy States, Greece, Turkey). He himself or his representative is the spokesman of the Community in the

Association Councils or Committees and maintains links with these countries' delegates to the Community, whether it be to organize the work of the institutions of the Association or to iron out difficulties.

Impulsion and mediation

38. Finally, the Chairman's office is an active one. He has to judge when a matter is ripe and it becomes useful and possible to try to clinch it. If the dossier is compendious and complicated the Chairman will keep discussion going at a pace which makes possible a wide area of agreement on minor points in a short time and thus open the way to more important decisions. In other cases he will present a "compromise from the Chair" as a basis of agreement. In this matter it is interesting to note analogies and differences, between his action and that of the Commission representatives.

Both have greater freedom of manoeuvre than the members of the Committee, who must uphold specific and sometimes narrow interests. Any concession they make is a point scored by the other delegations, and any position once taken up is binding for the rest of the discussions. The Commission representative for his part mainly endeavours to obtain the optimum agreement from the Community angle, and this often leaves him fairly wide scope for manoeuvre on details. As to the Chairman, he has neither national interests to defend directly nor concessions to make or withhold.

However, the Commission representative is bound by the latter's instructions, even if the Commission authorizes him to give, without committing it completely, a sort of "technical aid" to the Committee to promote agreement, while leaving him some latitude in relation to its initial proposal. Although he is thus less free, the Community backing he gives to the solution he advocates or supports may have great value for certain delegations.

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The Chairman has a freer hand. His chief concern is to arrive at a reasonable agreement, even if he deviates from what the Commission has proposed. He is not absolutely tied to any compromise he has one day submitted and can explore in succession the various courses of action possible. This does not mean that he would put forward any and every compromise solution offering, for in his position he is conscious of his Community responsibilities. The Secretariat of the Council, which assists him and whose imagination is often fertile, is equally uninhibited in its thinking and shares the same concern for Community interests.

To the hearing he gets because of his personal authority and his office, the President adds that strength which derives from any appeal to understanding. In his more modest position as a guest the Commission representative is, however, more demanding. His role is to try to lead the Committee towards the highest possible level of agreement and to get them to look beyond their national interests, without being in a position to offer anything in return except the Community advantage.

Thus, compromises which are conceivable for the Chair could be unacceptable to the Commission. A Chairman who was no more than an "agreement technician" might even upset the dialogue between Member States and common institutions and thus throw the delicate machinery of the Community out of gear. The Chairman's Community spirit, which no text defines, but of which there has never been any lack - is the only thing which makes it possible to surmount and even to ignore such a risk. A de facto understanding is established between the Chairman and the Commission representative. The Chairman will protect the Commission, will underpin its efforts, will take his stand on its arguments and, by his agreement, will help to weigh the balance in favour of the suggestion it advances. Conversely, when a compromise from the Chair, even if it does not go as far as the initial Commission proposal, offers the only possible solution, the Commission representative will be able to support it although it would have been difficult for him to make it.

B. Representation of the Commission

39. Being conscious of the importance of the Committee of Permanent Representatives, the Commission lost no time in taking special measures to give continuity and effectiveness to its representation therein.

During the weeks which followed the establishment of the Institutions, the Chief Executive Assistant of one of the members of the Commission was responsible for liaison. Then, as soon as the first services were organized, the Commission gave its Executive Secretariat the task of representing it permanently in the Committee. This arrangement was applied from the outset by the Euratom Commission. In EEC the deputy Executive Secretary has this special responsibility, which the Executive Secretary also assumes for certain problems in accordance with the internal distribution of work. The head of division of the Executive Secretariat responsible for relations with the Council fulfils this same function with the deputy Permanent Representatives.

The Executive Secretariat ensures permanent representation but obviously is not alone responsible for it. For each point of the Committee's agenda the competent Commission departments are represented, often at high level. The representative of the Executive Secretariat and those of the departments share the task as required by the problem under discussion.

40. The arrangements made by the EEC Commission have also aimed at ensuring the most rapid and direct liaison possible. The Executive Secretariat draws up a brief memo summing up the discussion on each question in the Committee and this appears on the agenda of the next Commission meeting. For its part the Directorate-General concerned, which has also taken part in the Committee meeting, will have briefed

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the competent Commission member on appropriate suggestions. In this way, not only is the Commission informed, but it can if necessary act forthwith and given immediate instructions to its representative. The time-tables for weekly meetings both of the Commission and of the Committee of Permanent Representatives favour such rapid reactions from week to week.

The fact that the Executive Secretary and his deputy are present at all Commission meetings puts them directly in the picture as to the general thinking and main concerns of the latter, and this helps to guide their action in the Committee or, where necessary, enables them to advise the Directorates-General.

The Commission thus keeps in very close touch with all discussions in the Committee, where it can at any time make its point of view heard through representatives with full powers whose actions it never loses sight of and who are supplied with specific directives, particularly when compromises are being worked out in the Committees (sec. 38).

41. The Commission is represented in the Committee only by officials. On the Committee side the question has sometimes been raised of having members of the Commission themselves at certain deliberations. The Commission has preferred meetings on specific matters between its competent member, on his invitation, and the Permanent Representatives.

In recent years this approach has been used at irregular and rather long intervals without yielding conclusive results. The meetings have served either to provide direct information on a precise point - but with the Permanent Representatives not yet in a position to act - or for more general discussion which has rarely reached the stage of formal conclusions.

Just as it would be inappropriate for members of the Commission to be present during the slow progress of a dossier towards final decision in the Committee, it might equally well be that a discussion between Permanent Representatives and the competent Commission member would not be unprofitable when possible solutions are appearing and compromises are in the offing. However, the practical difficulties should not be underestimated if it is desired to respect the prerogatives of the Commission and allow for the exigencies of the Committee's work. Thus, rather than look for radical changes with all the questions of principle they can bring up, it would be better to continue to improve pragmatically the functioning of the present procedures, which have proved not without efficacy, by seizing every favourable moment to try out adjustments.

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IV. WORKING METHODS OF THE COMMITTEE OF PERMANENT REPRESENTATIVES

42. It now remains for us to see how the Committee of Permanent Representatives fulfils its dual role of preparing business for the Council and executing the tasks for which it is itself responsible.

These tasks are difficult to distinguish. The majority concern studies or drafting work with a view to new Council deliberations. They are one way in which the Council's work is prepared.

However, on instructions from the Council, the Committee performs various executive tasks. For example, it will draft a communication which the President of the Council is to address on behalf of the latter to another Institution, a non-member state or an international organization. It will lay down details of a decision whose main lines have been discussed in the Council (for example, fixing certain details of the draft budget for submission to the Parliament after the Council has decided on the main heads of expenditure). However, respect for the principles already recalled (sec. 21) sets narrow limits to what the Committee can undertake in this field. Its instructions from the Council cannot include any delegation of powers, so that executive tasks are of only minor importance in relation to its other responsibilities.

43. A slight extension of this aspect of its terms of reference has nevertheless made the Committee a centre for co-ordination or confrontation. Information is exchanged there and thus transmitted rapidly and less formally: it may concern representations made to a Member State or the Commission, an initiative taken or a visit received. All this exchange of information comes under the "other business" heading on the agenda, the wording of which ensures discretion and flexibility.

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The day-to-day problems of the Institution are also normally settled in the Committee, particularly the details of relations between the Council and the Commission and the exact delimitation of their activities when this does not flow (or does not flow clearly) from the Treaty rules. Who will represent the Community at the session of an international organization and who will be the spokesman - the representative of the Member State in the chair at the Council or the representative of the Commission? Who will send a communication on behalf of the Community - the Commission or the President of the Council? Will a move be made in isolation by each Member State or collectively for the Community, and by whom? In all these matters general formulae have been discussed with the Commission in the light of typical instances in the Council. It is not always easy to apply them to specific cases, and these "demarcation disputes" (in fact they generally concern external relations) are not the least irritating among those which arise.

In matters of this sort the Permanent Representatives Committee generally react in a Community spirit in that it supports a solution which gives precedence to the Community rather than to the Member States. On the other hand, if the choice is between two Institutions it will quite naturally defend the Council's prerogative against encroachments by the Commission with all the rigour - and sometimes severity - which its detailed knowledge of the intimate affairs of the Community justifies. This is one of the most frequent causes of tension between the Commission and the Committee.

In theory it would be possible to bring about discussions in the Council on such points. In practice it quite often happens either that time does not permit, or that the matter is of such slight importance that a tame compromise is preferable to a good lawsuit. These adjustments in the Committee do not figure in the golden book of good relations between the Institutions, but although they have caused a few abrasions, no one has ever been really injured.

The Committee is sometimes the setting chosen by the Governments to express their reservations on a measure taken, or even a declaration made, by the Commission in the hope that they will there obtain the support of other delegations - which is sometimes the case. This is a practice at which the Commission has always shown some impatience, since it considers, not without reason, that the Committee is not its censor and that in such cases it is for the Member States which wish to do so to refer the matter to it direct. Such manifestations of mutual ill-humour are fortunately rare.

Mandate to prepare work and right of initiative

44. The preparation of the Council's work by the Committee could give rise to certain problems of principle. As a general rule the Treaty provides that Council decisions shall be taken on a proposal from the Commission. Is there not a risk of the Committee of Permanent Representatives substituting itself in a way for the Commission, either by drawing up in its stead projects for Council decision or replacing the Commission proposal by another wording which would be tantamount to setting aside this proposal even before the Council had discussed it.

There can be no gainsaying that technically such a possibility exists. While recognizing this, we must at the same time state that it has never materialized in the eight years during which the Institutions have functioned. Credit for this is due in part to the Committee itself and in part to the Commission. Either the Committee as a whole or, depending on the problems, one or other of its members, has always insisted that discussions should only begin on the basis of a Commission proposal or communication. Even in matters where a Commission proposal was not legally necessary the Committee has always wanted to have one. The Commission for its part has been diligent and efficient in not

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resting lazily on those Treaty articles which enshrine its rights and in retaining, or constantly taking, the initiative. As a result, when the Council instructs the Permanent Representatives Committee to prepare for it a study or a draft decision on a matter for which the Treaty does not require a Commission proposal (for example terms of reference for the Commission in negotiations) it is very rare for the Commission's aid not to be expressly requested or for the Commission itself not to announce that it will shortly make a contribution to such studies.

45. When matters in which the decision can only be taken on a Commission proposal are at issue, the permanent participation of Commission representatives in the Committee's discussions and the attention with which these are followed by the Commission (sec. 40) generally suffice to forestall any difficulties. The Commission is always prepared to participate in adjustments to its initial proposal which do not distort its meaning, if these can advance final agreement. The report of the Permanent Representatives Committee to the Council will thus often mention amendments which have been agreed to by the Commission representative, and the Commission will later confirm this agreement either in writing or verbally in the Council, thus modifying its original proposal in conformity with Article 149 (second paragraph) EEC or 119 (second paragraph) Euratom.

It may, however, happen that the whole Committee of Permanent Representatives or a clear majority of them take a determined stand against a Commission proposal and endeavour to frame - where necessary on the basis of a "compromise from the Chair" (sec. 38) - a sort of "counter-proposal" for reference to the Council. True, the Commission proposal will always remain in the Council's files and the Commission will be able to uphold it before the Ministers, but this prerogative can be rather theoretical if an agreement on quite different lines has already emerged before the Council session.

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Such a situation has occurred only rarely since 1958 and then in matters of only middling importance. In each case a reasonable solution has been found without raising any problems of principle. Sometimes unanimous agreement was not reached in the Council on the possible "counter-draft", and sometimes the Council has agreed to take sufficient account of the Commission's desiderata for the latter to admit that the decision remained within the framework of its initial proposal, even though it was opposed to the amendments introduced.

This is an encouraging omen for the future. If, however, a debate on principles were to begin the Commission would not be completely unarmed. The Council's right under Articles 149 (first paragraph) EEC and 119 (first paragraph) Euratom to modify a Commission proposal by unanimous vote is not an unlimited one. To exercise it by radically transforming the Commission proposal or profoundly modifying its legal basis would be an abuse which could vitiate the decision and make it null and void. A decision reached by the Council on the basis of a text, established outside the Commission and without its agreement, which constituted not a mere amendment but a basic change in the Commission's proposal, would also be out of order.

Points "A" on the agenda and written procedures

46. Now that these difficulties of principle are out of the way, we come to the practice followed in preparing a Council session. It is the legitimate wish of the Commission that its proposals be discussed in the fullest detail by the Ministers themselves. At the same time it is conscious that there are material obstacles to this. It therefore shares the concern of the Ministers and their Permanent Representatives that Council sessions should deal with a small number of problems of great political or economic moment in such a way as to permit thorough discussion at this level, which alone makes possible substantial Community progress.

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The Commission therefore associated itself with the studies undertaken, particularly in 1960 and 1962, to improve the Council's methods of work, with the proviso that the responsibility for decisions remained completely with the Ministers and that the Commission's right to table any matter within its competence in the Council itself was not called into question. These studies led to the establishment of the points "A" agenda procedure which takes its place beside the "written procedure" already laid down by the standing orders of the Councils.

Questions on which unanimous agreement has been reached between the six Members in the Committee of Permanent Representatives are entered as points "A" on the Council agenda. These points are taken as read by the Council unless one of its members or the Commission asks for a discussion, in which case the question at issue is held over to a subsequent session. This procedure has now been made even more flexible, so that it is interpreted rather as a unanimous renunciation of any discussion in the Council, thus making it possible to adopt without debate certain decisions - true, on secondary questions - which have not been agreed to by all the members of the Committee or, where appropriate, of the Commission. The relevant statements of the minority or abstaining members of the Council (or of the Commission) are included each time in the Council's minutes.

The written procedure consists of obtaining the vote of Council members on an urgent matter in writing. To initiate such procedure the agreement of all the Council members is necessary, and that of the Commission also if the question is within its competence (for instance, one on which the Commission has made a proposal).

47. The points "A" system, like the written procedure, appreciably reinforces the role of the Committee of Permanent Representatives. For the "A" points of its agenda the Council, with the Commission's assent, purely and simply approves the agreement reached in the Committee of Permanent Representatives. In practice the written procedure also is initiated only on a text on which there has been general agreement in

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the Committee. Although a majority vote can be secured in writing, the requirement of prior agreement to the initiation of the written procedure by all concerned limits this possibility to secondary questions (as in the case of points "A").

The great frequency of Council sessions has appreciably reduced recourse to written procedures. It is generally quicker to obtain the urgent decision desired as an "A" point of the next Council meeting, even if this has been convened to deal mainly with specialized questions of a different nature.

To a fairly large extent the "A" points have become the special field of the deputy Permanent Representatives, the Permanent Representatives themselves reserving the more important questions likely to involve political discussions in the Council. In defining the nature of the "A" points we could therefore use roughly the same terms which serve to specify the tasks of the deputy Permanent Representative (sec. 25). In fact, the "A" points cover procedural decisions (consultation of the Parliament or of the Economic and Social Committee, for example) current administrative decisions (replacement of committee members, transfer of appropriations, etc.) and decisions of substance which are sometimes important but generally more technical than political. A few figures will show how this procedure is applied.

48. In 1964 (when the Council held 36 sessions) 138 questions appeared as "A" points. During this same year the total number of items on the agenda of the Council sessions (apart from such purely procedural points as the adoption of the agenda, "other business", etc.) was 192. This shows how greatly the Council discussions were alleviated by this procedure.

Since this system has been in full operation, the Council (particularly in its "general" sessions with the Ministers of Foreign Affairs or Economics) has discussed only major problems or such as

are at least of genuine political importance for a Member Government or for the Commission.

To quote another example there were 28 "A" points on the agenda of three Council sessions chosen at random between 1 February and 2 March 1965. Eleven of these were procedural decisions, seven were on current administration and ten were "technical" decisions of some importance.

"A" points are not often deferred but the possibility that they may be is real. In 1964 for instance five points, all concerned with "technical" arrangements, were deferred after requests for further clarification and finally approved as "A" points at a later Council session. The habit which has now grown up of reserving the Council's "general" sessions for important questions only has in fact considerably increased pressure to reach agreement in the Permanent Representatives Committee itself.

49. The written procedures are used much less frequently. Questions of accreditation (opening of a mission by a non-member State and agrément of a head of Mission) are always settled by written procedure, which has the advantage of being very discreet. Apart from this, it is only used in the fairly rare cases where no Council sessions are scheduled early enough for a point "A" decision to be possible.

In this way, in 1964, 26 decisions were adopted by written procedure, of which 20 concerned accreditation (this figure may be compared with the 138 "A" points). In the first half of 1965 10 decisions were made by this procedure, three of them concerning accreditation.

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