IS THE ORGANISATION OF PETROLEUM PRODUCING COUNTRIES A CARTEL, WHAT ACCOUNTS FOR ITS SUCCESS?

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By

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CHAPTER I: INTRODUCTION

I first learnt of the Organisation of Petroleum Exporting Countries in 1973 . The organisation which the newspapers popularly phrased O .P E.C in their headlines was new to many people including myself . I was not quite sure what this organisation was all about and why it had gained so much prominence in the world press. The Kenya newspapers like their counterparts in the world gave a very wide coverage of this organisation, which seemed to be identified with the Arabs. A few years ago, that is 1968, 1969, 1970 we would read of the war in Vietnam and when the war ended the cry about oil and the high prices took a very high proportion which seems to be getting higher and higher .

It is the plight of motorists, the hopelessness and desperation spelt across their faces that forced me to take a keen interest in this organisation. I was also bewildered at the amount of power this organisation was capable of weilding, it was a power capable of wrecking the economies of the world, obviously a very big risk to international peace and security, oil became everyones major concern. For Kenyans who do not own vehicles like myself everytime the price of oil would go up the fares would also be increased, and this is the position to this day.

The Arabs, despite this have been attempting to convince the third world consumers that they are the champions of the new economic order. At a meeting in the U.N . the late Houari Boumedienne of Algeria called third world primary producers to

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form their own Cartel for their coffee, iron, bauxite, and copper (see the seven sister: P 354-6). The Arabs took over a "Cartel" already set up by the seven oil companies in the world (Exxon, Gulf, Mobil, Socal, Texaco, British Petroleum - B P. The Royal Dutch Shell) with a market allocation system well established, but who can do this for the primary producers? This also begs the question how legal it is to form Cartels for the worlds most needed commodities. Such an action destined to wreck the economies of the countries in the world is contrary to the U.N Charter on declaration on principles of International Law concerning friendly relations and cooperation among states 1970. There is nothing wrong in forming a Cartel but when members act arbitrarily coercing states, and imposing embargoes, then certainly this is in contravention of international law and a defiance to the above named U N resolution, consequently a threat to International security.

In this dessertation, I have attempted to examine the Organisation of Petroleum Exporting Countries to see whether it is a Cartel or not, and if it is how effective is it. The Arabs have popularized their organization as one, so my immediate task is to explore the validity of the claim. My other major concern is to find out why O.P.E.C. has been so successful, and whether the success is due to political or legal factors . I have also examined how the legal treaties adopted at various conferences work whether bilaterally or unilaterally, and if so the reasons for such a move.

In my Chapter two there is a definition of a Cartel. Since these tendencies were first legislated against in the U.S. I decided to write briefly on anti-trust laws. There is also some material on American jurisdiction over foreign companies in anti-trust cases.

The Third Chapter is a lengthy examination of the European coal and steel community (E.C.S.C.) which has power similar to those found in a private Cartel. I decided to write on it because it provides an excellent layout on how the organization with power similar to that of a private Cartel works. There is policy co-ordination, maximum efficiency and a very effective High Authority which serves as the court for (E.C.S.C.). I feel it should form a good contrast to O.P.E.C. which has been labelled on numerous occasions as a Cartel. This organisation (O.P.E.C.) has succeeded not because of its Cartel characteristics but due to the economic factors that prompted its formation. Such is the demand for oil in the world that by using it as their weapon, the oil producers can dictate terms and prices to the whole world, thereby claiming that the oil producers have formed a Cartel. The producers took over from the seven major oil companies popularly known as the seven sisters. These companies dominated the trade in oil for almost fifty years, and by the time they lost their business to O.P.E.C. formed a market allocation system. I have also examined the reasons that led to their great success.

In my dessertation I decided to include the 1973 oil embargo because of the terrible effects it had on some countries. I appreciate the fact that the embargo was placed by the Arab producing states only, but the gist of the matter lies in the fact that the Arab producing states are also members of O.P.E.C. These states (Arab) are so

important in the field of production and export that it would be pretensious to imagine that the exporting countries (non-Arab) can meet the worlds demand in oil without the Arab States. Even in the minds of people, O.P.E.C. and the Arab States go hand in hand. After all it is the Arab oil producing states that have given O.P.E.C. the efficacy it has and prominence. Origin, background and status of organisation of petroleum exporting countries 2.

The Organisation of Petroleum Exporting Countries (O.P.E.C) was established by the convention drawn up at a conference held in September 1960 in Baghdad by representatives of Iran, Iraq, Kuwait, Saudi Arabia and Venezuela, and approved in January 1961 at a conference in Caracas. It came into force on May 1, 1965.

In 1949, Venezuela had approached the other countries to explore avenues for closer communication. In 1959, the first Arab Petroleum Congress in Cairo called on oil companies to consult producing countries before-making price alterations. After further price reductions by oil companies in 1960, consultations were initiated between the producing countries to consider measures for coping with price fluctuations.

Full members of the organisation are the founder members and countries whose application for membership has been accepted by the conference. Other countries may become members or associate members, provided their interests and aims are similar to members, for instance - article 7(c) of the statute of O.P.E.C states aims as follows:

"Any other country with a substantial net export of crude petroleum , which has fundamentally similar interests to those of member countries, may become a full member of the organisation, if accepted by a majority of three fourths of full members, including the concurrent vote of all founder members . The statute further provide that if, "following a decision of the O.P.E.C., sanctions are employed by any oil company or companies against a member, other members shall not accept any other beneficial treatment". Members may withdraw within one year's notice , (article 8)

Members of O.P E C are:

Venezuela

Saudi Arabia

Kuwait

Qatar

United Arab Emirates

Algeria

Libya

Indonesia

Nigeria

Iran

Iraq

Ecuador

Gabon

The aim of the organisation is the coordination and unification of petroleum policies of members in their best individual and collective interest, the finding of ways and means to ensure stabilization of prices in international oil markets. The organisation is guided by the principle of sovereign equality of its members (article 3)

The conference is the supreme authority of the organisation and consists of delegations representing members, each member having one vote; all decisions other than procedural require unanimity. The conference meets twice a year. (article 10)

The Board of Governors is composed of Governors nominated by member countries and approved by the conference, each member having one vote and decision being taken by majority vote . It meets at least twice a year. (article 18)

The secretariat; the Secretary General is appointed by the Conference for a term of three years, renewable once. The division of the secretariat into departments is as follows: The Secretary General shall be assisted by the Deputy Secretary General, and Administration Department, a Technical Department any other department the conference may see fit to create and his own office. (article 33).

The Administration Department is described in (article 34) sub (1) it shall be responsible for all organisation methods, general and conference services, personnel matters, budgets, accounting and internal control.
Sub 2) study and review general administrative policies and industrial relations method used in the oil industry in member and other countries, and advise member countries of any possible improvement; and sub (3) keep abstract of the current administrative policies and for policy changes occuring in the international petroleum industry which might affect the organization or be of interest to it .

The economics department shall among others review the economics aspect of the world petroleum industry, with a view to ascertaining where the best interest of the member countries lie.

The Legal Department: shall: among others review the legal aspects of the world petroleum industry and carry out a continuous programme of legal studies of particular aspects of the international petroleum industry, with a view to ascertaining where the best interest of the member countries lie;.

The information centre, shall have library facilities and a documentation centre to create a central pool of information for the member countries and the public at large.

The Technical Department, shall review the technical aspects of the world petroleum industry.

Finally Article 39, empowers the Secretary General to commission consultants, as necessary, to advise on special matters or to conduct expert studies when such work cannot be undertaken by the Secretariat the Secretary General may engage such specialists or experts, regardless of nationality, as the organisation needs, for a period to be approved by the Board of Governors, provided there is a provision for such appointment in the budget. He may also, convene working parties to carry out any studies on specific subjects of interests to the member countries. His duties are spelt out by article 29

(1) organize and administer the work of the organisation

(2) ensure that the functions and duties assigned to the different departments of the secretariat are carried out;

(3) prepare reports for submission to each meeting of the Board of Governors concerning matters which call for consideration and decision

(4) inform the Chairman and other members of the Board of Governors of all activities of the secretariat.

(5) ensure the due performance of the duties which may be assigned to the secretariat by the conference of the board

of Governors.

Article 40, establishes the consultative meeting, composed of Heads of Delegations or their representatives. The consultative meeting may pass decisions or recommendations to be approved by the next conference.

The Conference has power to appoint specialised organisations in order to assist in resolving certain problems of particular importance within the general framework of the Secretariat of the organisation.

There are two levels of meetings, there is the Ministers Meetings and High officials. There is also occasional meetings of Heads of State, for instance during the reign of the late Colonel Houri Boumediene of Algeria, this Heads of State Meeting was held at Tripoli in Libya. The main decisions are made by the Ministers and High Officials Meetings. And decisions are binding to those who agree to be so bound. This was the position in 1976 when Saudi Arabia and Kuwait refused to go by the majority price increase. Similary in the year 1977 a two-tier pricing system was introduced when Saudi Arabia the leading exporter and producer of crude oil refused to increase her oil prices. This was motivated by the good relations existing between her and Washington. It was the fear that U.S. might take retaliatory moves and refuse to export to her military armaments . . . which she was depending on.

The absence of a High authority to deal with members who refuse to go by the resolutions of the majority is a big blow to the organisation, and can cause the disintegration of O.P.E.C. Against this background we examine the concept - of a Cartel.

CHAPTER II: CONCEPT OF A CARTEL

"A Cartel is a formal organisation of the producers within a given industry."[3] Similarly when a collusive arrangement is made openly and formally, it is called a Cartel.[4] Such collusive arrangements whether secret or open, were declared illegal in the U.S by the Sherman anti-trust act of 1890.[5] The General prohibition of contracts and conspiracies in restraint of trade - In (s) 1 of the Sherman act applies not only to trade "among the several states but also to trade "with foreign nations". A number of anti-trust cases have been concerned with trade with foreign nations with restrictive agreements between American and foreign firms, with the operations of American companies, and their local subsidiaries in foreign markets, with foreign companies run jointly by American firms and their international competitors and so on.[6] Despite this legislation some types of Cartels have the official sanctions of the U.S Government. i.e the airlines flying trans-antlantic routes are members of the international air transport associations, which can agree on uniform prices - for trans-antlantic air routes.[7]

The legislation has not been very successful however in its dealing with foreign companies outside its jurisdiction - Such companies have defied grand - jury subpoenas served on them to release their documents. This was the position seen in 1947 when subpoenas were served on Canadian companies and individuals in the newsprint industry, the provincial governments of Ontario and Quebec both passed special enactments to prevent the removal of the documents from their provinces. The subpoenas were subsequently withdrawn.[8]

Still more recently, the Department of justice started a grand jury investigation into restrictive agreements affecting international trade in oil, subpoenas were served on the Anglo-Iranian Oil Company and other foreign companies, requiring the production of many hundred of documents. The investigation was directed specifically and exclusively to operations outside the U.S. on the part of certain American and foreign oil companies. In this instance the British, Netherlands, France, Belgium, India and Pakistan Governments all issued directives to companies under their jurisdiction that the subpoenas should not be obeyed.[9]

At this point it would be appropriate to examine different kinds of Cartels. There are two types of Cartles which are very common the first exercises complete control over member firms, and is called the "Centralized Cartel". The second illustrates cases in which fewer functions are transferred to the central associations and is designated as the market - sharing Cartel. In the centralized Cartel the decision making with regard to pricing, output, sales and distribution of profits is accomplished by the central association, which markets the products, determires prices, determines the amount each firm is to produce, and divides profits among member firms.
Member firms are represented in the Central Associating and Cartel policies presumably result from exchanges of ideas, negotiation, and compromise. However, a firms power to influence Cartel policies is not necessarily proportional to its representation in the Central Association. Its economic power in the industry may significantly influence Cartel policies

The market sharing cartel is a somewhat looser form of organisation The firms forming the Cartel agree on market shares with or without an understanding regarding prices Member firms do their own marketing but observe the cartel agreement [10]

The O P E C countries impose an excise tax of so many cents per barrel on each barrel of oil produced in their country. By increasing these taxes, the O P E C countries can increase the price of crude oil, since no company can afford to sell oil for less than the production costs plus the tax The O P E C "Cartel" has pushed the crude oil price up toward the monopoly level, and this has increased their tax revenues.

Although we can classify O P E C as falling within the ambit of a "Centralized Cartel", the practice is if a member does not want to abide by the resolution of the majority that member will not be bound. As a result there is "Chiselling" and carrying under - courter - prices

CHAPTER III: EUROPEAN COAL AND STEEL COMMUNITY

The European coal and steel community, was founded on April 18, 1951; by a treaty signed between six European Nations. The treaty was further amended in April 1965; again on April 22, 1970; the final amendment was on January 1972. The signatory powers constituting the European coal and steel community are as follows: The German Federal Republic; Belgium, France, Italy, Luxembourg and the Netherlands, Britain Ireland, Denmark and Greece.

The aims and objectives of the European coal and steel community (hereinafter referred to as the community) are spelt out in article 2, 3, 4 which form the basis of this treaty. The aim of this chapter is to summarise these aims and objectives, as well as to examine whether the community does have power similar to that of a private cartel.

On the very outset, it is clear beyond doubt that the aim of setting up such an organisation is for economic ties between the signatory powers and consequently economic development in these Nations.
Article I: Briefly states,

> "by the present treaty the High contracting parties institute among themselves a European Coal and steel community, based on a common market , common objectives, and common institutions".

Article 2:

> "The mission of the European coal and steel community is to contribute to economic expansion, the development of employment and the improvement of the standard of living in the participating countries through the Institution, in harmony with the general economy of the member states, of a common market as defined in article 4..."

The community in article 3 has within its framework, its respective power and responsibilities spelt out, the guiding principles in fixing the price for its products, And in doing so, it apparently absolves itself from forming what would appear to be a private Cartel, by legislating against such an action.

Article 4:
lays down actions which would be incompatible with the common market. Sub a) prohibits imposing of import and export duties, or charges with any equivalent effect. Sub b) prohibits discriminating measures against the consumers specifically as concerns prices..." Sub d) prohibits restrictive practices that tend to divide the market or the exploitation of the consumer.

Article 5:
provides when the community can intervene due to matters pertaining to general objectives and competition.

By Article 47: of the treaty, the High Authority has power to gather any information considered necessary for the well being of the community. By the same token, the Authority shall not divulge any secret, and information pertaining to the commercial relations or the breakdown of the costs of production of enterprises.." Any violation by the High Authority of professional secrecy, which has caused damage to an enterprise may be the subject of a suit for damages before the court, under conditions provided for in article 40.

Article 48: gives enterprises the right to form associations, and associations may engage in any activity which is not contrary to the provisions of the present treaty, and the interests of the workers and consumers is highlighted by the article.

Article 49: empowers the authority to procure funds necessary to the accomplishment of the Mission. By placing levies, grants and borrowing.

Article 53: without prejudice to the provisions of article 58 and of Chapter V of title three, the High Authority May: authorize the institution of any financial mechanisms, common to several enterprises which are deemed necessary for the accomplishment of the mission.

Article 54: By this article, the High Authority, may do such acts as to promote the increase of production, lower production costs or facilitate marketing of products subject to its jurisdiction.."

If the high authority finds that financing such a programme or the operation of the installations which it entails would require subsidies, assistance protection or discrimination contrary to the present treaty, the unfavourable opinion taken shall have the force of a decision as defined in article 14, and shall have the effect of prohibiting the enterprises concerned from resort to resources other than the own funds to put such a programme into effect.

Article 55: " The High Authority shall encourage technical and economic research concerning production and development of consumption of coal and steel.."

Article 56: If the introduction of Technical process or new equipment with the framework of the general programmes of the High Authority, should have adverse effects, in terms of the workers employed, the High Authority will follow provisions of article 54, and the advice of the consultative committee.

Article 57: relates to production, and in this field of production, the High Authority shall give preference to the indirect means of action at its disposal, such as co-operation with governments to regularise or influence general consumption particularly that of public services. It shall intervene in so far prices and commercial policy are concerned.

Article 58: provides for the means to be taken by the High Authority, if there is a decline in demand, and the community is faced by a crisis, and if provisions provided for by article 57 cannot alleviate the crisis, then after consulting with the consultative committee and with the concurrence of the council, a system of production of quotas shall be established accompanied to the extent necessary by the measures provided for in article 74. This would off set the problems brought about by the decline in demand.

Article 59 sub (2) empowers the council and in consultation with the High Authority – the council shall establish consumption priorities and determine allocation of the coal and steel resources of the community, among industries subject to its jurisdiction, exports and other consumption. Sub (4) and (5) The High Authority is given power to allocate equitably among enterprises – quantities earmarked for the industries under the jurisdiction. If the situation described in S (1) that is, the community faced with a serious shortage of certain or all the products, and the means provided for in (s) 57 are not enough then with concurrence of the council and the consultative committee there shall be restrictions on exports to third countries in conformity with Article 57.

Article 60, declares pricing practices contrary to provisions of Article 2, 3, 4 prohibited, this entails competitive practices with the aim of creating a monopolywithinthe common market. Also, discriminatory practices involving application by a seller within the single market of unequal conditions to comparable transactions, especially according to the Nationality of the buyer sub (2) price scales shall be made public to the extent and in the form prescribed by the High Authority and an enterprise is forbidden from choosing an abnormal base point, but must follow the recommendations of the High Authority.

Article 61: Also deals with fixing of prices and the factors to be taken into account.

Article 65: deals with Agreements and concentrations. Sub (1) forbids all agreements among enterprises, all decisions of associations of enterprises and concerted practices, which would tend to restrict normal operation of competition within the common market. The section expressly forbids influencing of prices restricting or controlling of production, allocating markets, products, customers or sources of supply.

The Article continues to say that, the High Authority will authorize enterprises to agree among themselves to specialize in production of, or engage in joint buying or selling of specified products, if the High Authority finds that such specialization stated in Article 65 (2) will contribute positively in the improvement of products. And so long as the interested enterprises do not have the power to influence prices or, do an act which will be harmful to the common market.

Any agreement which is incompatible with the above, shall be automatically void. Sub (5) forfeiture , boycott, or authorization obtained by knowingly giving misleading information shall be declared null and void, and fines shall be imposed as stipulated by sub (5).

Article 66: actions leading to concentrations within territories are expressely forbidden. And it is immaterial whether such a concentration is carried out by one person or enterprises. But the High Authority, will give authorization, if it finds that transactions in question will not have power to influence prices, control production or marketing.

Article 67 (1) says that the High Authority shall intervene, if a member state does an act that has noticeable repercussions on the conditions of competition in the coal and steel industries. And if such an action, chall cause serious disequilibrium by increasing the differentials in costs of production, otherwise the High Authority will take the following measures:

The High Authority may authorize, assistance to the affected enterprises – as stated by the same section 67 (2). Again, the High Authority will put a recommendation to the state in question, with a view to remedying such effect, by such measures as that state my deem most compatible within its own economic equilibrium.

But if action of state in question reduces differentials in costs of production, the High Authority is empowered to address the necessary recommendations to the state in question , after consulting the consultative committee and the council.

From the foregoing provisions contained in the constitutional document of the community, as amended on January 22 1972, one forms the opinion that the community wishes to prohibit the formation of a private Cartel, and tries to absolve itself from having characteristics similar to that of a Private Cartel. As will become apparent in this chapter later on, the Cartel characteristics which the drafters of the treaty had earnestly attempted to avoid become manifest, especially in the provisions relating to production, prices, financial provisions, concentrations and Agreements. To what extent then does the community have power similar to that of a private Cartel? In answering such a question one must, examine the provisions which are inconsistent with that of a private cartel, and those which are compatible with a private Cartel.

The most Revolutionary Provisions forbid the formation of a Cartel which and state the aims and objectives of the community are contained in Articles 2, 3, 4. Art 2 states that :

> "the mission of the community is to contribute to economic expansion, the development of employment and the improvement of the standards of living in the participating countries through the institutions , in harmony with the general economy of the member states, of a common market as defined in Article 4".

Article 3 (c) The Community shall seek the establishment of the lowest prices which are possible. "Within the framework of their respective powers and responsibilities and in the common interest, the institutions of the community shall:

a) See that the common market is regularly supplied taking into account the needs of the third countries.

b) Assure to all consumers in comparable positions within the common market equal access to sources of production.

c) Seek the establishment of the lowest prices which are possible without requiring any corresponding rise either in the prices charged by the same enterprises in other transactions or in the prices charged by the same enterprises in other transactions or in the price level as a whole to another period, while at the same time permitting necessary armotization and providing normal possibilities of renumeration for capital invested.

Article 4: states acts which are incompatible with the common market.
Sub (a) Import and export duties, or charges with an equivalent effect, and quantitive restrictions on the movement of coal and steel:

(b) Measures of practises discriminating among producers, among buyers or among consumers specifically as concerns prices, delivery terms and transportation rates, as well as measures or practices which hamper the buyer in the free choice of his supplier.

(c) Subsidies or state assistance, or special charges imposed by the state, in any form whatsoever.

(d) Restrictive practices tending towards the division of markets or the exploitation of the consumer.

It is interesting to note that in a few examples I will mention, when community wishes to practice Cartel tendencies, it absolves itself by laying as its basis, the principles defined by article 2, 3, 4. These three sections have served as the smoke screen for such tendencies. Among the few curious provisions are Article 58 (I). Briefly it states that when the community is faced with a period of manifest crisis and that the means of action provided for in Article 57, are not sufficient to cope with that situation, then a system of quotas shall be introduced. If the High Authority after consultation with the enterprises and their associates shall establish quotas on an equitable basis, in accordance with the principles defined in Article 2, 3, 4, the High Authority may in particular regulate the rate of operation of the enterprises by appropriate levies on tonnage exceeding a reference level defined by a general decision. Article 61 (a) empowers the High Authority to fix "maximum prices within the common market. If it deems that such a decision is necessary to attain the objectives defined in Article 3 and particularly in paragraph(c) thereof.

However, chapter six which deals with Agreements and concentrations, the community legislates against attempts to form a private Cartel.

Article 65 (I) forbids agreements among enterprises all decisions of Associations of enterprises, and all concerned practices which would tend, directly or indirectly, to prevent, restrict or impede the normal operation of competition within the common market, in particular:

a) To fix influence prices

b) To restrict or control production on technical development or investments.

c) To allocate markets, products, customers or sources of supply.

Article 65 (5) states that the High Authority will declare void an agreement by enterprises, which have complied with, or enforced or attempted to enforce by arbitration, forfeiture, boycott or any other means, an agreement or decision which is automatically void or an agreement for which approval has been refused or revoked.

Chapter five which deals with prices cannot pass unmentioned, the relevant provision is article 60 (1). It states that pricing practices contrary to the provisions of article 2, 3, 4 are prohibited particularly:
- Unfair competitive practices in particular purely temporary or purely local price reductions whose purpose is to acquire a monopoly position within the common market.
- discriminatory practices involving the application by a seller within the single market of unequal conditions to comparable transactions, especially according to the Nationality of the buyer
After consultation with the consultative committee and the council, the High Authority may define practices covered by this prohibition.

My submission is that the community has tendencies similar to those of a private cartel. And I will enumerate various authorities within the article itself to substantiate my claim.

Article 5, will serve as the spring board for my assertion. The community shall:

"assure the establishment, the maintenance and the observance of normal conditions of competition and take direct action with respect to production and the operation of the market only when circumstances make it absolutely necessary.

- publish justifications for its action and take the necessary measures to ensure observance of rules set forth in the present treaty."

This is clear evidence that the community is prepared to follow tendencies compatible with those of a private cartel. It should stick to the guiding principles.

Further in article 47,

"prohibits the High Authority from divulging information which by its nature is considered a professional secret, and in particular information pertaining to the commercial relations or its breakdown of the costs of production of enterprises ;-violation by the High Authority of this clause may be the subject of a suit for damages before the Court".

It is my submission that, these documents should not be kept secret, they should be available when necessary. This is an apparent bid to hide from the public what really goes on in the community, such an act of classifying some documents as professional secrecy is compatible with a private cartel.

Under the financial provisions, Article 53 (a) the High Authority, after consultation with the Consultative Committee and the Council may authorize the Institution under conditions which it shall determine and under its control, of any financial mechanisms common to several enterprises which are deemed necessary for the accomplishments of the missions defined in article 3 and compatible with the provisions of the present treaty and particularly of article 65. There are also provisions which enable the High Authority to influence production. The relevant provisions are stated in articles: 54 - 56.
Article 54. Empowers the High Authority to assist in financing works and installations which contribute directly and principally to increase production, lower production costs or facilitate marketing of products subject to its jurisdiction.

Article 55: Empowers the High Authority to encourage technical and economic development of consumption of coal and steel..."

(2) After consultation with the consultative committee, the High Authority may initiate and facilitate the development of such research work.

(a) by encouraging joint financing by the interested parties.

(b) by earmarking for that purpose any grants it may receive.

(c) with the concurrence of the council by earmarking for that purpose funds derived from the levies provided for in article 50, without, however, going beyond the ceiling defined in section two of that article.

The results of the research financed under the conditions set forth in sub-paragraph (b) above

(c) shall be placed at the disposal of all interested parties in the community.

(3) The High Authority shall make all useful suggestions for the disemination of Technical Improvements, particularly with regard to the exchange of patent and the granting of licences.

Art. 56; If the introduction of technical process or new equipment within the framework of the general programmes of the High Authority, should have adverse negative effects in terms of the workers employed, the High Authority will follow provisions of article 54 and the advice of the consultative committee, non-reimbursable assistance to contribute to the payment of indemnities to tide the workers over until they can obtain new employment. Workers will also be given allowances for reinstallation expenses. The High Authority shall condition the granting of non-reimbursement assistance on the payment by the interested state of a special contribution at least equal to such assistance unless a 2/3 majority of the council authorises an exception to this rule. Clearly, one cannot fail to see the manipulation of the community in forming a Cartel. The High Authority here is the highest organ of the community. The Authority has the capability of financing works and installations, and by doing so, can effectively create an enterprise at the expense of the other existing enterprises, as a result of making the latter redundant, if it would be more profitable to run the new enterprise.

Article 54 most emphatically states this. The High Authority has the power to fix the amount which the enterprises can produce, as well as fix the prices, and if an enterprise or enterprises act inconsistently with the regulations imposed by the High Authority, they will be fined accordingly. The provision (article 54) is rather curious in that it allows the High Authority to do an act which it forbids the other enterprises from doing; for instance financing a new installation to compete in the market to the disadvantage of the other enterprises.

The High Authority will even go the lengths of violating the express provisions of the present treaty to create a private cartel. For our purposes we are concerned with article 54, the paragraph that states:

> "If the High Authority finds that financing of a programme or the operation of the installations which it entails would require subsidies, assistance protection or disrimination, contrary to the present treaty, the unfavourable opinion taken by virtue of this justification shall have the force of a decision as defined in Article 14, and shall have the effect of prohibiting the enterprise concerned from resort to resources other than its own funds to put such a programme into effect."

For any violation of this clause by an enterprise will automatically result in a fine being imposed on the enterprise by the High Authority.

Article 57, is straight forward, this section manifests the power of a Cartel, it states that, in the field of production, the High Authority shall give preference to the indirect means of action at its disposal, such as co-operation with governments to regularise or influence general consumption particularly that of public services; and in intervention on prices and commercial policy as provided for in the present treaty. Competition is once more enhanced here.

Article 58 (I)

> "In case of a decline in demand, if the High Authority deems that the community is faced with a period of manifest crisis and that the means of action provided for in article 57 are not sufficient to cope with that situation, it shall, after consulting the Consultative Committee and with the concurrence of the council, establish a system of quotas, accompanied to the extent necessary by the measures provided for by article 74".

Here once cannot help noticing the capitalistic tendency of the community. It has made this provision the to make sure that it will make a profit when threatened by a crisis of low demand; once more this is clear evidence of cartel tendencies.

59 (I) adds more light.

"If after consulting the consultative council, the High Authority finds that the community is faced with a serious shortage of certain or all of the products subject to its jurisdiction, and that the means of action provided for in article 57, do not enable it to cope with the situation, it shall bring this situation to the attention of the Council, and, unless the council decides otherwise by unanimous vote, shall propose the necessary measures if the authority fails to take any initiative, one of the member states may bring the matter before the council, which by unanimous decision may recognise the existence of the situation mentioned above" .

The section adds what (58 (I) states Sub (5) If the above situation still continues, then there shall be restrictions on exports to third countries, in conformity with article 57. This provision Sub (5) ostensibly manifests how greatly the community benefits as a private cartel. In the early chapters, specifically chapter I, article 3 sub a) The Community expresses the desire of taking care of the needs of third countries, in seeing that they are regularly supplied. There can never be a greater weakness than this in the article. Throughout the document there are a lot of contradictory statements. Obviously the Community does not have the need of the third countries at heart, but stands to make maximum profit to the disadvantage of the consumers.

On prices the cartel tendencies are self-evident Article 61 a)

"The High Authority may fix maximum prices within the common market, if it deems that such a decision is necessary to attain the objectives defined in Article 3 and particularly in paragraph C) thereof. Further it provides, that in fixing price limits the High Authority shall take into account the need to assure the ability to compete both of the coal and steel industries and of the consuming industries in accordance withe the principles defined in article 3, paragraph C)" .

Competition here is allowed in the coal and steel industries, yet the community has in numerous provisions legislated against competition.

Article 62 re-echoes article 53 and empowers the High Authority to determine financial mechanisms to obtain the objectives of article 3.

In addition to all this, the treaty purpots to defend the existence and continuance of this private Cartel, by giving the High Authority control over state intervention. The authority for my submission is article 67. Sub (1) states

> "Any action of a member state which might have noticeable repercussions on the conditions of competition in the coal and steel industries shall be brought to the attention of the High Authority by the interested governments."

Sub (2)

> "If such an action is liable to provoke a serious disequilibrium by increasing the differentials in costs of production otherwise than through variations in productivity, the High Authority after consulting the consultative committee and the Council, may take the following measures, if the action of that state produces harmful effects for coal and steel enterprises coming under the jurisdiction of the state in question, the High Authority may authorize that state to grant to such enterprises assistance, the amount conditions, and duration of which shall be applicable in case of a variation in wages and in working conditions which would have the same effects even if such variation is not the result of a governmental act."

If the action of the state produces harmful effects for coal or steel enterprises, subject to the jurisdiction of other member states, the High Authority may address a recommendation to the state in question with a view to remedying such effects by such measures as that state may deem most compatible within its own economic equilibrium.
Sub (3) If the action of the state in question reduces differentials in costs of production by granting a special advantage to, or by imposing special burdens on, coal or steel enterprises coming under its jurisdiction – comparison with the other industries in the same country, the High Authority is empowered to address the necessary recommendations to the state in question, after consulting the consultative committee and the council.

From the foregoing, it is apparent that the High Authority, is a powerful organ in that it has the authority to control any attempts by a state to intervene in the affairs of an enterprise. It can even order a state to remedy a violation on its part. The High Authority has assumed a higher role over a government, in as far as matters pertaining to an enterprise are concerned.

Here we notice subservience of an independent government vis-á-vis the High Authority, in corraboration with the consultative committee and the council. At no point does the state have a say in matters relating to an enterprise, but will get directions in form of recommendations from the High Authority.

I cannot resist the conclusion that the European Coal and steel community has power like a private cartel, despite its attempt to denounce any actions which are compatible with a private Cartel. Somehow the community in places where it has prohibited actions which are similar to a private cartel, will allow later for such an action to be followed – see Article (5). Inversely it will use article 2, 3, 4 as a cover-up, to justify competition, restrictions on exports, and monopoly, to realize profits.

The European coal and steel community is a supranational organisation set up in 1951. Today we rarely get such kind of an organisation. We have intergovernmental – organisations like OPEC which has power to influence prices, but cannot dictate the production capacity in the member states.

The member states would oppose a system purporting to control the amount of production. Each state is free to produce any quantity within its capability. From the foregoing we can safely assume that the European Coal and Steel Community has power similar to that of a private cartel.

It is also apparent that the E.C.S.C. Champions the interests of the producers as opposed to the consumers. The world would appreciate Cartels if they work for the interest of the public at large, rather than for producers.

The question arising at this stage is "Can Cartels be legalized? Or to what extent can the treaty of Rome which surveys the world through be interpreted so that competition may be restricted or eliminated as a result of lawful official sanction? A commission provided with legal basis was charged with the task of finding out if Cartels can be sanctioned.[12] Thomas Sharpe, submits that "Its inappropriate to fill a possible lacuna in the treaty of Rome with something that does not exist namely a legal power to approve Cartels which attempts to go beyond article 85 paragraph 3".

In Germany the Cartels "strukturkrisenkartell" (a Cartel which has been approved by a Cartel - authority after a decline in sales). It tries to make adaptation capacity to meet the demands. It works in the interest of the whole German economy and consistently with public interest. In as far as the European Economic Community is concerned, the commission stated that its role

> "Is to promote and establish structural change within a socially acceptable framework."

It dismissed as an illussion the claim that enterprises can protect themselves against such changes by coming to terms with competitors.

In Thomas Sharpe's research paper, he cites the example of the synethetic fibre industry which had over capacity. The industry had misjudged the future demand of its products and the long period of gestation before new investments came into operation, this meant that it was incapable of responding quickly to changes in demand,, here there was need for structural changes. The commission's concern was to prevent accretion of new capacity. Here there was no legal basis which would convert this aspiration, directly into an enforceable obligation on the part of the undertakings or on member states. The commission recommended that member states should

abstain for two years from granting any regional orother aids to investment projects which would result in an increase in production capacity. (See European coal and steel community which emphasises that aid must be called for to initiate new projects - article 54.)

The commission wants this aid to be channelled into efforts which try to reduce over-capacity. There should not be excess quantities. A fainter parallel to try and show the commission attitude was seen in the case of the Belgium Government assistance to an oil company which wanted to expand its existing oil refineries capacity. In Antwerp, the aid was refused by the commission on the grounds that surplus capacity in refineries was evident in Belgium and elsewhere in the community. Similary the synethetic fibre industry was refused funds on the authority of article 92 paragraph 3 (a) which prohibits aid to increase capacity where there is already over-capacity adversely affecting trading conditions to an extent contrary to the community interest.

The Author submits that Cartels can only be legalised so long as they prove that they are working for the public interest. The interests of the consumer must be put before hand. Article 85 (3) of the treaty of Rome does not have the powers to legalize Cartels. How about S 87, which has "power to give the Council, acting on a proposal from the Commission and after consulting the European Assembly, gives the power to adopt appropriate Regulations or directions with a view to giving effect to the principles set out in article 85 and 86?"

S-87 cannot legalize what S. 85 cannot, neither can it suspend the operation of the former. S. 87 has powers of implementation only and cannot provide the council with powers of suspension.

In U.K. S.29 of the restrictive trade practices Act 1976 can be invoked to sanction a Cartel. The treaty of Rome can do but little, However, we cannot conclude on such a note, the treaty has achieved a lot especially under articles 92 - 94 - which ensure that aids flowing are for the benefit of the Community as a whole. What if a Cartel is incorporated into a national scheme, can this be sanctioned by reference to community policy adopted by the Council? The answer was provided by a leading decision.

<u>In case 74/76 Ianelli and Volpi s.p.a. Milano v Paolo Meroni (1977)</u>
E.C.R. 557

1. It was held "this was not possible as this would constitute obstacles to trade. Such an action does not constitute aid at all"

From the discussion above, it is apparent that the treaty of Rome has formal limits which are stipulated by article 85 (3). The commission however must act despite the fact that it has met little success at all.

IS O. P. E. C. A CARTEL?
WHAT ACCOUNTS FOR ITS SUCCESS?

Chapter 4

> "We have formed a very exclusive club .....Between us we control ninety percent of crude exports to world markets, and we are now united. We are making History."[13]
>
> "Sovereign nations cannot allow their policies to be dictated, or their fate decided, by artificial rigging and distortion of world commodity prices."[14]

Theories have been put up by politicians, and economists, as to why O. P. E. C. was created, and Anthony Simpson with whom I find myself in agreement asserts that "It was the criticism of the major oil companies in the west" like the anti colonialists in the British Empire, they took their weapons from their masters, and the awakening could be interpreted as a reflection of American democracy as much as of Arab Nationalism"[17].

The adoptions of the conference were announced on September 24 1960 as follows:—

1. That the Oil Companies claim that there was over-production of oil in the world was rejected, but it was generally agreed that the producers would work in line with the Oil Companies, in matters affecting price, fixing production.

2. The producing companies would use all possible means to make the oil companies cancel their recent price reductions.

3. A permanent organization of petroleum producing countries would be formed and would be charged with the duty of unifying and co-ordinating oil production policies. The OPEC would consist of the five members (supra) but any other substantial net exporter of oil could become a member. If unanimously accepted by the others.

4. The five initial member countries of the O. P. E. C. would submit the above decisions before 30th September 1960, to the appropriate authorities in their countries[18]. Meanwhile a constitution to govern O. P. E. C. was later drawn at

Caracas Venezuela. It came into force on May 1 1965. [19]

The years from 1960 up to 1970's was a relatively calm one for O.P.E.C ¢. The impact of this organization had not been felt by the west because at this juncture, leading oil companies were still in control of the world's oil supply. The oil companies also were playing members of O. P. E. C. against each other, hoping to break what the producing countries have often boasted of as "a cartel". The oil companies were not going to stand by and watch their position snatched away from them, but the tide was slowly turning against them, and the world would now read in newspapers of O. P. E. C. instead of the oil companies. Obviously the governments which had supported these companies in their exploits were now going to stand in awe as the O. P. E. C. 'Cartel' dictated both terms and prices to their representative companies.

At first however, O. P. E. C. realized little success. For one thing the organization was still totally failing to achieve any kind of effective prorationing of oil production between its members. Saudi Arabia which could restrict production, showed no interest to do so. The problems became even harder as new oil producers sprang up and were not members of O. P. E. C. This included Nigeria and Mexico. Iran and Iraq were proposing "Programming" production according to population, both having large population. Others wanted programming according to need. The oil companies too were fighting hard to lower the price of oil. The year 1973 is significant since this is the time the Arabs imposed an embargo of oil supplies to the west and the United States of America. Further, it is the same year that the Arab- Israeli war war broke out. But perhaps the significance lies in the fact that the consuming countries came to the realization that the producing countries (Arabs) were using oil as a weapon (political) against countries which were pro-Israeli during the war, namely U. S. and Netherlands. [20]. The year saw the partial nationalization of the Basrah Petroleum Company in Iraq, and the greatly increased prices for crude oil'. [21]

As the war progressed, preassure built up within O. P. E. C. , seven of whose eleven members are arab states for a stronger policy to be taken in dealings with the oil companies which are principally U. S.

based. Demands were partly based on market conditions, and taken in the light of the combined effects of adjustments in currency parities and inflation in the developed countries, a further major factor was arab hostility to the U.S. and to a lesser extent certain Europeans countries which gave support to Israel in her confrontation with the Arab states. Anti U.S. feelings was further intensified as a result of the U.S. veto on July 26 on a U.N security council draft resolution, which inter-alia deplored Isaeli lack of co-operation with the U.N peace efforts towards the Mid-East and her continued presence in the arab occupied teritories during the 1967 six day war. China abstained from voting.[22]

Such was the state of affairs, that a meeting had to be convened to set up prices for oil. The new price agreement was between eight of O.P.E.C. members and the Oil Companies. At Geneva it was agreed that there should be an increase of 6.1 per cent in prices of crude oil, in addition to 5.8 % increase payable from April 1. The aggregate increase of 11.9% in the posted prices (which are reference prices against which taxes and royalties due to the producing countries are calculated) was designed to compensate the oil producing countries for losses in the purchasing power, of oil revenues resulting from the dollar devaluation of February 1973.[23] From the foregoing, we note that everytime there is devaluation of the dollar, there would be an increase in oil prices. This is what the Geneva agreement stipulated in 1972. The aforesaid agreement provided for adjustment of prices in relation to International parity changes by establising an index to measure any changes between the dollar and other key currencies. Nothing substantial was achieved because the meeting broke down in a disagreement between the Companies and the Arabs. As the oil companies insisted on modfying the 1972 Geneva agreement, and the arabs insisting that the Geneva agreement should be superseded. At this stage, differences among the producing countries became manifest. Iran on the one hand was fearing retaliatory moves by the industrialized nations, since she was depending on their manufactures and

armaments. Others were opposed to the nationalization policies. The most militant states were Libya and Iraq, while Kuwait and Saudi Arabia were neutral. Such signs are unhealthy for a cartel, generally all members agree to a policy and differences should not arise at all. (See European Coal and Steel Community). Negotiations opened on May 28. According to the terms of the agreement reached at Geneva, there was to be an immediate increase in oil prices, and modifications in the formula for the future calculation of prices in the light of currency fluctuations. The principal elements were as follows:-

1. The posted prices of crude oil were increased by 11.9% made up of 5.8% payable from April 1 in accordance with the terms of the 1972 Geneva agreement and a further 6.1% payable as from the date of the present agreement in accordance with the revised formula for calculating currency movements.

2. Formula established by 1972, Geneva agreement for adjusting posted prices to currency movements was revised, by

   i) adding the Australian and Canadian dollar to the nine other currencies (those of Belgium, France, West Germany, Italy, Japan, Netherlands, Sweden, Switzerland, and the U.K., the average movements of which against the dollar served to indicate any necessary changes in posted prices and

   ii) providing that the index movement of these currencies would be ascertained monthly (on the 23rd of each month) rather than quarterly as under the 1972 agreement, and that price adjustments would be made on the basis of movements in the value of the dollar of one percentage point rather than two, as under the 1972 agreement, and could be upward and downward.

3. The new Geneva agreement was to be regarded as a modification of the 1972 agreement, which itself had been a supplement of the five year agreement ,[24] signed in Tehran in February 1971 This would in effect mean that the new provisions were therefore to be operative until the end of the five year period laid down in the Tehran agreement, i.e. until the end of 1975.. They were also to apply to the automatic increases of approximately 5% laid down by the Tehran agreement to reflect world inflation and increased demand.

A curious provision is to be noted on the agreement that despite the wording of the resolutions, these new provisions were to apply to the six Gulf Countries, namely Iran, Iraq, Abu Dhabi, Qatar, Kuwait and Saudi Arabia.

In case of Nigeria, overall increase was laid down as 12.41%, additional 0.51% having been obtained as a freight premium, payable from the date of the agreement. Libya - as had happened in 1971-72 agreements had a separate agreement which was essentially identical with the main one. At the point, it is doubtful whether Libya's agreement was really identical with the main agreement in view of that country's militant stand in raising oil prices, and her policies of nationalizing oil companies.

It cannot escape the notice of a keen observer that when legal agreements adopted are motivated by political factors, as seen earlier in the chapter, they are bound to be ad-hoc-rules.and it follows that such rules will work unilaterally or bilaterally. As will be apparent later, neutral countries like Saudi Arabia and Iran were not willing to adopt some of the formulations.

The year 1974, proved that O.P.E.C. was determined to increase the price of oil. The year was marked by doubling of prices by

exporting countries.[25] There were sharp increases by major oil exporting countries in December 1973 and January 1974, following earlier increases implemented in the previous two months. At this point, there was some degree of relaxation in the rate of cutback from the arab countries, which had been made during the Arab-Israeli war (Cctober 73). These sharp increases were made by the exporting countries on December 22-23 at a meeting held in Tehran. It was resolved that the posted prices (on which taxes, rayalties, etc are calculated would therefore from January 1 (1974) be increased to $.11.65 per barrel, from the level of about $.5 in force since November 1973. The Ministers emphasized that, the new posted prices had already taken into consideration the effect of the second Geneva agreement which stipulated that there shall be periodic price adjustment.[26] The danger of this second Geneva convention lies in the fact that, it legitimazed rules taken ad-hoc. and further was meant to encourage the producers to arbitrary keep on increasing the oil prices - leading to a spiral increase in prices. The justification used by the producers was that the industrialized countries have caused inflation in the market, by inflating the price of their products. The producers warned that if these industrialized countries continued causing the inflation, the producers would not hesitate to increase the price of oil.

In 1974, there was pegging of general oil prices, as the Gulf states of O.P.E.C. - Abu Dhabi, Iran, Iraq, Kuwait, Qatar and Saudi Arabia agreed on December 22-24 to raise posted prices, i.e. that used for the calculation of taxes and royalties. Arabia light - 34 degree H.P.1 quality, effective Juanuary 1 1974 from about $.5.11 to $.11.65 per barrell of 159 litres.[27] An extra-ordinary meeting of the oil Ministers meeting in Vienna from March 16 - 17 agreed that the existing posted prices should remain throughout the second-quarter of 1974. Further price increase by O.P.E.C. was announced in 1976. Saudi Arabia and Iran took a relatively moderate stand. Saudi Arabia under King

Faisal was enjoying exellent relations with the United States. The latter was selling to her manufacturers and military armaments. Iran, was undergoing the "white revolution" under the Shah, and was receiving jet fighters and other sophisticated military equipment from America, and western Europe, so she did not want to jeopardize her relations with such nations. We note that not all the members applied the 10% price increase agreed upon on September 27 when making subsequent price increases, the resulting disparities being further accentuated by member countries' continuing freedom in absence of an agreed O.P.E.C. policy, to adjust the premiums charged to take account of differing freight costs and the higher quality of some oil in accordance with market conditions and their revenue needs.[28] Saudi Arabia and Kuwait, carried "under counter prices", that is cutting the prices.....[29] At this juncture, it would be appropriate to question the O.P.E.C. "Cartel" which the producers had claimed and have still continued to insist that they have formed. Lack of an agreed formula to follow in pricing the oil led to some countries applying their own prices, other countries like Kuwait and Saudi Arabia continued cutting down prices. The European coal and steel community has a high authority which deals with a member country that carries policies or undertakings incompatible with the interest of the common market.[30] The High Authority has made the "Cartel" under the European coal and steel community very strong. But perhaps one may argue that effectiveness of the "Cartel" is felt when there is an embargo, like in 1973 during the Arab Israeli war. The year saw a total cut of supply to countries which were pro-Israel. The producer states unlike the member countries of the European coal and steel community control production of oil, the latter dictates production to its member countries and lack of compliance with such a direction may lead to severe penalties being imposed by the High Authority.[31] Such a position cannot be tolerated by O.P.E.C. which is an Inter-Governmental organization.

The weakness of O.P.E.C. was ostensibly manifested in the year 1977. In this year there was a disagreement on the pricing policy, this lead to the introduction of a two-tier pricing system.[32] The conference was held at Doha in Qatar from December 15-16. By long established convention decisions had hitherto been accepted by all members, even where there had been strong differences in opinion. (i.e. Vienna in September 1975, when Saudi Arabian opposation to a price increase had been effectively over-ruled.[33] Again at Bali in Indonesia in May 1976 when such opposation had prevailed.[34] At Doha, the outcome was a two tier pricing system with effect from January 1 1976, in which Saudi Arabia and the United Arab Emirates (U.A.E) increased their prices by a substantially lower margin than that agreed by the other O.P E.C. members. This meant that the "market-price" now used by the marjority of O.P.E.C. members in calculating all other prices no longer corresponded to the actual selling price of the grade of oil (Saudi Arabia 34° light crude) to which it was linked. Moreover, the question of price differentials - a source of friction between the various O.P.E.C members for some time.[35] This was further obscured by the announcement of the price increase agreed by the marjority of members in that rate rather than percentage terms. It must be noted that Saudi Arabia is the world's second producer of Oil after the Soviet Union, but it is the leading exporter of oil. That is why it takes decisions contrary to what the marjority states agree. Even after the Doha meeting, the Saudi spokesman said that by taking such an action, Saudi Arabia would deliberately increase the output in an attempt to use market forces to undermine the marjority price-increase. This was an unfortunate step towards the well being of the "Cartel". This is what one would refer to as competition with the organization, and would ultimately frustrate attempts to make an effective Cartel. (See the E.C.S.C) But as the meeting at Doha broke in disagreements, one thing was evident - that the two tier-pricing system could not last for long. Practice implications of the Doha decisions were further disturbed by effects of stock piling of oil

consumers in late 1976 anticipating further increases leading to a fall in production. This meant that the producers were at a disadvantage, because this meant loss of substantial revenue. The E.C.S.C has rules which govern it when there is low production, this means in effect that the community hardly realizes loss of substantial revenue.[37] . The following were the new price levels:- The eleven member countries had decided to increase the price market crude (which had remained at $.11.51 per barrell since Cctober 1 1975, to $.12.70 per barrell January 1 1977 and again to $13.30 per barrell on July 1 1977. The "price at all other crudes" would be increased by the flat rate amounts i.e. by $1.19 on January 1 and by a further 60 cts on July 1. Saudi Arabia and U.A.E. had decided to raise their prices by 5% only for the whole of 1977.

The two tier-pricing system was ended in 1978 after the Geneva agreement in February of that same year. The member states were determined to establish a united pricing policy. An agreement in principle was arrived at between Saudi Arabia, the U.A.E. and the other eleven members. According to the agreement, Saudi Arabia and U.A.R. agreed to apply by July 1 the full 5% to bring them into line with the other O.P.E.C. members on condition that the latter should not increase the price of oil. Consequently nine of the O.P.E.C. members - Algeria, Ecuador, Gabon, Indonesia, Iran, Kuwait, Nigeria, Venezuela, Qatar decided in the interest of O.P.E.C. unity to forgo the proposed increase of 4.7% on July 1 (from $12.75 to $13.30 per barrell) in the basic reference price of their oil. Ecuador and Indonesia, had no plans for an increase. Iraq, Libya subsequently indicated that they would cancel their July price increase only after Saudi Arabia and U.A.E. had formally and unconditionally commited themselves to a price rise.

As a result of this meeting the price increase was 8.5 - 9.5 per cent compared with 10 - 11 per cent if there had been no settlement. The

average price under the two-tier pricing system was estimated at between 7.85%.

In 1979, the world received shocking news as O.P.E.C. made a further increase in their price of oil. The Soviet Union welcomed this further development and stated that this was "a legitimate act of retaliation against world capitalism". The 1979 price increase received condemnation from the developed and the developing countries. The developing countries were led in their criticism by the Cuban President Fidel Castro while addressing members of the non-aligned countries in Havana Cuba. The agreement fixed the basic 'marker price' at a level of 41.7% above this prevailing from July 1977 to December 1978, while a ceiling price to apply after the imposation of market premia was established at a level of some 85% above the same 1977-78 market price.[36] After this meeting, some countries took unilateral increases in the official prices, this undermined the pricing structure agreed in June, whose ceiling level was breached in mid-October in order to maintain the differentials between the various grades of crude.

Clearly, a keen observer cannot fail to see that in all major conferences which are held by O.P.E.C. to formulate their legal treaties, personal interests prevail vis-á vis attempts to create an effective oil Cartel. On the one hand we have pricing militants for instance Libya, Algeria and Iraq, whereas Saudi Arabia and Kuwait are always against decisions purporting to increase the price of oil, obviously for their own personal reasons, (see, 1976 legal treaties) which are quite logical. But perhaps the oil states could claim to have an oil - cartel, if they have a constitution like of the European Coal and Steel Community (E.C.S.C.). Stipulations are well spelt out rules to be followed in terms of crisis, a High Authority to penalize a member state that purports to undermine the Cartel. In absence on an authority to deal with member states which undermine efforts of the other states, O.P.E.C. can be describled as a 'weak Cartel'. One cannot

fail to notice how rules are adopted ad-hoc as soon as there is political turmoil. (See 1973 Arab Israeli War) This consequently leads to a lot of inconsistency within the organization, because some of the member countries like Nigeria, Gabon and Indonesia are not Arab states and they might not genuinely share the views of the Arabs. After all, the African states have got similar problems i.e. the illegal racist rule in South Africa, the Arabs are not so vocal on such issues.

There is no way O.P.E.C. will boast of having formed an effective Cartel, so long as legal rules adopted at conferences continue to be ignored by some member states, in absence of an authority to deal with such defaulting member states. Another factor dealing a cripp-ling blow to attempts of having a Cartel is in regard to stock piling.: The oil companies when they anticipate an increase in the price of oil stock pile the crude oil, this in turn leads to a low demand and the production falls very low. Such a problem was seen in (1976). The E.C.S.C. has spelt out stipulations to govern the member states when faced with a serious crisis like this by introducing a system of quotas.

Further, by purporting to fix the price of oil according to fluctuations in International monetary movement so everytime the Dollar fluctuates, then the price of oil would go up, has caused serious problems, and it is time O.P.E.C tried to fix the real price of oil and not to keep on changing prices of oil arbitrary. The E.C.S.C. has definite fixed prices and for any change which has to be made in regard to the products, a certain laid down procedure is followed. Such a position is non-existance with the O.P.E.C. By adopting the policy of following international currency movements, few states (members) have been willing to observe this policy. Instead you find them carrying on under-counter reduced prices, and increasing their rate of production.

In this book[38] Anthony Simpson asserts that O.P.E.C. has formed

an effective Cartel. He goes on to add that these sovereign states had not realized the need to safeguard their oil wealth, and to combine to confront the oil companies. He quotes the Shah of Iran as having said that "what had held back O.P.E.C. had been the mystical powers" of the companies, and it wasn't until we realized our strength that we had our strength". The Arabs learnt for the first time about the Cartel from the F.T.C.[39] from the education they had received in England and Washington. The point advocated by the author in trying to show the world that indeed C.P.E.C has formed an effective Cartel is both misleading and short sighted, and this is apparent after reading the resolutions passed in various conferences by the member states. These meetings leaves one in doubt about the effective Cartel. Both the author and the producers claim to have been formed. Despite disagreements and member states defaulting, the producers still believe they have formed a very effective Cartel. For instance the late Colonel Houari Boume'dienne of Algeria had this to say. "For the first time in history", he declared, "developing countries have been able to take the liberty of fixing prices of their raw materials themselves".[40] Similarly Yamani of Saudi Arabia declared that " "usually any Cartel will break up, because the stronger members will not hold up the market to protect the weaker members. But with O.P.E.C., the stronger members do not have an interest to lower the price and sell more".[40] This is what precisely Saudi Arabia did in January 1976 and in 1977 when they introduced the two tier system, In that year, we notice that the weaker members had to succumb to the demands of Saudi Arabia and the U.A.E. so that the latter could end the crisis facing the loose Cartel. Statements like these are intended to bluff the oil companies that there is in existence a very strong Cartel .and as such they have no chance of playing the members against each other to break the unity, and take control of the oil business they have lost to the producers. The oil companies had dominated the world in this business for a long time.

At this point, it would be worth while to examine what underlay the oil companies formindable success, until they came to be known as the "seven sisters".[41] Anthony Sampson has an excellent detailed account of how the seven sisters came into being, of these five are American :- EXXON, MOBIL, SOCAL, TEXACO, GULF, the other two were British - Petroleum (B.P) and the Royal Dutch Shell. Briefly the situation was as follows. It all started when Rockefeller a book keeper in Cleveland U.S.A. went into partnership in a refinery with two Englishmen, the clerk brothers but soon he bought them out. He expanded, and brought in new partners, he not only was determined to produce oil but refine it, and distributing it and undercutting his rivals by cheaper transport. He also persuaded the rail companies to give cheaper rebates to his oil so oil and railways grew together. By 1970 after only seven years in business, he was able to establish a joint stock Co called the Standard Oil Company, with a capital of $1m of which he owned 27%. By bribes and secret deals, he established "friends" in the legislature with teams of lawyers ready to defend his interest. The industry expanded in overseas, the Middle East and the Far East, where he bought a lot of concessionaries. By 1885, 75% of the standard business was overseas. Initially the Standard Oil did break up, leaving each component to the state where it operated". The reason behind the splitting of the Standard Oil was caused by the adaption of Anti-trust Laws by the U.S. congress i.e. the Sherman Act.

The West for a long time (50 years) had taken for granted that oil was in the hands of the seven giant oil companies of the world. It was they not their countries that formed the Cartel. For decades, the companies seemed possessed of a special mystique, both to the producing and consuming countries. Their supra-national expertise was beyond the ability of national governments. Their income was greater than in those countries they operated; their fleets of tankers had more tonnage than any navy, they owned and administered whole cities in the deserts.

They were the fore-runners of present day multi-National Corporations. At first, the five American companies had started by exploiting their home-fields, and they were content with this but as the future became uncertain, they started looking abroad at the vast untapped resources of oil fields. "The first imperialist world war made western governments realize how important oil was for their survival. The war was being fought with tanks, planes and cars. "Oil", said Clemenceau is as necessary as blood". "The allies", said Lord Curzon "floated to victory on a wave of oil". The Germans were in desperate need of oil, while Britain had access to the persian oil from B.P at Abadan, and Shell Oil from Mexico and the East Indies. But America remained the biggest supplier with 80% of all allied oil supplies, with a quarter of all allies oil from a single company. EXXON. Later we notice great competition between the British, French and America Oil Companies each trying to secure its own oil fields, this marked the beginning of the control of oil fields in the Middle East and the Far East and other areas leading in oil resources.

The oil companies gave the impression of permanence and stability, with their self perpetuating boards and beuraucracies and their evident ability to survive two world wars and countless revolutions across the continent. Their engineering achievements commanded the awe of governments and the public. The oil companies had built great oil refineries, complex industrial works for petrol chemicals and other related by-products from oil, the whole enterprise seemed to mark the triumph of technology over man. (See Seven Sisters: P.222). We must not forget that these oil companies were always supported by their home governments in their endevours at the risk of an open confrontation between the latter and the producing state. For instance the state department pushed the companies into Iraq in 1920, and into Iran in 1954. The companies had become uniquely internationalized, and were playing the role of diplomats in foreign affairs for their home governments. These seven companies despite the severe

competition that existed between them "still preserved a family likeness and closing ranks when challenged by outsiders".

To know the reasons for O.P.E.C's success, we will have to examine economic factors, political and legal factors if there are at all. The view of the Arabs was expressed by the late Algerian President Colonel Houri Boume dienne." O.P.E.C's success, depended on taking control of its own resources, and no recovery was possiblewhile the multi-national corporations remained in control, "those post masters at the art of making concessions in order to safeguard the essentials". Seizing control of their own resources is just like a country gaining its political independence. The presence of companies drilling their oil, was seen as colonialism by Arabs. It is also clear that oil is a unique commodity, and ranks by far the most important valuable product. It cannot be stockpiled or stored for long term supplies, except under the ground where it originated, at times there will be shortage and the next moment the oil wells dry up. This makes oil an exception to the rules of the market. This fact is further hardened by the realization that Saudi Arabia the leading exporter has least need for money. Above all, "the oil business had already been in the hands of the partial Cartel of the seven sisters who provided a world marketing and allocation system, so that the formation of a producers' 'Cartel' was made very much easier". [42]

A forceful argument has been put forward to the effect that, although substitutes for energy do exist (notably in the form of nuclear energy and gasification of coal) cannot be developed on a large scale to meet world demand. Again, it is thought that it is unlikely that oil reserves will be found in the near future. The North Sea has a potential of 30 million barrells, whereas proven reserves of the Arab states is 300 million barrells. The U.S. is no longer self sufficient, and is expected by 1980 to have imported over half its requirements, with 2% of the supply coming from the Middle East. Its fuel consumption

unless cut down like in 1973 will be about that of the whole of western Europe.[43] The Arabs continue speculating currencies, invading the worlds stock markets, or upsetting the currency system by floating liquid funds - from country to country in accordance with political fancy, which defies resolutions passed in their conferences. This became ostensibly manifest in 1973 during the Arab Israeli war, when the Tehran schedule became a scrap of paper and the oil prices shot up by 70%.

Zuhayr Mikdashi[44] submits that the strength of O.P.E.C. lies in their concerted collective action in exploiting market conditions of international oil, although in some conferences, rivalry and antagonisms have predominated.[45] The General Secretary of C.P.E.C. has clearly stated that the external threat of consumer countries to intervene on behalf of their oil companies, like the one voiced by U.S. Secretary of Treasury Mr Conally has solidified the unity of the producers states.

Nadim pachachi[46] argues that environmental factors are responsible for the tremendous achievement of O.P.E.C. According to this author, the solidarity of member countries vis-a vis external factors notably international companies and major importing countries, coupled with the economic characteristic of petroleum as an international commodity facing relatively high growth and inelastic in demands, has achieved great success for the producers. "O.P.E.C success" writes Aldeman[47], in raising prices is due to the collusion of the member international companies and the larger country governments, working hand in glove with the companies".

Mikdashi, in his contribution sees the membership of the producers as having enough cohesion to withhand preassure from within the organization itself, and despite their multiple differences O.P.E.C. leaders have come to realize that unless they hang together they will

hang separately.[48] Benefit of collective action was evidenced in 1970 and 1973, the producers then realized their strength.

There is no doubt that the arguments put forward in this chapter are both forceful and note worthy, and I'm in fundamental agreement with the authors contributions. Among the most convincing factors leading to the success of the organization is the economic factor. Political reasons (on the part of the Arab states) should not be overlooked. Controlling the source of the oil and using the world market allocation system already set up by the seven sisters, and finally but not least the economic characteristic of petroleum. There are no legal factors that can be attributed in this chapter. Throughout we have seen how legal rules passed in the organization's conferences are in rigged by the member states. Petroleum is so much in demand for practically any activity one may think of and whatever the prices, the consumers will always be prepared to pay for this essential commodity, because it is as was observed by an Arab delegate "the nerve of civilization". The world market and allocation system set up by O.P.E.C.'s predecessor, the seven sisters has helped the former a lot. In the world, primary producers would like to have a Cartel for their produce, but they are not willing to start it by themselves, they would rather have someone start it for them by creating a market and an allocation system and then they would gladly take over. But the success of such a Cartel would remain very doubtful. O.P.E.C. despite its insistence that it is a Cartel, is nothing more than a 'Trade Union of Oil Sheikhs'. It is a body that collectively makes policy intergration rules to achieve their objectives by whatever means. This view was expressed by Joseph Nye[49]. The policy rules however do not get the full blessings of some member countries who default for their own valid reasons.

The future indicates problems, for the exporting countries. Alternative sources of energy will have to be found. Attempts are being made to trap the sun's energy, efforts are also being concentrated

to make nucleur energy, and unless an achievement is made the major oil consumers like U.S.A., Japan and Western Europe may feel obliged to intervene on behalf of the oil companies and seize control of both the production and distribution of oil.

The U.N. charter in its preamble, states that all states and peoples have pledged to each other and to all mankind their continued effort to practice tolerance to develop friendly relations among nations based on respect for equal rights ..... to co-operate in an effort to solve international economic and other problems; to live together in peace; and to settle disputes by peaceful means in such a manner that international peace, security and justice are not endangered.[50] By coercing[51], the world, the Arabs have impaired articles 2 (4) of the U.N. charter that prohibits threats or use of force in a manner inconsistent with the purposes of the U.N. The recent General Assembly resolutions have reiterated the priority of other goals - that the natural resources be used or controlled in such a manner that international peace is served and the coercion of other states does not reach impermisible levels. It is ironic for the producers to do this, yet they approved the U.N. declaration on prlciples on International Law concerning friendly relations and co-operation. My submission is that its time the issue of continued violation of the U.N. charter is brought before the General Assembly and strong action should be taken against the oil exporting countries, even if it means taking control of this very vital commodity upon which mankind's civilization and survival depends. As matters stand now, international peace and security stands in grave danger, and cannot be sacrificed by letting the exporting countries infringe international laws responsible for peace for benefit of the producers. The benefits are seen mainly as political (ofcourse for Arabs). The aims are "to force an overall settlement upon Israel on terms satisfactory to the Arabs through coercion of Israel itself or through the use of force to make others pay more attention to Arab claims and demands; to seek a continued

embargo against any country supporting Israel in any manner, with each country classified as either friendly to the Arabs, neutral, or supporting Israel; to force other states to severe deplomatic and trade relations with Israel; to compel other states to external military aid to the Arab nations; to compel other states to extend economic aid to the Arabs".[52]

The Arabs will have to realize that the question of the Palestinian people can only be solved peacefully by the U.N. which is the legitimate and competent organ for dealing with matters that pose a danger to the security of the world and not the Arab oil weapon. The Arabs will have to choose between the two . Whatever their diclsion, peace and security in the world must be maintained. The world will not stand by and see the 1973 embargo repeated by the Arab producing states who happen to lead in production and export of oil.

The oil exporting countries must also realize that new sources of oil are being discovered each time, for instance the Ekofisk field in Norway, the Northsea potentials, Mexico and ofcourse the U.S.S.R which is the world's leading producer of oil. In future, O.P.E.C. may have to find that it will need to reach a kind of agreement with these countries on prices of oil. She may find that she can no longer work in isolation. These countries are a potential future threat.[53]

CONCLUSION:

The organisation of petroleum producing countries (O.P.E.C.) is not a cartel. This peculiar organisation is similar to what one may refer to as a Trade Union. This body makes policy intergration rules to achieve its objectives by whatever means. Throughout we have seen how legal rules adopted at various conferences are flouted by some members.

The constitution creating this organisation is not comprehensive like the one under the European Coal and Steel Community (E.C.S.C). The members have done nothing to widen its provisions to cater for the various actions they adopt at major conferences, and that is why there is evidence of ad-hoc-rules, and spiral price increases.

O.P.E.C. will never claim to have formed a Cartel as long as differences continue among the member states. On one hand we have price hawks like Libya, Nigeria, ~~Iraq~~ and Algeria, and on the other we have less militant price states like Saudi-Arabia and Kuwait. Saudi Arabia as previously pointed out by the author is the world's leading producer of oil after the Soviet Union, and ranks top in oil - export. I fail to understand how the exporting states can claim to have formed a Cartel when Saudi Arabia continues to increase its production capacity as well lower oil prices.

Normally a Cartel will break if strong members will not hold up the market to protect the weaker members. This is what has happened. Saudi Arabia has completely failed to hold up the market for the benefit of the weaker member states, and has continued to lower the price fixed in the various conferences as well as increasing the rate of production.

The absence of a High Authority to deal with a defaulting state like Saudi Arabia is seen as the cause of the problem mentioned above. Such an Authority if created would make the legal rules adopted in conferences - effective, and by so doing the exporters would hang together in the market. However, we must not overlook the fact that O.P.E.C. is an inter-governmental organisation as opposed to the E.C.S.C. which is a supra-national organisation created in 1951. The former cannot tolerate an Authority dictating the rate of production, whereas the latter does such a situation is

bound to create a lot of problems.

O.P.E.C. owes its success to the economic characteristics of oil, the demand for oil is so great that its inconceivable for mankind civilization to advance without it. So much is the importance of this vital – commodity that the consumers are prepared though unwillingly to pay for the arbitral prices.

Another factor which cannot be overlooked is political (i.e. for the Arab exporting states) these states have succeeded in blackmailing the industrialized nations into accepting their political demands, and they have succeeded.

There are no legal factors that can be attributed to the success of this organisation. We have seen how legal rules adopted at major conferences are defined. The position cannot be expected to change in the near future in the absence of a kind of an authority created to penalize a defaulting member. As for the constitution of O.P.E.C. it is nothing more than a scrap of paper, it has no provisions providing for structuring of oil prices. On the whole it lacks the comprehensiveness like the treaty governing the E.C.S.C. the treaty of the latter has created provisions which has given the community powers similar to that of a private cartel.

My submission is that O.P.E.C. is a body obviously very different from the E.C.S.C. which has powers similar to that of a private cartel. In the latter, we witness subservience of an independent government vis-á-vis- the High Authority whereas in O.P.E.C. the sovereignty of the states is unchallenged. Although, the effect of O.P.E.C's actions has created an impact just like a private Cartel would, such a reason can be attributed to the economic characteristics of oil and no more.

It is time the consumers collaborated with new producers like Great Britain and Mexico to increase their production capacity and lower the price of oil. Such a move would break O.P.E.C.'s hold in the international oil markets. Until such a move materializes, we will have to contend with the present gas crisis.

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7. Edwin Mansfield: Micro Economics, P. 335

8. Neale D : p. 326:

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10. Richard Leftwich: The price system and resource allocation
P. 299 - 300:

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12. Common market law review: v 17
A Research paper on crisis cartel by Thomas Sharpe.

13. Perez Alfonso: The Venezuelan Minister
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14. esident Gerald Ford: September 1974 Supr 9 P. 339

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18. Keesings Archives 1961 - 1962 (17862 A):

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22. Keesings Archives (1973) (26194A)

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24. Five year agreement signed in Tehran supposed to form the base for oil structuring on long term basis.

25. Keesings Archives 1974 (26355 A)

26 Keesings Archives (1974) (26355A)

27. " " (1974) (26618 A)

28. " " (1976) (28064)

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30. Article 67 E.C.S.C.

31. Article 67 (2) E.C.S.C.

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35. Keesings Archives (1976) (28064)

36. Keesings Archives (1979) (29981)

37. Article 58 (I) E.C.S.C.

38. The Seven Sisters: Page 344

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44. International Organisation v. 28 1974:

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46. International Organisation 1974 (v. 28): p. 8

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Appendix: Peaslee: E. C. S. C.

Abbreviations *

A. J. I. L.	American Journal of International Law
C.M.L.R.	Common Market Law Review
E.C.S.C.	European Coal and Steel Community
E.C.R.	European Court Review

TREATY[1] CONSTITUTING THE EUROPEAN COAL AND STEEL COMMUNITY

April 18, 1951, as amended April 18, 1965, April 22, 1970, and January 22, 1972

The President of the German Federal Republic, His Royal Highness the Prince Royal of Belgium, the President of the French Republic, The President of the Italian Republic, Her Royal Highness the Grand Duchess of Luxembourg, Her Majesty the Queen of the Netherlands.

Considering that world peace may be safeguarded only by creative efforts equal to the dangers which menace it;

Convinced that the contribution which an organized and vital Europe can bring to civilization is indispensable to the maintenance of peaceful relations;

Conscious of the fact that Europe can be built only by concrete actions which create a real solidarity and by the establishment of common bases for economic development;

Desirous of assisting through the expansion of their basic production in raising the standard of living and in furthering the works of peace;

Resolved to substitute for historic rivalries a fusion of their essential interests; to establish, by creating an economic community, the foundation of a broad and independent community among peoples long divided by bloody conflicts; and to lay the bases of institutions capable of giving direction to their future common destiny;

Have decided to create a European Coal and Steel Community and to this end have designated as plenipotentiaries: (*names follow*)

Which, having exchanged their powers, found in good and due form, have agreed to the following provisions.

TITLE I. THE EUROPEAN COAL AND STEEL COMMUNITY

Art. 1. By the present Treaty the High Contracting Parties institute among themselves a European Coal and Steel Community, based on a common market, common objectives, and common institutions.

[1] English text published by the Community and reproduced in 2nd edition, together with amendments of 1965 and 1970, translated from French 1971 text of Treaties by the Editor, and 1972 Adjustments to Treaties published in Official Journal Special Edition of 27 March 1972. Ed.

Art. 2. The mission of the European Coal and Steel Community is to contribute to economic expansion, the development of employment and the improvement of the standard of living in the participating countries through the institution, in harmony with the general economy of the member States, of a common market as defined in Article 4.

The Community must progressively establish conditions which will in themselves assure the most rational distribution of production at the highest possible level of productivity, while safeguarding the continuity of employment and avoiding the creation of fundamental and persistent disturbances in the economies of the member States.

Art. 3. Within the framework of their respective powers and responsibilities and in the common interest, the institutions of the Community shall:

(*a*) see that the common market is regularly supplied, taking account of the needs of third countries;

(*b*) assure to all consumers in comparable positions within the common market equal access to the sources of production;

(*c*) seek the establishment of the lowest prices which are possible without requiring any corresponding rise either in the prices charged by the same enterprises in other transactions or in the price-level as a whole in another period, while at the same time permitting necessary amortization and providing normal possibilities of remuneration for capital invested;

(*d*) see that conditions are maintained which will encourage enterprises to expand and improve their ability to produce and to promote a policy of rational development of natural resources, avoiding inconsiderate exhaustion of such resources;

(*e*) promote the improvement of the living and working conditions of the labor force in each of the industries under its jurisdiction so as to make possible the equalization of such conditions in an upward direction;

(*f*) further the development of international trade and see that equitable limits are observed in prices on external markets;

(*g*) promote the regular expansion and the modernization of production as well as the improvement of its quality, under conditions which preclude any protection against competing industries except where justified by illegitimate action on the part of such industries or in their favor.

Art. 4. The following are recognized to be incompatible with the common market for coal and steel, and are, therefore, abolished and prohibited within the Community in the manner set forth in the present Treaty:

(*a*) import and export duties, or charges with an equivalent effect, and quantitative restrictions on the movement of coal and steel;

(*b*) measures or practices discriminating among producers, among buyers or among consumers, specifically as concerns prices, delivery terms and transportation rates, as well as measures or practices which hamper the buyer in the free choice of his supplier;

(*c*) subsidies or state assistance, or special charges imposed by the state, in any form whatsoever;

(*d*) restrictive practices tending towards the division of markets or the exploitation of the consumer.

Art. 5. The Community shall accomplish its mission, under the conditions provided for in the present Treaty, with limited direct intervention.

To this end, the Community will:

– enlighten and facilitate the action of the interested parties by collecting information, organizing consultations and defining general objectives;

– place financial means at the disposal of enterprises for their investments and participate in the expenses of readaptation;

– assure the establishment, the maintenance and the observance of normal conditions of competition and take direct action with respect to production and the operation of the market only when circumstances make it absolutely necessary;

– publish the justifications for its action and take the necessary measures to ensure observance of the rules set forth in the present Treaty.

The institutions of the Community shall carry out these activities with as little administrative machinery as possible and in close co-operation with the interested parties.

Art. 6. The Community shall have juridical personality.

In its international relationships, the Community shall enjoy the juridical capacity necessary to the exercise of its functions and the attainment of its ends.

In each of the member States, the Community shall enjoy the most extensive juridical capacity which is recognized for legal persons of the nationality of the country in question. Specifically, it may acquire and transfer real and personal property, and may sue and be sued in its own name.

The Community shall be represented by its institutions, each one of them acting within the framework of its own powers and responsibilities.

TITLE II. THE INSTITUTIONS OF THE COMMUNITY

Art. 7. The institutions of the Community shall be as follows:

– a High Authority, assisted by a Consultative Committee;

– a Common Assembly, hereafter referred to as "the Assembly";

– a Special Council, composed of Ministers, hereafter referred to as "the Council";

– a Court of Justice, hereafter referred to as "the Court".

Chapter 1. The High Authority

Art. 8. The High Authority shall be responsible for assuring the fulfilment of the purposes stated in the present Treaty under the terms thereof.

Art. 9–13. *Abrogated.*

Art. 14. In the execution of its responsibilities under the present Treaty and in accordance with the provisions thereof, the High Authority shall issue decisions, recommendations and opinions.

Decisions shall be binding in all their details.

Recommendations shall be binding with respect to the objectives which

they specify but shall leave to those to whom they are directed the choice of appropriate means for attaining these objectives.

Opinions shall not be binding.

When the High Authority is empowered to issue a decision, it may limit itself to making a recommendation.

Art. 15. The decisions, recommendations and opinions of the High Authority shall state the reasons therefor, and shall take note of the opinions which the High Authority is required to obtain.

When such decisions and recommendations are individual in character, they shall be binding on the interested party upon their notification to him.

In other cases, they shall take effect automatically upon publication.

The High Authority shall determine the manner in which the provisions of the present article are to be carried out.

Art. 16. The High Authority shall take all appropriate measures of an internal nature to assure the functioning of its services.

Art. 17. *Abrogated.*

Art. 18.[1] A Consultative Committee shall be attached to the High Authority. It shall consist of not less than sixty and not more than eighty-four members and shall comprise equal numbers of producers, of workers and of consumers and dealers.

The members of the Consultative Committee shall be appointed by the Council.

As concerns producers and workers, the Council shall designate the representative organizations among which it shall allocate the seats to be filled. Each organization shall be asked to draw up a list comprising twice the number of seats allocated to it. Designations shall be made from this list.

The members of the Consultative Committee shall be designated in their individual capacity. They shall not be bound by any mandate or instruction from the organizations which proposed them as candidates.

A President and officers shall be elected for one-year terms by the Consultative Committee from its own membership. The Committee shall fix its own rules of procedure.

Art. 19. The High Authority may consult the Consultative Committee in any case it deems proper. It shall be required to do so whenever such consultation is prescribed by the present Treaty.

The High Authority shall submit to the Consultative Committee the general objectives and programs established under the terms of Article 46, and shall keep the Committee informed of the broad lines of its action under the terms of Articles 54, 65 and 66.

If the High Authority deems it necessary, it shall give the Consultative Committee a period in which to present its opinion of not less than ten days from the date of the notification to that effect addressed to the President of the Committee.

The Consultative Committee shall be convoked by its President, either at the request of the High Authority or at the request of a majority of its members, for the purpose of discussing a given question.

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[1] As amended by the 1972 Accession Act.

The minutes of the meetings shall be transmitted to the High Authority and to the Council at the same time as the opinions of the Committee.

Chapter II. The Assembly

Art. 20. The Assembly, composed of representatives of the peoples of the member States of the Community, shall exercise the supervisory powers which are granted to it by the present Treaty.

Art. 21. 1. The Assembly shall be composed of delegates whom the parliaments shall be called upon to appoint from among their members in accordance with the procedure laid down by each Member State.

2.[1] The number of these delegates shall be as follows:

Belgium	14
Denmark	10
Germany	36
France	36
Ireland	10
Italy	36
Luxembourg	6
Netherlands	14
Norway	10
United Kingdom	36

3. The Assembly shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all member States.

The Council, acting by means of a unanimous vote, shall determine the provisions which it shall recommend to Member States for adoption in accordance with their respective constitutional rules.

Art. 22. The Assembly shall hold an annual session. It shall convene regularly on the second Tuesday in May.

The Assembly may be convoked in extraordinary session on the request of the Council in order to state its opinion on such questions as may be put to it by the Council.

It may also meet in extraordinary session on the request of a majority of its members or of the High Authority.

Art. 23. The Assembly shall designate its President and officers from among its membership.

The members of the High Authority may attend all meetings. The President of the High Authority or such of its members as it may designate shall be heard at their request.

The High Authority shall reply orally or in writing to all questions put to it by the Assembly or its members.

The members of the Council may attend all meetings and shall be heard at their request.

Art. 24. The Assembly shall discuss in open session the general report submitted to it by the High Authority.

If a motion of censure on the High Authority's administration is pre-

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[1] As amended by the 1972 Accession Act.

sented to the Assembly, a vote may be taken thereon only after a period of not less than three days following its introduction, and such vote shall be by open ballot.

If the motion of censure is adopted by two thirds of the members present and voting, representing a majority of the total membership, the members of the High Authority must resign in a body. They shall continue to carry out current business until their replacement in accordance with Article 10.

Art. 25. The Assembly shall fix its own rules of procedure, by vote of a majority of its total membership.

The acts of the Assembly shall be published in a manner to be prescribed in such rules of procedure.

Chapter III. The Council

Art. 26. The Council shall exercise its functions in the events and in the manner provided in the present Treaty, in particular with a view to harmonizing the action of the High Authority and that of the governments, which are responsible for the general economic policy of their countries.

To this end, the Council and the High Authority shall consult together and exchange information.

The Council may request the High Authority to examine all proposals and measures which it may deem necessary or appropriate for the realization of the common objectives.

Art. 27. *Abrogated.*

Art. 28.[1] When the Council is consulted by the High Authority it shall consider the matter without necessarily taking a vote. The minutes of its proceedings shall be forwarded to the High Authority.

Wherever this Treaty requires that the assent of the Council be given, that assent shall be considered to have been given if the proposal submitted by the High Authority receives the approval:

— of an absolute majority of the representatives of the Member States, including the votes of the representatives of two Member States which each produce at least one eighth of the total value of the coal and steel output of the Community; or

— in the event of an equal division of votes and if the High Authority maintains its proposal after a second discussion, of the representatives of three Member States which each produce at least one eighth of the total value of the coal and steel output of the Community.

Wherever this Treaty requires a unanimous decision or unanimous assent, such decision or assent shall have been duly given if all the members of the Council vote in favor. However, for the purposes of applying Articles 21, 32, 32a, 78d and 78f of this Treaty, and Article 16, the third paragraph of Article 20, the fifth paragraph of Article 28 and Article 44 of the Protocol on the Statute of the Court of Justice, abstention by members

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1 As amended by the 1972 Accession Act.

present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

Decisions of the Council, other than those for which a qualified majority or unanimity is required, shall be taken by a vote of the majority of its members; this majority shall be considered to be attained if it represents an absolute majority of the representatives of the Member States, including the votes of the representatives of two Member States which each produce at least one eighth of the total value of the coal and steel output of the Community. However, for the purpose of applying those provisions of Articles 78, 78b and 78d of this Treaty which require a qualified majority, the votes of the members of the Council shall be weighted as follows: Belgium 5, Denmark 3, Germany 10, France 10, Ireland 3, Italy 10, Luxembourg 2, Netherlands 5, Norway 3, United Kingdom 10. For their adoption, acts shall require at least forty-three votes in favor, cast by not less than six members.

Where a vote is taken, any member of the Council may act on behalf of not more than one other member.

The Council shall deal with the Member States through its President.

The acts of the Council shall be published in such a manner as it may decide.

Art. 29 and Art. 30. Abrogated.

Chapter IV. The Court

Art. 31. The function of the Court is to ensure the rule of law in the interpretation and application of the present Treaty and of its implementing regulations.

Art. 32.[1] The Court of Justice shall consist of eleven Judges.

The Court shall sit in plenary session. It may, however, set up chambers, each composed of three or five judges, in order either to conduct certain enquiries or to judge certain categories of cases in accordance with provisions to be laid down in rules for this purpose.

The Court shall, however, always sit in plenary session in order to hear cases submitted to it by a Member State or by one of the institutions of the Community or to deal with preliminary questions submitted to it pursuant to Article 41.

Should the Court so request, the Council may, by means of a unanimous vote, increase the number of judges and make the requisite amendments to the second and third paragraphs of this Article and to Article 32 (*b*), second paragraph.

Art. 32A.[1] The Court of Justice shall be assisted by three Advocates-General.

The duty of the Advocate-General shall be to present publicly, with complete impartiality and independence, reasoned conclusions on cases submitted to the Court, with a view to assisting the latter in the performance of its duties as laid down in Article 31.

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[1] As amended by the 1972 Accession Act.

Should the Court so request, the Council may, by means of a unanimous vote, increase the number of Advocates-General and make the requisite amendments to Article 32 (*b*), third paragraph.

Art. 32B[1] The judges and the Advocates-General shall be chosen from among persons of indisputable independence who fulfil the conditions required for the holding of the highest judicial office in their respective countries or who are jurists of a recognized competence; they shall be appointed for a term of six years by the Governments of Member States acting in common agreement.

Every three years there shall be a partial replacement of the Judges. Six and five Judges shall be replaced alternately.

Every three years there shall be a partial replacement of the Advocates-General. One and two Advocates-General shall be replaced alternately.

The retiring judges and Advocates-General shall be eligible for reappointment.

The judges shall appoint from among their members the President of the Court for a term of three years. Such term shall be renewable.

Art. 32C. The Court shall appoint its registrar and determine his status.

Art. 33. The Court shall have jurisdiction over appeals by a member State or by the Council for the annulment of decisions and recommendations of the High Authority on the grounds of lack of legal competence, substantial procedural violations, violation of the Treaty or of any rule of law relating to its application, or abuse of power. However, the Court may not review the conclusions of the High Authority, drawn from economic facts and circumstances, which formed the basis of such decisions or recommendations, except where the High Authority is alleged to have abused its powers or to have clearly misinterpreted the provisions of the Treaty or of a rule of law relating to its application.

The enterprises, or the associations referred to in Article 48, shall have the right of appeal on the same grounds against individual decisions and recommendations concerning them, or against general decisions and recommendations which they deem to involve an abuse of power affecting them.

The appeals provided for in the first two paragraphs of the present article must be taken within one month from the date of the notification or the publication, as the case may be, of the decision or recommendation.

Art. 34. If the Court should annul a decision or recommendation of the High Authority, the matter shall be remanded to the High Authority. The latter must take the necessary measures in order to give effect to the judgment of annulment. In case a decision or recommendation is adjudged by the Court to involve a fault for which the Community is liable, and causes a direct and particular injury to an enterprise or a group of enterprises, the High Authority must take such measures, within the powers granted to it by the present Treaty, as will assure an equitable redress for the injury resulting from the decision or recommendation which has been annulled, and, to the extent necessary, must grant a reasonable indemnity.

If the High Authority fails to take within a reasonable period the meas-

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[1] As amended by the 1972 Accession Act.

ures required to give effect to a judgment of annulment, an appeal for damages may be brought before the Court.

Art. 35. In the cases where the High Authority is required by a provision of the present Treaty or of implementing regulations to issue a decision or recommendation, and fails to fulfil this obligation, such omission may be brought to its attention by the States, the Council or the enterprises and associations, as the case may be.

The same shall be true if the High Authority refrains from issuing a decision or recommendation which it is empowered to issue by a provision of the present Treaty or implementing regulations, where such failure to act constitutes an abuse of power.

If at the end of a period of two months the High Authority has not issued any decision or recommendation, an appeal may be brought before the Court, within a period of one month, against the implicit negative decision which is presumed to result from such failure to act.

Art. 36. Prior to imposing a pecuniary sanction or fixing a daily penalty payment provided for in the present Treaty, the High Authority shall give the interested enterprise an opportunity to present its views.

An appeal to the general jurisdiction of the Court may be taken from the pecuniary sanctions and daily penalty payments imposed under the provisions of the present Treaty.

In support of such an appeal, and under the terms of the first paragraph of Article 33 of the present Treaty, the petitioners may contest the regularity of the decisions and recommendations which they are charged with violating.

Art. 37. If a member State shall deem that in a given case an action of the High Authority, or a failure by it to act, is of such a nature as to provoke fundamental and persistent disturbances in the economy of such State, it may bring the matter to the attention of the High Authority.

The latter, after having obtained the opinion of the Council, will recognize the existence of such situation, if any, and decide on the measures to be taken under the terms of the present Treaty, to correct such situation while at the same time safeguarding the essential interests of the Community.

When an appeal is taken to the Court under the provisions of the present Article against such decision or against the explicit or implicit decision refusing to recognize the existence of the situation mentioned above, the Court shall review the sufficiency of the grounds of such decision.

In case of annulment, the High Authority shall decide, within the framework of the Court's judgment, the measures to be taken to fulfil the objectives set forth in the second paragraph of the present article.

Art. 38. On the petition of a member State or of the High Authority, the Court may annul the acts of the Assembly or of the Council.

The petition must be submitted within one month from the publication of such act of the Assembly or of the notification of such act to the Court or to the member States or to the High Authority.

Such an appeal may be based only on the grounds of lack of jurisdiction, incompetence or substantial procedural violations.

Art. 39. Appeals to the Court shall not have the effect of suspending the execution of a decision or a recommendation.

However, if in its judgment circumstances demand, the Court may order the suspension of the execution of the decision or recommendation in question.

It may prescribe any other necessary provisional measures.

Art. 40. Subject to the provisions of the first paragraph of Article 31, the Court shall have jurisdiction to assess damages against the Community, at the request of the injured party, in cases where injury results from a fault involved in an official act of the Community in execution of the present Treaty.

It shall also have jurisdiction to assess damages against the Community, in cases where injury results from a personal fault of an agent of the Community. The personal responsibility of its agents to the Community shall be set forth in the regulations establishing their status or the regime applicable to them.

All other litigation to which the Community may be a party, and third party actions relating to the application of the provisions of the present Treaty and implementing regulations, shall be brought before the national tribunals.

Art. 41. When the validity of acts of the High Authority or the Council is contested in litigation before a national tribunal, such issue shall be certified to the Court, which shall have exclusive jurisdiction to rule thereon.

Art. 42. The Court shall have such jurisdiction as may be provided by any clause to such effect in a public or private contract to which the Community is a party or which is undertaken for its account.

Art. 43. The Court shall have jurisdiction in any other case provided for in a supplementary provision of the Treaty.

It may also exercise jurisdiction in any case relating to the objects of the present Treaty, where the laws of a member State grant such jurisdiction to it.

Art. 44. The judgments of the Court shall be executory on the territory of the member States under the terms of Article 92 below.

Art. 45. The Code of the Court shall be contained in a Protocol annexed to the present Treaty.

TITLE III. ECONOMIC AND SOCIAL PROVISIONS

Chapter 1. General Provisions

Art. 46. The High Authority may at any time consult the governments, the various interested parties (enterprises, workers, consumers and dealers) and their associations, as well as any experts.

Enterprises, workers, consumers and dealers, and their associations, may present any suggestions or observations to the High Authority on questions which concern them.

In order to provide guidance for the action of all of the interested parties in the achievement of the purposes assigned to the Community, and to determine its own action within the framework of the present Treaty, the High Authority shall, by means of the consultations mentioned above:

(1) carry on a permanent study of markets and price tendencies;

(2) periodically draw up non-compulsory program forecasts dealing with production, consumption, exports and imports;

(3) periodically work out general programs with respect to modernization, the long-term orientation of manufacturing and the expansion of productive capacity;

(4) at the request of the interested governments, participate in the study of the possibilities of re-employment, either in existing industries or through the creation of new activities, of workers set at liberty by the evolution of the market or by technical transformations;

(5) gather all information necessary to the appraisal of the possibilities of improving the living and working conditions of the labor force in the industries under its jurisdiction, and of the risks which menace such living conditions.

It shall publish the general objectives and programs after having submitted them to the Consultative Committee.

It may make public the studies and information mentioned above.

Art. 47. The High Authority may gather such information as may be necessary to the accomplishment of its mission. It may have the necessary verifications carried out.

The High Authority shall not divulge information which by its nature is considered a professional secret, and in particular information pertaining to the commercial relations or the breakdown of the costs of production of enterprises. With this reservation, it shall publish such data as may be useful to governments or to any other interested parties.

The High Authority may impose fines and daily penalty payments upon those enterprises which evade their obligations resulting from decisions made in application of the provisions of the present article, or which knowingly furnish false information. The maximum amount of such fines shall be one percent of the annual turnover and the maximum amount of such penalty payments shall be five percent of the average daily turnover for each day the violation continues.

Any violation by the High Authority of professional secrecy which has caused damage to an enterprise may be the subject of a suit for damages before the Court under the conditions provided for in Article 40.

Art. 48. The right of enterprises to form associations is not affected by the present Treaty. Membership in such associations must be voluntary. The associations may engage in any activity which is not contrary to the provisions of the present Treaty or to the decisions or recommendations of the High Authority.

In cases where the present Treaty requires the consultation of the Consultative Committee, any association has the right to submit to the High Authority, within the time limits fixed by the latter, the observations of its members on the action envisaged.

The High Authority will normally call upon producers' associations to obtain information which it requires or to facilitate the fulfilment of its tasks, provided that the associations in question either permit the qualified representatives of the workers and consumers to participate in the leader-

ship of these associations or in consultative committees affiliated to them, or in any other way give a satisfactory place in their organization to the expression of the workers' and consumers' interests.

The associations referred to in the preceding paragraph shall be obliged to furnish the High Authority with such information on their activity as the High Authority may deem necessary. The observations mentioned in the second paragraph of the present article and the information furnished under the fourth paragraph shall also be forwarded by the associations to the government concerned.

Chapter II. Financial Provisions

Art. 49. The High Authority is empowered to procure the funds necessary to the accomplishment of its mission:

– by placing levies on the production of coal and steel;

– by borrowing.

It may also receive grants.

Art. 50. 1. The levies are intended to cover:

– the administrative expense provided for in Article 78;

– the non-reimbursable assistance provided for in Article 56, concerning readaptation;

– as concerns the financial facilities provided for in Articles 54 and 56, and after recourse to the reserve fund, any portion of the servicing charges on the High Authority's obligations which cannot be covered by receipts from the servicing of loans granted by the High Authority, as well as payments which might be required by virtue of the operation of the Authority's guarantee on loans obtained directly by the enterprises;

– expenditures to encourage technical and economic research as provided for in section 2 of Article 55.

2. The levies are assessed annually on the various products according to their average value; the rate of levy may not exceed one percent unless previously authorized by a two-thirds majority of the Council. The method of assessment and collection shall be fixed by a general decision of the High Authority taken after consulting the Council; to the extent possible, cumulative taxation shall be avoided.

3. The High Authority may impose increases of not more than 5 percent per quarter-year of delay in payment upon enterprises which do not obey the decisions which it may issue in application of the present article.

Art. 51. 1. The funds obtained by borrowing may be used by the High Authority only to grant loans.

The issuance of the obligations of the High Authority on the markets of member States shall be subject to the regulations in effect on these markets.

In case the High Authority shall deem the guarantee of member governments necessary in order to contract loans, it shall approach the interested government or governments after consulting the Council. No government shall be required to give its guarantee.

2. In accordance with the terms of Article 54, the High Authority may guarantee loans granted directly to enterprises by third parties.

3. The High Authority may adjust its terms for loans or guarantees in order to build up a reserve fund, for the sole purpose of reducing the size of the levy provided for in the third sub-paragraph of section 1 of Article 50; the sums thus accumulated may not be used in any manner to grant loans to enterprises.

4. The High Authority itself shall not perform the operations of a banking nature which may be required to carry out its financial missions.

Art. 52. The member States shall take all necessary measures to assure the free transfer within the territories mentioned in the first paragraph of Article 79, and through the channels employed for commercial payments, of funds derived from levies, from pecuniary sanctions of all kinds, and from the reserve fund, to the extent necessary to their use for the purposes set forth in the present Treaty.

The methods of transfer among member States, as well as to third countries, of funds resulting from the other financial operations effected by the High Authority or under its guarantee shall be the subject of agreements concluded by the High Authority with the interested governments or the competent bodies; no member State which applies exchange controls shall be obliged to assure any such transfers to which it has not explicitly agreed.

Art. 53. Without prejudice to the provisions of Article 58 and of Chapter V of Title Three, the High Authority may:

(*a*) after consulting the Consultative Committee and the Council, authorize the institution, under conditions which it shall determine and under its control, of any financial mechanisms common to several enterprises which are deemed necessary for the accomplishment of the missions defined in Article 3 and compatible with the provisions of the present Treaty and particularly of Article 65;

(*b*) with the concurrence of the Council acting by unanimous vote, institute itself any financial mechanism satisfying the same purpose as referred to above.

Mechanisms of the same nature instituted or maintained by the member States shall be reported to the High Authority which, after consulting the Consultative Committee and the Council, shall address to the interested States the necessary recommendations, in case such mechanisms should be wholly or partly contrary to the application of the present Treaty.

Chapter III. Investments and Financial Assistance

Art. 54. The High Authority may facilitate the carrying out of investment programs by granting loans to enterprises or by giving its guarantee to loans which they may obtain elsewhere.

With the concurrence of the Council acting by unanimous vote, the High Authority may assist by the same means in financing works and installations which contribute directly and principally to increase production, lower production costs or facilitate marketing of products subject to its jurisdiction.

In order to encourage a coordinated development of investments, the

High Authority may, in accordance with the provisions of Article 47, require enterprises to submit individual programs in advance, either by a special demand addressed to the enterprise concerned or by a decision defining the nature and the size of the programs which must be submitted.

Within the framework of the general programs described in Article 46, the High Authority may, after having given the interested parties an opportunity to present their views, issue an opinion on such programs, accompanied by a justification. It is obliged to issue such an opinion when so requested by an enterprise. The High Authority shall notify the enterprise of its opinion and shall bring it to the attention of the government concerned. The list of opinions shall be made public.

If the High Authority finds that the financing of a program or the operation of the installations which it entails would require subsidies, assistance protection or discrimination contrary to the present Treaty, the unfavorable opinion taken by virtue of this justification shall have the force of a decision as defined in Article 14, and shall have the effect of prohibiting the enterprise concerned from resort to resources other than its own funds to put such program into effect.

The High Authority may impose fines not exceeding the sums unduly devoted to realization of the program in question on enterprises which violate the provisions of the above paragraph.

Art. 55. 1. The High Authority shall encourage technical and economic research concerning the production and the development of consumption of coal and steel, as well as labor safety in these industries. To this end, it shall establish all appropriate contacts among existing research organizations.

2. After consultation with the Consultative Committee, the High Authority may initiate and facilitate the development of such research work:

(*a*) by encouraging joint financing by the interested enterprises; or

(*b*) by earmarking for that purpose any grants it may receive, or

(*c*) with the concurrence of the Council by earmarking for that purpose funds derived from the levies provided for in Article 50, without, however, going beyond the ceiling defined in section 2 of that article.

The results of the research financed under the conditions set forth in subparagraphs (*b*) and (*c*) above shall be placed at the disposal of all interested parties in the Community.

3. The High Authority shall make all useful suggestions for the dissemination of technical improvements, particularly with regard to the exchange of patents and the granting of licenses.

Art. 56. If the introduction of technical processes or new equipment within the framework of the general programs of the High Authority, should lead to an exceptional reduction in labor requirements in the coal or steel industries, creating special difficulties in one or more areas for the re-employment of the workers released, the High Authority, on the request of the interested governments:

(*a*) will consult the Consultative Committee;

(*b*) may facilitate, in accordance with the methods provided for in Article 54, the financing of such programs as it may approve for the creation,

either in the industries subject to its jurisdiction or, with the concurrence of the Council, in any other industry, of new and economically sound activities capable of assuring productive employment to the workers thus released;

(c) will grant non-reimbursable assistance to contribute to:

– the payment of indemnities to tide the workers over until they can obtain new employment;

– the granting of allowances to the workers for reinstallation expenses;

– the financing of technical retraining for workers who are led to change their employment.

The High Authority shall condition the granting of non-reimbursable assistance on the payment by the interested State of a special contribution at least equal to such assistance, unless a two thirds majority of the Council authorizes an exception to this rule.

Chapter IV. Production

Art. 57. In the field of production, the High Authority shall give preference to the indirect means of action at its disposal, such as:

– co-operation with governments to regularize or influence general consumption, particularly that of the public services;

– intervention on prices and commercial policy as provided for in the present Treaty.

Art. 58. 1. In case of a decline in demand, if the High Authority deems that the Community is faced with a period of manifest crisis and that the means of action provided for in Article 57 are not sufficient to cope with that situation, it shall, after consulting the Consultative Committee and with the concurrence of the Council, establish a system of production quotas, accompanied, to the extent necessary, by the measures provided for in Article 74.

If the High Authority fails to act, one of the member States may bring the matter to the attention of the Council which, acting by unanimous vote, may require the High Authority to establish a system of quotas.

2. The High Authority, after consultation with the enterprises and their associations, shall establish quotas on an equitable basis in accordance with the principles defined in Articles 2, 3 and 4. The High Authority may in particular regulate the rate of operation of the enterprises by appropriate levies on tonnages exceeding a reference level defined by a general decision.

The sums thus obtained will be earmarked for the support of those enterprises whose production rate has dropped below the level envisaged particularly in order to ensure as far as possible the maintenance of employment in those enterprises.

3. The system of quotas shall be terminated automatically upon a proposal to the Council by the High Authority after consulting the Consultative Committee, or by the government of one of the member States, except in the case of a contrary decision of the Council; such decision must be taken by unanimous vote, if the proposal originates with the High Authority, or by simple majority if the proposal originates with a govern-

ment. The termination of the quota system shall be published by the High Authority.

4. The High Authority may impose upon enterprises violating the decisions taken by it in application of the present article, fines not to exceed a sum equal to the value of the irregular production.

Art. 59. 1. If, after consulting the Consultative Committee, the High Authority finds that the Community is faced with a serious shortage of certain or all of the products subject to its jurisdiction, and that the means of action provided for in Article 57 do not enable it to cope with the situation, it shall bring this situation to the attention of the Council, and, unless the Council decides otherwise by unanimous vote, shall propose the necessary measures.

If the High Authority fails to take any initiative, one of the member States may bring the matter before the Council, which by unanimous decision may recognize the existence of the situation mentioned above.

2. Acting by unanimous vote, on the basis of proposals by and in consultation with the High Authority, the Council shall establish consumption priorities and determine the allocation of the coal and steel resources of the Community among the industries subject to its jurisdiction, exports, and other consumption.

On the basis of the consumption priorities thus determined, the High Authority shall, after consulting the enterprises concerned, establish manufacturing programs which the enterprises shall be required to execute.

3. If the Council fails to reach a unanimous decision on the measures referred to in Section 2, the High Authority will itself proceed to allocate the resources of the Community among the member States on the basis of consumption and exports and independently of the location of production.

The allocation of the resources assigned by the High Authority shall be carried out within each of the member States under the responsibility of the government of that State, which shall consult with the High Authority concerning the portion of such resources, to be assigned to export and to the operation of the coal and steel industries.

If the quantities actually exported by a member State are less than the scheduled quantities which were included in the basis for total allocations to the State in question, the High Authority will to the extent necessary redistribute among the member States the additional availabilities for consumption thus created, whenever a new allocation is made.

If a relative reduction in the quantities directed by a government to the coal and steel industries leads to a reduction in production of one of these products in the Community, the allocation of that product to the member State in question at the time of a new allocation shall be reduced to the same extent as the reduction in production for which it is responsible.

4. In all cases, the High Authority, acting on the basis of studies undertaken in consultation with the enterprises and their associations, shall be responsible for allocating equitably among enterprises the quantities earmarked for the industries under its jurisdiction.

5. In the situation described in Section 1 of the present article, the High Authority may, after consulting the Consultative Committee and with the

concurrence of the Council, decide on the establishment in all member States of restrictions on exports to third countries in conformity with the provisions of Article 57; in the absence of any initiative on the part of the High Authority, the Council may take such a decision by unanimous vote upon the proposal of a government.

6. The High Authority may terminate the system set up in conformity with the present Article after consultation with the Consultative Committee and the Council. It may be overruled by a unanimous vote of the Council opposing such termination.

If the High Authority fails to take any initiative, the Council may, by unanimous vote, terminate the system of allocation.

7. The High Authority may impose upon enterprises which violate the decisions taken in application of the present article, fines not to exceed in amount twice the value of the manufactures or deliveries prescribed and not executed or diverted from their proper use.

Chapter V. Prices

Art. 60. 1. Pricing practices contrary to the provisions of Articles 2, 3 and 4 are prohibited, particularly:

unfair competitive practices, in particular purely temporary or purely local price reductions whose purpose is to acquire a monopoly position within the common market;

discriminatory practices involving the application by a seller within the single market of unequal conditions to comparable transactions, especially according to the nationality of the buyer.

After consultation with the Consultative Committee and the Council, the High Authority may define the practices covered by this prohibition.

2. For the above purposes:

(*a*) the price scales and conditions of sales to be applied by enterprises within the single market shall be made public to the extent and in the form prescribed by the High Authority after consultation with the Consultative Committee; if the High Authority deems that an enterprise has chosen an abnormal base point for its price quotations, in particular one which makes it possible to evade the provisions of sub-paragraph (*b*) below, it will make the appropriate recommendations to that enterprise.

(*b*) the prices charged by an enterprise within the common market, calculated on the base of the point chosen for the enterprise's price scale must not as a result of the methods of quotation:

- be higher than the price indicated by the price scale in question for a comparable transaction; or
- be less than this price by a margin greater than:
  - either the margin which would make it possible to align the offer in question on that price scale, set up on the basis of another point, which procures for the buyer the lowest price at the place of delivery;
  - or a limit fixed by the High Authority for each category of products, after consultation with the Consultative Committee, taking into account the origin and destination of such products.

These decisions shall be taken when they appear necessary to avoid disturbances in all or any part of the common market, or disequilibria which would result from a divergence between the methods of price quotation used for a product and for the materials which enter into its manufacture. These decisions shall not prevent enterprises from aligning their quotations on the prices offered by enterprises outside the Community, provided that such transactions are reported to the High Authority; the latter may, in case of abuse, limit or eliminate the right of the enterprises in question to benefit from this exception.

Art. 61. On the basis of studies undertaken in co-operation with the enterprises and their associations in accordance with the provisions of the first paragraph of Article 46 and the third paragraph of Article 48, and after consultation with the Consultative Committee and the Council as to the advisability of these measures as well as concerning the price level which they determine, the High Authority may fix for one or more products subject to its jurisdiction:

(*a*) maximum prices within the common market, if it deems that such a decision is necessary to attain the objectives defined in Article 3 and particularly in paragraph (*c*) thereof;

(*b*) minimum prices within the common market, if it deems that a manifest crisis exists or is imminent and that such a decision is necessary to attain the objectives defined in Article 3;

(*c*) after consultation with the enterprises concerned or their associations, and according to methods adapted to the nature of the export markets, minimum or maximum export prices, if such action can be effectively supervised and appears necessary either because of dangers to the enterprises on account of the situation of the market or to pursue in international economic relations the objective defined in Article 3 paragraph (*f*), without prejudice, in the case of minimum prices, to the application of the measures provided for in the last paragraph of section 2 of Article 60.

In fixing price limits the High Authority shall take into account the need to assure the ability to compete both of the coal and steel industries and of the consuming industries, in accordance with the principles defined in Article 3, paragraph (*c*).

If the High Authority should fail to act under the circumstances described above, the government of one of the member States may refer the matter to the Council; the latter may, by unanimous decision, invite the High Authority to fix such maximum or minimum prices.

Art. 62. If the High Authority should deem that such an action would be the most appropriate one in order to prevent the price of coal from being established at the level of the production costs of the most costly mine whose production is temporarily required to assure accomplishment of the missions defined in Article 3, the High Authority may, after consulting the Consultative Committee, authorize compensations:

– among enterprises of the same basin to which the same price scales are applicable;

– after consulting the Council, among enterprises situated in different basins.

Such compensations may, in addition, be undertaken under the terms of Article 53.

Art. 63. 1. If the High Authority finds that discrimination is being systematically practised by buyers, particularly as concerns orders placed by government subsidiaries, it shall make the necessary recommendations to the governments concerned.

2. To the extent that it finds necessary, the High Authority may decide that:

(*a*) enterprises shall establish their conditions of sale in such a way that their customers or their agents shall be obliged to conform to the rules established by the High Authority in application of the provisions of this Chapter;

(*b*) enterprises shall be made responsible for infractions committed by their direct agents or by dealers acting on behalf of such enterprises.

In case of a violation committed by a buyer against the obligations so contracted, the High Authority may limit the right of the enterprises of the Community to deal with the said buyer, to a degree which may entail temporary deprivation of access to the market in case of repeated infractions. In this case, and without prejudice to the provisions of Article 33, the buyer may appeal to the Court.

3. In addition, the High Authority is empowered to address to the member States such recommendations as may be necessary to ensure that any enterprise or organization engaged in distribution of coal or steel shall respect the rules established in application of Section 1 of Article 60.

Art. 64. The High Authority may impose upon enterprises which violate the provisions of the present Chapter or the decisions taken in application thereof, fines not to exceed twice the value of the irregular sales. In case of second offense, the above maximum may be doubled.

Chapter VI. Agreements and Concentrations

Art. 65. 1. There are hereby forbidden all agreements among enterprises, all decisions of associations of enterprises, and all concerted practices, which would tend, directly or indirectly, to prevent, restrict or impede the normal operation of competition within the common market, and in particular:

(*a*) to fix or influence prices;

(*b*) to restrict or control production, technical development or investments;

(*c*) to allocate markets, products, customers or sources of supply.

2. However, the High Authority will authorize enterprises to agree among themselves to specialize in the production of, or to engage in joint buying or selling of specified products, if the High Authority finds:

(*a*) that such specialization or such joint buying or selling will contribute to a substantial improvement in the production or marketing of the products in question; and

(*b*) that the agreement in question is essential to achieve such effects, and does not impose any restriction not necessary for that purpose; and

(*c*) that it is not susceptible of giving the interested enterprises the power to influence prices, or to control or limit production or marketing of an appreciable part of the products in question within the common market, or of protecting them from effective competition by other enterprises within the common market.

If the High Authority should recognize that certain agreements are strictly analogous in their nature and effects to the agreements mentioned above, taking into account the application of the present section to distributing enterprises, it will authorize such agreements if it further recognizes that they satisfy the same conditions.

An authorization may be made subject to specified conditions and may be limited in time. If so limited, the High Authority will renew it once or several times if it finds that at the time of renewal the conditions stated in paragraph (*a*) to (*c*) above are still fulfilled.

The High Authority will revoke or modify the authorization if it finds that as a result of changes in circumstances the agreement no longer fulfils the conditions set forth above, or that the actual effects of the agreement or of the operations under it are contrary to the conditions required for its approval.

The decisions granting, modifying, refusing or revoking an authorization shall be published along with their justification; the limitations contained in the second paragraph of Article 47 shall not be applicable to such publication.

3. The High Authority may obtain, in accordance with the provisions of Article 47, any information necessary to the application of the present article, either by a special request addressed to the interested parties or by a regulation defining the nature of the agreements, decisions or practices which must be communicated to it.

4. Any agreement or decision which is prohibited by virtue of Section 1 of the present article shall be automatically void and may not be invoked before any court or tribunal of the member States.

The High Authority has exclusive competence, subject to appeals to the Court, to rule on the conformity of such agreements or decisions with the provisions of the present article.

5. The High Authority may pronounce against enterprises:

– which have concluded an agreement which is automatically void;

– which have complied with, enforced or attempted to enforce by arbitration, forfeiture, boycott or any other means, an agreement or decision which is automatically void or an agreement for which approval has been refused or revoked;

– which shall have obtained an authorization by means of knowingly false or misleading information; or

– which engage in practices contrary to the provisions of Section 1;

fines and daily penalty payments not to exceed double the turnover actually realized on the products which have been the subject of the agreement, decision or practice contrary to the provisions of the present article; if the object of the agreement is to restrict production, technical development or investments, this maximum may be raised to 10 percent of the

annual turnover of the enterprises in question, in the case of fines, and 20 percent of the daily turnover in the case of daily penalty payments.

Art. 66. 1. Except as provided in paragraph 3 below, any transaction which would have in itself the direct or indirect effect of bringing about a concentration, within the territories mentioned in the first paragraph of Article 79, involving enterprises at least one of which falls under the application of Article 80, shall be submitted to a prior authorization of the High Authority. This obligation shall be effective whether the operation in question is carried out by a person or an enterprise, or a group of persons or enterprises, whether it concerns a single product or different products, whether it is effected by merger, acquisition of shares or assets, loan, contract, or any other means of control. For the application of the above provisions, the High Authority will define by a regulation, established after consultation with the Council, what constitutes control of an enterprise.

2. The High Authority will grant the authorization referred to in the preceding paragraph if it finds that the transaction in question will not give to the interested persons or enterprises, as concerns those of the products in question which are subject to its jurisdiction, the power:

– to influence prices, to control or restrain production or marketing, or to impair the maintenance of effective competition in a substantial part of the market for such products; or

– to evade the rules of competition resulting from the application of the present Treaty, particularly by establishing an artificially privileged position involving a material advantage in access to supplies or markets.

In this appreciation, and in accordance with the principle of non-discrimination set forth in sub-paragraph (*b*) of Article 4, the High Authority will take account of the size of enterprises of the same nature existing in the Community, to the extent it deems justified to avoid or correct the disadvantages resulting from an inequality in the conditions of competition.

The High Authority may subject such an authorization to any conditions which it deems appropriate for the purposes of the present section.

Before taking action on a transaction concerning enterprises of which at least one is not subject to the application of Article 80, the High Authority will request the observations of the interested government.

3. The High Authority will exempt from the requirement of prior authorization those classes of transactions which, by the size of the assets or enterprises which they affect taken together with the nature of the concentration they bring about, must in its opinion be held to conform to the conditions required by Section 2. The regulation established for this purpose with the concurrence of the Council will also fix the conditions to which such exemption is to be subject.

4. Without limiting the applicability of the provisions of Article 47 to enterprises subject to its jurisdiction, the High Authority may obtain from physical or juridical persons who have acquired or regrouped or may acquire or regroup the rights or assets in question, any information necessary to the application of the present article concerning operations which might produce the effect mentioned in Section 1; it may do this either

regulation established after consultation with the Council which defines the nature of the operations which must be communicated to it, or by a special demand addressed to the interested parties within the framework of such regulation.

5. If a concentration should occur, which the High Authority finds has been effected contrary to the provisions of Section 1 but which it finds nevertheless satisfies the conditions provided in Section 2, it will subject the approval of this concentration to the payment, by the persons who have acquired or regrouped the rights or assets in question, of the fine provided in the second sub-paragraph of Section 6; such payment shall not be less than half of the maximum provided in the said sub-paragraph in any case where it is clear that the authorization should have been requested. In the absence of this payment the High Authority will apply the measures provided hereafter for concentrations found to be illegal.

If a concentration should occur which the High Authority recognizes cannot satisfy the general or special conditions to which an authorization under Section 2 would be subject, it will establish the illegal character of this concentration by a decision accompanied by a justification; after having allowed the interested parties to present their observations, the High Authority shall order the separation of the enterprises or assets wrongly concentrated or the cessation of common control, as well as any other action wich it deems appropriate to re-establish the independent operation of the enterprises or assets in question and to restore normal conditions of competition. Any person directly interested may take an appeal against such decisions under the conditions provided in Article 33. Notwithstanding the provisions of that article, the Court shall be fully competent to judge whether the operation effected is a concentration within the meaning of Section 1 of the present article and of the regulations issued in application of that section. This appeal shall be suspensive. It may not be taken until the measures provided above have been ordered, unless the High Authority should agree to the taking of a separate appeal against the decision declaring the transaction illegal.

The High Authority may at any time, subject to the possible application of the provisions of the third paragraph of Article 39, take or cause to be taken such measures as it may deem necessary to safeguard the interests of competing enterprises and of third parties, and to prevent any action which might impede the execution of its decisions. Unless the Court decides otherwise, appeals shall not suspend the application of such precautionary measures.

The High Authority will grant to the interested parties a reasonable period in which to execute its decisions, at the expiration of which it may begin to impose daily penalty payments not to exceed one tenth of one percent of the value of the rights or assets in question.

Furthermore, if the interested parties fail to fulfil their obligations, the High Authority shall itself take measures of execution and in particular may: suspend the exercise, in enterprises subject to its jurisdiction, of the rights attached to the assets illegally acquired; bring about the designation by judicial authorities of a receiver-administrator for these assets; organize

the forced sale of such assets in conditions preserving the legitimate interests of their proprietors; annul, with respect to physical or juridical persons who have acquired the rights or assets in question by the effect of illegal transaction, the acts, decisions, resolutions, or deliberations of the directing organs of enterprises [illegible] to a control which has been irregularly established.

The High Authority is also empowered to address to the interested member States the recommendations necessary to obtain, within the framework of national legislation, the execution of the measures provided for in the preceding paragraphs.

In the exercise of its powers, the High Authority shall take account of the rights of third persons which have been acquired in good faith.

6. The High Authority may impose fines not to exceed:

– 3 percent of the value of the assets acquired or regrouped or to be acquired or regrouped, against physical or juridical persons who shall have violated the obligations provided for in Section 4;

– 10 percent of the value of the assets acquired or regrouped, against physical or juridical persons which shall have violated the obligation provided for in Section 1; after the end of the twelfth month following the transaction, this maximum shall be raised by one-twenty-fourth per month which elapses until the High Authority establishes the existence of the violation;

– 10 percent of the value of the assets acquired or regrouped or to be acquired or regrouped, against physical or juridical persons which shall have obtained or attempted to obtain the benefit of the provisions of Section 2 by means of false or misleading information;

– 15 percent of the value of the assets acquired or regrouped, against enterprises subject to its jurisdiction which shall have participated in or lent themselves to the realization of transactions contrary to the provisions of the present article.

Persons who are the object of sanctions provided for in the present paragraph may appeal before the Court under the conditions provided for in Article 36.

7. To the extent necessary, the High Authority is empowered to address to public or private enterprises which, in law or in fact, have or acquire on the market for one of the products subject to its jurisdiction a dominant position which protects them from effective competition in a substantial part of the common market, any recommendations required to prevent the use of such position for purposes contrary to those of the present Treaty. If such recommendations are not fulfilled satisfactorily within a reasonable period, the High Authority will, by decisions taken in consultation with the interested government and under the sanctions provided for in Articles 58, 59 and 64, fix the prices and conditions of sale to be applied by the enterprise in question, or establish manufacturing or delivery programs to be executed by it.

Chapter VII. Impairment of the Conditions of Competition

Art. 67. 1. Any action of a member State which might have noticeable repercussions on the conditions of competition in the coal and steel industries shall be brought to the attention of the High Authority by the interested government.

2. If such an action is liable to provoke a serious disequilibrium by increasing the differentials in costs of production otherwise than through variations in productivity, the High Authority, after consulting the Consultative Committee and the Council, may take the following measures:

If the action of that State produces harmful effects for coal or steel enterprises coming under the jurisdiction of the State in question, the High Authority may authorize that State to grant to such enterprises assistance, the amount, conditions and duration of which shall be determined in agreement with the High Authority. The same provisions shall be applicable in case of a variation in wages and in working conditions which would have the same effects, even if such variation is not the result of a governmental act.

If the action of the State produces harmful effects for coal or steel enterprises subject to the jurisdiction of other member States, the High Authority may address a recommendation to the State in question with a view to remedying such effects by such measures as that State may deem most compatible with its own economic equilibrium.

3. If the action of the State in question reduces differentials in costs of production by granting a special advantage to, or by imposing special burdens on, coal or steel enterprises coming under its jurisdiction in comparison with the other industries in the same country, the High Authority is empowered to address the necessary recommendations to the State in question, after consulting the Consultative Committee and the Council.

Chapter VIII. Wages and Movement of Labor

Art. 68. 1. The methods of fixing wages and social benefits in force in the various member States shall not be affected, as regards the coal and steel industries, by the application of the present Treaty, subject to the following provisions.

2. If the High Authority notes that abnormally low prices practised by one or several enterprises are the result of wages fixed by these enterprises at an abnormally low level in comparison with the actual wage level in the same region, it shall make the necessary recommendations to the interested enterprise after consulting the Consultative Committee. If the abnormally low wages are the result of governmental decisions, the High Authority shall enter into consultation with the interested government; in the absence of agreement and after consulting the Consultative Committee, it may issue a recommendation to the government concerned.

3. If the High Authority finds that a lowering of wages is leading to a drop in the standard of living of the labor force and at the same time is

being used as a means of permanent economic adjustment by enterprises or as a weapon of competition among enterprises, it shall address to the enterprise or government concerned, after consulting the Consultative Committee, a recommendation intended to assure the labor force of compensatory benefits to be paid for by the enterprise in question.

This provision shall not apply to:

(*a*) over-all measures taken by a member State to re-establish its external equilibrium, without prejudice in this latter case to the possible application of the provisions of Article 67;

(*b*) wage decreases resulting from the application of the sliding scale legally or contractually established;

(*c*) wage decreases brought about by a decrease in the cost of living;

(*d*) wage decreases to correct abnormal increases previously granted under exceptional circumstances no longer in existence.

4. With the exception of the cases provided for in paragraphs (*a*) and (*b*) of the above section, any wage decrease affecting the whole labor force of an enterprise or a sizeable fraction thereof shall be reported to the High Authority.

5. The recommendations provided for in the above sections may be made by the High Authority only after consultation with the Council; such consultation shall not be necessary, however, in the case of recommendations addressed to enterprises smaller than a minimum size to be defined by the High Authority in agreement with the Council.

If, in one of the member States, a modification of the provisions relative to the financing of social security or of the measures for combating unemployment and the effects thereof, or a variation in wages, produces the effects referred to in Article 67, Sections 2 and 3, the High Authority shall be empowered to apply the provisions of Article 67.

6. If an enterprise should fail to conform to a recommendation made to it by virtue of the present article, the High Authority may impose on it fines and daily penalty payments not to exceed twice the amount of the savings in labor costs unjustifiably effected.

Art. 69. 1. The member States bind themselves to renounce any restriction based on nationality against the employment in the coal and steel industries of workers of proven qualifications for such industries who possess the nationality of one of the member States; this commitment shall be subject to the limitations imposed by the fundamental needs of health and public order.

2. In order to apply these provisions, the member States will work out a common definition of specialities and conditions of qualification, and will determine by common agreement the limitations provided for in the preceding paragraph. They 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.

3. In addition, for the categories of workers not falling within the provisions of the preceding paragraph and where an expansion of production in the coal and steel industries might be hampered by a shortage of qualified labor, they will adapt their immigration regulations to the extent

necessary to eliminate that situation; in particular, they will facilitate the re-employment of workers from the coal and steel industries of other member States.

4. They will prohibit any discrimination in remuneration and working conditions between national workers and immigrant workers, without prejudice to special measures concerning frontier workers; in particular, they will work out among themselves any arrangements necessary so that social security measures do not stand in the way of the movement of labor.

5. The High Authority shall guide and facilitate the application by the member States of the measures taken by virtue of the present article.

6. The present article shall not interfere with the international obligations of the member States.

Chapter IX. Transport

Art. 70. It is recognized that the establishment of the common market requires the application of such transport rates for coal and steel as will make possible comparable price conditions to consumers in comparable positions.

For traffic among the member States, discriminations in transport rates and conditions of any kind, based on the country of origin or of destination of the products in question, are particularly forbidden. The suppression of these discriminations involves in particular the obligation to apply to the transport of coal and steel, originating in or destined for another country of the Community, the rate scales, prices and tariff provisions of all types applicable to internal transport of the same merchandise over the same route.

The rate scales, prices and tariff provisions of all sorts applied to the transport of coal and steel within each member State and among the member States shall be published or brought to the knowledge of the High Authority.

The application of special internal tariff measures in the interest of one or several coal or steel producing enterprises is subject to the prior agreement of the High Authority, which will assure itself that such measures conform to the principles of the present Treaty; it may give a temporary or conditional agreement.

Subject to the provisions of the present article, as well as to the other provisions of the present Treaty, commercial policy for transport, particularly the establishment and modification of rates and conditions of transport of any type as well as the arrangement of transport costs required to assure the financial equilibrium of the transport enterprises themselves, remains subject to the legislative or regulatory provisions of each of the member States; the same is true for the measures of coordination or competition among different means of transport or among different routes.

Chapter X. Commercial Policy

Art. 71. Unless otherwise stipulated in the present Treaty, the competence of the governments of the member States with respect to commercial policy shall not be affected by application of the present Treaty.

The powers granted to the Community by the present Treaty concerning commercial policy towards third countries shall not exceed the powers which the member States are free to exercise under the international agreements to which they are parties, subject to the application of the provisions of Article 75.

The governments of the member States will lend each other the necessary assistance in the application of measures recognized by the High Authority as in conformity with the present Treaty and with international agreements in effect. The High Authority may propose to the member States concerned the methods by which this mutual assistance shall be undertaken.

Art. 72. Minimum rates below which the member States are bound not to lower their customs duties on coal and steel with regard to third countries, and maximum rates, above which they are bound not to raise such duties, may be fixed by unanimous decision of the Council upon the proposal of the High Authority, which may act on its own initiative or at the request of a member State.

Between the limits fixed by the said decision, each government will set its tariffs according to its national procedure. The High Authority may, on its own initiative or at the request of one of the member States, issue an opinion suggesting the modification of the tariffs of such participating country.

Art. 73. The administration of import and export licensing in relations with third countries shall be the responsibility of the government on th territory of which is located the point of origin for exports or the point of destination for imports.

The High Authority is empowered to supervise the administration and control of such licensing where coal and steel are concerned. After consulting the Council, it will address recommendations to the member States wherever necessary in order either to prevent the measures adopted from having a more restrictive character than is required by the situation justifying their establishment or maintenance, or to insure coordination of measures taken in compliance with the third paragraph of Article 71 and Article 74.

Art. 74. In the cases enumerated below, the High Authority is empowered to take all measures in conformity with the present Treaty, in particular with the objectives defined in Article 3, and to make any recommendations to the governments which do not violate the provisions of the second paragraph of Article 71:

(1) if it is established that countries not members of the Community, or enterprises situated in such countries, are engaging in dumping operations or other practices condemned by the Havana Charter;

(2) if a difference between the offers made by enterprises outside the jurisdiction of the Community and those made by enterprises within its jurisdiction is due exclusively to the fact that those of the former are based on competitive conditions contrary to the provisions of the present Treaty;

(3) if one of the products enumerated in Article 81 of the present Treaty imported into the territory of one or several of the member States of the Community in relatively increased quantities and under such conditions that these imports inflict or threaten to inflict serious damage on production, within the common market, of similar or directly competitive products.

However, recommendations for the establishment of quantitative restrictions may be issued: in the case cited in paragraph (2) above, only with the concurrence of the Council; and in the case cited in paragraph (3) above, only under the conditions set forth in Article 58.

Art. 75. The member States bind themselves to keep the High Authority informed of proposed commercial agreements or arrangements to the extent that such agreements relate to coal, steel or the importation of other raw materials and of specialized equipment necessary to the production of coal and steel in the member States.

If a proposed agreement or arrangement should contain clauses interfering with the application of the present Treaty, the High Authority will address the necessary recommendations to the interested State within a period of ten days from the receipt of the communication made to it: it may in any other case issue opinions.

TITLE IV. GENERAL PROVISIONS

Art. 76. *Abrogated.*

Art. 77. The seat of the institutions of the Community shall be fixed by common agreement of the governments of the member States.

Art. 78. 1. The financial year shall run from 1 January to 31 December inclusive.

The operational expenditures of the Community shall include the expenditures of the High Authority, including those pertaining to the functioning of the Consultative Committee, as well as to the Court, the Assembly and the Council.

2. Each of the institutions of the Community shall draw up before July 1, provisional estimates of its operational expenditures. The High Authority shall combine these estimates in a preliminary draft operational budget. It shall attach its opinion which may contain divergent estimates.

This preliminary draft operational budget shall include an estimate of receipts and expenditures.

3. The High Authority must lay the preliminary draft operational budget before the Council by, at the latest, 1 September of the year preceding its implementation.

The Council shall consult the High Authority and, when necessary, the other institutions concerned whenever it intends to depart from this preliminary draft.

The Council, acting by means of a qualified majority vote, shall draw up the draft operational budget and transmit it to the Assembly.

4. The draft operational budget must be laid before the Assembly by, at the latest, 5 October of the year preceding its implementation.

The Assembly shall have the right, by a majority of its members, to amend the draft operational budget and to propose to the Council, by an absolute majority of votes, modifications to the draft in relation to the expenditures flowing automatically from the Treaty or the acts drawn up in virtue of the Treaty.

If, within a period of forty five days after the draft operational budget has been communicated to it, the Assembly has given its approval, the operational budget shall be considered as finally adopted. If, within this period, the Assembly has neither amended nor proposed amendments to the draft operational budget, it shall be considered as finally adopted.

If, within this period, the Assembly has adopted or proposed amendments, the draft operational budget, thus amended or together with the proposed amendments, shall be transmitted to the Council.

5. The Council may, after having debated the draft operational budget with the High Authority and, if necessary, with the other institutions concerned, decide by a qualified majority vote, to modify each of the amendments adopted by the Assembly, and it shall decide, by the same majority, on the proposed amendments presented by the Assembly. The draft operational budget shall be modified taking into account the proposals or alterations accepted by the Council.

If, within a time limit of fifteen days after the communication of the operational budget, the Council has not modified any of the amendments adopted by the Assembly and has accepted the proposals the latter has presented, the operational budget shall be considered as finally adopted. The Council shall inform the Assembly of the fact that it has not modified any of the amendments and that it accepts the proposals of amendments.

If, within this time limit, the Council has modified one or more of the amendments adopted by the Assembly or has not accepted the amendments proposed by it, the draft operational budget shall be again transmitted to the Assembly. The Council shall report to it on the results of its discussions.

6. Within a time limit of fifteen days after communication of the draft operational budget, the Assembly, having been informed of the action taken on its proposed amendments, shall decide, by a majority of its members including three fifths of the votes, upon the amendments proposed by the Council to its amendments, and shall adopt in the light of this the operational budget. If, within this time limit the Assembly has not decided, the budget shall be considered as finally adopted.

7. When the procedure provided in the present article has been carried out, the President of the Assembly shall declare that the operational budget has been finally adopted.

8. For the total of the expenditures other than those automatically flowing from the Treaty or from the acts drawn up in virtue of the Treaty, a maximum rate of increase in relation to expenditures of the same nature for the current fiscal year shall be established each year.

The High Authority, after consulting the Committee of policy in connection with economic trends and the Committee of budgetary policy shall declare the maximum rate which results from:

— the evolution of the gross national product in volume within the Community;

the mean variation of the budgets of member States, and

evolution of the cost of living during the course of the preceeding fiscal year.

The maximum rate shall be communicated before the 1st of May, to all the institutions of the Community. These shall be obliged to respect it in the course of the budgetary procedure, subject to the provisions of the fourth and fifth paragraphs of this paragraph.

If, for expenditures other than those automatically flowing from the Treaty or from the acts drawn up in virtue of the Treaty, the rate of increase resulting from the draft operational budget drawn up by the Council is greater than half the maximum rate, the Assembly exercising its rights of amendment, may further increase the total amount of such expenditures within the limitation of half the maximum rate.

When, in exceptional cases, the Assembly, the Council or the High Authority consider that the activities of the Communities require that the established rate be exceeded according to the procedure laid down in this paragraph, a new rate may be fixed by agreement between the Council, deciding by a qualified majority vote, and the Assembly deciding by the vote of a majority of its members including three fifths of the votes.

9. Each institution shall exercise the powers granted to it by this article with due regard for the provisions of the Treaty and the other acts drawn up in virtue of the Treaty, in particular in the question of the resources of the Communities and a balance of receipts and expenditures.

10. The definitive adoption of the operational budget shall require and oblige the High Authority to collect the corresponding receipts, in accordance with the provisions of Article 49.

Art. 78A. In derogation of the provisions of Article 78, the following provisions shall be applicable for the budgets of the fiscal years preceding 1975.

1. The financial year shall run from 1 January to 31 December inclusive.

The operational expenditures of the Community shall include the expenditures of the High Authority, including those pertaining to the functioning of the Consultative Committee, as well as to the Court, the Assembly and the Council.

2. Each of the institutions of the Community shall draw up before July 1, provisional estimates of its operational expenditures. The High Authority shall combine these estimates in a preliminary draft operational budget. It shall attach its opinion which may contain divergent estimates.

This preliminary draft operational budget shall include an estimate of receipts and expenditures.

3. The High Authority must lay the preliminary draft budget before

the Council by, at the latest, 1 September of the year preceding its implementation.

The Council shall consult the High Authority and, when necessary, the other institutions concerned whenever it intends to depart from this preliminary draft.

The Council, acting by means of a qualified majority vote, shall draw up the draft operational budget and transmit it to the Assembly.

4. The draft operational budget must be laid before the Assembly by, at the latest, 5 October of the year preceding its implementation.

The Assembly shall have the right to propose amendments to the draft operational budget to the Council.

If, within a time limit of forty five days after communication of the draft operational budget, the Assembly has approved or has not proposed amendments to the draft, the budget shall be considered finally adopted.

If, within this time limit, the Assembly has proposed amendments, the draft operational budget, accompanied by the proposed amendments, shall be transmitted to the Council.

5. The Council, having debated the draft budget with the High Authority and, if appropriate, with the other institutions interested, shall draw up the operational budget within a time limit of thirty days after it has been communicated to it, in the following conditions.

If an amendment proposed by the Assembly does not result in increasing the total amount of the expenditures of an institution because the increase of the expenditures would be expressly compensated by one or more proposed amendments embodying a corresponding decrease of expenditures, the Council may, deciding by a qualified majority vote, reject this proposed amendment. Failing a decision to reject it, the proposed amendment shall be considered accepted.

If an amendment proposed by the Assembly would result in increasing the total amount of the expenditures of an institution, the acceptance of such an amendment by the Council shall require a qualified majority vote.

If, in accordance with the second or third paragraphs of this paragraph, the Council has rejected or has not accepted a proposed amendment, it may, deciding by a qualified majority vote, either maintain the amount appearing in the draft operational budget, or establish another amount.

6. When the procedure provided in this article has been carried out, the President of the Council shall declare that the budget is finally adopted.

7. Each institution shall exercise the powers which have been granted to it by this article with due respect to the provisions of the Treaty and of the acts drawn up in virtue of the Treaty, in particular in relation to the resources of the Communities and a balance of receipts and expenditures.

8. The definitive adoption of the administrative budget means that the High Authority is authorized and obliged to collect the amount of the corresponding receipts, in accordance with the provisions of Article 49.

Art. 78bis. The operational budget shall be drawn up in the unit of account fixed in accordance with the provisions of the financial regulations adopted pursuant to Article 78 *septimo*.

The expenditures inscribed in the operational budget shall be authorized

for the duration of the fiscal year, unless the regulations adopted pursuant to Article 78 *septimo* provides otherwise.

In the conditions to be determined in the application of Article 78 *septimo*, credits other than those relating to expenditures for personnel which may be unused at the end of the fiscal year, may be carried over for no longer than the next fiscal year.

Appropriations shall be listed by headings comprising expenditures according to their nature or their destination and subdivided, as necessary, in accordance with the regulations adopted pursuant to Article 78 *septimo*.

The expenditures of the Assembly, the Council of the High Authority and the Court shall be the subjects of separate headings of the operational budget, without prejudice to the special regime for certain common expenditures.

Art. 78 ter. 1. If, at the beg' ning of the financial year, the operational budget has not yet been voted, expenditures may be effected on a monthly basis per heading or other division of the budget, according to the provisions of the regulations adopted pursuant to Article 78 *septimo*, up to one twelfth of the budget appropriations for the preceeding financial year provided that the amount so made available to the High Authority shall not exceed one twelfth of the total appropriations shown in the draft budget in course of preparation.

The High Authority shall be authorized and obliged to collect the receipts corresponding to the appropriations for the preceeding fiscal year, without however being authorized to cover an amount higher than that which would result from the adoption of the draft operational budget.

2. The Council, acting by means of a qualified majority vote, may, subject to observance of the other provisions laid down in the first paragraph, authorize expenditures in excess of one twelfth. The authorization and obligation to collect the receipts may be adapted in consequence.

Art. 78 quater. The High Authority shall, in accordance with the provisions of the regulations adopted pursuant to Article 78 *septimo*, implement the operational budget on its own responsibility and within the limits of the appropriations made.

The regulations shall lay down the particular procedure according to which each institution shall participate in the expenditure of its own funds.

Within each oporational budget, the High Authority may, subject to the limits and conditions laid down in the regulations adopted pursuant to Article 78 *septimo*, transfer funds as between the various headings or subheadings.

Art. 78 quinto. The accounts of all the operational expenditures provided for in Article 78 paragraph 2, as well as receipts of an operational nature and receipts from the tax for the benefit of the Community on wages, salaries and fees of its officials and employees, shall be examined by a committee of control composed of auditors of indisputable independence of whom one shall be the chairman. The Council, acting by means of a unanimous vote, shall fix the number of auditors. The auditors and the chairman of the committee of control shall be appointed by the Council, acting by means of a unanimous vote, for a period of five years. Their

remuneration shall be determined by the Council acting by means of a qualified majority vote.

The auditing of the accounts, which shall be based on vouchers and shall take place, if necessary, on the spot, shall be designed to ascertain that all revenues and expenditures are lawful and proper and that the financial management is sound. After the winding up of each budget, the committee of control shall draw up a report the adoption of which shall require a majority vote of its members.

The High Authority shall annually submit to the Council and to the Assembly the accounts of the preceeding financial year in respect of the operational budget, together with the report of the committee of control. The High Authority shall also communicate to them a balance sheet showing the assets and liabilities of the Community.

The Council and the Assembly shall give the High Authority a discharge in respect of the implementation of the operational budget. For this purpose, the committee of control's report shall be examined first by the Council, which shall act by means of a qualified majority vote, and then by the Assembly. The discharge may not be given to the Commission until both the Council and the Assembly have acted.

Art. 78 sexto. The Council shall appoint a Commissioner of Audit for three years, who shall be entrusted with drawing up an annual report on the lawfulness and propriety of the accounting operations and on the financial management of the High Authority, with the exception of activities relating to the operational expenses provided in Article 78, paragraph 2, and to receipts of an operational character and receipts from the tax for the benefit of the Community on the wages, salaries and fees of the Community' officials and employees. He shall draw up this report at the latest six months after the end of the fiscal year which it concerns and shall address it to the High Authority and to the Council. The High Authority shall communicate it to the Assembly.

The Commissioner of Audit shall exercise these functions in complete independence. The office of the Commissioner of Audit shall be incompatible with any other office in an institution or organ of the Community other than that of member of the committee of control provided in Article 78 *quinto*. His term of office shall be renewable.

Art. 78 septimo. The Council, acting by means of a unanimous vote on a proposal of the High Authority, shall:

(*a*) lay down the financial regulations specifying, in particular, the procedure to be adopted for establishing and implementing the operational budget for rendering and auditing accounts;

(*b*) establish rules concerning the responsibility of pay-commissioners and accountants and arrange for the relevant supervision.

Art. 79.[1] The present Treaty is applicable to the European territories of the member States. It is also applicable to those European territories whose foreign relations are assumed by a member State: an exchange of letters between the government of the German Federal Republic and the govern-

[1] Amended by the 1972 Accession Act.

ment of the French Republic concerning the Saar is annexed to the present Treaty.

Notwithstanding the preceding paragraph:

(*a*) This Treaty shall not apply to the Faroe Islands. The Government of the Kingdom of Denmark may, however, give notice, by a declaration deposited by 31 December 1975 at the latest with the Government of the French Republic, which shall transmit a certified copy thereof to each of the Governments of the other Member States, that this Treaty shall apply to those Islands. In that event, this Treaty shall apply to those Islands from the first day of the second month following the deposit of the declaration.

(*b*) This Treaty shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus.

(*c*) This Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Decision concerning the accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Coal and Steel Community.

Each High Contracting Party binds itself to extend to the other member States the preferential measures which it enjoys with respect to coal and steel in the non-European territories subject to its jurisdiction.

Art. 80. The term enterprise, as used in the present Treaty, refers to any enterprise engaged in production in the field of coal and steel within the territories mentioned in the first paragraph of Article 79; and in addition, as concerns Articles 65 and 66 as well as information required for their application and appeals based upon them, to any enterprise or organization regularly engaged in distribution other than sale to domestic consumers or to artisan industries.

Art. 81. The terms "coal" and "steel" are defined in Annex I to the present Treaty.

Additions may be made to the lists set forth in this annex by unanimous decision of the Council.

Art. 82. The turnover which shall serve as basis for the calculation of the fines and daily penalty payments applicable to enterprises by virtue of the present Treaty shall be the turnover on the products subject to the jurisdiction of the High Authority.

Art. 83. The establishment of the Community does not in any way prejudice the regime of ownership of the enterprises subject to the provisions of the present Treaty.

Art. 84. In the provisions of the present Treaty, the words "present Treaty" shall be understood as referring to the clauses of the said Treaty and its annexes, of the annexed Protocols, and of the Convention containing the Transitional Provisions.

Art. 85. The initial and transitional measures agreed upon by the High Contracting Parties with a view to permitting the application of the provisions of the present Treaty are set forth in an annexed Convention.

Art. 86. The member States bind themselves to take all general and

specific measures which will assure the execution of their obligations under the decisions and recommendations of the institutions of the Community, and facilitate the accomplishment of the Community's purposes.

The member States bind themselves to refrain from any measures which are incompatible with the existence of the common market referred to in Articles 1 and 4.

To the extent of their competence, the member States will take all appropriate measures to assure the international payments arising out of trade in coal and steel within the common market; they will lend assistance to each other to facilitate such payments.

Officials of the High Authority charged with verifying information shall enjoy on the territories of the member States, to the extent necessary for the accomplishment of their mission, such rights and powers as are granted by the laws of such States to officials of its own tax services. The missions and the status of the officials charged with them shall be duly communicated to the State in question. Officials of such State may, at the request of such State or of the High Authority, assist those of the High Authority in carrying out their mission.

Art. 87. The High Contracting Parties agree not to avail themselves of any treaties, conventions or agreements existing among them to submit any difference arising out of the interpretation or application of the present Treaty to a method of settlement other than those provided for herein.

Art. 88. If the High Authority deems that a State is delinquent with respect to one of the obligations incumbent upon it by virtue of the present Treaty, it will, after permitting the State in question to present its views, take note of the delinquency in a decision accompanied by a justification. It will allow the State in question a period of time within which to provide for the execution of its obligation.

Such State may appeal to the Court's plenary jurisdiction within a period of two months from the notification of the decision.

If the State has not taken steps for the fulfilment of its obligation within the period fixed by the High Authority, or if its appeal has been rejected, the High Authority may, with the concurrence of the Council acting by a two thirds majority:

(*a*) suspend the payment of sums which the High Authority may owe to the State in question under the present Treaty;

(*b*) adopt measures or authorize the other member States to adopt measures involving an exception to the provisions of Article 4, so as to correct the effects of the delinquency in question.

An appeal to the Court's plenary jurisdiction may be brought against the decisions taken in application of paragraphs (*a*) and (*b*) within two months following their notification.

If these measures should prove inoperative, the High Authority will lay the matter before the Council.

Art. 89. Any dispute among member States concerning the application of the present Treaty, which cannot be settled by another procedure provided for in the present Treaty, may be submitted to the Court at the request of one of the States parties to the dispute.

The Court shall also have jurisdiction to settle any dispute among member States related to the purpose of the present Treaty, if such dispute is submitted to it by virtue of an agreement to arbitrate.

Art. 90. If an act committed by an enterprise in violation of the present Treaty also constitutes a violation of an obligation under the legislation of the State to which the enterprise in question is subject, and if legal or administrative action is instituted against the enterprise in question under such legislation, the State in question shall so inform the High Authority which may suspend action in the premises.

If the High Authority suspends action, it shall be kept informed of the status of the proceedings and permitted to produce any pertinent documents, expert advice and evidence. It shall also be informed of the final decision taken in the case, and shall take account of this decision in determining any sanctions which it may be led to pronounce.

Art. 91. If an enterprise does not make, within the prescribed time-limit, a payment for which it is liable to the High Authority either by virtue of a provision of the present Treaty or the agreements in application thereof or by virtue of a fine or a daily penalty payment imposed by the High Authority, the latter may suspend settlement of sums due by the High Authority to the said enterprise up to the amount of the payment in question.

Art. 92. The decisions of the High Authority imposing financial obligations on enterprises are executory.

They shall be enforced on the territory of member States through the legal procedures in effect in each of these States, after the writ of execution in use in the State on the territory of which the decision is to be carried out has been placed upon them; this shall be done with no other formality than the certification of the authenticity of such decisions. The execution of these formalities shall be the responsibility of a Minister which each of the governments shall designate for this purpose.

Enforcement of such decisions can be suspended only by a decision of the Court.

Art. 93. The High Authority will maintain whatever relationships appear useful with the United Nations and the Organization for European Economic Co-operation, and will keep these organizations regularly informed of the activity of the Community.

Art. 94. The relations of the institutions of the Community with the Council of Europe will be assured under the terms of an annexed Protocol.

Art. 95.[1] In all cases not expressly provided for in the present Treaty in which a decision or a recommendation of the High Authority appears necessary to fulfil, in the operation of the common market for coal and steel and in accordance with the provisions of Article 5 above, one of the purposes of the Community as defined in Articles 2, 3 and 4, such decision or recommendation may be taken subject to the unanimous concurrence of the Council and after consultation with the Consultative Committee.

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1 As amended by the 1972 Accession Act.

The same decision or recommendation taken in the same manner shall [illegible] applied.

In following the expiration of the transition period provided for by the Convention on certain transitional provisions, unforeseen difficulties which are brought out by experience in the means of application of the present Treaty, or a profound change in the economic or technical conditions which affects the common coal and steel market directly, should make necessary an adaptation of the rules concerning the exercise by the High Authority of the powers which are conferred upon it, appropriate modifications may be made provided that they do not modify the provisions of Articles 2, 3 and 4, or the relationship among the powers of the High Authority and the other institutions of the Community.

These amendments shall be proposed jointly by the High Authority and the Council, acting by a nine-tenths majority of its members, and shall be submitted to the Court for its opinion. In considering them, the Court shall have full power to assess all points of fact and of law. If as a result of such consideration it finds the proposals compatible with the provisions of the preceding paragraph, they shall be forwarded to the Assembly and shall enter into force if approved by a majority of three quarters of the votes cast and two thirds of the members of the Assembly.

Art. 96. Following the expiration of the transition period, the government of each member State and the High Authority may propose amendments to the present Treaty. Such proposals will be submitted to the Council. If the Council, acting by a two-thirds majority, approves a conference of representatives of the governments of the member States, such a conference shall be immediately convoked by the President of the Council, with a view to agreeing on any modifications to be made in the provisions of the Treaty.

Such amendments will enter into force after having been ratified by all of the member States in conformity with their respective constitutional rules.

Art. 97. The present Treaty is concluded for a period of fifty years from the date of its entry into force.

Art. 98. Any European State may request to accede to the present Treaty. It shall address its request to the Council, which shall act by unanimous vote after having obtained the opinion of the High Authority. Also by a unanimous vote, the Council shall fix the terms of accession. It shall become effective on the day the instrument of accession is received by the government acting as depositary of the Treaty.

Art. 99. The present Treaty shall be ratified by all the member States in accordance with their respective constitutional rules; the instruments of ratification shall be deposited with the Government of the French Republic.

The Treaty shall enter into force on the date of the deposit of the instrument of ratification of the last signatory nation to accomplish that formality.

In the event that all the instruments of ratification have not been deposited within a period of six months following the signature of the present

Treaty, the governments of the States which have effected such deposit will consult among themselves on the measures to be taken.

Art. 100. The present Treaty, drawn up in a single copy, shall be deposited in the archives of the Government of the French Republic, which shall transmit a certified copy thereof to each of the governments of the other signatory States.

In witness whereof the undersigned Plenipotentiaries have placed their signatures and seals at the end of the present Treaty.

Done at Paris, the eighteenth of April one thousand nine hundred and fifty-one.

PROTOCOL ON THE STATUTE OF THE COURT OF JUSTICE [1]

April 18, 1951

The High Contracting Parties:

Desirous of establishing the Code of the Court of Justice provided by Article 45 of the Treaty,

Have agreed as follows:

Art. 1. The Court of Justice established by Article 7 of the Treaty shall be constituted and shall perform its duties in accordance with the provisions of the Treaty and of the present Code.

TITLE I. THE JUDGES

Oath of Office

Art. 2. Before commencing his duties, each judge shall take a public oath to discharge his duties conscientiously and with complete impartiality and to preserve the secrecy of the Court's deliberations.

Privileges and Immunities

Art. 3. The judges shall enjoy legal immunity. They shall retain this immunity after their term of office for all acts performed by them in their official capacity including their statements and writings.

The Court, sitting *en banc*, may suspend this immunity.

Only the courts with jurisdiction over the highest members of the national judiciary in each member State shall have jurisdiction in criminal proceedings against judges whose immunity has been so suspended.

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[1] See page 649, Article 4 of the *Convention relating to certain institutions common to the European Communities*, concerning the replacement of the Court here provided for, the revision of Article 32 of the Treaty establishing the Coal and Steel Community and the abrogation of such provisions of this Protocol as are incompatible with revised Article 32.

Conflicts of Interest

Art. 4. Judges may not hold any political or administrative office.

They may not engage in any business or professional activities, paid or unpaid, except by specific exemption granted by a two-thirds majority of the Council.

The [illegible] may not [illegible] hold, directly or through [illegible] any interest in any business [illegible] during their term of office and during a period of three years thereafter.

Remuneration

Art. 5. [illegible]

Termination of Office

Art. 6. In addition to the provisions for regular changes in membership, the term of office of any judge shall be terminated by death or resignation.

In case of resignation, the letter of resignation shall be addressed to the President of the Court for transmission to the President of the Council. The latter notification shall cause such office to become vacant.

Except for instances in which Article 7 below shall be applicable, each judge shall continue to hold office until his successor shall enter upon his duties.

Art. 7. The judges may be removed from office only if, in the unanimous opinion of the other members of the Court, they no longer fulfil the requisite conditions thereof.

The President of the Council, the President of the High Authority and the President of the Assembly shall be notified thereof by the clerk.

Such notification shall cause such office to become vacant.

Art. 8. A judge who is appointed to replace a member whose term of office has not expired, shall finish the term of office of his predecessor.

TITLE II. ORGANIZATION

Art. 9. The judges, the Advocates-General and the Clerk must reside at the seat of the Court.

Art. 10.[1] The Court shall be assisted by two Advocates-General and a Clerk.

Court Advocates

Art. 11.[1] The function of the Advocates-General shall be to present publicly and with complete impartiality and independence oral reasoned

[1] See Article 32A, 32B of the Treaty, page 550.

arguments on the cases submitted to the Court, in order to assist the Court in the performance of its duties, as defined in Article 31 of the Treaty.

Art. 12.[1] The Advocates-General shall be appointed for a term of six years in the same manner as judges. There shall be a partial change in membership every three years. The Advocate-General whose term expires at the end of the first period of three years shall be designated by lot. The provisions of the third and fourth paragraphs of Article 32 [2] of the Treaty and the provisions of Article 6 of this Statute shall be applicable to the Advocates-General.

Art. 13. The provisions of Articles 2 to 5 and 8 above shall be applicable to the Advocates-General.

The Advocates-General may be removed from office only if they no longer fulfil the requisite conditions thereof. This decision shall be taken by unanimous vote of the Council, upon the advice of the Court.

Clerk

Art. 14. The clerk shall be appointed by the Court, which will fix the rules of his office according to the provisions of Article 15 below. He shall take an oath before the Court to discharge his duties conscientiously and with complete impartiality and to preserve the secrecy of the Court's deliberations.

Art. 15. *Abrogated.*

Personnel of the Court

Art. 16.[1] 1. The Court shall have officials and other employees to permit the performance of its duties. They shall be directed by the clerk, under the general supervision of the President.

2. On a proposal from the Court, the Council may, acting unanimously, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the rules of procedure, to participate in preparatory inquiries in cases pending before the Court and to co-operate with the Judge who acts as Rapporteur.

The Assistant Rapporteurs shall be chosen from among persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Functioning of the Court

Art. 17. The Court shall sit permanently. The length of its judicial recesses shall be fixed by the Court, with due regard for its judicial obligations.

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1 See Article 32A, 32B of the Treaty, page 550.

2 The references in this paragraph are now to Article 32A and 32B.

Composition of the Court

Art. 18. The Court shall sit in plenary session. It may, however, set up one or more Chambers each consisting of three members each, in order to conduct preliminary examinations or to decide certain categories of cases in accordance with rules laid down for these purposes.

Decisions of the Court shall be valid only if an uneven number of its members is sitting for the deliberations. Decisions of the Court shall be valid if seven judges are sitting. Decisions of Chambers shall be valid only if three judges are sitting; in the event of one of the judges of a Chamber being prevented from attending, a judge of another Chamber may be called upon to sit in accordance with conditions laid down in the rules of procedure.

Actions brought by States or by the Council shall, in all cases, be tried in plenary session.

Special Rules

Art. 19. The judges and the Advocates-General may not participate in the disposition of any case in which they have previously participated as a representative, counsel or advocate of one of the parties, or as to which they have been called upon to render judgment as a member of a tribunal, of a commission of inquiry or in any other capacity.

If any judge or Advocate-General, for a special reason, deems improper his participation in the judgment or the examination of a particular case, he shall so notify the President. If the President, for a special reason, deems it improper for a judge or Advocate-General to sit or argue in a particular case, he shall so notify the person affected.

The Court shall resolve any difficulties arising from the application of the present Article.

A party may not invoke the nationality of a judge, or the absence from the bench or from one of the Chambers of a judge of its own nationality, in order to ask a change in the composition of the Court or of one of its Chambers.

TITLE [illegible] PROCEDURE [1]

Representation of Assistance and to the Parties

Art. 20. The States and the different institutions of the Community shall be represented before the Court by representatives appointed for each case; the representative may be assisted by an advocate admitted to the bar of one of the member States.

Enterprises and all other natural or legal persons must be represented by an advocate admitted to the bar of one of the member States.

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[1] See Article 32 of the Treaty, page 550.

The representatives and advocates appearing before the Court shall have the rights and immunities necessary for the independent performance of their duties, under the conditions fixed in rules to be established by the Court and submitted to the approval of the Council taken unanimously.

The Court shall have, with respect to the advocates who appear before it, the powers normally recognized in this regard to courts and tribunals, under the conditions fixed by the same rules.

Professors of the member State whose national law allows them to plead shall have the same rights before the Court as are recognized to advocates by the present Article.

Stages of Procedure

Art. 21. The procedure before the Court shall consist of two parts: written and oral.

The written procedure shall include communications to the parties, as well as to the institutions of the Community whose decisions are in dispute, petitions, memoranda, defenses and observations and replies, if any, as well as all documentary evidence and supporting papers or certified copies thereof.

Notices shall be served by the clerk in the order and within the time fixed by the rules of procedure.

The oral procedure shall include the reading of the report presented by the reporting judge, as well as the hearing by the Court of witnesses, experts, representatives and advocates and the arguments of the Advocate-General.

Applications

Art. 22. Matters shall be referred to the Court by a written application addressed to the Clerk. The petition must contain the name and the address of the party and the description of the signatory, the subject matter of the dispute, the arguments and a short summary of the grounds on which the application is based.

This application must be accompanied, where appropriate, by the decision whose annulment is sought, or, in case of an appeal against an implied decision, by documentary evidence showing the date on which the matter in question was raised with the High Authority of filing of the request. If these documents are not annexed to the petition, the clerk shall ask the party in question to produce them within a reasonable period of time, but in that event the rights of the party shall not lapse even if such documents are produced after the time limit for bringing proceedings.

Transmittal of Documents

Art. 23. When an appeal is instituted against a decision of one of the institutions of the Community, such institution must transmit to the Court all the documents relating to the case before the Court.

Preparatory Inquiries

Art. 24. The Court may ask the parties, their representatives or officials and employees, as well as the governments of the member States, to produce all documents and furnish all information which the Court deems desirable. In case of refusal, the Court shall take formal note thereof.

Art. 25. The Court may at any time charge any person, body, office, commission or organ it chooses with the duty of making a formal inquiry or expert opinion; to this effect, the Court may draw up a list of persons or organizations qualified to serve as experts.

Publicity of the Hearings

Art. 26. The hearings shall be public, unless the Court, decides otherwise for serious reasons.

Minutes

Art. 27. Minutes shall be kept of each hearing, signed by the President and the Clerk.

Hearings

Art. 28. The President shall fix the schedule of the hearings.

Witnesses may be heard under the conditions which shall be determined by the rules of procedure. They may be heard under oath.

During the hearings, the Court may also examine the experts and persons charged with a formal inquiry, as well as the parties themselves; the latter, however, may only plead through their representative or advocate.

When it is established that a witness or an expert has concealed or falsified the truth as to the facts on which he has testified or has been examined by the Court, the Court shall be empowered to refer such misconduct to the Minister of Justice of the State of such witness or expert, for the application of the appropriate sanctions provided by the national law.

The Court shall have, with respect to defaulting witnesses, the powers which are generally recognized in this regard to courts and tribunals, under the conditions fixed by rules established by the Court and submitted to the approval of the Council taken unanimously.

Secrecy of the Deliberations of the Court

Art. 29. The Court's deliberations shall be and shall remain secret.

Judgments

Art. 30. Judgments shall state forth the reasons on which they are based. They shall state the names of the judges who have participated therein.

Art. 31. Judgments shall be signed by the President, the reporting Judge and the Clerk. They shall be read in public session.

Costs

Art. 32. Costs shall be determined by the Court.

Summary Procedure

Art. 33. The President of the Court may make summary rulings, in accordance with a procedure to be established by the rules of procedure and of declaration, to the extent necessary, of certain provisions of this Statute upon arguments for the granting of suspension of execution provided in the second paragraph of Article 39 of the Treaty, or for the application of provisional measures under the third paragraph of the same Article, or for the suspension of compulsory execution in accordance with the third paragraph of Article 92.

In the event of the absence or incapacity of the President, he shall be replaced by another judge under the conditions fixed by the rules provided in Article 18 of this Statute. The ruling of the President or his alternate shall be provisional in nature and shall not prejudice in any way the decision of the Court on the matter in its entirety.

Intervention

Art. 34. Natural or legal persons establishing an interest in the outcome of a dispute pending before the Court may intervene in such dispute.

Submissions made in an application to intervene shall be limited to supporting or requesting the rejection of the submission of one of the parties.

Judgment by Default

Art. 35. When, in an appeal to the Court's general jurisdiction, the defending party is duly summoned and fails to file written arguments, default judgment shall be given against that party by default. An objection may be lodged against the judgement within a month from the date of its notification. Such objection shall not suspend the execution of the judgment by default, unless otherwise decided by the Court.

Contest by Third Party Proceedings

Art. 36. Natural or legal persons, as well as institutions of the Community, may institute third-party proceedings to contest a judgment rendered without their being hard in the cases and under the conditions to be fixed by the rules of procedure.

Interpretation

Art. 37. In case of difficulty as to the meaning or scope of a judgment, such judgment shall be interpreted by the Court upon the request of any party or any institution of the Community establishing an interest therein.

Revision of a Judgment

Art. 38. The Court may be asked to revise a judgment only on the discovery of a fact of such a nature as to be a decisive factor and which was unknown to the Court and to the party requesting revision prior when the judgment was given.

The revision shall commence with a judgment of the Court explicitly setting forth the existence of a new fact, recognising that it is of such a character as to lay the case open to revision, and holding the application admissible for this reason.

No request for revision may be introduced after a lapse of ten years from the date of the judgment.

Time-limits

Art. 39. The proceedings provided by Articles 36 and 37 of the Treaty must be instituted within the period of one month provided in the last paragraph of Article 33.

The periods of grace based upon distance shall be fixed by the rules of procedure.

There shall be no loss of rights by reason of the expiration of time limits if the party in question proves the existence of unforeseeable circumstances or *force majeure*.

Periods of Limitations

Art. 40. The proceedings provided in the first two paragraphs of Article 40 of the Treaty shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are substituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Community. In the latter event the proceedings must be instituted within the period of one month provided in the last paragraph of Article 33; the provisions of the last paragraph of Article 35 shall apply where appropriate.

Special Rules for Disputes between Member States

Art. 41. When a dispute between member States is submitted to the Court, under Article 89 of the Treaty, the other member States shall be notified forthwith by the Clerk of the subject matter of such dispute.

Each of the States shall have the right to intervene in the proceeding. The dispute referred to in the present Article must be adjudged dealt with in priority to all other cases.

Art. 42. If a State intervenes in a case submitted to the Court under the conditions provided in the preceding Article, the interpretation given by the judgment shall also be binding on it.

Proceedings by Third Parties

Art. 43. The decisions of the High Authority under Section 2 of Article 63 of the Treaty must be notified to the buyer as well as to the enterprises concerned; if the decision refers to all or an important category of enterprises, such individual notification may be replaced by publication.

An appeal may be taken, under the conditions in Article 36 of the Treaty, by any person on whom a periodic penalty payment has been levied in application of paragraph 4 of Section 5 of Article 66.

Rules of Procedure

Art. 44. The Court shall establish its rules of procedure. They shall be submitted to the Council for its unanimous approval. These rules shall contain all the provisions necessary for applying and, where necessary, supplementing of this Statute.

Transitional Provision

Art. 45. Immediately after the taking of the oath, the President of the Council shall proceed to designate by lot the judges and the Advocates-General whose term shall expire at the end of the first period of three years in accordance with Article 32 of the Treaty.

Done at Paris, the eighteenth of April, one thousand nine hundred and fifty-one.

PROTOCOL CONCERNING RELATIONS WITH THE COUNCIL OF EUROPE

April 18, 1951

The High Contracting Parties:

Fully aware of the need to establish ties as close as possible between the European Coal and Steel Community and the Council of Europe, particularly between the two Assemblies;

Taking note of the recommendations of the Council of Europe;

Have agreed to the following provisions:

Art. 1. The governments of the member States are invited to recommend to their respective Parliaments that the members of the Assembly which these Parliaments are called upon to designate, should preferably

be chosen from among the representatives of the Consultative Assembly of the Council of Europe.

Art. 2. The Assembly of the Community will forward annually to the Consultative Assembly of the Council of Europe a report on its activity.

Art. 3. The High Authority will communicate each year to the Committee of Ministers and to the Consultative Assembly of the Council of Europe the general report provided for in Article 17 of the Treaty.

Art. 4. The High Authority will inform the Council of Europe of the action which it has been able to take on any recommendations which the Committee of Ministers of the Council of Europe might have addressed to it under Article 15 (*b*) of the Statute of the Council of Europe.

Art. 5. The present Treaty and its Annexes will be registered with the General Secretariat of the Council of Europe.

Art. 6. Agreements between the Community and the Council of Europe may, among other things, provide for any other type of mutual assistance and collaboration between the two organizations, and the appropriate forms thereof.

Done at Paris, the eighteenth of April, one thousand nine hundred and fifty-one.

TEXTS APPENDED TO THE TREATY[1]

ANNEX I. Definition of the Terms Coal and Steel.

ANNEX II. Scrap Iron.

ANNEX III. Special Steels.

EXCHANGE OF LETTERS between the Government of the German Federal Republic and the Government of the French Republic concerning the Saarre.

Convention on Transitional Provisions.

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1 Not reproduced.

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