

THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM): THE LIMITS OF SUPRANATIONALISM

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Among the reasons for the development of the European Atomic Energy Community—the expense of nuclear research, the scarcity of trained scientists and the need for uniformity in inspection, health and safety rules was the further thought that nuclear energy was a good area for the development of a supranational entity since there was the possibility of a crisis in the study of fuel for Europe and cooperative positive action was necessary. As it turned out, the crisis did not materialize and the nationalistic desires of the Member States re-manifested themselves to a great extent making the original hopes for Euratom fade. However, there was still great pressure for the development of a supranational institution, and it is the scope of this article to consider the limits of that supranationalism.

I

If . . . Euratom seems beyond whatever precedents international public law has to offer and appears to remain short of federal processes, the nature of the new Community would have been adequately manifested.¹

THE TREATY AND SUPRANATIONALISM

There has been significant controversy over whether Euratom is a supranational entity capable of effectively enforcing its authority within the territory of Member States.² For example, it is

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1. Hahn, *Control Under the Euratom Compact*, 7 AM. J. COMP. L. 23, 46 (1958). See also S. GOODSPEED, *THE NATURE AND FUNCTION OF INTERNATIONAL ORGANIZATION* 5-9 (1967).

2. "Euratom, as is the case with a multitude of other international organizations, is not a supranational entity with power to enforce its authority, if necessary, by physical force under its own control." Gorove, *The First Multinational Atomic Inspection and Control System at Work: Euratom's Experience*, 18 STAN. L. REV. 160, 180 (1965). See also J. POLACH, *EURATOM* 7 (1964).

argued with reference to safety control provisions that Article 83(3) of the Euratom Treaty³ is unsatisfactory in that it only provides for recommendations to be made to Member States rather than positive enforcement measures. However, Article 83(2) provides that when penalties are imposed under Chapter VII that the decisions of the Commission shall be enforceable and that they may be enforced in the territories of Member States in accordance with Article 164. Under Article 164, forced execution is governed by the rules of civil procedure of the State in which it takes place. The procedure followed is that the domestic authority designated by the Member State serves the writ of execution, and the forced execution is conducted under municipal law. The supervision as to the regularity of the measures of execution is within the competence of the domestic courts. Only the Court of Justice of the Community may suspend the forced execution.

One means by which to judge the extent to which Euratom approximates a supranational institution is to examine its authority to conduct its own foreign affairs, its authority to enter into external agreements. Article 1 of the Euratom Treaty states that it is the aim of the Community to develop “. . . commercial exchanges with other countries by the creation of conditions necessary for the speedy establishment and growth of nuclear industries.”⁴ Article 2(h) makes reference to this same idea in slightly different language:

For the attainment of its aims the Community shall, in accordance with the provisions set out in this Treaty . . .

(h) establish with other countries and with international organisations any contacts likely to promote progress in the peaceful uses of nuclear energy.⁵

The question is, to what extent “commercial exchanges” and “con-

3. Treaty Establishing the European Atomic Energy Community, Published by the Secretariat of the Interim Committee for the Common Market and Euratom, Rome, 1957, (1931/5/57/4), 298 U.N.T.S. 167 (1958) [hereinafter cited as Euratom Treaty]. Article 83(3) provides “The Commission may make any recommendations to Member States concerning Legislative provisions designed to ensure the observance in their territories of the obligations resulting from the provisions of this Chapter.”

Article 161 provides that “Recommendations and opinions shall have no binding force.”

4. Euratom Treaty, Art. 1, para. 2. See also A.H. ROBERTSON, EUROPEAN INSTITUTIONS 185-92 (1966); D.W. BOWETT, THE LAW OF INTERNATIONAL INSTITUTIONS 169-82 (1963); E.H. WALL, THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES 35-47 (1966).

5. *Id.* at Art. 2(h).

tacts" can be considered in terms of an external relations function?

Chapter X deals specifically with external relations, and Article 101 permits the Community to enter into obligations "by means of the conclusion of agreements or conventions with a third country, an international organisation or a national of a third country."⁶ This article (101) is said by Professor Hahn⁷ to include both public and private international law arrangements due largely to the influence of Judge Philip Jessup's work on *Transnational Law*.⁸ Major agreements of this type have been concluded with the United States⁹ as well as with the United Kingdom and Canada. There have also been agreements of a less important nature concluded with Argentina and Brazil. Regarding the latter two agreements, it has been suggested that they reflect Euratom's desire to corner potential reactor markets in addition to the symbolic value of aiding developing nations.¹⁰ Article 101 further provides that the Council issue directives outlining the negotiation procedures, and that it also approves the agreement by a qualified majority vote. The exception to this is that the Commission can act independently if the action is within the appropriate budget and if it informs the Council of its action.

There is the possibility of conflict between Article 101 and the second paragraph of Article 115 which provides that the Council ". . . shall take all measures within its competence in order to co-ordinate the actions of Member States and of the Community."¹¹ While several of the other Articles of Section II dealing with the Council are repealed by the agreement consolidating the Council and the Commission of the European Communities,¹²

6. *Id.* at Art. 101, para. 1.

7. Hahn, *Euratom: The Conception of an International Personality*, 71 HARV. L. REV. 1001, 1012 (1958).

8. P. JESSUP, *TRANSNATIONAL LAW* 2 (1956). Transnational Law is that which comprises all norms applicable to affairs transcending the jurisdictional and territorial limits of a State or an international organization.

9. Agreement for cooperation between the European Atomic Energy Community and the Government of the United States of America; European Atomic Energy Community, 8 Nov. 1958, Publication Dept. of the European Communities, 2115/5/59/6.

10. Scheinman, *Euratom: Nuclear Integration in Europe*, Int'l Conc. 18 (May, 1967: No. 563).

11. Euratom Treaty, Art. 115, para. 2.

12. Treaty Establishing a Single Council and a Single Commission of the European Communities, Publications Department of the European Communities 11578/5/65/1. Art. 7 repeals Arts. 116, 117, 121 and 123 of the Euratom Treaty.

Article 115 remains and is given renewed authority by Article I of the consolidation treaty.¹³ Depending on the interpretation one gives to the phrase, "within its competence" found in Article 115, an argument could be put forward to the effect that the Council was given powers by Article 115 that are greater than those found in Article 101 and that the Council may consider activities extraneous to its limited role as depicted in Article 101. A more limited interpretation would resolve this possible conflict by stating that Article 101 is the reference point of the phrase "within its competence" and, therefore, the Council is limited in its activities by this provision.

Article 102 of the Euratom Treaty provides that when an agreement is concluded with a third country, an international organization or a third State national, and where one or more Member States are parties in addition to the Community, that the Member States shall notify the Commission that the agreement has become applicable in accordance with their municipal law. Article 103 places an obligation on a State entering into such an agreement to notify the Commission to the extent that it concerns the field of application of the Treaty. The State is forbidden from concluding the proposed agreement until it has satisfied the Commission of its compatibility either by its own argument or by petition to the Court of Justice. However, Article 106 provides that when the agreement antedates the Euratom Treaty, the Member State, jointly with the Commission, is encouraged to enter into negotiations the end of which will be to have the Community assume the obligations of the prior agreement. The resultant new agreement must receive the approval of the Member State signatory to the prior agreement as well as the Council acting by means of a qualified majority vote. It would appear to be inconsistent to demand Commission approval for new agreements while requiring only Council approval for new agreements that have a basis in some prior arrangement. Thus, there remains some ambiguity as to whether Member States retain the capacity to undertake third party agreements.¹⁴

13. Art. I of the Treaty provides in part that "The Council shall exercise the powers and the competences devolving upon these institutions under the conditions laid down in the Treaties establishing . . . the European Atomic Energy Community."

14. Scheinman, *supra* note 10 at 19.

SANCTIONS

The sanctions available under the Euratom Treaty refer primarily to the inspection and control of nuclear installations. The basis for the sanctioning process is the cooperation of the Member States since the Community has no independent sanctioning force of its own. Concerning safety control, inspectors are recruited by the Commission who have the responsibility of obtaining and verifying the accounting required by Article 79 and reporting any infringement to the Commission. The Commission, in turn, issues a directive requiring the Member State to take all necessary measures “. . . to terminate any infringement so found and . . . [to] inform the Council thereof.”¹⁵ If there is no compliance, the Commission or any interested Member State may refer the matter to the Court of Justice. A broader provision found in Article 142 states that “any Member State which considers that another Member State has failed to fulfill any of its obligations under this Treaty may refer the matter to the Court of Justice.”¹⁶ The power of review of the Court of Justice is found in Article 146 and is limited to review of acts other than recommendations or opinions of the Council or Commission.

For this purpose, it shall be competent to give judgment on appeals by a Member State, the Council or the Commission on grounds of incompetence, of errors of substantial form, of infringement of this Treaty or of any legal provision relating to its application, or of abuse of powers.¹⁷

Following the judicial procedure, the ultimate sanctioning power lies with the State under Article 143 which provides that when the Court of Justice finds that a Member State has not fulfilled any of its obligations under the Treaty that “. . . such State shall take the measures required for the implementation of the judgment of the Court.”¹⁸

The other general provision dealing with sanctions is Article 83(1) which allows the Commission to impose penalties following any infringement of the provisions of Chapter VII on safety control. The penalties are graded and range from a warning to the complete withdrawal of source materials or special fissionable ma-

15. Euratom Treaty, Art. 82, para. 3.

16. *Id.* at Art. 142, para. 1.

17. *Id.* at Art. 146, para. 1.

18. *Id.* at Art. 143.

terials.¹⁹ Section 4 of Article 83 again provides that it is the Member State that is responsible for the enforcement of penalties and also for the making of reparation by those responsible for any infringement. Where the decision of the Commission concerns the withdrawal of materials, it may be enforced in accordance with Article 83(2) under municipal law in the territories of the Member States once they are verified by the competent national authority.²⁰ There is also a broader provision in Article 83(2) which states: "The protection of injured interests shall be guaranteed by an appropriate legal procedure."²¹ While the Commission may request the Court of Justice to immediately enforce their decision, it is possible to bring an appeal which has a staying effect.²²

In the special case of the inspection of nuclear facilities, if there is any opposition to the carrying out of an inspection, ". . . the Commission shall apply to the President of the Court of Justice for a warrant to enforce the carrying out of the inspection. The President of the Court of Justice shall give a decision within a period of three days."²³ Once again, however, it is the State that must ultimately ensure access by the inspectors to the places named in the warrant or decision.²⁴

19. The penalties are as follows:

- (a) a warning;
- (b) the withdrawal of special advantages, such as financial or technical assistance;
- (c) the placing of the enterprise, for a maximum period of four months, under the administration of a person or board appointed jointly by the Commission and the State having jurisdiction over such enterprise; or
- (d) the complete or partial withdrawal of source materials or special fissionable materials. Euratom Treaty, Art. 83(1).

20. *Id.* at Art. 83(2). *See also* Art. 164.

21. *Id.* at Art. 83(2), para. 3.

22. The grant of jurisdiction for the Court is found in Art. 144(b). For a general discussion, *see* BEBR, *JUDICIAL CONTROL OF THE EUROPEAN COMMUNITIES* (1962).

23. Euratom Treaty, Art. 81, para. 3. If there may be a delay, the Commission may issue a decision to the effect that the decision is to be carried out. Art. 81, para. 4.

24. *Id.* at Art. 81, para. 5. "Viewed against these considerations, the Community's control system is not without significance, particularly since it embodies an experiment in direct administration and, though not unique to Euratom, permits international inspectors with broad rights of access to persons, places, and data to enter the territory of a sovereign State. This coupled with judicial safeguards, is, despite the system's limitations, a most significant step forward in the development of world institutions." Gorove, *The First Multinational Atomic Inspection and Control System at Work: Euratom's Experience*, 18 *STAN. L. REV.* 160, 186 (1965).

INTERPRETATION

Liberal interpretative analysis can indicate a supranational interest in several additional clauses that deal with external affairs. Article 192, paragraph 1, provides that Member States shall take appropriate action to carry out the obligations arising out of the Treaty or resulting from the acts of the institutions of the Community. In addition, the Member States undertake to facilitate the achievement of the aims of the Community while at the same time abstaining from any measures likely to jeopardize the achievement of these aims. It might be desirable to interpret "appropriate action" in such a way that external relations of a supranational character are sanctioned. Similarly, Article 199 provides that the Commission is responsible for ensuring "all suitable contacts" with the United Nations, and the General Agreement on Tariffs and Trade. "The Commission shall also ensure appropriate contacts with all international organisations."²⁵ These suitable and appropriate contacts may involve activities of various kinds, some of which could certainly be of a supranational nature.

A major part of any attempt at interpretation of the Treaty would require adherence to a view that the scope of law-making powers of Euratom included implied powers. Article 161 provides that

[f]or the achievement of their aims and under the conditions provided for in this Treaty, the Council and the Commission shall adopt regulations and directives, make decisions and formulate recommendations or opinions.²⁶

Of these, "regulations" have general application and are binding and directly applicable in each Member State. "Directives" bind any Member State to which they are addressed pertaining to the result to be attained, but domestic agencies have the competence to derive the means and form. "Decisions" are binding only to the addressees named therein. Recommendations and opinions have no binding force. As to each of these categories, the question can be raised of whether or not there must be a specific request under a provision of the Treaty for a regulation, directive, or decision to be made. While it is possible to construe the Treaty in such a way as to allow the development of an implied power based on the desirability of carrying out the objectives of the Community, it can

25. *Id.* at Art. 199, para. 2.

26. *Id.* at Art. 161, para. 1.

also be argued that there is specific statutory authority within the Treaty which concludes that there must be distinct authorization. Specifically, Article 103 states that

[i]f any action by the Community appears necessary to achieve one of the aims of the Community in cases where this Treaty has not provided for the requisite powers of action, the Council, acting by means of a unanimous vote on a proposal of the Commission and after the Assembly has been consulted, shall enact the appropriate provisions.²⁷

If it is argued that this Article provides for an exclusive means of action, then it would follow that in every instance where the Treaty was not expressly applicable, there would need to be a unanimous vote by the Council on a proposal of the Commission, coupled with consultation with the Assembly. On the other hand, it may be that this Article simply provides an alternative means of action since in some cases it may prove desirable to take formal action in order to embark on a new and untried activity where reinforcement for the action could be obtained from the procedure outlined above, but on other occasions it might prove desirable to enable the Commission to issue directives, regulations, or decisions based on an implied power of action. There would probably be a standard of good faith applied to any such actions, but this might prove more satisfactory than to demand a unanimous vote of the Council for every new activity.

Stein and Hay relate an example of the above controversy relating to the Euratom Commission's responsibility for publishing production programs indicating targets for nuclear energy activities and the types of necessary investments, coupled with industry involvement in communicating investment projects to the Commission before they are undertaken. It is the role of the Commission to discuss all aspects of any such project with the person or enterprise involved and communicate its views to the Member State concerned. The Commission then makes a proposal to the Council which in turn establishes the criteria as to the type and scope of the projects communicated to the Commission under Article 41. In this example, subsequent to the Council regulation, the Commission enacted a regulation establishing a detailed questionnaire to be sent to the enterprises. The argument was then made that there was no direct Treaty authorization for this action, and that even if there was an implied power it could not be used to expand

27. *Id.* at Art. 203. See also EEC Treaty, Art. 235.

the scope of inquiry beyond that established by the Council. The counter-argument given was that the Commission needed the power to authoritatively require information if it was to operate effectively. A working group of the Euratom Council and Commission issued an unsatisfactory interpretative statement which did not specify the amount of information that the Commission could demand. The conclusion of the authors was that it was probably wise not to raise this question in the Community Court given the early stage of Community development.²⁸

It would appear to make more sense to enable the Commission to act within a limited sphere of competence without requiring formal voting action in each specific instance. It is a standard of statutory interpretation that the provisions of a treaty are to be interpreted in such a way as to supply provisions without which it would be impossible to implement the main provisions of the Treaty.²⁹ The assumption would then be that Euratom could demonstrate any activities that are necessary to the exercise of a foreign relations power unless it was expressly reserved to the Member States. This would appear to allow both unilateral acts if in the Community interest and informal negotiations.³⁰

28. *Law and Institutions in the Atlantic Area* 875 (E. Stein and P. Hay eds. 1967), reprinted from Stein, *The New Institutions*, in STEIN AND NICHOLSON, *AMERICAN ENTERPRISE IN THE EUROPEAN COMMON MARKET: A LEGAL PROFILE* 33, 73-75 (1960). They further report that in a subsequent regulation, the Commission asked for specific information concerning control against the diversion of nuclear materials on the theory of implied powers.

29. "Under international law, the Organization [U.N.] must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties." *Reparations for Injuries Suffered in the Service of the United Nations*, International Court of Justice, Advisory Opinion, 1949 (C.J. Rep. 174). See also *McCulloch v. Maryland*, 4 Wheat (17 U.S.) 316, 421 (1819); *United States v. Oregon*, 366 U.S. 643 (1960); *Kinsella v. United States ex rel Singleton*, 361 U.S. 234 (1960). See generally, Dodd, *Implied Powers and Implied Limitations in Constitutional Law*, 29 *YALE L.J.* 137, 141-42 (1919-1920).

30. Parry, *The Treaty-Making Power of the U.N.*, 26 *BRIT. Y.B. INT'L L.* 108, 115 (1949). Seyersted suggests that once an organization has come into being through the agreement of its Member State that it has an inherent competence to perform acts designed to carry out its purposes providing that it is practical for it to do so. It does not matter whether there is a grant of power either explicitly or implicitly made in its constituent instrument. If the limitations in the organization are too great then all that has been created is a joint agency. The opposing view is that the extent of the organization's powers is a question of treaty interpretation whereby competence is defined solely by the express provisions of the treaty or implied therefrom. A middle ground would be to stress the importance of the statement of purpose of the Treaty and con-

II

CONCEPTUAL DIFFICULTIES

One difficulty with the concept of supranationalism is that it presupposes a recognized interest among a political grouping of States that is different, distinguishable, or somehow separable from the interests of any one of them. The practical questions become, first, the determination of the most efficient unit in relation to the subject matter involved for the decision-making process, and second, the level of government at which people are willing to allow these decisions to be made. Euratom exhibits certain debts to federalism such as the fact that it is based on a written document and is subject to a court of law. However, it is also true that the theory, that an independent entity can be set up that will not reflect national prejudices because the men involved with it become servants of the group rather than representatives of their respective countries, is at variance with historical reality.³¹

The original idea for Euratom embodied the ideal that a supranational venture involving nuclear power might be easily achieved without significant controversy,³² but the general impression at the present time is that the degree of unification required has not been met and that, in fact,

[i]f we return to present times, we are forced to conclude

clude that within these agreed purposes that the organization may do anything that falls within the general purview of this statement even though there may not be express authorization within the specific treaty provisions. See LEGAL ADVISORS AND INTERNATIONAL ORGANIZATIONS 14-17 (H.C.L. Merillat ed. 1966); Seyersted, *International Personality of Intergovernmental Organizations*, 4 INDIAN J. INT'L L. 1 (1964); and Seyersted, *Is the International Personality of Intergovernmental Organizations Valid vis-a-vis Non-Members*, *Id.* at 233.

31. See Beloff, *International Integration and the Modern State*, 112 in THE COMMON MARKET: PROGRESS AND CONTROVERSY (L.B. Krause ed. 1964); Regarding international-oriented personnel, Jenks has said: "Experience has shown that the degree of international loyalty shown by the staff of an international organization is likely to be an important factor in the success or failure of the organization." Jenks, *Some Constitutional Problems of International Organizations*, 22 BRIT. Y.B. INT'L L. 11, 44 (1945); Reuter suggests that the test for determining whether a person is a State agent or an international agent is by ascertaining the accountability of the person and compounding this with an analysis of the person's independence and responsibility. P. REUTER, INTERNATIONAL INSTITUTIONS 241-48 (1958).

32. "Instrumental in the choice of nuclear power as the subject of a new joint venture was also the consideration that harnessing the atom on a *supranational basis* might be less controversial and less clouded by powerful national egotisms than other topics, particularly military affairs." Hahn, *supra* note 1 at 23 (emphasis added).

that such integration as was achieved in the fifties is now under direct menace from the general revival of national self-confidence, and that we may, for the future, be reduced to the type of intensive co-operation seen in both the EEC and EFTA today.³³

A further bar to the supranational nature of Euratom was the necessity for the development of the nuclear inspection and control system. It attempted to invade the sovereignty of Member States and implicitly raised the spectre of non-compliance and bad faith, thereby increasing national suspicions. Some of the smaller European countries feared Euratom domination in this area and were in favor of the development of the European Nuclear Energy Agency (ENEA) which had no legal personality of its own and had its activities integrated into the economic policies of the Organization for European Economic Cooperation (OEEC)—now known as the Organization for Economic Cooperation and Development (OECD).³⁴

There was also hesitancy regarding the formation of Euratom as a supranational institution on the part of American business entities. It was generally believed that the development of Euratom would adversely affect private technological exchange agreements and private contracts for nuclear development. Euratom was seen as a “middle-man” that would dilute the profitable ventures which were possible if only national corporations were the primary participants. The preference for industry-to-industry agreements was supported by the argument that private industry was in a better position to furnish the needed materials, and would in fact give better guarantees than the government agencies would. The result of this pressure was that “. . . through a series of unrelated events, Euratom lost the needed momentum for her supranational bid to become a viable power promoting agency.”³⁵ On the other hand,

33. The European Free Trade Association and the Crisis of European Integration, by a Study Group, Graduate Institute of International Studies, 39, Geneva (1968). It is further argued that integration involving the sharing of sovereignty is so revolutionary as to require exceptionally strong forces working in its favor such as the fear of war or economic disaster, and that these are not present in Europe today. *Id.* at 37.

34. Gorove, *The Inspection and Control System of the European Nuclear Energy Agency*, 7 VA. J. INT'L L. 72 (1967). Nations such as Switzerland and Sweden preferred their own ENEA inspectors to Euratom officials and definitely did not want IAEA inspection involving Communist officials.

35. Goodman, *American's Role in the Creation of Euratom*, 8 ATOMIC ENERGY L.J. 128 (1966). General Electric's SENN guarantees for the construc-

there was general United States government approval for Euratom since it would free European fuel dependency which had rested on the Middle East, which could cause serious political difficulties if international political conflicts arose.

CONTINUAL CRISIS

While the nationalism exhibited by the United States arose primarily from the pressure of private business enterprises, there was also a general concept of nationalism with which the Member States of Euratom had to contend. The problem of nationalism has resulted in a continual state of crisis in Euratom which is caused, to no small extent, by the concept of supranationalism which, in practice, has met with disapproval from the major Member States, particularly France and the Federal Republic of Germany. While the early years of Euratom reflected attempts to organize and begin operations, it was not long until it became apparent that a lack of surveillance over national nuclear activities had resulted in a competitive market being established that would work to the detriment of Euratom.

Particularly, France, the most advanced nuclear power in Euratom, decided to continue and expand its national nuclear program at the expense of the cooperative effort. By limiting the number of scientists and technological personnel made available to Euratom and by refusing to bring the French nuclear facility at Grenoble into the Euratom program, France was able to retard Euratom development and raise problems concerning the good faith intentions with which the Euratom program was begun. This conflict was heightened by the refusal of France to allow Euratom control and inspection over a large number of its nuclear facilities that were said to be engaged in defense activities. The conflict in 1960-61 regarding the extent of defense purposes was a serious occurrence and damaged Community spirit pertaining to whether the activities of Euratom were to be truly supranational or were to merely reflect the wishes of the most advanced Member State to the detriment of the Community.

An example of the unilateral activities of France occurred when, as a result of all the available French plutonium going into the French independent nuclear deterrent, the *force de frappe*,

tion of a 150 megawatt boiling water reactor at Punta Fiume, Italy, exceeded those offered by the United States to Euratom.

France attempted to enter bilateral negotiations with the United States and Great Britain to obtain an additional supply for their fast breeder reactor. Having failed in these negotiations, France had to turn to Euratom for the necessary fissile material and an association agreement. As Scheinman states, "While it is the EEC that has been the object of the most frontal political attack that Paris has yet mounted against supranational integration, it is Euratom that has suffered the more severe consequences."³⁶ This use of Article 84 (which limits control to non-defense materials) by France to forbid Euratom inspection of their Marcoule plant further damaged Euratom/Member-State relations. Euratom had contended that nuclear activities constituted a single track system and that Euratom could not divide these activities into a two channel system—a peaceful and a defensive line. Thus, temporary harmony was achieved by allowing France and other Community countries to use atomic energy for military purposes subject only to Euratom's open-book policy which allowed any use so long as it conformed to the user's announced intention, subject to the Article 84 restriction.³⁷

The departure of General de Gaulle from active government participation may somewhat change the degree of French participation with the Community, but it is much too early to make any definitive predictions. It should be remembered, however, that the same motives that were available to de Gaulle in formulating his Euratom policy will also be available to the new political leader of France who may feel that a strong show of nationalism is his best political move at the early stages of his term of office.

However, there are some circumstances in which the supranational character of Euratom has been clearly indicated. Following the failure of the Community to get France to include its reactor in their program, action was taken to shift funds from the Euratom five-year research program to a project for the construc-

36. Scheinman, *supra* note 10 at 39.

37. See Gorove, *Lessons from the Control of the Peaceful Uses of Atomic Energy in Euratom*, 1964 PROC. AM. SOC'Y INT'L L. Vol. 58, 136, 142. Germany could follow the same course of action as France, but any activity would become known under the open-book policy and Germany is prohibited by other treaty obligations from developing nuclear weapons. While generally Euratom controls only the peaceful uses of atomic energy, this control and inspection could apply, prior to the special preparation stage, to materials intended for defense purposes.

tion of a power reactor. The result of a qualified majority vote was that the Council allocated up to \$32 million for reactor construction. To the extent that this action was taken over the direct protest of France, it could be said that this was a decision indicating the supranational character of the organization.

The prolonged crisis over the second five-year program (1963-67), wherein the Member States voiced their individual and many times noncompatible preferences, indicated a shift away from supranationalism. The form of the debate, which continued for more than a year, was an inter-governmental dispute rather than a meeting where there was any common feeling outside and possibly contrary to the respective governmental positions. Again it was French nationalism that caused the majority of the difficulty, particularly their position favoring concentration which would focus Euratom expenditures on "major targets of mutual interest."³⁸ Since it was unlikely that any further monies would be put into Euratom, it was obvious that any concentration would come about through the elimination of projects already underway, to the displeasure of those countries in which the projects were being carried out.

There were further problems that centered around the allocation of the available funds. It was charged that funds were distributed in response to political pressure and also in direct relation to the financial contribution of the Member State to the Community.³⁹ Due to a disagreement on procedure, there was difficulty in formulating the 1965 budget and a provisional budget was passed along with a supplementary budget by a qualified majority vote over the dissent of Italy. This once again indicated the implications of supranational power. While program revision was achieved in May of 1965, the continuing crisis of June 1965 through February 1966 added to the state of uncertainty.

38. The projects considered by this phrase included the ORGEL project concerning a medium-term natural uranium reactor, fast reactors, and controlled thermonuclear fusion projects. See *Euratom's Second Five-Year Research Program, 1963-67*, European Community Information Service, Comm. Topics 23 (1966).

39. Scheinman *supra* note 10 at 45. The Italian argument was that Euratom should concentrate on nuclear development based on scientific and economic criteria rather than political concerns through emphases on the then existing enriched uranium reactors. In short, Italy wanted short term profitability, France wanted nuclear independence, and West Germany was in between the two. *Id.* at 46, 47.

Current problems are centered around the fast reactor association contract program, and the fact that Euratom cannot maintain its share (35%) of the association with the two major partners, West Germany and France. The problem has been characterized as follows:

The association contract system, which accounts for approximately 40 percent of the total Euratom budget, has *not* led to a full sharing of know-how and knowledge, has *not* eliminated duplication and waste (the Federal Republic and France conduct rival programs geared to the construction of similar prototype reactors), and has *not* truly served to coordinate national programs in the framework of Community development.⁴⁰

There is a real question as to the degree of disparity that can exist in the Community while still maintaining an effective degree of supranational authority. As long as a gap exists in the technological development scale of the participating countries, it is probable that true supranational integration will not be achieved.

As a result of the above-mentioned inability of Euratom to continue in the fast reactor program, a decision was taken to reduce appropriations for eleven projects in favor of four others. These and other reallocation decisions had entailed more than two years of discussions and had resulted in the retardation of other necessary programs such as biology and the development of proven reactor technology involving prestressed concrete, thermal insulation of concrete, and twisted tapes. Personnel was reduced by 22%, even though this meant that it would not be possible to get the full benefit from the facilities of the Joint Research Centre or successfully implement the major associations' programs.

In February 1967, the Commission submitted to the Council of Ministers a document designed to bring about discussions of a third program which was to start on January 1, 1968. This document, entitled *Euratom's Future Activities*, failed, and the Commission of the European Communities was not able to prepare a preliminary draft research and investment budget for 1968, nor was it possible for the Commission to study the modifications necessary for drafting a future program to take account of trends in nuclear science and developments in national programs. The Commission did submit an interim program for one year in November 1967 following consultation with the Scientific and Tech-

40. *Id.* at 50.

nical Committee and the Consultative Committee on Nuclear Research. On December 8, 1967, the Council concurred and drew up the interim budget and a draft research budget for 1968. A distinction was made between direct action by Euratom, such as activities carried out by the Joint Research Centre, and indirect action, such as programs conducted through association contracts or research contracts. The significance of this was that while reducing the allocations for direct action somewhat, the Council was able to reject the Commission's proposals that association arrangements should be financed by the Community during 1968 so as not to lose them for future programs. However, provision was made for transitional arrangements allowing for the continued payment by the Community of Commission staff members participating in these programs.

The Council also discussed Euratom's future activities on the basis of a document submitted which suggested the following guidelines:

- (i) formulation of a concerted prototype policy supplemented by large-scale joint supporting programmes. This problem exists in the case of both fast reactors and heavy-water and high-temperature converters.
- (ii) action to ensure the dependability of supply of nuclear fuels, particularly enriched uranium, for Community users, possibly by setting up a European isotope separation plant.⁴¹

It remains in each program to decide on the type of cooperation to be implemented and the extent to which the public interest will be affected. Public interest may be defined in terms of projects for nuclear measurements, health and safety, radiation hygiene, training, and the dissemination of information. Possible joint action activities included work on future reactors, proven-type reactors, and general research on biology and controlled thermonuclear

41. First General Report on the Activities of the Communities, 299, 1967. European Coal and Steel Community, European Economic Community, European Atomic Energy Community, Commission, Brussels-Luxembourg, Feb. 1968. Research programs are drawn up under Article 7 of the Euratom Treaty while Article 6 and Chapter V dealing with Joint Enterprises offers additional possibilities for action.

"In this context, the Commission emphasizes that the merging of the Institutions as a prelude to the amalgamation of the three Treaties affords the opportunity for joint action to go beyond the field of atomic energy and, by incorporating all pioneering techniques, to make the fullest use of the infrastructures created with the advent of nuclear energy." *Id.* at 300.

fusion. In sum, the Commission would prefer to avoid dispersion of effort and find a workable link with private industrial development.

The Council, while not reaching a decision on the Commission's document at the discussion on December 8, 1967, did adopt a resolution containing a number of proposals for future Euratom projects with emphasis on a joint program having a comprehensive scope which would be financed by the Member States on the basis of a budget containing a fixed scale of contributions.⁴² There would also be supplementary programs which would be the responsibility only of those Member States which made individual agreements with the Commission if it did not prove possible to obtain unanimity. The form for cooperation under these programs is to be examined jointly by the Commission and the Council to determine budgetary matters and the extent of information to be given to non-participating countries. The Council also distinguished between activities which presented no industrial problems and those which presupposed a joint industrial policy. There was agreement that non-member countries in Europe should be invited to participate in the latter categories of programs. Finally, the resolution instructed a special study group of the Consultative Committee on Nuclear Research to consider the question of the long-term supply of enriched uranium so that the appropriate proposals could be submitted to the Council.

INTERPRETATION

While the difficulties of Euratom appear amenable to long-run solution based on a reallocation of research and development monies and the adoption of a more structured supranational form of organization, the major drawback may turn out to be the lack of the basic desire for cooperation regarding nuclear policy:

42. The joint programs contemplated would consist of the following:

- (i) the activities of the Joint Nuclear Research Centre, whose present programmes are being revised in the light of the need to use existing plant and available personnel to best advantage. Wherever legally possible, research may also encompass non-nuclear activities;
- (ii) certain present and possible future activities under association agreements, to the extent that they are of Community interest or could be the subject of scientific cooperation between the various national programmes and do not constitute wasteful overlapping. Special importance will be attached to Community research work and basic programmes concerning reactor development;
- (iii) training of scientists and documentation. *Id.*

For a discussion of the JNRC see *The Euratom Joint Nuclear Research Centre*, European Community Information Service, Community Topics, 16.

But the real cause of the crisis is the absence of any genuine political will for joint action. It is deeply disquieting that once again agreement has proved possible only on a provisional programme for one year—and even then half the projects are to be paid for by only five of the Member States out of six—while the 1969 research budget is still not adopted. If the Member States should get into the habit of financing only those projects which are of direct concern to them, the result would be a rapid and serious deterioration of Community action.⁴³

This separation of political and economic decision-making has led to a situation where the sixteen power plants in Europe were (or will be) constructed by twelve firms while the 87 power plants in the United States were constructed by five firms. In addition, the total value of the orders placed with the firms in the Community is “. . . less than that of the orders placed with each of the American firms.”⁴⁴ The resultant fragmentation must be remedied if any form of supranational organization is to survive. Euratom cannot simply be a seventh power adding its programs to those of the Member States on a secondary basis. The development of a single integrated European nuclear policy will require that all Member States be willing to support activities that do not always have an immediate return so that basic research can be supported at an adequate level.

To achieve a successful supranational organization, it will also be necessary to end the isolation of European universities, government research centers and individual firms. This would involve the elimination of administrative and fiscal obstacles to international mergers and a more enlightened patent policy.⁴⁵

43. Introduction to the Second General Report on the Activities of the Communities in 1968, Commission of the European Communities, 6, Spokesman's Group, Brussels, Feb. 1969. It was further stated that there was a feeling of bitterness and impatience that followed the discussions of Member States in reducing their joint efforts in the first large technological centre created by the Community while at the same time “. . . American cosmonauts were flying round the moon and striving to outbid their Soviet rivals in the conquest of space!” *Id.*

44. Survey of the Nuclear Polity of the European Communities, Secretariat General of the Commission, ECSC-EEC-EAEC, Published by the European Communities 4001/5/1968/5.

45. “In the final analysis, the basic problem with Euratom is the subject matter over which it governs. Developing a universal patent valid within the Common Market and returning atomic energy wholly within the patent system will be only partial steps in curing the problems. There is still the dual purpose of atomic energy, one peaceful, the other destructive. As long as nuclear in-

Without an integration of effort it is likely that Euratom nations will not be able to effectively compete with outside technology and suppliers of nuclear materials. This, in turn, will lead to more nationalistic activity which will further erode the concept of Euratom as a supranational entity. Further, if Euratom fails, precedent would be created for the further withdrawal of funds from other areas of European cooperation. One current impression of the situation is

*FOR LACK OF A clearly stated POLITICAL DETERMINATION to take the imperative corrective measures, the creation of a genuine common market will be irremediably jeopardized and the present walling-off of each country's market will become yet more pronounced, thus helping non-Community techniques to consolidate a supremacy that will soon be impregnable.*⁴⁶

One suggestion for future action is the establishment of transnational groupings of nuclear industrial firms which would set up a small number of competitive consortia to bargain for a large volume of European business. This restructuring of nuclear industry on a multinational basis would provide for a competitive market which would help achieve the goals of the Community. To this end, the Commission proposed that guarantees be given to the consortia against unexpected problems encountered in the use of nuclear power, that Community or national aid be given to the consortia to develop advanced designs, that assistance be given on a Community or national level to promote the restructuring of the reactor component industry on a Community basis, and that an attempt be made at standardization to prevent future industry problems. Further suggestions included the advocacy of a definition of a joint policy as regards the choice of reactor types,⁴⁷ the

formation is classified and held secret by the nations of the world, actual progress necessarily will be slow and restricted." *Patent Policies of the European Atomic Energy Community*, 30 U. PITT. L. REV. 331, 363 (1968). On patent questions, see also Meller, *Toward a Multinational Patent System*, 44 J. PAT. OFF. SOC'Y 227 (1962); Beckhoefer and Stein, *Patent Aspects of Domestic Law, Euratom, and the International Atomic Energy Agency*, 55 MICH. L. REV. 747, 770 (1958); Von Holstein, *International Co-operation in the Field of Patent Law with Special Reference to the Activities of the Council of Europe*, 16 INT'L AND COMP. L.Q. 191 (1967); W. WHITE and B. RAVENSCROFT, *PATENTS THROUGHOUT THE WORLD* (1966).

46. Research and Technology, 1, *The Commission of the European Communities defines "Euratom's Future Activities,"* Bulletin published by the Commission of the European Communities, No. 15, Brussels, April 30, 1969.

47. By granting selective aids such as joint enterprise status, guarantees

adoption of a joint policy on fissile materials (particularly on enriched uranium), more effective coordination of the nuclear research programs carried out in the Community, and the gradual reorientation of the research potential of the Joint Centre towards non-nuclear fields.

While the above ideas appear feasible, they run contrary to the "in fact" disparities in the capabilities and goals of the participating governments. France has little use for Euratom, favoring instead a national approach coupled with minimal investment in Euratom projects. The Benelux Countries and Italy give much more credence to Euratom to the extent that its activities conform to their own national goals. In short, Euratom enables these countries to actively participate in nuclear industry. Italy favors the development of cheap energy sources and any means by which parity with France and West Germany can be obtained. The fact that private industry controls the majority of West German nuclear activity means that an attempt at supranational control through Euratom will be less than completely successful. Further, West Germany's coal resources are substantial and, thus, nuclear power does not have the urgency that it has for various other nations. The conflict in France is over whether the *Commissariat a l'Energie Atomique* will be able to subsume Euratom to the domestic interests of the French program which emphasizes independence as a concept. "But as in the latter fields (foreign and defense policy), so too in the nuclear field, France does not intend to purchase independence for Europe at the price of an increased supranational system in Europe."⁴⁸ The difficulty is that by hindering Euratom, France has only served to increase nuclear business originating in the United States and Great Britain with the result that French domestic endeavors have not proven entirely successful.⁴⁹

III

ANALYSIS

There are a number of alternatives to be considered for a supranational type structure for Euratom which would concentrate

against selected risks, etc., the Community could promote the concentration of resources on a common technique for fast breeders, high temperature reactors and heavy-water reactors. It should be noted that the Commission has proposed an abandonment of the ORGEL heavy-water reactor. *Id.* at 3.

48. Scheinman, *supra* note 10 at 35.

49. *Id.* at 31-35.

on the subject matter of the organization. The primary function of the EEC is to control and regulate while the primary function of Euratom is to integrate and promote the production and use of nuclear energy and to raise the standard of living in the Member States. It is possible, if the objectives of Euratom are to be maintained, that it will become necessary to provide for a more comprehensive integration of nuclear energy policies into the broader context of a European policy on science and technology. While this would allow Euratom policy to be more closely tied to general economic and industrial policy, it might also result in a de-emphasis on nuclear energy at a time when a scientific breakthrough might create a situation of extreme importance for a body with Euratom's potential.

Given the joint merger of Community executives, it might now be possible for the bargaining that takes place between Member States to include as a trade factor the goals and programs of Euratom, with concessions being made in other sectors in return for reciprocation in the nuclear field. Since there is a disparity in the capabilities of the participating Member States,⁵⁰ some means must be found for making agreement mutually acceptable. Further, this must be done while maintaining the three distinct Communities with three Treaties which still must be interpreted in light of the philosophy upon which they are based. The hope is, however, that the unitary execution of the three Treaties will ". . . facilitate the consistent and co-ordinated development of the Community's legal order."⁵¹

This, in turn, raises questions as to the international legal personality of Euratom and its foreign relations power. One interpretation of the foreign relations power of Euratom⁵² suggests that it consists only of the sum of the foreign relations powers of the Member States. On the other hand, it is suggested that Euratom acts in its own right and conducts foreign relations on its own account in accordance with Article 184 which confers on it a

50. *Id.* at 54-65. "Current low-capacity States like Italy or the smaller Euratom states perceive concessions to France or the Federal Republic simply as the widening of an already unacceptable gap between themselves and the high-capacity states. The latter, on the other hand, and especially France, view concessions to low-capacity states as uneconomic allocations of limited resources that tend to compromise the nuclear future of Europe." *Id.* at 58.

51. First General Report, *supra* note 41 at 463.

52. The foreign relations authority is found in Chap. X, Arts. 101-106.

legal personality of its own.⁵³ This does not mean, however, that it has exclusive competence to act nor that it may take precedence over other types of multi-national action. To the extent that the Member States retain a concurrent jurisdiction over external nuclear relations, there is a possible area of Community/Member State conflict. It must be remembered that the assumption of international legal personality does not by itself confer supranational powers upon Euratom. Only to the extent that the Member States can realize gains and benefits from any supranational action on the part of Euratom will they be willing to conform to its initiation of independent activity. Even though Euratom may conclude association agreements with third countries, unions of States, or international organizations,⁵⁴ these will only be successful so long as they do not conflict with the basic domestic political concerns of the Member States. Perhaps more important than association agreements are those designed for cooperation with foreign powers. The cooperative agreement with the United States has proved highly successful and is continuing in a satisfactory manner.⁵⁵

While Euratom is recognized generally as having international personality, there is some question about the character of the agreements it may make with bodies other than States or

53. Hahn, *supra* note 7 at 1046. "Yet a tendency to subordinate the concomitants of the foreign-relations powers of the member states to supranational supervision and control would seem to be in line with a teleological interpretation of the treaty." *Id.* at 1029.

54. Euratom Treaty Art. 206. See Gaudet, *Euratom* 173-174, reprinted from PROGRESS IN NUCLEAR ENERGY SERIES 10, Vols. 1 and 2—LAW AND ADMINISTRATION, 1959.

55. Agreement for Cooperation, *supra* note 9. The single operative Article of a preliminary agreement, May 29, 1958, provided that

The Parties will cooperate in programs for the advancement of the peaceful applications of atomic energy. Such cooperation will be undertaken from time to time pursuant to such terms and conditions as may be agreed and shall be subject to all provisions of law respectively applicable to the Parties. Specifically it is understood that under existing law the cooperation extended by the Government of the United States of America will be undertaken pursuant to an Agreement for Cooperation entered into in accordance with Section 123 of the Atomic Energy Act of 1954, as amended.

In addition to this preliminary agreement there was also an extensive Memorandum of Understanding concerning the proposed joint nuclear power program also dated May 29, 1958. The Agreement, itself, had for its major purposes:

- (a) To bring into operation within the European Atomic Energy Community (Euratom) large-scale power plants using nuclear reactors of types on which would approach the competitive range of conventional energy costs in Europe;
- (b) To initiate immediately a joint research and development program centered on these types of reactors. *Id.* at 55.

other international organizations.

Many of the legal transactions of international organizations are, however, concluded with parties other than States and international organisations; while such a transaction is not necessarily governed by international law, there are already important cases, and there may well be more, in which the rules applicable to such transactions are international in character.⁵⁶

While these agreements will not be considered treaties, they are probably governed by international law. Such controversy⁵⁷ is eliminated in Euratom by Article 184 which grants it legal personality, but to the extent that treaty-making power is not based on international personality, this specific grant may not be entirely successful. It has been suggested that the main requirements for agreements negotiated with non-governmental bodies is that these bodies should be of international standing and representative in their field of activities.⁵⁸

It might be possible to consider the term "treaty" in the generic sense so as to include "conventions," "agreements," "*modi vivendi*," "concordats," "declarations," and "pacts."⁵⁹ Thus, to the extent that Euratom enters into agreements with other bodies which are functional and serve a useful purpose, it can be argued that these agreements should come within the purview of the concepts of international law. It should not be the precise terms of the Euratom Treaty that confine its area of activity but rather a functional interpretation of the goals sought to be accomplished.⁶⁰

56. C. WILFRED JENKS, *THE PROPER LAW OF INTERNATIONAL ORGANIZATION* 256-257 (1962).

57. Jenks, *The Legal Personality of International Organizations*, 22 *BRIT. Y.B. INT'L L.* 267-274 (1945). Jenks further asks whether it is necessary to invoke the concept of legal personality for the purpose of defining the legal capacity of international organizations. He concludes that regretfully this concept must be used to "... define the status of public international organization as legal entities." *Id.* at 271. For a critique of the concept of legal entity, see A. NEKAM, *THE PERSONALITY CONCEPT OF THE LEGAL ENTITY* (1938).

58. J.W. SCHNEIDER, *TREATY-MAKING POWER OF INTERNATIONAL ORGANIZATIONS* 139 (1959). It is a further assertion of Schneider that the treaty-making power is not based on international personality and that the international character of agreements concluded by organizations is recognized without recourse to the personality of the organization. *Id.* at 129.

59. Jones, *International Agreements Other Than Inter-State Treaties—Modern Developments*, 21 *BRIT. Y.B. INT'L L.* 111, 115 (1944).

60. "It is not so much the express provisions or powers in a constitution which guarantee its effectiveness and thereby its survival but the use to which these are put through a functional interpretation of both express and implied stipulations." K. HOLLOWAY, *MODERN TRENDS IN TREATY LAW* 699 (1967).

There are a number of examples of Euratom activities that indicate a supranational competence to varying degrees. The principal agreements for cooperation concluded by Euratom, including agreements with the United States, The United Kingdom, and Canada have not been seriously questioned in any quarter and there has been a rise in the number of non-Member States that have diplomatic missions accredited to Euratom.⁶¹ The cooperative arrangements concluded with the United States Atomic Energy Commission on proven-type reactors have satisfactorily developed and an estimate of plutonium needs through 1971 has been coupled with implementation procedures to ensure that all necessary plutonium will be supplied through the Euratom/United States Agreement for Cooperation. As an example of the functional approach to the powers of the organization, it is reported that while Belgium and The Netherlands have not yet been included in the Euratom/United States Atomic Energy Commission Agreement of 25 May 1964, that since April 1966 “. . . the two associates have been enjoying the *de facto* benefit of information exchanged under the agreement.”⁶²

Further, the Commission participates in the work of the Organization for Economic Cooperation and Development, particularly on the committees on energy and electricity, science policy, cooperation in research, and scientific and technical manpower. There is also cooperation between Euratom and the European Nuclear Energy Agency, particularly concerning Euratom participation in the work of ENEA and its Steering Committee in accordance with Additional Protocol No. 1 to the OECD Convention and Article 21 of the Council's decision setting up ENEA.⁶³ There has also been a Commission observer at the General Conference of the International Atomic Energy Agency (IAEA) in

61. These countries include: Argentina, Australia, Austria, Brazil, Canada, Chile, Denmark, Finland, Gabon, Greece, Iran, Ireland, Israel, Ivory Coast, Japan, Norway, Pakistan, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States, Upper Volta, and Venezuela. For a discussion of the Euratom Agreements, see *Background Note, Euratom's External Relations*, The Commission, Official Spokesman's Group, EUR/C/608/62e, Brussels, Feb. 7, 1962.

62. Tenth General Report on the Activities of the Community, 82, European Atomic Energy Community, Euratom, The Commission, April 1967.

63. The second renewal of the DRAGON Agreement occurred on April 1, 1966, providing for expenditures of 4.35 million u.a., 47% to be carried by Euratom over a period from April 1, 1967 to Dec. 31, 1967. There has also been a proposal for a further renewal up until March 31, 1970. *Id.* at 83.

Vienna, September 21-28, 1966. The trend here is towards a more concrete relationship particularly regarding nuclear safeguards and controls. At the beginning of 1967, the United States government notified Euratom of certain aspects of the draft treaty on the non-proliferation of nuclear armaments which was discussed in the context of concern over whether any signature by certain Member States might introduce factors of discrimination or diversion inside the Community through the wording of the control clauses of such a treaty. Finally, Euratom has standing relationships with the International Labour Organization, the World Health Organization, the United Nations Food and Agriculture Organization, the Inter-American Nuclear Energy Commission, and the Council of Europe.⁶⁴

At the present time Euratom continues to exist despite the state of continued crisis that has attended its activities during the past three years. The 1969 Research Programme and Budget was adopted by the Community's Council of Ministers on March 4, 1969, and earlier in the year the European Parliament's Committee on Energy, Research and Atomic Problems discussed the present state and the prospects of the European Atomic Energy Community wherein the general opinion was that Euratom should concentrate more on industrial ends.⁶⁵ Finally, the Commission will present to the Council before July 1, 1969, its proposals for a "Multiannual Research and Training Programme for Euratom" which it is hoped will aid in the development of a coordinated industrial policy in the nuclear field.⁶⁶

It is hoped that the policy whereby some Member States do not support all projects will be eliminated in the near future:

The pros and cons are open to discussion, but the system under which half the programmes are financed by everybody and the other half only by those actively concerned is a detestable one and profoundly dangerous for our Community.⁶⁷

64. *Id.* at 85. Several bilateral agreements entered into by Member States prior to the Treaty's coming into force have expired and have not been renewed. The countries involved are Belgium/U.S., Belgium/U.K., Federal Republic of Germany/U.K., and France/U.S.

65. Research and Technology, Bulletin published by the Commission of the European Communities, 2, Brussels, Mar. 5, 1969, No. 9.

66. *Id.* at 2 of No. 3; *Id.* at 1 of No. 4.

67. Address by M. Jean Rey, President of the Commission of the Communities to the European Parliament, 19, Strassbourg, Mar. 12, 1969, SEC(69) 1110-E.

Thus, the future of Euratom continues to be uncertain. The extent to which Euratom is a supranational entity will continue to be determined partially by the provisions of the Treaty modified by various modes of interpretation which differ primarily as to whether implied powers are to be recognized. Matters such as the ability of Euratom to conduct foreign affairs in the nuclear field, the validity of its sanctioning processes and their extra-territorial effect, and the desirability of a more effective inspection and control system, all are matters upon which further Treaty interpretation will be provided by Member States and the administrators of the Community. The concept of supranationalism will also be considered in terms of structural functionalism with emphasis given to the context of Community development—including such matters as the realization of the interests of American private business concerns, the continual state of crisis in the Community itself, the disparity in the nuclear capabilities of the Member States, and the isolated votes in the Council over strong national objection that indicate the beginning of a supranational capability—with the result that pragmatism will contribute to an over-all understanding of the immediate problems.

In sum, it would appear that Euratom does not possess, to any great extent, the attributes of supranationalism. One of the reasons for this centers around the military implications of any nuclear research which has caused Member States to be over-cautious in entering into cooperative ventures, but more important is the absence of a developed sense of mutual shared expectations within which the provisions of the Treaty can be interpreted. If deference is given to the genuine shared expectations of the Member States, then there is a great likelihood of the development of an enlarged area of cooperation. Where the Treaty is ambiguous, the expectations of the parties should be considered and given effect unless they conflict with basic concepts of Community order and stability.⁶⁸ To facilitate this approach it will be necessary to develop a realization on the part of Member States that it is beneficial to their respective national interests to cooperate in the area of

68. "The role of interpretation is precisely the nurturing of confidence by seeking to ascertain and to effectuate in greatest measure the expectations of agreement-makers." M. McDOUGAL, H. LASSWELL, and J. MILLER, *THE INTERPRETATION OF AGREEMENTS AND WORLD PUBLIC ORDER* 394-95 (1967). See also, Information Memo, *Euratom's Future Activity*, 1, April 30, 1969. P-24, Commission of the European Communities.

nuclear research for the furtherance of European integration and eventual consolidation. In the absence of such a realization, the limits of supranationalism discussed herein will prove determinative and Euratom as a supranational entity will fail and with it the hopes for successful European federalism.