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### De-commissioning the Empty Chair Crisis : the Community institutions and the crisis of 1965-6

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# *De-Commissioning the Empty Chair Crisis*

## **The Community Institutions and the Crisis of 1965-6**

The outbreak of the Empty Chair Crisis of 1965-6 is normally associated with behaviour (and miscalculation) of one Community institution, the Commission, encouraged in its misguided zeal by another, the European Parliament. The French boycott triggered by this Commission action then led to a stand-off that centred on the Community's institutional arrangements – both the power of the European Commission and the manner in which decisions were to be taken in the Council of Ministers – and was only resolved by an institutional compromise. The outcome of the Luxembourg meeting, furthermore, is often suggested to have had a decisive impact upon the functioning of the whole Community institutional system in subsequent years. The standard account of the 1965-6 confrontation is thus highly institutional in its focus.<sup>1</sup>

This paper will seek to qualify this conventional reading somewhat. As far as the outbreak of the crisis is concerned, it will acknowledge that both the Commission and the European Parliament did indeed play a role. It will contend, however, that their actions, while interesting and revealing, were ultimately much less significant than the rigid positions of a number of member states, as revealed by deliberations in a third Community institution, the Council of Ministers. The June/July breakdown was in other words first and foremost a Council failure, rather than a mishap for which the Commission bore primary responsibility. And this de-emphasising of the Commission's centrality will continue in the sections of the paper examining the crisis months themselves and the denouement in Luxembourg. For during both the July to January period of stand-off and the deliberations amongst the Six in Luxembourg, the Commission was to find itself in a marginalized position, neither at the centre of activity nor even the central object of discussion and disagreement amongst the Six. Walter Hallstein, the first Commission President, and his colleagues were certainly anxious spectators of what happened in Luxembourg. Hallstein, furthermore, would

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<sup>1</sup> A fluent, and widely-circulated, recent rendition of this standard account is Bino Olivi, *L'Europe difficile. Histoire politique de la Communauté européenne* (Paris: Gallimard, 1998), esp. pp.113-125

be the only figure to lose his job for what had happened.<sup>2</sup> But neither their anxiety, nor Commission President's ultimate role as scape-goat for the empty chair crisis should be allowed to obscure the fact that the Community institution most centrally involved in the outbreak, development and resolution of the crisis was the Council (and COREPER) and that it was the manoeuvrings, contradictory aspirations and tactical calculations of the six member states that were fundamentally to determine the nature of the confrontation. The empty chair crisis was institutional in nature, because it was played out within an institutional framework that five at least of the member states were anxious to preserve (and to which the sixth was probably less hostile than is normally asserted). But it was not the clash between Commission aspirations and Gaullist obstinacy that characterises some of the more basic accounts.

### **A Commission gamble but a Council failure**

There was of course a significant Commission contribution to the outbreak of the Empty Chair Crisis. The legislative package upon which the Council would so spectacularly fail to agree on June 30, 1965 was, like all legislative proposals in the Community system, something that the Commission had drafted and submitted to the Council.<sup>3</sup> Furthermore, the way in which it had been prepared and presented made it quite clear that no one in Brussels believed this to be just another ordinary piece of European legislation. On the contrary the whole manner of its emergence indicated that this was a step that the Commission took in the full knowledge that it was hazardous but potentially vital for its long term ambitions.

One piece of evidence for this comes from Walter Hallstein's personal involvement in the genesis of the March 31 proposals. In normal circumstances, the lead role in drafting what was in essence a piece of agricultural legislation would have been entrusted to Sicco Mansholt, the Commissioner responsible for agriculture, and his highly qualified team of experts in DGVI. They after all had been largely responsible for all the other land-mark CAP proposals that had been passed to date, and which had transformed the Community's agricultural endeavour so much more quickly than expected from a vague collection of articles in the Treaty of Rome into a

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<sup>2</sup> For an archivally-based account of Hallstein's fall, see Philipp Gassert, 'Personalities and the Politics of European Integration: Kurt Georg Kiesinger and the Departure of Walter Hallstein, 1966/7' in Wilfried Loth (ed.), *Crises and Compromises: The European Project 1963-1969* (Baden-Baden: Nomos, 2001), pp.265-284

<sup>3</sup> The full text of the Commission proposal is in European Commission Historical Archives, Brussels (henceforward ECHA), COM(65) 150, 31.3.1965

largely operational policy.<sup>4</sup> On this occasion, however, Hallstein had sought and gained his colleagues permission to be centrally involved in the preparation of the policy proposals as early as December 1964.<sup>5</sup> The birth of the CAP proposals was thus as much the work of a Commission President with a clear set of political ambitions as it was that of Mansholt, who while also politically ambitious, might well have been expected to concentrate first and foremost on the rapid advance of the agricultural policy with which he had become so personally associated.

Secondly, the tone of the Commission's internal deliberations – although muted by Emile Noël's highly terse minute-taking – was such as to suggest that almost all of those who discussed the policy in the course of March 1965 were acutely conscious that this was a major, and highly controversial, set of plans.<sup>6</sup> The best evidence for this is not so much that several Commissioners were willing to vote against the scheme. Within a collegiate body like the Commission dissenting minorities were far from unheard of – although it was rare that they were composed of both French Commissioners.<sup>7</sup> It was much more the way in which several Commissioners not centrally involved in the drafting of the proposals arrived at the March meetings of the full Commission with various extra provisions that they wanted add onto the package, as if conscious that this was the Commission's major legislative initiative of the year and as such something to which they would do well to attach their own particular legislative ambitions. Jean Rey's attempt to add a set of measures designed to increase Community control over agricultural sales to the Communist bloc was a clear case in point.<sup>8</sup> And the Brussels rumour mill – always highly active and well fed given the perennial inability of Eurocrats to keep anything secret for long – was also full of information that suggested that the Commission was about to launch a highly significant set of proposals. Unsurprisingly, therefore, both the national permanent representatives and some of the better informed journalists

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<sup>4</sup> For a recent, detailed account of the CAP's emergence which emphasises Mansholt's role, see Anna-Christina Knudsen, 'Defining the Policies of the Common Agricultural Policy. A Historical Study.' (Unpublished PhD, European University Institute, Florence, 2002)

<sup>5</sup> ECHA, COM(64) PV 298, 2e partie, 16.12.1964

<sup>6</sup> The main Commission discussions are in ECHA, COM(65) PVs 308, 309, 310, 311 & 312 (all 2e partie, all March 1965)

<sup>7</sup> The key votes were on March 22 & March 31. See ECHA, COM(65) PVs 311, 2e partie and 312, 2e partie respectively.

<sup>8</sup> ECHA, COM (65) PV 311, 2e partie, 22.3.1965. On this issue Robert Marjolin and Henri Rochereau were joined in their opposition to the proposed new clause by Colonna di Paliano, one of the Italian Commissioners.

were reporting home fairly accurate summaries of what the Commission intended some time before the proposals were actually finalised.<sup>9</sup>

Third and perhaps most revealing of all was the interplay between the Commission and the European Parliament. The Strasbourg Assembly had long hoped that the Commission would champion its campaign to be granted greater powers, especially over the budgetary process, and had passed several resolutions calling for this to happen. Hallstein's appearance before the Parliament on March 24 and his outlining of the policy package, nearly a week *before* the proposals were passed onto the Council, was thus not a coincidence or a miscalculation. Instead it reflected the Commission's President desire to be personally associated with the moment at which the Parliament's long-standing – and his view legitimate – desires would take a large step towards being met. Alongside such personal fulfilment, there may also have been the hope that the early presentation of these plans to the Strasbourg Assembly – a foretaste of course of how Hallstein believed the Community *ought* to be run – would somehow trigger a tidal wave of pro-European enthusiasm that would serve to sweep the ambitious March 31 legislative package past the highly foreseeable objections of the member states.

The March 31 measures were not therefore in any sense a humdrum piece of everyday European legislation. They were both ambitious and bold, and although not devoid of a strong degree of inner logic – Hallstein and Mansholt were too clever to put forward a set of proposals that did not possess a certain logical coherence – were undoubtedly a conscious gamble. Why then did the Commission take this risk? Why did an institution that strongly believed itself to be at the forefront of an ongoing diplomatic revolution and which could therefore have been forgiven had it decided to display a degree of caution and cunning so as not to invite too hostile a response from the member states so much of whose power it hoped to gain, opt instead for a foolhardy confrontational strategy? The answer would appear to lie in a strange combination of hubris – born of past success – and equally strong anxiety about the likely future powers of its most formidable opponent, Gaullist France.

Commission over-confidence is probably the easier strand to trace. Hallstein's Commission was on somewhat of a high in early 1965. The European project had

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<sup>9</sup> *Le Monde* carried a pretty accurate summary as early as 17.3.1965. News had been reaching the French government even earlier: see Ministère des Affaires Etrangères (henceforward MAE), Série DE-CE 1961-6, Carton 402, Boegner to Quai, Tel. 295/97, 11.3.1965

seemingly bounced back well from its first taste of major crisis in January 1963. The December 15<sup>th</sup> cereal prices accord – the outcome of the celebrated *nuit du blé* – appeared to vindicate the Commission’s insistence that the show had had to go on after the row caused by de Gaulle’s veto of British membership. It also represented a personal triumph for Sicco Mansholt – whose agricultural plans the Council had at last endorsed – and an institutional victory for the Commission which had worked hard to secure the cereal prices agreement and had been widely- and justly – praised for the 11<sup>th</sup> hour compromise proposals that had done much to facilitate agreement amongst the member states.<sup>10</sup> It thus suggested that the Commission once more enjoyed the esteem of EEC member states comparable to the evident prestige that it was building up beyond the Community’s borders. 1964-5, as Lucia Coppolaro will remind us, were the years of the Kennedy Round where the Commission was making its debut as Europe’s single commercial representative and seemingly building an ever stronger rapport not merely with the Americans – who had long sought to bolster the self-esteem of the Brussels body – but also with many of the other participants in the global trade round.<sup>11</sup> That torrent of foreign ambassadors that were subsequently to be the direct target of de Gaulle’s scorn, *were* indeed a fillip to the Commission’s sense of self-worth and a confirmation of the centrality that it believed itself destined to assume in Community affairs.<sup>12</sup> Even the ever sceptical British appeared to have been won round, as was shown by their decision in 1963 to replace the light-weight Arthur Tandy – memorably described as ‘a jumped-up consul-general’ – with a serious Head of Mission like Sir Con O’Neill.<sup>13</sup>

Developments in Brussels did therefore appear to be bearing out the predictions of the Commission’s favourite political scientists – the neo-functionalists.<sup>14</sup> As recent research has strikingly demonstrated, the leaders of the Commission were not merely highly aware of what Leon Lindberg and his fellow

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<sup>10</sup> The importance of the December 15 accord to Commission morale is acknowledged in John Newhouse, *Collision in Brussels: The Common Market Crisis of 30 June 1965* (London: Faber & Faber, 1967), pp.54-5

<sup>11</sup> See Coppolaro’s chapter in this volume.

<sup>12</sup> De Gaulle’s celebrated denunciation of Hallstein’s diplomatic pretensions is in *Mémoires d’espoir* (Paris: Plon, 1970), p. 195. An indication of how such contacts did boost Commission self-belief is Hallstein’s speech to the Institut für Weltwirtschaft in Kiel, 19.2.1965, ECHA speeches collection.

<sup>13</sup> The description of Tandy was by Peter Pooley, interview with the author, 18.12.1995; O’Neill’s calibre would be confirmed in 1970-1 when he was Britain’s principal negotiator in its successful EEC membership bid.

<sup>14</sup> See e.g., Leon Lindberg, *The Political Dynamics of European Economic Integration* (Stanford: Stanford University Press, 1963)

academics were predicting. They were also deeply involved in a dialogue with these supposedly impartial experts that was both influencing the arguments that the political analysts put forward *and* reinforcing the Commission's own sense of destiny.<sup>15</sup> It is therefore little wonder that there is a close correlation between the institutional predictions and arguments being used by Hallstein in particular in a whole range of speeches delivered in the 1964-6 period, and the most optimistic suggestions of Lindberg, Scheingold and the others. The Commission President and his senior colleagues did therefore have a strong sense that they were playing out crucial roles in a drama already written for them by the star institutional analysts of the day.<sup>16</sup>

At the same time, however, the Commission was well aware that it faced a determined and potentially formidable opponent in the shape of General de Gaulle. January 1963 moreover had shown that the French leader was no longer content merely to direct rhetorical broadsides at the *apatrides* of Brussels, but was also prepared to use the powers at his disposal to block forward movement in the EEC, albeit temporarily.<sup>17</sup> The Commission did therefore give a great deal of thought as to how de Gaulle could be defeated. Two strategies appear to have recurred in such thought – and both were evident in the March 31 proposals.

The first was the onward march of supranational institutional building. The best remedy to de Gaulle's use of the national veto and abuse of France's power within the EEC, was to bring forward the moment at which national vetoes would disappear and power would lie with the Commission and the European Parliament and not with the member states. In February 1963 the Commission President had thus sought to convince those most eager to see the British join the EEC that their best long-term hope of defeating de Gaulle's efforts to bar the UK's path to Community membership was to pin their hopes on the eventual disappearance of national vetoes and their replacement by a Community in which all decisions would be taken by majority vote.<sup>18</sup> (And this despite the fact that there was no legal basis to believe that

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<sup>15</sup> Jonathan White, 'Theory Guiding Practice: the Neofunctionalists and the Hallstein EEC Commission', *Journal of European Integration History*, 9/1 (2003)

<sup>16</sup> Hallstein, as a former academic himself and someone much attached to his title as *Professor* Hallstein, was probably more susceptible to influences from the academic debate than some of his successors as Commission President have subsequently been. His esteem for America also probably made the nationality of the neo-functionalists analysts a further advantage.

<sup>17</sup> De Gaulle's shift from purely verbal attacks to an active challenge to the Community is explored in more detail in the introductory chapter of N. Piers Ludlow, *The European Community and the Crises of the 1960s: Negotiating the Gaullist Challenge* (London: Routledge, 2005)

<sup>18</sup> Public Record Office, Kew (henceforward PRO), PREM 11 4524, Ward to FO, tel. 148, 14.2.1963

the majority voting that was meant to become widespread after January 1966 would apply to issues such as enlargement where the Treaty spoke quite explicitly about unanimity.)

The second tactic was that of enmeshing France in an ever-more complex set of economic ties that would render de Gaulle unable to strike out at the EEC. As Hallstein commented to the Americans in November 1964 one of his reasons for being so keen to see the cereal price level agreed upon was that this would serve to bind France still more irrevocably to the EEC despite the General's misgivings about supranationality. 'Philosophizing on tactics of the Commission, he [Hallstein] stated that it was basic Commission policy to concentrate on weaving every thread in the fabric in order to strengthen the Community and thus to make it more difficult for de Gaulle to break it up.'<sup>19</sup> The March 31, 1965 proposals constituted the logical culmination of *both* these strategies. The increase in the powers of the European Parliament and the Commission that they would bring would go a long way towards increasing the EEC's degree of supranationality and hence reducing individual member states' ability to obstruct forward movement, while the enveloping of such ideas within a package primarily designed to complete France's favourite policy, the CAP, would also serve to protect the radical institutional ideas from Gaullist opposition especially in a year when de Gaulle needed to be re-elected.<sup>20</sup> The tactics employed thus highlight Commission nervousness vis-à-vis France as much as they do over-confidence and hubris.

The Commission was therefore fully aware that it was taking a gamble in putting forward a series of proposals as far reaching as those of March 31, 1965. And it also underlined its serious political intent in the manner that it remained loyal to those proposals throughout the ensuing negotiations, despite the fierceness of French opposition in particular. In June 1965 was there to be no repeat of the last-minute compromise proposals, based upon what Marjolin would later term 'une équilibre des mécontentements', which the Commission had so often employed to break Council deadlock.<sup>21</sup> Instead, Hallstein and his fellow Commission negotiators clung grimly to their embattled vision, with a determination that was eloquent about how politically

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<sup>19</sup> *Foreign Relations of the United States 1964-8*, volume 13, p.112

<sup>20</sup> For a very perceptive contemporary analysis of the Commission's tactics and the dilemmas these posed for France see Pierre Drouin's article in *Le Monde*, 11.5.1965

<sup>21</sup> Marjolin's comments are in Council of Ministers Archive, Brussels (henceforward CMA), R/609/66 Procès verbal de la réunion restreinte tenue à l'occasion de la 185ème session du Conseil CEE, (4-5 & 9-12.5.1966)



important they believed the March 31 proposals to be.<sup>22</sup> But Commission over-ambition while very real cannot really be classed as the main reason for the June 30 breakdown. For this was fundamentally a failure of the Council not of the Commission.

Had the Council been a less troubled body in 1965, the Commission's reckless gamble would have been of little consequence. Faced with the clear and inescapable political reality that none of the member states were prepared to contemplate the full range of changes advocated by the Commission, Hallstein and his colleagues would have been forced to tone down their proposals or accept a major delay in the establishment of the CAP – something that the Commission was unlikely easily to swallow. There would have been some loss of face on the part of the Commission, accompanied perhaps by a short postponement of the introduction of the new CAP financial regime, but no serious crisis would have resulted. To understand why a major crisis did occur, therefore, it is necessary to shift the historical focus from the Commission to the collective mood of the member states.

A detailed review of member state opinions is clearly beyond the scope of this paper and would also risk duplicating unnecessarily the work done by other conference participants. But it is important to recall that the Commission proposals of March 31 encountered a member state constellation that almost uniquely unpropitious for a deal. This involved two member states – Germany and Italy – who were convinced that not only were they due some compensation for the multiple concessions that they had been obliged to make in earlier rounds of CAP negotiations but also that 1965 was the best – and quite possibly the only – moment at which to stop de Gaulle's attempt to turn the EEC into an entity fully responsive only to French national preferences. To the mix was added a third member state, the Dutch, whose normal tendency to side with the French whenever CAP matters were discussed was temporarily held in check by the totemic importance to The Hague of the whole question of European Parliamentary power. And on collision course with all three were the French whose belief in the centrality of the financial regulation had only been increased by their past CAP successes and who nurtured justified suspicion of the stances adopted by Rome and Bonn in particular. The French desire to secure a

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<sup>22</sup> Hallstein would only concede the possibility of the Commission re-visiting its proposals in the small hours of July 1, 1965 – i.e. *after* the June 30 deadline had expired. CMA. R/850/65, Procès verbal de la réunion restreinte tenue à l'occasion de la 172<sup>ème</sup> session du Conseil CEE (28.6 – 1.7.1965)

CAP deal *but only* a CAP deal thus careered headlong into the Italian, German and Dutch determination not to allow the French to walk away with a financial regulation without having made a number of substantial concessions to *their* Community priorities. And to protect their fragile solidarity from the widely recognised negotiating prowess of the French delegation, the three countries intent on blocking France's path decided tactically to cling to the Commission proposal, not because they really supported the majority of its provisions, but instead because they were aware that by so doing they would make a deal on the terms sought by France impossible. Once the June 30 deadline had been missed, there would then be the opportunity for a much wider ringer reckoning, in the course of which France could be granted its desperately wanted financial regulation, but in exchange for a raft of measures designed to push the EEC in a number of directions desired by the Germans, Italians and Dutch.<sup>23</sup> That tried and tested mechanism of Community advance – the deadline – had thus been subverted and turned into a mechanism for disrupting the progress of French Community priorities rather than a technique for pushing the EEC forward as a whole.

To make matters worse, the Council was also deprived of most of its normal sources of compromise and mediation. The Presidency – to whom it would normally have fallen to calm the debate and conjure agreement out of deadlock – was held by the French, who were for obvious reasons totally *parti pris*. Couve de Murville did make use of the Council chair to some effect, but not to smooth ruffled feathers or suggest bridging proposals, but instead to issue a series of ever more explicit threats about what might happen should the June 30 deadline be missed.<sup>24</sup> The Commission, as noted above, was also out of the running, encouraged to cling on desperately to its proposals in their unadulterated form by the seeming support they were receiving from the Germans, Italians and Dutch. And the Italians, so often the architects of skilful compromise deals, were on this occasion more partisan than any. This left only the Belgians in a position to perform any mediation at all, and even here the fact that Belgium was temporarily without a government and hence constitutionally debarred from entering into any agreement that might involve additional financial

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<sup>23</sup> This uniquely unpropitious Council environment is analysed in much greater depth in Ludlow, *The European Community and the Crises of the 1960s*.

<sup>24</sup> CMA. R/850/65, Procès verbal de la réunion restreinte tenue à l'occasion de la 172ème session du Conseil CEE (28.6 – 1.7.1965)

commitments, meant that the scope for Paul-Henri Spaak and his colleagues to act as honest brokers in a deal that did after all centre on money was very limited indeed.<sup>25</sup>

All told therefore it would have been quite hard to have designed a set of political circumstances more prone to Council *impasse*. It was not the Council machine itself that failed to function; it was simply that the task of reaching agreement given the diversity and fierceness of member state attitudes on display, would have been beyond any multilateral forum. Needless to say, the French did their best to secure agreement. In the run-up to June 30, Paris deployed the full panoply of negotiating techniques ranging from the repeated use of threats about what might happen were the deadline to be missed, to a blatant attempt to buy Italy's consent with a package of last minute financial proposals.<sup>26</sup> And its multilateral efforts were flanked with a parallel use of bilateral discussions with its main Community partners. One of the regular encounters between Olivier Wormser, the senior Community expert in the *Quai d'Orsay*, and Rolf Lahr, State Secretary in the *Auswärtiges Amt*, was for instance employed in a last ditch effort to persuade the Germans to allow a deal to be done.<sup>27</sup> But such was the depth of feeling on each side – and the profound conviction in Bonn, The Hague and Rome that to give way to the French once more would be more hazardous for the continuation of the Community experiment than would be anything that the French might threaten to do – that agreement proved totally impossible. France's bluff was called – and the French consequently had to respond by putting into action those empty chair tactics that Couve de Murville had discussed with de Gaulle at least two months earlier.<sup>28</sup>

At the heart of the June 30 breakdown was thus a Council failure and not one by the Commission. Hallstein's tactical ineptitude was certainly a contributory factor to the breakdown. And to the extent that the European Parliament encouraged Hallstein in his folly, it too bears a degree of responsibility.<sup>29</sup> But fundamentally what happened on and in the run-up to June 30 was an outburst of deeply held member state anxieties and mutual antagonisms rather than a Commission-induced

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<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

<sup>27</sup> For the German account of this meeting. Bundesarchiv, Koblenz, Bundeskanzleramt files, B-136 3546, Ergebnis des Gesprächs zwischen Lahr und Wormser, 22.6.1965 & Vermerk, 23.6.1965. For the French, MAE. Série DE-CE 1961-6, carton 402, Quai to Bonn 4691/470, 23.6.1965

<sup>28</sup> For Couve and de Gaulle's discussion of these tactics, see Maurice Vaisse, 'La politique européenne de la France en 1965: pourquoi la "chaise vide"?' in Loth (ed.), *Crises and Compromises*, p.207

<sup>29</sup> 'Résolution sur certains aspects de l'organisation financière de la CEE', 24.3.1965, *Débats du Parlement Européen, Session 1965-66, Séance du 22 au 26 mars 1965*, p.191

crisis. The Community institution to which historical attention needs to be first and foremost directed when attempting to explain what went wrong in the late spring and early summer of 1965 is hence the Council of Ministers and not the Commission or the European Parliament. (Nor has this author seen much evidence to suggest that Joseph Weiler is right to look to the European Court of Justice and its series of trail-blazing – but also potentially frightening – set of judgements which had laid the main pillars of Community law as the main factor behind the crisis.<sup>30</sup> Some of the targets for French ire once the crisis had started do suggest that Paris at least was anxious about what the ECJ had been doing.<sup>31</sup> But this was an opportunistic addition to the French list of grievances rather than a root cause of the crisis itself.)

### **Commission marginalisation; Council centrality**

The Commission was even less central to the course of the empty chair crisis once the boycott began than it had been in triggering the French action. During the July to December period the Commission went on operating of course.<sup>32</sup> Hallstein and his fellow Commissioners, moreover, made a number of speeches about the EEC's predicament and sought to impress their viewpoints upon the key ministerial players.<sup>33</sup> And the Commission did perform the useful – if belated – task of going back to the drawing board on the financial regulation proposals and devising a new system that stood a better chance of winning support from all six of the member states.<sup>34</sup> But for all its activism, it is difficult to escape from the conclusion that once the crisis became an open and political dispute between France and its partners, the Commission was pushed to the margins of a diplomatic process that centred on the actions of, and dialogue between, member states.<sup>35</sup> Just as had been the case in January 1963, in other words, Community crisis and the need for political decisions

<sup>30</sup> J.H.H. Weiler, 'The Transformation of Europe', *Yale Law Journal*, vol. 100 (1991), pp.2423-4

<sup>31</sup> Points 3 & 4 of the original French *Decalogue* presented at the Luxembourg Council would be cases in point. For the French text see MAE, Série DE-CE 1961-6, carton 402, aide-mémoire, 17.1.1966

<sup>32</sup> The minutes of the weekly meetings of the Commission offer the best overview of the institutions ongoing activities. ECHA, COM(65) PVs 324-346, 1er & 2e parties.

<sup>33</sup> See e.g. ECHA speeches collection: Hallstein speech to the Düsseldorf CDU/CSU meeting, 8.7.1965, Hallstein's speech to Bayerischen Rundfunk, 5.11.1965 & Levi-Sandri's speech to a delegation of Italian MPs, 8.11.1965; the member state government with which the Commission seemed to have talked most was that of the Netherlands. See for instance the multiple references to dialogue with the Commission in Dutch cabinet records: Netherlands Foreign Ministry, 996.0 EEG, box 177, Ministerraad van het Koninkrijk, 14.1.1966 & 21.1.1966.

<sup>34</sup> For the revised version see ECHA. COM (65) 320 final, 22.7.1965. Its genesis can be traced through ECHA, COM(65) PVs 325 & 326, 2e parties, 14.7.1965 & 19-22.7.1965.

<sup>35</sup> The evolving diplomatic relations amongst the Five and between France and its partners is explored in some detail in Ludlow, *The European Community and the Crises of the 1960s*

brought the member states to the fore and minimised the scope for the Commission to use the vast technical expertise it had built up of the EEC's day-to-day operation.<sup>36</sup> Thus well before the controversial decision of the Six to assemble in Luxembourg in January 1966 *without* the presence of the Commission, the Five had taken to meeting at the level of both ministers and permanent representatives to discuss tactics without the Commission being present.<sup>37</sup> Such meetings were not entirely without precedent. The permanent representatives had become a close-knit group that could periodically assemble, informally, without the Commission's representatives attending. But the regularity and frequency of such encounters during the period of the French boycott did graphically underline how completely the Commission had been pushed to the margins of a dispute it was widely – if rather unfairly – blamed for starting. Similarly, the European Parliament had next to no influence on proceeding. It too went on functioning of course. And it passed a number of resolutions calling for the swift solution of the crisis.<sup>38</sup> But its capacity to shape events – marginal even at the best of times in the 1960s – was minimal during the crisis months.

The Community institution that did come to the fore, by contrast, was the Council and still more its junior off-shoot Coreper. This might at first seem a surprising claim. After all it was the Council and its subordinate bodies that were most directly affected by the (partial) French boycott.<sup>39</sup> And it was the Council and Coreper which were obliged to operate in something of legal limbo, uncertain whether the voluntary absence of one of their members automatically invalidated any

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<sup>36</sup> The marginalisation of the Commission in the earlier Community crisis is confirmed by all three detailed studies published to date: Oliver Bange, *The EEC Crisis of 1963. Kennedy, Macmillan, de Gaulle and Adenauer in conflict* (London: Macmillan, 2000), pp.151-5; W. Holscher, 'Krisenmanagement in Sachen EWG. Das Scheitern des Beitritts Großbritanniens und die deutsch-französischen Beziehungen' in R.A. Blasius (ed.), *Von Adenauer zu Erhard. Studien zur Auswärtigen Politik der Bundesrepublik Deutschland 1963* (Munich: R. Oldenbourg Verlag, 1994), pp.9-44 & N. Piers Ludlow, *Dealing With Britain: the Six and the First UK Application to the EEC* (Cambridge: Cambridge University Press, 1997), pp. 200-230.

<sup>37</sup> Most seriously, the Commission was not invited to the ministerial discussion amongst the Five about the tactics to adopt at Luxembourg. See *Akten zur Auswärtigen Politik der Bundesrepublik Deutschland 1965* (Munich: Oldenbourg Verlag, 1996), document 470. For Commission complaints about its exclusions from some COREPER meetings, see ECHA, BDT 214/80, G(65)487, Sigrist note on COREPER meeting, 13.10.1965

<sup>38</sup> See e.g. 'Résolution sur la situation actuelle de la Communauté européenne', 24.9.1965, *Débats du Parlement Européen, Session 1965-66, Séance du Vendredi 24 septembre 1965*, p.9

<sup>39</sup> The French boycott was not complete, since the French decided to go on sending representatives to those meetings of Council working groups that were intended to discuss ongoing Community management (*gestion*) rather than new policy directions. See ECHA, High Authority microfiche, no. 3482, SEC(65) 222, Sigrist note to Commission, 19.7.1965

decisions taken.<sup>40</sup> Yet paradoxically, despite its questionable legal standing, and despite the determination of several of the Five to avoid taking any major decisions that might deepen the rift with France, the Council and Coreper did play a vitally important role during the July to December period.

The reasons for this were quite simple. In the first instance the Council and Coreper were the most effective instruments of coordination that were available to the Five. At a time when their unity would be sorely tested, but also when they were highly conscious that it was only by remaining loyal to each other that they could hope to win the war of nerves with the French, the Five had every incentive to use multilateral meetings at which they could pool their readings of the crisis and discuss how the dispute might be overcome. Both regular Council meetings and weekly encounters amongst the permanent representatives were hence vital.<sup>41</sup> This was all the more important since all dialogue with the French had to be conducted bilaterally – to a large extent by the Italian Presidency, but also by the Germans taking advantage of their status as the most powerful member of the rump Community, and even by Spaak, taking his final bow on the Community stage.<sup>42</sup> This intermittent and hesitant dialogue with Paris, however, contained within it the serious danger of allowing France to practice a policy of divide and rule by saying subtly different things to each different interlocutor and attempting to play upon the very real mutual suspicions that haunted the Five. The only way of countering this was to ensure that after each bilateral meeting with the French, the country involved reported back to the assembled Five and kept them fully abreast of what had been said and suggested.<sup>43</sup> This made for laborious negotiation – but it also minimised the risk of the Five falling out with each other.

There were two additional reasons for the importance of the Council institutions, however. The first was that one of the earliest tactical decisions taken by the Five was to attempt to push ahead with the financial regulation negotiations in

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<sup>40</sup> Amongst the multiple legal opinions drawn up during the crisis months, see NLFM, 996.0 EEG, box 175, DIE to DGES, 6.10.1965 and Historical Archives of the European Communities, Florence (HAEC), Emile Noël papers, EN-8, G(65) 353, Note du Service Juridique, 13.7.1965

<sup>41</sup> For a good, near contemporary account, of the most famous coordinating meeting of the Five, that of October 25-6, 1965, see John Lambert, 'The Constitutional Crisis of 1965-66', *Journal of Common Market Studies*, vol. 4 (1966), p.218

<sup>42</sup> One of the fuller bilateral discussions was that between Couve and Schröder. See Couve de Murville private papers, Sciences Po, Paris, CM2, Conversation entre Couve et Schröder, 13.11.1965.

<sup>43</sup> An example of Italian briefing about talks with the French is in CMA, R1136/65, Projet de Procès Verbal de la 176ème session du Conseil de la CEE, 20.12.1965

France's absence, thereby trying to demonstrate both their readiness to settle the original cause of the breakdown and the very practical material advantages that France was denying itself by withdrawing from the EEC. This meant that the Council negotiations suspended in June continued intermittently throughout the six months of the crisis, now on the basis of the Commission's revised financial regulation plans. The level of success attained was admittedly somewhat questionable – the discussions seemed at times to be better suited to demonstrating how far the Community still was from agreement on CAP finance than they were to doing the opposite – but it did mean that both the Council and its subordinate bodies still had plenty of substantive issues to discuss throughout the July to December period.<sup>44</sup>

Second, the crisis confirmed the importance of Coreper at times of Community difficulty. For the permanent representatives knew each other well, were highly versed in the legal and other niceties of Community diplomacy, and were sufficiently low-profile to be able to meet discreetly without generating the type of publicity or expectation of results that surrounded most ministerial meetings. From the very outset of the crisis therefore much of the day to day decision-making about how to manage the Community in the absence of one of its member states were taken by and amongst the permanent representatives, whether meeting in formal session (and hence with the Commission) or meeting informally and without the Commission's presence.<sup>45</sup> Furthermore, the French decision to retain their deputy permanent representative – Maurice Ulrich – in Brussels meant that Coreper was also an obvious channel of communication with Paris. One of the earliest decisions taken by the Five was that the President of Coreper – the Italian Antonio Venturini – would brief Ulrich on all that had been discussed in his absence.<sup>46</sup> The French archives hence contain almost as much information on the meetings that the French did not attend as they normally do on meetings where a French representative had been present.

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<sup>44</sup> This is very clear from the minutes of the key Council meetings. See esp. CMA, 1304/65, *Projet de Procès-Verbal de la 174<sup>ème</sup> session du Conseil de la CEE*, 25-6.10.1965

<sup>45</sup> For a more detailed discussion of COREPER's role during the crisis, see N.P. Ludlow, 'Mieux que six ambassadeurs. L'émergence du COREPER durant les premières années de la CEE' in Laurence Badel, Stanislas Jeannesson and N. Piers Ludlow (eds.), *L'adaptation des administrations nationales à la construction européenne: Une approche historique (1920-1975)* (Brussels: Peter Lang, forthcoming 2005)

<sup>46</sup> ECHA, BDT 214/80, G(65) 367, note de Sigrist sur la réunion du COREPER, 15.7.1965

While the crisis months thus saw the further decline in the centrality of the Commission and Parliament it did not witness the eclipse of all Community institutions. On the contrary, while much was discussed bilaterally and away from Brussels (one of the features of European cooperation in the 1960s was the sheer number of fora in which French officials and ministers might expect to run into their counterparts amongst the Five – discussions about the empty chair crisis were thus held on the margins of NATO gatherings, UN meetings, the closing ceremony of the Second Vatican Council, and the opening of the Mont Blanc tunnel) the Council and Coreper retained a vital coordinating role throughout the crisis period.

### **The institutional quarrel**

Both Council and Commission, however, had a further role during the crisis period, namely that of object of discussion between France and its partners. For almost as soon as its representatives had withdrawn from Brussels, Paris made it clear that while the crisis had broken out over a dispute centring on the CAP, it could not be resolved without there being a wider political agreement about the manner in which the EEC operated.<sup>47</sup> De Gaulle's celebrated press conference of September 9 and Couve de Murville's October speech to the National Assembly therefore did no more than spell out publicly what the French had been communicating privately to their partners from July onwards.<sup>48</sup> A simple CAP deal would no longer suffice to bring the French back to the Community negotiating table.

The negotiations between the French and the representatives of the Five was a slow and frustrating affair. With neither side wanting to commit itself too far, both tended to talk in rather vague and imprecise terms. For the French to ask too clearly for major institutional change would make Paris all too obviously the *demandeur*, a status Gaullist France always sought hard to avoid. Equally, however, for any member of the Five to show too much willingness to discuss institutional change might be to offer unwanted solace to the French and to endanger the fragile solidarity of the Five. But haltingly and unevenly the basic components of a political deal between the two sides had been more or less assembled before the Luxembourg meetings began. And these components did appear to include both some sort of

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<sup>47</sup> See for instance *AAPD 1965*, document 270

<sup>48</sup> For the General's press conference, Charles de Gaulle, *Discours et messages* (Paris: Plon, 1970), vol. 4, pp.377-81; for Couve's speech, see *Débats de l'Assemblée Nationale*, 1965, pp.3889-3892



arrangement on the authority and powers of the European Commission and a deal on the manner in which majority voting would be employed in the Council of Ministers.

Surprisingly, however, only one of these two issues would prove central to discussions at Luxembourg itself. The Extraordinary Council meeting did indeed feature two major controversies.<sup>49</sup> But contrary to the impression given by some of the more simplistic accounts these were not the twin issues of Commission power and majority voting. Instead the former was rapidly disposed of, the ministers of the Six agreeing fairly rapidly in the first of their Luxembourg encounters that the French Decalogue was a document that deserved study and which could hence be passed onto the ever-willing Coreper for detailed examination. The outcome of the permanent representatives deliberations, moreover, the toned down Heptalogue, was also quickly given ministerial sanction at the second of the two Luxembourg meetings. What divided the Six was on the contrary the issue of majority voting *and* the ongoing controversy about the Community's agenda. This latter was brought to the fore by the rather tactless timetable for the resumption of Community operation submitted by the France towards the end of the first meeting, which deeply offended the Germans and Dutch in particular and which rendered any further discussion all but impossible. But the row rumbled onto into the second meeting and continued until the French agreed to a much more evenly balanced schedule for future Community discussions.

Even at Luxembourg, therefore, the Commission as object was less central than has often been asserted. It was discussed and the Heptalogue is a document of some note – despite its lack of legal applicability.<sup>50</sup> (It was described as the Council's opening salvo in a dialogue with the Commission held under article 162 but no official dialogue between Council and Commission was ever held.) But disagreements over the powers or role of the Commission did not lie at the heart of the arguments that were eventually to bring the crisis to an end. Instead the controversies that proved really difficult to resolve were those about majority voting – finally settled with the famous *gentleman's disagreement* – and that about what order the Community should tackle the outstanding substantive issues once the French had retaken their place in Brussels.

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<sup>49</sup> CMA, C/12/66, Procès-verbal de la session extraordinaire du Conseil de la CEE (17-18 & 27-28.1.1966)

<sup>50</sup> For a published version of the Heptalogue text, see David Weigall & Peter Stirk (eds.), *The Origins and Development of the European Community* (Leicester: Leicester University Press, 1992), pp.134-5

## Conclusion

The somewhat flippant title of this piece should not of course be taken too literally. The Commission did play a role in the outbreak, development and denouement of the crisis, albeit of secondary importance. And the Brussels body could also – were the scope of this article to extend to the consequences of the crisis – make a fair claim to be the principal victim of the empty chair crisis, losing not only its first and most dynamic leader until Jacques Delors, but also suffering from a blow to its morale and sense of destiny that it would take years fully to overcome.<sup>51</sup> But the de-emphasising of the role of the Commission at all stages of the crisis does have the significant merit of allowing historical attention to be redirected towards those institutions that did do much more to affect the outcome of the quarrel between France and its partners, namely the Council of Ministers and Coreper. For it is within the Council that the crisis began, it was through the Council mechanisms that the Five retained a degree of solidarity during the period between July and December, and it was by means of an Extraordinary Council (albeit one meeting in Luxembourg not Brussels) that the crisis was finally resolved. A shift in historical focus from Hallstein and his colleagues to the much lower profile but much more central institution of the Council of Ministers is hence long overdue.

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<sup>51</sup> For a discussion of the Commission's waxing and waning fortunes during the 1960s, including an assessment of the crisis' effects, see N.P. Ludlow, 'A Supranational Icarus: the early Commission and the search for an independent role' in Antonio Varsori (ed.), *Inside the European Community: Actors and Policies in European Integration from the Rome Treaties to the Creation of the "Snake" (1958-1972)* (Baden-Baden: Nomos, 2005 forthcoming)