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AD HOC ASSEMBLY

INSTRUCTED TO WORK OUT A DRAFT TREATY SETTING UP A

EUROPEAN POLITICAL COMMUNITY

Session of January 1953

REPORT

of the

Constitutional Committee

PARIS, 20TH DECEMBER 1952

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TABLE OF CONTENTS

Part. 1 — Powers and competence of the Community

(M. BENVENUTI, Rapporteur)

Part. 2 — Political Institutions of the Community

(M. DEHOUSSE, Rapporteur)

Part. 3 — Judicial Institutions of the Community

(M. von MERKATZ, Rapporteur)

Part. 4 — Relations of the European Political Community with third States and international organisations

(M. SEMLER, Rapporteur)

Part. 5 — Liaison to be established between the Community and the Council of Europe

(M. WIGNY, Rapporteur)

Part. 6 — Conclusion adopted by the Constitutional Committee

PART I

POWERS AND COMPETENCE OF THE COMMUNITY

REPORT

submitted by M. BENVENUTI

I. — HISTORICAL SURVEY: IMPORT OF THE PROJECT FOR A COMMUNITY [1]

1. *a*) On 14 September 1951, at WASHINGTON, the three Ministers for Foreign Affairs of the United States, France and the United Kingdom, after noting that the action taken by the French Government with a view to the creation of a European Coal and Steel Community and a European Defence Community constituted « an important step in the direction of European Unity », announced their agreement with the creation of a European continental Community. The Government of the United Kingdom made it clear that it wished to establish the closest possible ties with the continental Community in all stages of its development.

Since that date, the work of the Six Governments and of the European Organizations has helped to clarify the import and define the structure of the continental Community.

b) The Consultative Assembly of the Council of Europe was the first European institution to give definite form to the principle announced at Washington.

On 10 December 1951, the Consultative Assembly, referring to the declaration of Washington, advised the Committee of Ministers [2] to encourage the early conclusion, between any Member States that were so disposed, of an agreement setting up a Political Authority, subject to the democratic control of a Parliamentary Assembly and having a competence limited *to the domains of defence and external affairs*, in which the exercise of sovereignty in common becomes necessary through the organization of a European army and its employment within the orbit of the Atlantic Treaty.

The Recommendation made it clear that the said agreement must specify the liaisons which could be established between the Community thus created and the non-signatory Member States of the Council of Europe, in particular, the United Kingdom.

c) This aim, common to the Six continental countries — the creation of a Community — has been officially recognized in article 38 of the E. D. C. Treaty, signed at Paris, on 30 May 1952, an article which outlines the essential structures of the future federal or confederal Community:

— an Assembly elected on a democratic basis,
— a two-Chamber representative system,
— the separation of powers,
— suitable representation of the States.

d) Three days after the signature of the E. D. C. Treaty, on 30 May 1952, the Consultative Assembly of the Council of Europe took up the same problem and, following the line of its recommendation of November 1951, made an immediate advance, as compared with the positions of the Six Governments.

For article 38 E. D. C. entrusted the future E. D. C. Assembly with a definitely limited task: to examine the constitution of an Assembly of the European Defence Community, elected on a democratic basis, and to define the powers which would be vested in such an Assembly, and the changes which might have to be made in consequence in the E. D. C. Treaty while bearing in mind that this permanent organization of the Defence Community should be able to constitute one of the elements in a *subsequent* federal or confederal structure.

The Consultative Assembly of the Council of Europe, on the contrary, regarded the definition of the constitutional foundations of the European Political Community as a task that should be undertaken at once.

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(1) The term « Community » is employed throughout the present report to denote the European Political Community.

(2) Translated from the French text.

In its Resolution 14 of 30 May 1952 the Consultative Assembly:

« considering that several Governments and Parliaments have held it essential that the setting up of the European Defence Community should be accompanied by the constitution of a supranational political authority »;

« considering that it would be of great advantage if the basic principles of this authority and the limits of its powers were to be defined within the next few months, without waiting for the entry into force of the Treaty instituting the European Defence Community »;

proposed: « that the clauses in the Treaty of the European Defence Community which relate to the determination of the future political structure of Europe should be incorporated in a special agreement, distinct from the Treaty itself, and capable of being put into effect immediately »,

« and desired that, by the terms of the agreement thus contemplated, the Governments concerned should charge either the Coal and Steel Assembly, or the Assembly of the Council of Europe sitting with a restricted membership to draft the Statute of a supranational political community, which would remain open to all Member States of the Council of Europe and would include provisions for the association of those States which had not yet adhered to it ».

The Consultative Assembly was thus proposing to the Governments a two-fold change in the system of article 38:

(i) that the constitutional mandate should be given to an institution, other than the Assembly of the E. D. C., which would be in a position to exercise its functions *immediately*.

(ii) that the institution to which this mandate had been given would not confine itself to studying the permanent organization of the E. D. C. (which was the mandate conferred on the Assembly of the Defence Community by article 38) but should proceed to draft a statute for a supranational European political community.

e) The proposals of the Consultative Assembly were approved by the Six Governments which, by their Luxembourg resolution, adopted on 10 September 1952, requested the members of the Coal and Steel Assembly to co-opt nine more representatives and to draw up a draft Treaty instituting a European Political Community.

The Luxembourg resolution also gave information as to the nature of the powers and competence of the Political Community. The Six Ministers for Foreign Affairs expressly referred to the Consultative Assembly's resolution of 30 May, and they further recognized that the Constitution of a European Political Community, with a federal or confederal structure, « is linked to the establishment of common bases of economic development and to a merging of the essential interests of the Member States ».

The Community is also linked to the E. D. C., which is indeed one of its principal components. It will have, therefore, to contribute to the preservation of « the spiritual and moral values which are the common heritage » of the peoples of Europe (Preamble of the E. D. C. Treaty), that is, in the first place, to the maintenance of human rights and fundamental freedoms.

2. That is the nature of the mandate conferred on the Ad Hoc Assembly; it is a far wider mandate than that which was conferred by article 38 on the E. D. C. Assembly: it even extends to the study of the structures which article 38 only regarded as a « « subsequent » consideration, for it had limited the task of the E. D. C. to determining the « permanent organization » of the Defence Community only.

Such is the import, and such are the limits of the Community: human rights, defence, economic and social integration, and foreign policy.

It must not be forgotten that, in recent years, several treaties — in particular, the European Convention for Economic Co-operation, the Statute of the Council of Europe, the North Atlantic Treaty and the Convention of Human Rights — have recognized the fact that these matters were of common interest for the peoples of Europe. Economic integration, in particular, has just made decisive progress with the coming into operation of the E. C. S. C., the first actual example of a common market in one of the key-sectors of economy.

A Community founded on the union of the peoples cannot exclude, in advance, from its activity those fields in which the peoples have already recognized, through their qualified representatives, that they have common interests.

We shall have to determine subsequently the powers and means of action of the Community in every field of its competence, their nature, their limits and the conditions under which they will be exercised, and the possibility which the Statute provides for enabling the powers and competence of the Community's institutions to be conferred on them progressively during the successive phases of the implementation of the Statute. The present remarks in no way pre-judge these subsequent decisions.

For that reason, I am most anxious that the Committee should arrive at a general agreement on this conception of the import of the Community. It is not a question of new data, but simply of a clarification of the texts, — primarily, of the Luxembourg resolution — which constitute the terms of reference of the Ad Hoc Assembly.

These texts, as presented by the governments, no doubt fail to give full satisfaction to anyone. They are too advanced for some people and they fall short of the aspirations of others. It would be easy for either of these two groups to criticize them ; but is it not better to admit that they represent a basis of work which could not easily be replaced ?

3. The Sub-Committee has sought, with the support of most of its members, to establish in the opening part of its resolution, the principle referred to above — that the powers and competence of the Community should be progressively extended to domains of *common interest* — and I would add : solely to those domains — thus adopting a very pertinent observation by one of our colleagues : national States, in the same way as men, possess fundamental and inalienable rights which must never be encroached upon by the general competence of a federal or confederal Community.

I emphasize this principle which constitutes a guarantee for us all. We are all attached to the traditions, the culture, and the special characteristics of our different countries. The Community could never be entitled to infringe them, to absorb them or confuse them with one another, thereby destroying their originality. On the contrary, it must be the task of the supranational institutions, to which our States will have entrusted the exercise of some of their sovereign rights, to afford them protection.

In order to avoid ambiguities and, at the same time, to give full effect to the principles on which our action is founded, the Committee proposes that the indication of the immediate powers and competence conferred on the Community should be prefaced by an enumeration of the general tasks which fall to a Community founded on a union of the peoples, as a result of its very nature and of the prior engagements undertaken by the States. This amounts to delimiting the fields in which wo envisage a progressive enhancement of the powers and competence of the Community (1).

The Sub-Committee considered that, by acting in this way, the Assembly would be indicating to our peoples, simply and clearly the path which has been marked out for the past two years by the recommendations of the Assembly of the Council of Europe, the Coal and Steel Community, the Defence Community and the session of our Assembly. That is a vision sufficiently inspiring to encourage their efforts and to sustain their hopes.

4. I wish to dispose of two objections :

(i) *The first is* that any enumeration has a restrictive character which might hamper the development of the Community if it were found necessary, later on, to invest it with competence in other fields than those referred to in § 2 of Resolution 2.

The answer is simple. The Community will, at the least, have a right of initiative in constitutional matters (cf. § 31). If circumstances should arise of such gravity that it became necessary to extend its tasks still further, the text defining those tasks could itself be modified by the procedure laid down for constitutional amendments.

(1) Cf. Resolution 2 § 2. In the Annex § 3, b) will be found the details of the discussion on § 2 of Resolution 2, in particular, in regard to an important amendment relating to the tasks and aims of the Community in the economic sphere.

(**ii**) *A second objection,* which relates to an important political problem, is that the formulation of objectives of such a general kind might convey the impression that the Community of the Six was isolated from the rest of Europe, whereas efforts have already been undertaken, on the widest possible European plane, in some of the spheres enumerated in § 2 of Resolution 2.

In answer to that, it must be said that the Community will not only remain open to all the European States, but will also offer them wide opportunities of Association (cf. Resolution 2, § 35 and Resolution 5, Section I). Moreover the last part of § 2 of the resolution implies that the Community, so far from « seceding », must, on the contrary, endeavour to « vitalize » as much as possible the larger European (or Atlantic) organizations and to pursue their objectives in the interests *of all,* with increased energy.

Is it not the fact that the Community has been constituted with the agreement and encouragement of *all* the other free States of Europe ? Its consolidation so far from being an obstacle to closer European co-operation, will, on the contrary, result in a strengthening of Europe's position and in enhanced security for the whole of the free world. The Community only contains Six countries at this moment, *but it is constituting and developing itself in the interests of all the countries*

Note on the duties of the Rapporteur.

5. The Assembly will allow its Rapporteur to explain his conception of his role in the present situation. He considered it a primary duty to have constantly in mind the terms of reference given by the Six Ministers, and in consequence to submit proposals within the scope outlined by the Six Governments and approved by the Ad Hoc Assembly. He has endeavoured to define their limits and to formulate proposals which would go right up to those limits but not beyond them, regardless of his own personal preferences.

It was in that spirit that the Committee's work was conducted. The Assembly will of course have to pronounce on its conclusions in complete liberty ; but the Rapporteur hopes that his colleagues will take these considerations into account when they come to examine them.

II. — CONCERNING POWERS AND COMPETENCE WITHIN THE SCOPE OF THE E. C. S. C. AND E. D. C. TREATIES, AND CONCERNING THEIR REVISION

A. — Transfer of the powers and competence of the E. C. S. C. and the E. D. C. (cf. Resolution I and Resolution II, § 6).

6. General agreement was reached within the Committee on the principle of the transfer to the Community of the powers and competence of the E. D. C. and the E. C. S. C. The Community, together with the E. C. S. C. and the E. D. C. will constitute a legal unit.

It was pointed out that, while article 38 *requires* the transfer to the Community of the powers and competence of the E. D. C. a transfer of the powers and competence of the E. C. S. C. is not expressly demanded and already represents an enlargement of competence, as compared with the provisions, article 38. The Committee was, however, unanimous in considering that the question of the E. C. S. C. must be placed on the same plane as that of the E. D. C. In both cases one is dealing with sovereign supranational institutions, and it would be unthinkable that they should exercise their powers side by side with, and independently of, a sovereign supranational Political Community having a general mission.

7. The Committee discussed the detailed methods of this transfer at great length. General agreement was reached on the following points :

(**i**) The transfer of the powers and competence of the E. C. S. C. and the E. D. C. to the community does not in itself involve any fresh waiver of sovereignty by the Member States. It only affects, indeed, the powers and competence which the States have already granted to the supra-national Communities. Consequently, this transfer can, and must, be carried out even if the Sattes refuse the few extensions of competence proposed later on in the report;

(**ii**) the transfer of the powers and competence of the E. C. S. C. and the E. D. C. *necessarily* involves certain changes in the provisions of the E. C. S. C. and E. D. C. Treaties, particularly in the institutional provisions, in their section II. It is, however, desirable in view of the present situation, to reduce these changes to the minimum that is necessary to ensure satisfactory conditions for the operation of the Community at the moment when it is instituted;

(**iii**) in order to arrive at this result the transfer will be made on the general principle that the Community's institutions will at once take the place and assume the powers and duties of the corresponding institutions of the E. C. S. C. and the E. D. C. which are most similar to them in their structure : at the same time they will exercise their functions according to the rules laid down in the E. C. S. C. and E. D. C. Treaties, *so long as those rules have not been modified by the Community* (cf. §§ 15, to 21 below). This does not neccessarily involve the permanent maintenance of a Council of National Ministers. That Council need only continue to exist, in the view of some members of the Committee, during a transitional period, simply as a « heritage » of the E. C. S. C. and E. D. C. Treaties. It was for reasons independent of this problem and of a more general kind that the Committee agreed to maintain a Council of National Ministers, furnished with substantial powers, within the permanent structure of the Community (cf. Resolution III, §§ 14 and 19 to 24).

In pursuance of the principle set forth above the Committee proposes that the judicial powers of the Community should be vested in the Court of the E. C. S. C. and the E. D. C., that the Parliament and the Council of National Ministers of the Community should immediately take the place and assume the powers of the Common Assembly and of the Councils of Ministers of the E. C. S. C. and the E. D. C., and that, under *the definitive regime*, the European Executive Council should similarly assume the functions of the High Authority and of the Commissariat (Resolution I, §§ 2 to 5 and 7).

However, as regards the latter institutions, it seemed necessary to the Committee (with one abstention) to provide for a period of adaptation during which special provisions would apply (Resolution I, § 6).

8. During the discussion on the latter point two points of view emerged in the Committee :

a) Some representatives considered that any immediate modification of the present situation of the High Authority of the E. C. S. C. and the Commissariat of the E. D. C. might involve changes in the treaties so far-reaching that they might endanger either their effective application or their ratification. In order to avoid this risk these members recommended that, during the early stages of the Community's existence, there should be only a simple juxtaposition of the executive institutions of the E. C. S. C. the E. D. C. and the Community.

The European Executive Council would not be entitled to intervene in the activities of the High Authority or of the Commissariat. Nevertheless, the Presidents of these two institutions would sit, by right, with the European Executive Council with a right to vote ; this would be justified because of the importance of the responsibilities imposed on them by the E. C. S. C. and E. D. C. Treaties and in order to enable them to assist in the preparation of the protocols designed to ensure the progressive establishment of the definitive regime (cf. § 7 above, in fine, and Resolution I, §§ 6, **iii** and 7).

The methods by which these protocols are to be put in effect have not yet been settled. However, some representatives suggested that the procedures provided in Resolution II (§ 8, **ii**) in regard to the revision of the E. C. S. C. and E. D. C. Treaties would be applicable to a certain extent (approval by the Community's Parliament and unanimous approval by the Council of National Ministers, without ratification by the Member States).

b) Other members of the Committee held, on the contrary, that one of the chief reasons for the setting up of the Community is to ensure that the « Specialised Authorities », the E. C. S. C. and the E. D. C., should be subordinated to a political power responsible to a democratically elected Assembly, and that one of the first tasks of the Community must be to ensure the indispensable unity in the political conduct of the « Specialised Authorities ». Those members demanded that the supra-national powers of the High Authority and of the Commissariat should be transferred to the European Executive Council as soon as the Statute of the Community comes into force. The two Presidents of the two Specialised Communities would sit in the Executive Council but would have to share in its joint responsability. In case of a motion of censure regarding the Executive Council being carried they would have to resign from their offices.

In the view of those members the two Presidents would have a position analogous to that of Cabinet Ministers who are required to apply the general directives of the Cabinet within the scope of ther ministerial departments. As regards the members of the High Authority and the Commissariat, they would be in the position of Under-Secretaries of State, working under the orders of the Minister. It is quite conceivable that (as is the case in Germany) the resignation of the « Minister », on account of a censure of the Executive Council, would not involve that of the Under-Secretaries of State, i. e. of the members of the High Authority and of the Commissariat ; in that way any too extensive upheavals might be avoided.

The application of these principles would manifestly involve some changes in the provisions of the Treaties concerning the High Authority and the Commissariat ; but these changes would be limited, in fact, to a part of Chapter I of Title II of the E. C. S. C. and E. D. C. Treaties. Furthermore, some representatives declared that such changes would be calculated to facilitate the approval of the E. D. C. Treaty by some of the Parliaments in which there had been very insistent demands that the organisation of European defence should be made subject to a supra-national political power, responsible to Parliamentary Assemblies.

9. In its Resolution I the Committee adopted a position midway between the two standpoints referred to above. It approved by 9 votes, to 7, with one abstention, the important principle that, from the moment when the Community was instituted, and during the period of adaptation, the High Authority and the Commissariat would continue in office but would discharge their duties *under the direction and supervision* of the European Executive Council, in which their Presidents would sit with the right to vote (1). The Committee afterwards agreed by 16 votes to 2, with 3 abstentions, that the two Presidents would not be held jointly responsible with the Executive Council in case of the latter being censured (Resolution I, § 6, ii).

This last provision calls in question the unity and coherence of the European Executive Council and its authority as the institution appointed to direct the general affairs of the Community, as is laid down (Resolution III, § 22). It appears however from the explanatory statements accompanying the votes that a large number of members of the Committee were concerned especially with the need of securing a certain stability for the executive institutions recognised by the Treaties — the High Authority and the Commissariat. The principle having been adopted (by 9 votes to 8, with 3 abstentions) that the European Executive Council could be censured by a simple majority of each Chamber of Parliament, these representatives thought it best to support the formula in § 6, ii of Resolution I.

The general problem of the Executive, its stability, its responsibility to Parliament and its relations with the latter body are of such fundamental importance that they must inevitably be the subject of renewed and careful studies both by the Assembly and the Committee. Your Rapporteur will return to this point, in a more personal capacity, in the general conclusion of the report (§§ 31 and 42).

10. Apart from the changes in the institutional clauses which are immediately necessary to enable the principles referred to above to be applied (and, we must repeat, these changes will in all cases be very limited), and apart from the amendments to two other Articles, which

(1) It has been pointed out that this rule might be applied by different methods in the E. C. S. C. and in the E. D. C.

will be referred to below (§§ 11 to 21) and which are of high importance for the subsequent evolution of the Community, no other modification should, in the Committee's view, be made in the E. C. S. C. and E. D. C. Treaties. As already mentioned the duties devolving on the E. C. S. C. and the E. D. C. will continue to be discharged in accordance with the rules which are laid down in the Treaties.

A great part of the articles in those treaties constitute the basis of a *genuine European legislation* in matters of defence and coal and steel, a legislation which has just been — or will soon be — approved by the Governments and the Parliaments. It would be unwise to upset it before it has even been fully applied. The coming into force of the whole system, based on the two treaties, might be delayed or even endangered.

This, of course, in no way prevents us from providing possibilities of a subsequent progressive transformation by the action of the Community itself (cf. §§ 15 to 21 below).

B. — Methods of exercising the normative powers (cf. Resolution II, § 7).

11. The E. D. C. and E. C. S. C. treaties confer certain normative powers on the Communities.

As regards the E. C. S. C.: this power is, as a rule, exercised by the High Authority, in some cases in virtue of the concurrence of the Council of Ministers. If we except certain measures, such as the fixing of levies on coal and steel (which is entrusted to the High Authority) and the provisions in regard to decisions and recommendations in article 95, which are analysed below, this power is essentially concerned with the making of regulations.

As regards the E. D. C.: the treaty contains an article 124, the equivalent of article 95, sub-paragraph (1) of the E. C. S. C. treaty, and the Commissariat has a normative power similar to that of the High Authority.

Furthermore, the Council of Ministers has the power — deciding unanimously it is true — of passing laws which the Commissariat is required to put in force ; these laws regulate certain matters of the highest importance in all parts of the territory of the Community, e. g. length of service periods (article 72), conditions of service, recruitment, establishments, officering of the Forces, plan for constituting the European Defence Forces (article 44) etc...

The E. D. C. treaty withdraws from the national Parliaments, in regard to these points, the powers of decision which they at present possess, and entrusts them to the Council of Ministers.

12. It will, therefore, be observed, that the Common Assembly provided in the two treaties *plays no part* in the exercise of the normative powers which devolve upon the two Communities. As the transfer of the powers and competence of the E. C. S. C. and the E. D. C. does not involve any change in the rules governing the functioning of these two Communities, it follows that the Parliament of the Political Community will not, at the outset, possess *any normative powers in these two vital domains of European policy and economy* — defence and coal and steel — the whole of these matters being retained in the hands of the executive institutions (European Executive Council, High Authority, Commissariat).

It is not possible to alter this state of affaires without altering clauses of the treaties in which the rules for the exercise of the powers of the E. C. S. C. and the E. D. C. are laid down — a course which we have already rejected (§ 10).

13. There remain the *cases not provided for* by the E. C. S. C. and E. D. C. Treaties. That question is expressly dealt with in articles 95 of the E. C. S. C. Treaty and 124 of the E. D. C. Treaty, which allow of an intervention by the Community, provided that it keeps within the scope of the Community's aims and does not exceed the limits of its general competence.

The Community thus possesses considerable normative powers ; namely, the power to supplement the E. C. S. C. and E. D. C. Treaties, to legislate on all the new problems which will

arise in the functioning of the common market or in the direction of the European forces. The manner in which these normative powers are to be exercised raises the question of the future of the European institutions. The reasons of expediency which have led us in so many other cases to maintain treaties (even when they are unsatisfactory) are no longer acceptable in this case.

It would be inadmissible for the future rules of the Community to be established without the participation of the Community's Parliament.

A revision of articles 95 E. C. S. C. and 124 E. D. C. becomes necessary once a Peoples' Chamber, elected by universal suffrage, has been set up. It should be effected simultaneously with the transfer of the powers and competence of the E. C. S. C. and the E. D. C., as soon as the Community's Statute comes into force.

14. Articles 95 E. C. S. C. and 124 E. D. C. lay down that new rules are to be issued by the executive institutions with the unanimous concurrence of the Council of Ministers. Some members thought that the role of the Council would have to be assumed by the Parliament of the Community. It seems possible, indeed, that, at the time when the treaties were drawn up, the parliamentary institution which they provided may have appeared inadequate, because it lacked an electoral basis and was too narrowly specialized — thus justifying a recourse to the Council of Ministers. Such reservations would no longer seem justifiable, once a two-chamber Parliament, with a general mission, has been called into existence.

The Committee, however, considered it was not yet possible to dispense with the safeguard represented, for the States, by the necessity of obtaining the unanimous concurrence of the Council of Ministers. It was, however, agreed that the measures to be taken under these two articles would have to be submitted to the Parliament of the Community, either for prior approval, or, if the case is urgent, for subsequent ratification.

The initiative in matters of legislation thus remains with the executive institutions, the « veto » of the governments is maintained, but the Parliament is associated with the exercise of those normative powers of the Community which are most important for the development of future European legislation. That is the least that can be required in a statute involving the institution of a European Parliament, one Chamber of which will represent the sovereign will of the peoples.

C. — Revision of the E. C. S. C. and E. D. C. Treaties (cf. Resolution II, § 8).

15. The foregoing provisions only enable the Parliament of the Community to be associated with the measures designed to fill a possible gap, in the normative sphere, in the domains of coal and steel and of defence. In order that it may play a decisive part in European policy of defence and coal and steel, it is necessary that it should be endowed with powers to intervene in matters already regulated by the legislative provisions of both treaties.

The new rules introduced in application of Articles 95 E. C. S. C. and 124 E. D. C. cannot modify the legislation contained in the treaties. The adoption of new rules in conflict with those laid down by the treaties would amount to undertaking a revision — explicit or implicit — of the treaties.

Reference must here be made to the clear distinction already drawn at the end of § 10. Though we are convinced that the Statute of the Political Community must not modify any of the normative provisions of the treaties, that fact in no way deprives the Community of the right to adapt the treaties to the necessities of European life, in other words of its own right to revise certain of their provisions by methods, which would have to be laid down, and after the expiry of a transitional period.

16. The provisions of the E. C. S. C. and E. D. C. Treaties fall into two main categories :

— the constitutional provisions, which have the effect of transferring part of the sovereignty of the Member States to these Communities,

— the normative provisions, which have the character of an internal « European legislation », and which are designed to regulate the details of the exercise by each Specialised Community of the powers and competence transferred to it.

a) *Constitutional Provisions.*

17. These are the provisions which relate to the powers and competence of the E. C. S. C. and the E. D. C. and to their institutional structures. They cannot be revised except by the procedure laid down for the analogous clauses of the Community's Statute (cf. § 31 below) : namely, approval by the qualified institutions of the Community and ratification by the Member States.

The term « *constitutional provisions* » has not, in this context, merely its usual significance, in contradistinction to « normative provisions ». The constitutional provisions of the E. C. S. C. and E. D. C. Treaties, whether they fix competences or whether they confer powers, or whether again they create legal structures, have the effect of *transferring a part of the sovereignty of the Member States* to one or other of these Specialised Communities, therefore to the Political Community itself. They constitute an actual contract, any modification of which requires the intervention and consent of each party ; of the Community, by the approval by its Parliament ; of the participating States, by the approval of the respective national Parliaments.

b) *Normative provisions.*

18. This term applies to the whole body of clauses which regulate, within the Community itself, the operation of its institutions, the powers which are assigned to them, the methods by which those powers are exercised, etc.

Their essential characteristic is that, unlike the constitutional provisions, they are internal provisions of the Community.

In support of this view, we must emphasise the profound difference between the clauses providing for the transfer to the Community, in certain spheres, of the powers of the Member States, and the clauses which regulate the exercise of these powers. Once the powers and competence have been conferred on the Community, no matter what internal procedure is adopted, the decisive step has been taken, even if a clause requiring the unanimous concurrence of the Council of National Ministers is maintained.

Once the approval of the Council of Ministers has been obtained, the High Authority, or the Commissariat, have their hands free to give effect to the provisions that have been approved ; the simple assent given by the Ministers in the Council suffices, by the operation of the Treaties, to oblige each State to accept the Community's decisions and to see that they are carried out, even if radical changes subsequently take place in the parliamentary majority or in the policy of the government. This is a remarkable illustration of the fact that the Council of National Ministers is not just a means of affording representation to the States, but is, in fact, one of the institutions of a supranational Community.

The essential step is therefore the attribution of competences to the Community. The rules of procedure — whatever they may be — fixing the internal allocation of powers between the institutions of the Communities, do not involve a fresh transfer of the powers and competence of the States to the supranational Community. As they constitute internal legislation of the Community *they must normally be liable to revision by the Community itself.*

19. The internal provisions laid down in the E. C. S. C. and E. D. C. Treaties are however of such varied natures and importance that it is not possible, from a political standpoint, to provide a uniform procedure for the revision of them all. The Committee was therefore led to distinguish between two cases and two types of procedure, both of which leave the decision solely to the Community, in conformity with Conclusion § 20.

(i) A realistic view of the present state of the process of European unification leads one to group together the clauses of the E. C. S. C. and E. D. C. Treaties which are designed for

the protection of the interests of the Member States within these supranational Communities (e. g. the conditions governing the exercise of the powers of the High Authority, the obligation, in certain cases, to obtain the approval of the Council of Ministers, acting by a unanimous decision, etc...) or designed to ensure a certain equilibrium between the institutions.

The Committee proposes that it should be impossible for these clauses to be amended except with the unanimous concurrence of the Council of National Ministers.

Some of us will regret the latter condition. It would no doubt be much more satisfactory if the Member States could agree that the Community's Statute should authorise the Parliament of that body to limit or abolish, in favour of itself, the powers of the other specialised Communities (e. g. of the Councils of Ministers). However, for the present, there seems to be no possibility of the States agreeing on that point.

A proposal to that effect, which some members of the Committee would have gladly supported, would therefore have remained without practical effect.

(ii) The revision of the normative clauses, other than those defined above, might on the contrary be brought about by an ordinary law of the Community, adopted by the latter's legislative institutions according to their normal procedure (§ 8, ii b, of Resolution II). One possibility of appeal is, however, left open to the States, i. e. the right to petition the Court under conditions similar to those laid down in Articles 37 E. C. S. C. and 56 E. D. C.

The Court may also intervene to settle the procedure applicable for the examination and adoption of a proposed amendment.

20. Although the constitutional and normative provisions (of either of the types indicated above) are sometimes closely intermingled in the texts of the Treaties, and often in the actual clauses of the articles, they can be fairly easily distinguished in most cases. For instance, a summary analysis of Article 72 E. C. S. C. enables us to illustrate, *by way of example*, the manner in which the revisional procedures thus laid down can be applied.

The text of Article 72 E. C. S. C. is as follows:

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

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

(i) *Constitutional Provisions*: the Community is competent to fix the rates of Customs dues on coal and steel in regard to third States.

(ii) *Normative Provisions*: these constitute the rest of the Article, and one can recognise the two categories which were distinguished in § 19.

— one clause determines the respective powers of the institutions in respect of the fixing of Customs dues: a power of decision by the Council of Ministers; a power of initiative and issue of opinions by the High Authority (end of the first sub-paragraph). This clause could not be amended by, the Community, except with the unanimous concurrence of the Council of Ministers.

— one clause fixes the conditions under which the High Authority may issue opinions in regard to Customs tariffs (end of second sub-paragraph). It could be modified by an ordinary law enacted by the Community's Parliament. For example, it is conceivable that obligatory consultation with the Consultative Committee of the E. C. S. C. might be introduced in that way.

21. It will not escape notice that Articles 95 and 96 E. C. S. C. and 126 E. D. C. institute procedures for revision far stricter than those proposed here. All amendments to the

E. D. C. Treaty, no matter of what kind, have to be approved by a specially convened diplomatic conference and ratified by the States. The same applies to amendments to the E. C. S. C. Treaty, except that Article 95, actually allows the adaptation of some of the legislative clauses defined in § 19, ii above (those relating to « the exercise by the High Authority of the powers conferred on it ») by the institutions of the Community themselves, though this right is, it is true, hedged round by procedural obstacles.

The E. D. C. and E. C. S. C. Treaties, in the present state of affairs, are « fixed » treaties. This was comprehensible in view of the specialised character of the Communities *and the absence of a popular basis for their institutions.* The creation of the Community not only justifies but makes it necessary to simplify, and give more flexibility to, the procedures by which they may be revised.

III. — POWERS AND COMPETENCE WITHIN THE GENERAL FRAMEWORK OF THE SYSTEM CREATED BY THE E. C. S. C. AND E. D. C. TREATIES

The Committee recognised that the mere existence of the Community implies certain extensions of the powers stipulated in the E. C. S. C. and E. D. C. Treaties.

A. — Powers in matters of foreign policy (cf. Resolution II, §§ 9 to 14).

22. The Committee studied the vitally important problem of the Community's responsibilities for the definition of a common external policy for the Six countries in connection with coal and steel and defence.

This question is not a new one. As early as December 1951 the Assembly of the Council of Europe emphasised clearly (Recommendation 21, B already cited, § 1) that the creation of a common defence force necessarily involved the definition of a common defence policy.

Some decisions have already been taken by the States. With regard to coal and steel, the E. C. S. C. has already been given restricted powers in matters of commercial policy. The statements made by MM. MONNET and SPIERENBURG to the Committee on the Organisation of the Common Assembly (November 8 1952) show that the governments are far from objecting to an enhancement of these powers.

In matters of defence, though the E. D. C. Treaty does not provide for the definition by the E. D. C. of a common policy (it leaves that duty to the Atlantic Council), it lays down (Article 47) that the Council of Ministers of the E. D. C. may decide (by a majority) to request a joint meeting of the N. A. T. O. Council and the Council of Ministers of the E. D. C.

These meetings are designed (see § 1 of the Protocol regarding relations between the E. D. C. and N. A. T. O.) for the study of questions concerning the common objectives of the two organisations and, if necessary, the measures to be taken if one of the Member States considers that its safety is seriously menaced.

In the course of the deliberations in which it decides to request such a joint meeting, the Council of Ministers must necessarily undertake a first examination of the problems which have occasioned it, and it may be expected that, before the meeting takes place, the Six governments will endeavour to co-ordinate their attitudes. What the Committee now proposes is to clarify and systematise these possibilities, which are already implicit in the E. D. C. Treaty, and to make room for the intervention, in this process, of the European Executive Council, a political institution responsible to a democratically elected Parliament.

23. The Community will therefore have the task of *defining* the common objectives of the foreign policy of the Member States in questions of defence and coal and steel, while the responsibility for the execution of this policy devolves on the Community and the Member States. That is the significance of the provisions concerning the right of representation and the conclusion of treaties in Resolution II, §§ 9 to 14 (1).

During a transitional period the States would have the safeguard, both in regard to the definition of the common objectives, and to the conclusions of treaties, of concurrence or prior approval, of the Council of National Ministers, acting unanimously (cf. Resolution II, § 13).

24. It is doubtless true, as was pointed out by a member of the Committee, that the principle of unanimity may paralyse action when a decision has to be made. In the case we are considering it seems preferable to run this risk — which will certainly be mitigated by the action and control of the Community's Parliament — rather than to allow the Member States to follow independent, and even divergent, foreign policies at a time when the international situation is exceptionally delicate and dangerous.

The conditions under which powers and competence are transferred from the E. D. C. to the Political Community practically *impose* the maintenance of the rule of unanimity during the transitional period. No change has been made in the rules governing the operation of the E. D. C., which provide that all important matters must be decided unanimously by the Council of Ministers. It would therefore be inconceivable that the Community's objectives, in matters of foreign policy, should be defined by a majority, whereas the direction of its armed forces, and the *decision as to their use*, are subject to the unanimous agreement of the Ministers (cf., in particular, Articles 18, 75 and 123 of the E. D. C. Treaty).

The question of abandoning the unanimity rule in matters of foreign policy would only arise if the E. D. C. Treaty had been amended, in particular in regard to the clauses referred to above.

25. In connection with the Community's powers in matters of foreign policy, attention is drawn to a proposal by one of the Committee's members for an extension of the Community's competence in regard to the policy of Specialised Authorities. This proposal, which the Committee hopes to study after the Assembly's session, is analysed in the Annex (§ 3, b, note on § 14 bis of Resolution II).

B. — Powers in financial matters (cf. Resolution II, §§ 15 to 20).

26. The financial provisions proposed by the Committee are in accordance with the general rules laid down in the corresponding parts of the E. C. S. C. and E. D. C. Treaties. The said provisions systematise and supplement these rules in the light of the new fact represented by the existence of a Chamber elected on a democratic basis. The Community is given fiscal powers (Resolution II, § 16) — thus generalising the principale accepted for the first time in the E. C. S. C. Treaty, in connection with the European tax (« levy ») on coal and steel. The details of the exercise of this power will have to be laid down *by the Community itself*, subject to the unanimous approval of the Council of National Ministers. The Committee proposes to consider, later, the desirability of settling the general lines for its exercise, at once, in the Statute itself (cf. Annex § 3, b, Note on § 16 of Resolution II).

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(1) The Rapporteur draws attention to the important observations made by some of the members of the Committee on these questions ; these are summarised in the Annex (§ 3, b, note on §§ 12 to 13 of Resolution II). These observations must be studied in detail by the Committee after the session of the Assembly.

IV. — ECONOMIC POWERS AND COMPETENCE [1]

27. The Committee had to express its opinion on a preliminary question : some of the representatives considered that no new economic powers and competence should be conferred on the Community, and that it was even unwise to insert the progressive achievement of the common market among the Community's general aims and objectives (Resolution II, § 2). These representatives considered that the said objectives might be more usefully pursued in a wider European framework, such as would be afforded by the Council of Europe or the O. E. E. C..

The Committee, almost unanimously (cf. Annex, § 3, b, note on § 2 and Section D of Resolution II), rejected this point of view and agreed that the achievement of the common market was one of the general objectives of the Community, subject to the important consideration that this market must be conceived in the spirit of the E. C. S. C. Treaty : in other words that any autarchic tendency must be excluded from the Community's commercial policy which, on the contrary, must seek to facilitate a general lowering of Customs barriers and other obstacles to trade, and to promote measures of economic integration extending to the largest possible number of countries.

There were some divergencies of opinion as to the magnitude of the powers, which should be conferred on the Community, at the present moment, in order to enable it to achieve this aim. While some of the representatives almost made their acceptance of the Community conditional on the assignment to it of substantial economic powers, others considered that it would be inexpedient, at this moment, to ask the Member States to consent to further transfers of sovereignty to the Community.

28. The Committee was of opinion that the normal operation of a Community, having the duties of the E. C. S. C. and the E. C. D., necessarily implied certain general economic powers. It felt that it was impossible to ignore the importance of the repercussions on the economies of the Six countries of the creation of a common market for coal and steel, of a partially transferable budget for military expenditure, and of a common armaments programme administered by the Commissariat. It considered that by the mere fact of the application of the Treaties — E. C. S. C. and E. D. C. — the Community would have to intervene, directly or indirectly, in constantly expanding economic spheres.

The Committee therefore suggests that a foundation be laid for a system of *permanent consultation* on economic matters between the Community and the Member States : such a system as, without involving any waiver of sovereignty by the States, would be of a nature to facilitate, by indirect action, the creation of conditions favourable to the common market.

§§ 21 to 23 of Resolution II set forth in detail the method of organising this system of consultation : to begin with the Community has general consultative competence in economic matters. In addition, except in cases of urgency, Member States are bound to consult it before taking any measures for ratifying the treaties, in matters directly connected with the creation of the common market. In the case of treaties, the Parliament of the Community would normally be required to make a pronouncement.

To give the Community, and particularly its democratically-elected Peoples' Chamber, the opportunity of making a pronouncement beforehand on any measure likely to have immediate repercussions on the economic situation of the peoples of Europe, is the essential feature of the suggested system of consultation, the feature which can doubtless permit of achieving practical results.

29. Many of the representatives felt that these provisions were certainly of a nature to prevent the adoption of measures conflicting with the principles of the common market, but that they were not adequate to solve the tremendous economic problems with which Europe

(1) Cf. Resolution II, §§ 21 to 25.

is now faced ; for, without transfer of sovereignty by Member States to the Community, the latter's institutions, particularly its Parliament, will never be able to take any effective action or cause the Member States to take essential measures. This point of view is strikingly illustrated by the activities of European consultative bodies during the last few years.

However, the Committee thought it would be inexpedient on political grounds, to insert provisions granting it powers of decision in economic matters. A proposal to that effect was completely rejected (cf. Annex, § 3, b, note on §§ 24-25 of Resolution II). On the other hand, it was agreed, in spite of certain reservations, that provisions (concerning the liberalisation of the exchanges, the abolition of Customs barriers, and monetary unification) should be introduced in a special protocol, which will have to be submitted to the National Parliaments together with the Statute, though its approval will not necessarily be linked to that of the Statute. In that way it should be possible to confront the Parliaments with decisive measures which will no doubt, in every one of our countries, promote the expansion of production, the increase of employment, and the raising of the standard of living of the peoples.

V. — POWERS AND COMPETENCE WITH REGARD TO HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS [1]

30. The Committee emphasised the high significance of the decisions that will have to be taken in order to enable the Statute to guarantee the protection of human rights : for is not the foremost aim of the efforts being made to-day by Europe and the free world in the sphere of defence, to ensure the enjoyment of fundamental freedoms by its peoples ?

The Committee proposes that the Statute guarantee enjoyment of human rights and of fundamental freedoms, and give the Community competence to uphold and maintain them.

The conditions governing the exercise of the latter powers and competence form the subject of clauses in Resolutions II (§ 27) and IV (§ 1), which are commented on in the reports of MM. DEHOUSSE and von MERKATZ.

VI. — PROCEDURE FOR AMENDMENT OF THE STATUTE [2]

The procedure for the amendment of the Statute must be as simple as possible, while a the same time giving the Member States the necessary guarantees of stability.

The Committee considered that the Community must have a right of initiative in constitutional matters and that a means must be sought of simplifying the traditional procedure for formulating and ratifying amendments to a treaty. It felt that it was not possible to lay down a uniform rule with regard to all the provisions of the Statute, and it agreed to classify them in different categories on the basis of the same principles as were adopted for the revision of the E. C. S. C. and E. D. C. Treaties (cf. §§ 16 to 19 above).

§ 28 of Resolution II, without leading to an « auto-extension » of the Community's powers, nevertheless simplifies the problem in one important respect by avoiding the convocation of a diplomatic conference ; that conference is replaced by the deliberations of the Council

(1) Cf. Resolution II, § 26.

(2) Cf. Resolution II, §§ 27 to 31.

of National Ministers (who must approve the amendments unanimously), so that the amendments adopted by the Community can be sent direct to the States for approval by the national Parliaments.

However, some members of the Committee were unable to agree to this formula, and demanded that all amendments relating to powers and competence, and to institutions of the Community, should form the subject of a treaty concluded by the governments, after a specially convened conference (cf. note on § 28, Resolution II).

32. §§ 29 and 30 of Resolution II, on the other hand, offer an abridged procedure for the adoption of amendments to the international provisions of the Community. Here again the Committee adopted the same criteria as in the case of the revision of the E. C. S. C. and E. D. C. Treaties: the procedure for revisions takes place within the Community, and without intervention by the States and National Parliaments, though the States are given adequate safeguards.

On the same grounds of political expediency as were mentioned in § 19, (i), it was considered impossible to give the Community's Parliament the right to decide for itself on changes in the allocation of powers between the institutions, and thereby to increase its powers within the Community, on its own initiative. The unanimous concurrence of the Council of National Ministers is required for amendments in this category.

VII. — QUESTION OF MEMBERSHIP (1)

33. The Committee held divided views on the question of the length of time for which the Statute should be concluded, and, in the same connection, on the right of withdrawal or exclusion. Some representatives considered that the solution least likely to give rise to dispute during the present period would be to adopt the methods laid down in the E. C. S. C. and E. D. C. Treaties: a period of fifty years, without any provision for withdrawal or exclusion. Nevertheless, the possibility of renewing the Statute would be provided for.

The majority of the Committee considered that such a provision, though acceptable in regard to Specialised Authorities, was inconsistent with the essential character of a Community, having a general mission and founded on a union of the peoples. It therefore proposed that the Community should be indissoluble (cf. Annex § 3, b, note on § 1 of Resolution II).

34. The other provisions adopted in §§ 32 to 35 of Resolution II do not call for any special explanation. With regard to the procedure for admitting members, however, the Rapporteur thinks it may be useful, after a fresh study of the wording adopted by the Committee (Resolution II, § 34), to suggest a new formula which more nearly approaches that provided in the E. C. S. C. and E. D. C. Treaties, and which takes more account of the fact that the Community's institutions include a democratically-elected Chamber.

While it is normal that the admission of a new member — a decision which implies reciprocal political, economic and military undertakings of extreme gravity — can only result from an Additional Act to the Statute, it appears that, so far as concerns the Community, its adoption must be a matter solely for the Community's institutions, and in the first place for the Community's Parliament. The new proposal amounts, in fact, to giving the Community's Parliament the right of approving the admission, a right, which — according to the Committee's wording, — is still vested in the National Parliaments (cf. Annex § 3, b, note on § 34 of Resolution II).

35. The Committee did not complete its examination of the delicate question of the « composition of the membership », a problem which is linked to that of the participation in the Community of the non-European territories of certain States. The declarations on this subject made by some of the representatives are set forth in the Annex § 3, b (note on § 36, of Resolution II).

(1) Cf. Resolution II, § 1 and §§ 32 to 36.

VIII. — GENERAL CONCLUSIONS

36. An objective and impartial examination of the conclusions arrived at by the Committee in regard to the powers and competence of the Community leads us to conclude that, at the moment of its foundation, the European constitutional edifice will rest on a rather modest collection of competences and powers of what may be called a « pre-confederal » character. The same solicitude for impartiality compels the Rapporteur to declare his firm conviction that it would be a gross error and a grave injustice, both in regard to the Committee and to the Ad Hoc Assembly (from which the Committee derives its powers), to undervalue the substantial importance of the progress that has been accomplished.

It is true that the powers and competence of the European Executive Council in the spheres of coal and steel and defence are still incomplete and that the conditions for their exercise must be formulated later ; however, the principle is already established that the executive organisms of the two Specialised Communities will henceforth exercise their activities under the direction and supervision of the European Executive Council and that powers and competence of the E. C. S. C. and E. D. C. will be transferred to the Community, a decision which is of importance for the cohesion of the European organisation.

It is true that the normative powers of the Community's Parliament will at first be very limited, in view of the fact that almost the only fields in which it can exercise them are already, to a great extent, occupied by the « European legislation » embodied in the E. C. S. C. and E. D. C. Treaties. However, the Parliament will none the less be associated — though with restricted powers — in the developments of that legislation and will even be able after a transitional period to alter it or improve it, if necessary.

It is true that in questions of foreign policy the Community will only possess the power of co-ordinating the diplomacy of the Member States within the limits of the requirements of defence and of the production of coal and steel, and will have no power to impose a unified European policy. But it is also true that, after the institution of the Community, the Member States will be required, when they seek to initiate important actions, to submit to a fairly strict procedure of preliminary opinions and subsequent controls which the goodwill and mutual confidence of all the members can invest with a *very real* import, in practice.

It is true that the fiscal powers of the Community may only be exercised within the limits of an organic law which must be approved by the National Ministers, acting by a unanimous vote ; but it is also true that, in the elaboration of that law, the Parliament of the Community will perform the functions of a legislative organ.

Finally, it is true that the powers of decision of the Community in economic matters may not be approved by the National Parliaments, until a later stage. However, the immediate exercise of the competence to issue opinions and above all the obligation of the Member States to consult the Community in advance befor taking certain measures in fields of special importance, is calculated to facilitate the early granting of powers of decision, by general agreement.

37. According to an opinion which is very widely held by the militant supporters of the European cause, the chief obstacle to the effectual operation and development of a federal or confederal Community is the maintenance — as proposed in the Report — of a Council of National Ministers, invested with important prerogatives. Several of our colleagues have insistently pressed for the total abolition of this institution.

I trust the that Assembly will allow the author of the present Report — entirely in his personal capacity — to express his opinion on this important question. In his view the granting of *autonomus* powers of *decision* to a Council of National Ministers would be an unsound method to adopt for the building of Europe. The interesting counter-project of one of our colleagues, which is referred to in another part of the report (cf. Annex § 2), and which the committee considered inconsistent with the basic principles of its terms of reference, was founded in substance on just such a principle.

To be more precise it may be said that a Council of Ministers with autonomous powers of decision would imply the desire to move towards an organisation based on the intangibility of the sovereign structure of the National States, that is, in a direction inconsistent with any federal or confederal system and likewise with the principles of the E. C. S. C. and E .D. C.

On the contrary, when we speak of granting the Council of Ministers a power of merely issuing Opinions — or perhaps « approvals », and although these are made subject to the rule of unanimity — a power that has to be exercised within a supranational constitutional system, the judgment should be less rigid. The Council of National Ministers may, in such a case, be a necessary instrument for facilitating progress in the right direction i. e. for assisting in the transfer of certain powers of the States to the institutions of the Community.

The discussion on the powers and competence of the Community showed clearly that a definite connection exists between the extent of the powers granted to the Community and the methods by which they are to be exercised : in particular, the guarantee that a Council of National Ministers will always be able to control or influence the action of the European Executive Council and of the Parliament by its competence to issue an « approval » (*avis conforme*). It was the acceptance of such a procedure which made it possible to obtain unanimous, or almost unanimous, agreement in the Committee on the granting of certain fundamental powers (powers in fiscal affairs, in foreign policy, in the revision of the E. C. S. C. and E. D. C. Treaties and in the revision of the Statute).

The Council of National Ministers must be regarded (cf. § 18 above) as an institution of the Community which participates with the European Executive Council and the Parliament in the formation of the supranational decisions of the Community. True, the National Ministers are the spokesmen of the national points of view, but it is better that the latter should be defended in the Community rather than that the powers should be rejected outside the Community, together with the spokesmen who would have been prepared to sanction their exercise by the institutions of the Community, especially by its Parliament, with all the weight of its autonomy, if they had been duly represented in the Community.

38. It would not suffice that the draft Statute should be held, in spite of its imperfections, to be satisfactory as an immediate measure. It is essential, further, that the possibilities of a progressive extension of the powers and competence of the Community and of the conditions for the harmonious development of its institutions towards authentic federal or confederal forms should be assured. The problem of the Council of National Ministers, and more generally the problem of the duties and responsibilities of the executive institutions and their relations with the Parliament should also be considered from this point of view.

In the Rapporteur's opinion three essential principles must be respected. It is important that the Assembly should take them into account when it comes to study the conclusions of its Committee.

A. — The conclusions of the Council of National Ministers in the field of its competence are binding on the Member States (cf. § 18 above).

39. This is a principle which is radically different from that adopted in the Council of Europe (and in many other international organisations) where the conclusions of the Committee of Ministers have only the value of recommendations, without binding force, and where the representatives of the governments, are usually without veritable powers other than that of veto-ing a decision....

In the system devised by the Committee, as soon as the Council of National Ministers has issued its « approval », the measures elaborated by the Committee's institutions (the Parliament or the Executive Council, as the case may be) can come into force immediately, and *the States are bound to apply them and to see that they are respected.* The above applies, for

instance, to the normative decisions provided for in the E. C. S. C. and the E. D. C. Treaties and in the Community's Statute.

The application of this principle has enabled a radical simplification to be made in the procedure for the extension of powers and competence by way of amendments to the Statute. The unanimous agreement of the Council of National Ministers with such an amendment, which has been adopted by the Parliament of the Community, binds the governments and obliges them to defend the amendment in their National Parliaments, all further intergovernmental deliberations, such as a diplomatic conference, being excluded.

B. — The Council of National Ministers may only intervene in certain cases, laid down in advance in the statute or in the treaties instituting the Specialised Communities.

40. It would be out of the question that the Council of National Ministers should be entitled to guide the action of the European Executive Council of the Parliament at every step, and to intervene in proceedings of minor importance.... The efficacy of these institutions would very soon be compromised and the supranational character of the Community would become illusory. The Executive Council would be demoted to the grade of a mere executive agent, and the National Ministers would hold the real reins of power in the Community.

The obtaining of an « approval » from the Council of National Ministers must only be regarded as one of the stages — though an important one — in the constitutional process, a necessary sanction, but one which is only to be taken after a careful elaboration of the provisions formulated by the Community's institutions. Before the Council of National Ministers takes action, those institutions are completely at liberty, within the limits of their competence, to initiate any appropriate actions. When they have obtained the approval of the Ministers, they again have a free hand to carry out the measures that have been adopted.

It was in that way, for instance, that the intervention of the Council of National Ministers in the conclusion of the treaties by the Community was conceived. The Council's « approval » only becomes necessary at the time of the signature of the draft treaty (Resolution II, § 13). That is also the conception which prevails in the E. C. S. C. Treaty, and its general application to the Community will greatly facilitate the development of the European institutions. In § 19 of Resolution III the Committee was concerned to safeguard that principle.

C. — The control of the European Parliament must be capable of being exercised over all the constitutional organs through which the Community exercises its powers and competence.

41. Several representatives made it clear in the Committee that their assent to the granting of supranational powers and competence to a Community was conditional on a genuine parliamentary control of the exercise of the said powers and competence by the executive institutions. This requirement is parallel to that which we referred to above in connection with the Council of National Ministers (§ 37). The elaboration of effective rules, constituting a new European parliamentary law, is a condition for the agreement of the National Parliaments to the extension of the Community's powers.

The effect of the present circumstances is that European parliamentary control cannot be exercised by methods as simple as those adopted in our National States, for the following reasons :

— because the European Executive Council is not fully autonomous, but has to obtain the approval of the Council of National Ministers for its chief decisions.

— because the Community's institutions are composite, including, side by side with the European Executive Council, the High Authority and the Commissariat, which interlock with the Community in the manner set forth in § 9 above.

42. It appears to the Rapporteur that, in order that satisfaction may be given to the legitimate concern of the National Parliaments when they are called on to relinquish some of their powers and competence in favour of the Community, the « European parliamentary law » must be based on the following points:

(i) *The Parliament must be able to exercise its control,* not only over the European Executive Council, but *also over the Council of National Ministers* — though naturally according to other rules.

That is already provided for in the E. C. S. C. Treaty, whose Article 24 lays down that the censure pronounced by the Common Assembly relates to the general report of the High Authority, a report which deals (Article 19) with the activities of *the whole* of the Community, including therefore the Council of National Ministers as well. On the contrary, Article 38 E. D. C., § 2, limits the scope of the censure solely to « the administration of the Commissariat », thus making the scope of the censure administrative rather than political, in other words ensuring that it shall not imply a judgement on the work of the Council of Ministers of the E. D. C. That amounts, in fact, to giving the Parliament power to force the resignation of an administrator but not to discuss the policy — and here it is a question of European defence policy — which this administrator has had to apply and in the formulation of which the Council of Ministers had a large responsibility.

European parliamentary law on this subject should be founded on Article 24 E. C. S. C. and the Community's Statute should provide for an immediate adaptation of Article 36 E. D. C. That adaptation, which does not imply any real waiver of sovereignty by the States could be effected in connection with the institutional amendments to be adopted with a view to the transfer of the powers and competence of the E. C. S. C. and the E. D. C. to the Community (cf. § 7, **ii** above).

(ii) *The joint responsibility of the members of the European Executive Council to Parliament must be ensured.*

The Committee has specified that the Presidents of the High Authority and the Commissariat should retain their personal status, i. e. that they could only be censured by Parliament in strictly limited cases and by a two-thirds majority, whereas the other members of the European Executive Council may be censured by a simple majority. This cannot fail to produce prejudicial confusion in the exercise of the powers and competence conferred on the different branches of the Executive.

For instance, the European Executive Council might enjoy the confidence of a majority of the Parliament for its defence policy but might find difficulty in having it carried by the Commissariat (although the latter is under its direction by the terms of § 6, i, of Resolution I) because the Commissariat can only be censured by a two-thirds majority.

Conversely, the European Executive Council might be censured for its defence policy, though the President of the Commissariat, who would have borne an essential responsibility in the elaboration of this policy, would not be affected if the motion of censure had failed to secure a two-thirds majority.

It seems to the Rapporteur that our National Parliaments will criticise us severely for allowing the Parliament of the Community to be paralysed by contradictory rules, and that this might gravely compromise the subsequent development of the Community, It is essential that a democratically-elected Parliament should be able, as soon as it has been instituted, to exercise its activities within the framework of coherent rules which will enable it to discharge fully its duties of control and, later, to exercise its normative powers.

43. In conclusion, your Rapporteur desires to express his conviction that it is not by constitutional texts that the union of the peoples will be created ; it is the peoples who, by their resolute and tenacious will for union, will impart effectiveness and driving power to the constitutional texts. The Committee's proposals are on a modest scale but they will be a touchstone of the will of the peoples. It they wish, they will be able to make use of them as a means of traversing *immediately* and without hesitation the first stage of the journey. What will count is to act quickly, and to leap the first ditch while keeping the gaze fixed on the final aim.

ANNEX

DISCUSSIONS IN COMMITTEE.

1. At its session 23-27 October 1952 the Constitutional Committee set up a Sub-Committee on Powers and Competence. The Chairman was M. BLAISSE and it appointed M. BENVENUTI as its Rapporteur.

The Sub-Committee on Powers and Competence held meetings on thirteen days. In the first part of its proceedings it undertook an exhaustive examination of the different questions refered to it by the Plenary Committee on the basis of notes written by several of its members. It then requested its Rapporteur to collect and systematize its first conclusions with a view to their reconsideration at the secound reading.

The Sub-Committee benefited, in particular, in everything concerning the powers and competence of the Community, by notes prepared by MM. BECKER, BENVENUTI, BERGMANN, BLAISSE, DEBRE, DELBOS, KOPF, PARIS and WIGNY, and in regard to « membership », by the notes of MM. BENVENUTI, BLAISSE, DELBOS and WIGNY. It was also greatly assisted in regard to the E. C. S. C. and the E. D. C. Treaties by the analytic notes on the Coal and Steel Community and the Defence Community prepared by its Chairman, M. BLAISSE.

The Sub-Committee's report was submitted to the Plenary Committee, which selected the parts concerning the integration of the E. C. S. C. and the E. D. C. in the Community and discussed them in conjunction with the proposals on the same subject put forward by the Sub-Committee on Political Institutions. Its conclusions on this subject constitute Resolution I. The general problem of the Community's powers and competence is dealt with in Resolution II (1).

The active assistance furnished by all the members of the Sub-Committee greatly facilitated the task of its Rapporteur, who expresses his special thanks to M. von BRENTANO, President of the Committee and to M. BLAISSE, Chairman of the Sub-Committee on Powers and Competence.

2. The idea of a European Political Community, regarded as a development of the E. C. S. C. and E. D. C., led to express reservations on the part of one of the members of the Committee, who submitted a comprehensive plan, based upon other principles : the project of an political authority founded on a union of States.

It was difficult for the Committee to pronounce upon these proposals, in spite of their great interest : for what was proposed was a system which seems incompatible with the political and juridical premises on which the preparatory work entrusted to it by the Assembly were founded.

Our colleague, after defending his ideas with an ability and a conviction worthy of the highest consideration, consented to accept this point of view and to continue to take an active part in our work, it being understood that he retained his full liberty of action before the Plenary Assembly. Your Rapporteur is convinced that the Assembly will give these proposals the attention which they deserve.

3. The following notes relate to different resolutions concerning the powers and competence of the Community :

a) *Resolution I* (integration of the E. C. S. C. and the E. D. C. in the Community).

§ **1.** — *Adopted* by 23 votes to 0.

§ **2.** — *Adopted* by 17 votes to 0.

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(1) Cf. Part VI — Conclusions of the Constitutional Committee.

§§ **3** *and* **4**. — *Adopted* by 20 votes to 0.

§ **5**. — *Adopted* without opposition.

§ **6**, (**i**). — *Adopted* by 9 votes to 7, with one abstention.

§ **6**, (**ii**). — The clauses were voted on separately:

— « The President of the High Authority of the E. C. S. C. and the President of the Commissariat of the E. D. C. will sit, by right, with the European Executive Council... »

Adopted by 17 votes to 0, with 2 abstentions.

— « ... with a right to vote. »

Adopted by 13 votes to 5, with 2 abstentions.

— « ... but retaining their personal status, as resulting from the E. C. S. C. and E. D. C. Treaties, in particular from Articles 24 E. C. S. C. and 26 E. D. C. »

Adopted by 16 votes to 2, with 3 abstentions.

§ **6**, (**iii**). — *Adopted* by 14 votes to 0, with one abstention.

The Committee had first rejected (by 16 votes to 3, with 2 abstentions) an amendment seeking to make the Presidents of the High Authority and of the Commissariat jointly responsible, with the European Executive Council; the latter would be liable to be censured by a simple majority vote in each of the Chambers of the Parliament. It also rejected by 9 votes to 8, with 3 abstentions, a proposal whereby a two-thirds majority would be required to enable a vote of censure to be carried in either of the Chambers (in this case, also, the two Presidents would gave shared the responsibility of the European Executive Council).

The question, as a whole, is examined in the report in §§ 7 to 9, The principal theories confronting one another are discussed in § 8.

§ **7**. — *Adopted* by 16 votes to 0, with one abstention.

b) *Resolution II* (on the powers and competence of the Community).

§ **1**. — *Adopted* by 13 votes to 4, with 4 abstentions (cf. Report § 33).

§ **2**. — An amendment seeking the omission of § 2 was rejected by 18 votes to 2.
An amendment seeking to enlarge the general objectives and aims of the Community in the sphere of foreign policy was retained for further study after the session of the Assembly.

One representative wished the principles on which the common market (referred to in the 5th sub-paragraph) would be founded to be clearly stated. He mentioned that he had more than once strongly emphasised the great importance that he attached to the paragraphs of the Resolution relating to economic and social powers and competence (Section D). He also thought it very desirable that account should be taken in Section A (general principles), of economic and social considerations.

This representative had made a previous observation on this point. He had emphasised the interdependence of the structures of the Community and the spheres in which it would exercise its powers. In his view, the Community's scope would be very greatly restricted if it was to be confined solely to questions of Coal and Steel and Defence. This did not imply the advocacy of immediate action in other fields but that of a possible wider integration at a later date. This idea, he considered, should govern the formulation of the Community's general principles.

As a consequence, the representative in question would have preferred the text to be drawn more widely in regard to the economic principles, which are referred to in § 2 in terms which he regarded as unduly restrictive ; it should, he considered, lay down the guiding lines for the Community's action regarding the following matters:

— Quantitative restrictions,

— customs duties,

— free interchange of manpower,

— provisional measures, and measures calculated to ensure the effective operation of the market.

Finally, the representative esplained that these ideas regarding a possible integration in new spheres — ideas which are in conformity with §§ 21 et seq. of Resolution II — did not exclude a possible « auto-extension » of the Community's competence, it being understood that this « auto-extension » could only take place within the framework of the Statute, which would have to provide the necessary safeguards.

Another representative maintained that it was inappropriate for a constitutional text to contain directives for the Community's line of conduct in economic matters. Having regard to the instability of the situation, methods which, at the present moment, appear the best for ensuring the economic progress of Europe might prove to be less suitable after a lapse of some years. The Statute should confine itself to laying down some very general principles, leaving due freedom of interpretation to the qualified institutions of the Community.

The Committee agreed to re-examine this question after the Assembly's session.

§ **2**. — was adopted by 15 votes to 1, with 2 abstentions.

§ **3**. — *Adopted* by 23 votes to 0.

§§ **4** *and* **5**. — *Adopted* without opposition.

§ **6**. — Several representatives submitted an amendment calling for an express statement to the effect that the Community would possess, within the scope of its competence, the power to enact laws and to put them in force.

This amendment was retained for later consideration by 18 votes to 0, with 2 abstentions.

A representative submitted an amendment calling for a mention in this paragraph of « federal citizenship » in conjunction with the whole problem of the Community's competence in regard to the maintainance of Human Rights and Fundamental Freedoms (« federal executive procedure »). As this question had already been touched upon in various paragraphs of the resolutions (Resolution II § 26 and Resolution III § 27), it was agreed by 22 votes to 0, with 1 abstention, to retain the amendment for subsequent study by the competent Sub-Committees.

§ **6** was adopted by 23 votes to 0.

§§ **7** *and* **8**. — *Adopted* without opposition.

§ **9**. — Several representatives submitted drafting amendments, which were retained for subsequent study when the Committee was drafting the Treaty itself.

§ **9** was adopted without opposition.

§ **10**. — An amendment seeking to replace the word « représentation » by the word « légation » (in the French text) was reserved for subsequent study.

§ **10** was adopted without opposition.

§ **11**. — An amendment seeking to clarify the procedure for the conclusion of treaties by the Community was reserved for further study after the Assembly's session.

§ **11** was adopted without opposition.

§§ **12** *and* **13**. — Amendments were submitted with the object of making it clear that, if the Community desired to conclude, within the sphere of its competence, an international agreement which might specially affect one of the Member States, the European Executive Council must first obtain the opinion of the said Member State. Conversely, any Member State wishing to conclude an international agreement must keep the Community informed.

Severals member of the Committee expressed general agreement with the principles of the amendments. Some of them, however, pointed out that the effect of the amendments would be, especially, to define the permanent regime referred to in § 14 of Resolution II. During the transitional regime the necessity of obtaining the unanimous approval of the Council

of National Ministers (§ 13 of Resolution II) implied, *ipso facto*, that every Member State would be consulted. Other representatives considered that a more precise wording seemed to be required.

The Committee considered that the amendments in question would have to be very carefully studied after the Assembly's session by the competent Sub-Committees, and it agreed to draw the special attention of the Assembly to their principles.

§§ **12** *and* **13** were adopted without opposition.

§ **14**. — *Adopted* without opposition.

§ **14** *bis*. — *Specialised Authorities*. A representative asked for the insertion of a new sub-title dealing with the powers and competence of the Community within the scope of the policy of Specialised Authorities, and specifying that the Community would be required to put into effect a policy for the Specialised Authorities invested with a competence of their own in the economic, social and cultural spheres and operating under the political control of the Community.

The representative in question pointed out that it would be possible in this way to ensure the indispensable decentralisation of the Community's administration, and also, more especially, to contribute to the success of a policy for Specialised Authorities which all the Member States ot the Council of Europe have supported. It seemed justifiable to hope that, when the creation of new Specialised Authorities was undertaken, the links of association which the Community proposed to establish with other European States might be strengthened.

Some members of the Committee considered, however, that the policy of Specialised Authorities ought to be developed within the scope of the Council of Europe and not in that of the Community ; for otherwise the result might be the creation only of Specialised Authorities limited to the Six countries. Other representatives expressed a fear that a clause in such general terms might imply an immediate extension of the Community's competence in every sphere — and that would conflict with the provisions adopted by the Committee.

On the other hand, some representatives supported the principle of the amendment but asked that its wording should be modified in such a way as to avoid, at least in part, some of the objections mentioned above.

The Committee agreed by 15 votes to 2, with 2 abstentions, to take the amendment into consideration with a view to submitting it to careful study after the Assembly's session. It calls the Assembly's attention, here and now, to this important problem.

§ **15**. — *Adopted* without opposition.

§ **16**. — An amendment requiring the basic principles of the organic law referred to in the third sub -paragraph to be specified in the Statute itself was reserved for further study after the Assembly's session.

§ **16**. — *Adopted* without opposition.

§§ **17** *to* **20**. — *Adopted* without opposition.

Section D. — Economic Powers and Competence.

An amendment seeking the rejection of the whole of Section D was defeated by 18 votes to 1, with 1 abstention.

§§ **21** *to* **23**. — *Adopted* by 19 votes to 0, with 1 abstention.

§§ **24** *and* **25**. — An amendment calling for the insertion of the provisions of the Protocol referred to in § 25 in the Statute itself, so that the latter would invest the Community with a right of decision in economic matters, was defeated by 20 votes to 0.

Some representatives observed that, though they agreed in principle with the basis of the Protocol, they thought it was inexpedient at the present moment, from a political point of view, for that instrument to be drawn up and submitted to the States for ratification at the same time as the Statute.

§§ **24** *and* **25** were adopted by 15 votes to 1, with 4 abstentions.

§ **26**. — An amendment seeking the omission of the second sub-paragraph of § 26 was rejected by 16 votes to 2, with 2 abstentions.

§ **26** was adopted by the same majority.

§ **27** *to* **29**. — *Adopted* without opposition.

§ **30**. — An amendment seeking to add a supplementary article providing, after the tenth year of the Community's existence, a simplified procedure for the revision of the Constitution, in particular for the clauses referred to in §§ 29 and 30 of Resolution II, was reserved, for study after the Assembly's session.

§ **30** was adopted without opposition.

§ **31**. — *Adopted* without opposition.

§§ **32** *and* **33**. — *Adopted* without opposition.

§ **34**. — *Adopted* without opposition.

The Rapporteur considers, however, that the wording adopted is unduly restrictive, appreciably more so than the corresponding provisions in the E. C. S. C. and E. D. C. Treaties (Articles 98 E. C. S. D., 129 E. D. C.). The admission of a new member is, in his view, an internal act by the Community, and must be decided solely by the Community's institutions, without reference to the States.

The Rapporteur accordingly suggests the following text:

« The European Executive Council, with the approval of the Council of National Ministers acting by a unanimous vote will decide what action should be taken on a request for admission and will define the conditions for admission. These conditions would be embodied in an Additional Act to the Statute, which will be submitted for approval by the Community's Parliament and for ratification by the new Member State, in conformity with the latter's constitutional rules.

« If the conditions for the admission of the new member would involve amendments to the Community's Statute, such as are referred to in § 30 of Resolution II, the procedure indicated in that paragraph must be followed.

« The adjustements in the Statute necessitated by the admission of a new member, in order to regulate:

(i) the representation of the said State in the Community's institutions;

(ii) the qualifying coefficients referred to in Articles 43 and 43 bis E. D. C.,

are not included in the cases referred to in § 30 of Resolution II ».

§ **35**. — *Adopted* without opposition.

§ **36**. — The following observations were made in regard to the composition of the membership;

The Belgian and Netherlands representatives stated that there was no constitutional obstacle to the application of the Statute only to the European territories of the kingdoms of Belgium and the Netherlands.

The Italian representatives pointed out that, as Somaliland was a country under trusteeship, the question of its possible association with the Community would not arise until Somaliland had reached a stage enabling it to determine its own destiny.

A French representative observed that the E. C. S. C. and E. D. C. Treaties only applied to the metropolitan territory of France. He pointed out that certain overseas States or territories are united to France by links of very varying kinds. He added that the method by which this French group of territories — which could not be dissociated from one another — could participate in a European Political Community would depend on the legal structure of the said Community.

c) *Special Resolution*.

It was made clear that § b) of the Resolution did not imply the adoption of uniform postal rates, and only had in view the issue of *some* identical postage stamps in the Six countries.

The resolution was adopted without opposition.

PART II

POLITICAL INSTITUTIONS OF THE COMMUNITY

REPORT

submitted by M. DEHOUSSE, Rapporteur.

INTRODUCTION

1. Resolution III, on the political institutions of the Community, contains the conclusions adopted by the Committee on this question.

Resolution I also deals with the problem of the institutions ; it defines the position of the institutions of the Community and those of the E. C. S. C. and the E. D. C. during the first period of the Community's existence. The institutions of the Community will carry out the functions attributed to those of the E. C. S. C. and the E. D. C., and, in co-operation with the President of the High Authority of the E. C. S. C. and the President of the Commissariat of the E. D. C., will draw up the protocols intended to ensure the gradual integration in *the* Community of the two specialized Communities.

In the first part of this report, M. BENVENUTI comments on this resolution and sets forth the political problem that confronted the Committee in its attempt to ensure that, from its inception, the Community should have the necessary unity without prejudicing the results attained by the E. C. S. C. and E. D. C. Treaties.

2. The Committee has endeavoured to define the form of the institutions which will be necessary in order to unite, under a single political authority, and under a single democratic control, the Coal and Steel Community, which is already established, the European Defence Community, the creation of which awaits the approval of the national Parliaments, and those other domains to which the competence of the Community may hereafter be extended.

The impelling idea of the proposals of the Committee resides in the election by universal suffrage of a popular Assembly, in other words, in the participation of the peoples themselves, by the direct selection of their representatives, in the construction and direction of a united Europe, the scale of whose development has hitherto been mostly determined by the Governments.

3. These conclusions are incomplete and their drafting requires revision. The Committee is, however, convinced that the general principles by which it has been inspired, and to which it has sought to give practical form, are those which political considerations require in the construction of a European Political Community.

These principles are the following :

— to establish European political institutions of a democratic character ;

— to ensure, step by step, the unity of the Political Community, resulting from the creation of these institutions, with the already organized Communities (Coal and Steel, Defence) ;

— to provide for the functioning and development of the Community thus constituted, in co-operation with other free nations.

THE POLITICAL INSTITUTIONS OF THE COMMUNITY

4. The Committee proposes to create :

A Parliament ;

An executive organization ;

An economic and social Council.

A. — Parliament of the Community.

a) *The Peop es' Chamber.*

5. The importance attached by the Committee to the election by direct universal suffrage of the members of the Peoples' Chamber has already been stressed.

The desirability of a transitional system, the effect of which would be to postpone the election of the Peoples' Chamber by universal suffrage, was considered, but this idea was rejected.

Certain representatives contended that public opinion was not yet ripe for European elections, that there were no European parties or programmes. Against this, it was argued that the same situation had existed when the Member States first made their appeal to universal suffrage and that the same difficulties would always recur at the outset, no matter what date were chosen for the first European elections. It was further pointed out that the abandonment of elections by direct suffrage would deprive the plan for a Political Community of its substance and its driving power. Consequently, it was observed, at the very moment when the ratification of the Treaty instituting the European Defence Community was encountering great difficulties in certain countries, one would be excluding the possibility of improving that Treaty and of putting the European army under the control of a popular assembly.

6. The distribution of seats in the Peoples' Chamber (sixty, three each for France, Germany, and Italy, thirty each for Belgium and the Netherlands, twelve for Luxembourg), is not, of course, proportionate to the respective populations of the Member States. The Committee considered that the democratic character and the balance of the Community would be better ensured if the larger countries were required to make some sacrifice in the matter of representation. The qualification selected is the same as that adopted for the Assembly of the E. D. C.

The Committee had also regard for other requirements of a political and technical nature. It considered that the Peoples' Chamber should have sufficient members to ensure adequate representation of the political parties of the six States, and the smooth working of its committees.

7. With regard to the problem of electoral law, the Committee confined itself to laying down the following principles:

— Each Country shall be free decide to whether the voting for the European elections is compulsory;

— electoral disputes shall be submitted to the Peoples' Chamber itself;

— each deputy shall represent the Community as a whole;

— voting by direction shall not be allowed.

It was suggested that after the first elections the task of drawing up regulations for subsequent European elections should be entrusted to the Community itself.

With regard to the first election, four proposals have been submitted, and will be found in the Appendium to this part of the Report.

b) *Senate.*

8. The establishment of a second Chamber would guarantee to the Community a fuller degree of parliamentary control; it would also make it possible to establish a liaison between the European Parliament, the national parliaments, and the Consultative Assembly of the Council of Europe.

The second Chamber represents the States. The notion that it might take the form of a mere Council of national Ministers was definitely ruled out. The Committee was in favour of a second Chamber having a parliamentary character in conformity with the traditions of the Member States. This will ensure that all possible developments of the Community will be based on the European Parliaments.

For the same reason, the Committee decided against parity of representation for the individual States, voting by substitutes and collective voting.

The distribution of seats in the Senate is the same as that in our Assembly.

B. — The executive power.

9. The structure of the executive power proposed by the Committee will inevitably appear complicated, especially the organization envisaged for the initial period of the Community's existence (Resolution I).

The Committee is aware of the difficulties inherent in the proposed solution : but it took the view that a theoretically perfect solution would be less desirable than one which made allowance for political realities, that is to say, for the structure and the historical background of the Member States ; the need for the Community to further a closer co-operation not only among Member States, but among all the Western democracies ; and the efforts already made by the Member States in constituting the E. C. S. C. and in signing the E. D. C. Treaty.

10. The Executive Organization of the Community shall comprise the European Executive Council and the Council of National Ministers. These two Councils will meet periodically in a Conference with the representatives of the Associated States.

11. The European Executive Council shall be entrusted with the general direction of the Community. With regard to its composition and its method of appointment, various proposals have been submitted and referred to the Assembly without any previous decision by the Committee.

Paragraph 17, which stipulates that the President of the European Executive Council shall be elected by a two-thirds majority of the Council of National Ministers, was inspired by the wish to adopt the procedure best calculated to result in the election of a sufficiently authoritative figure. Some representatives consider, however, that in order to stress the political implications of the choice of a President, he should be elected by the Peoples' Chamber.

12. The system proposed by the Committee for establishing the responsibility of the European Executive Council is a parliamentary system which, in conformity with article 38 of the Treaty instituting the European Defence Community, and the Luxembourg Resolution, is based on the separation of powers.

The Committe did not adopt a system such as that of Switzerland, in spite of the advantages of the stability which it confers on the Executive, because the Community's Parliament does not possess — particularly in budgetary matters — sufficient powers and competence to enable it to counterbalance an Executive Council which, though of a collegiate form, occupies a presidential position. Furthermore, the parliamentary system is that adopted by the Member States, and the Committee wished to make the political institutions of the European Community conform to the constitutional principles which they themselves are applying.

13. The Committee recognised that in creating a supranational European Political Community the application of the principle of separation of powers must take account of a twofold necessity. For, while creating institutions which would guarantee a satisfactory balance between the common and national interests of the Member States it was necessary to set up a European Political Authority, which has not yet come into being, whereas the separation of powers had, from a historical point of view, been introduced in the Member States in order to curb an Executive which had been created some time previously and whose powers were more extensive than those of the national governments of those days.

14. The European Executive Council shall take its decisions in virtue of an « approval » issued by the Council of National Ministers. In stipulating the issue of this « approval », the intention was not to imply that it would be obligatory in every case. The possibility of drawing up a list of matters regarding which the approval of the Council of Ministers must necessarily be obtained, is a question for subsequent consideration.

The rule laid down in paragraph 19 is in no way prejudicial to the corresponding provisions of the E. C. S. C. and E. D. C. Treaties, nor to the right enjoyed by the Council of Ministers of delegating to the European Executive Council general powers in regard to day-to-day problems of administration. The Executive Council would otherwise be unable to take necessary action in the interests of the Community.

The Committee considers it of great importance that in issuing an « approval » the Committee of National Ministers shall not be required to achieve unanimity, except in certain special and strictly defined cases.

The members of the European Executive Council will take part in the discussions of the Council of National Ministers when the latter is exercising its power of decision in subjects covered by the E.C.S.C. and E. D. C. Treaties, and in the manner stipulated in those Treaties.

15. The Conference to be held periodically by the European Executive Council, the Committee of National Ministers, and the representatives of the Associated States, was first of all conceived as a « practice », and not as an organ of the Community in the strict sense of the term. However, the Committee attaches so much importance to this « practice » that it was led to propose that the Conference should be mentioned in the Community's Statute, so as to give it an institutional character.

16. The European Executive Council will lay down the general policy for the existing and future European specialized authorities. This competence with which the European Executive Council is endowed will allow of the creation of a fairly decentralized administrative organization and avoid a multiplicity of organs acting independently one of the other.

Administration of the Community.

17. The Community's administration will, in principle, be delegated to the national administrations. The administration of defence constitutes an exception. The Community is, however, entitled to establish an administration of its own if the Parliament authorizes it to do so, and is empowered to supervise the implementation by the national administrations of any measures it may decide.

Human Rights and Fundamental Freedoms.

18. The maintenance in Member States of a democratic regime, respecting individual freedom, is an indispensable condition for the existence and development of the European Political Community.

The Member States must apply the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome in 1950. The European Executive Council may have recourse, like a Member State, to the judicial mechanism set up by that Convention. The European Executive Council shall also be entitled to afford assistance to a Member State, at the latter's request, in order to uphold democratic institutions and fundamental freedoms within its territory.

C. — The Economic and Social Council.

19. To enable the European Executive Council to act in close liaison with those concerned with social and economic matters in the Community, the Committee has stipulated that this Council shall be assisted by an Economic and Social Council acting in an advisory capacity.

D. — Links between the European Political Community and the free world.

20. The establishment of the European Political Community should result in binding the Member States and the other democratic nations in a closer and more intimate contact. In working out the provisions which will enable that result to be attained, the Committee bore in mind the different situations which must be taken into account as regards the non-member countries. The links between those countries and the Community will be more intimate in some

cases than in others. Accordingly, the Committee has envisaged, in the first place, the direct association of non-member States with the Community and, secondly, the co-operation of those States with the Community by means of liaisons with the Council of Europe.

The problem of liaisons between the Community and non-member States is dealt with in the sections of this report which were drafted by MM. SEMLER and WIGNY. However, certain aspects of these problems are more particularly related to the institutions of the Community. The Committee suggests that the treaties of Association which the Community is entitled to conclude shall be negotiated by the European Executive Council. They will come into force after ratification by the Community's Parliament. The treaties of Association may provide for the admission of representatives of the Associated States into the organs of the Community. They will lay down the rights and obligations of these representatives in the Parliament or other institutions of the Community.

Furthermore, as has already been mentioned, representatives of the Associated States will meet periodically in conference with the European Executive Council and the Committee of National Ministers.

Liaison with the Council of Europe shall be effected chiefly by the Senate, but also by the Peoples' Chamber and the Economic and Social Council.

The Committee recommends that the members of the Senate shall at the same time be representatives in the Consultative Assembly of the Council of Europe.

As regards the Economic and Social Council, the Committee proposes that if the Council of Europe should, in its turn, constitute an Economic and Social Council, the latter shall absorb the Community's Economic and Social Council, it being understood that, if required, the opinion of the Economic and Social Council of the Council of Europe may be obtained in a dual form ; an opinion by the majority of the Fifteen and an opinion by a majority of the Six.

ANNEX

DISCUSSIONS IN COMMITTEE

1. At its session, 23-27 October 1952, the Constitutional Committee set up a Sub-Committee on Political Institutions. Its Chairman was M. TEITGEN and it appointed MM. AZARA et DEHOUSSE as its Rapporteurs.

The Sub-Committee on Political Institutions held 5 meetings. In the first part of its proceedings it engaged in a comprehensive discussion of the different questions which had been referred to it, on the basis of notes drawn up by several of its members. The conclusions which it arrived at were subsequently reconsidered by the Sud-Committee at the second reading.

The Sub-Committee benefited, in particular, by studies or memoranda submitted by MM. AZARA, von BRENTANO, BRUINS SLOT, DEHOUSSE, van der GOES van NATERS, von MERKATZ, TEITGEN and WIGNY.

The plenary Committee, to which the Sub-Committee's report was submitted, selected those parts of it which concerned the integration of the E. C. S. C. and the E. D. C. in the Community with a view to examining them in conjuction with the proposals on the same question formulated by the Sub-Committee on Powers and Competence. Its conclusions on this point constitute Resolution I. The general problem of the Community's political institutions is dealt with in Resolution III (1).

The active assistance of all the members of the Committee has greatly facilitated the task of the Rapporteur, who desires to express his thanks to all his colleagues, and in particular to M. von BRENTANO, President of the Committee, and to M. TEITGEN, Chairman of the Sub-Committee on Political Institutions.

2. Details of the votes adopted on Resolution I (integration of the E. C. S. C. and the E. D. C. in the Community) will be found in the Appendix to M. BENVENUTI's report on the Powers and Competence of the Community (PART I of the Constitutional Committee's report). Details of the votes on Resolution III are given below.

Resolution III (Political Institutions of the Community).

§ **1.** — An amendment seeking to introduce elections by a system in two stages during a transitional period was rejected by 13 votes to 5, with one abstention.

— was adopted by 17 votes to 0.

§ **2.** — The Committee discussed the question of the representation of the Saar in the Community's Parliament. It considered that it would be essential, at a suitable moment, to undertake a careful examination of the problem and that it would no doubt be necessary to settle it before the Community's Statute was definitively adopted by the States.

It was explained that the number of seats which it was proposed to allot to each country un no way prejudged the question of the participation of overseas territories in the Community. It would be for each country to decide, where necessary, the methods by which the everseas territories would be represented in the Peoples' Chamber and to make a suitable allocation of the seats ar its disposal, with that object in view.

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(1) Cf. Part VI — Conclusions of the Constitutional Committee.

An amendment was submitted seeking to allocate the seats to the different Member States in the proportions laid down in the E. D. C. Treaty. Some representatives opposed this view on the ground that such an allocation would be unduly weighter and might isolate the Peoples' Chamber from political realities. Other representatives thought it was undesirable that seats should be allocated in the same proportions as in the Peoples' Chamber and in the Senate.

The amendment was adopted by 15 votes to 0, with 6 abstentions.

§ 2, thus amended, was *adopted* by the same number of votes.

The Question of the Electoral Law.

Proposals regarding the electoral system were submitted by the Sub-Committee on Political Institutions and by some members of the Committee.

The Committee agreed not to take any decision on this question and to submit the whole of the proposals that were before it to the Assembly.

As regards the first election, the following proposals were submitted :

1*st proposal.*

The first election would be conducted according to the following rules :

— Each country would constitute a single constituency.

— In each country, the seats to filled would be allotted by ballot, with proportional representation and the possibility of combining lists. The details of the latter process would be settled in each country by a national law.

2*nd proposal*

The first election would be conducted according to the following rules :

— Each country would form a single constituency.

— The problems concerning electoral qualifications, the electoral list, the organisation of the ballot and the counting of the votes, and all other electoral problems not settled by the Statute would be settled in each country in accordance with domestic law.

3*rd proposal*

The first election would be conducted according to the following rules :

— Each country would form a single constituency.

— The election would be carried out by a uninominal majority vote, with two ballots, an absolute majority being requisite at the first ballot, and a majority of the votes cast being sufficient at the second ballot.

— The problems concerning electoral qualifications, the electoral list, the organisation of the ballot and the counting of votes and all other electoral problems not settled by the Statute, would be settled in each country in accordance with domestic law.

4*th proposal*

The first election would be conducted according to the following rules :

— Each country would be divided into constituencies, each of which would return one representative.

— The problems concerning electoral qualifications, the electoral list, the organisation of the ballot and the counting of votes and all other problems not settled by the Statute would be settled in each country in accordance with domestic law.

As regards the subsequent electoral regime, the following proposal was submitted :

« The subsequent electoral regime will be laid down by the Community ».

§§ 3 *to* 6. — *Adopted* without opposition.

Questions concerning incompatibilities and multiplications of office.

Proposals were submitted by the Sub-Committee on Political Institutions and by some members of the Committee. It was agreed that the Committee would further study all these questions after the Assembly's session.

A (b) (Senate)

An amendment seeking to omit the whole of Section I, B, and providing that the duties assigned to the Senate would be exercised, at any rate at the beginning of the Community's existence, by a Council of National Ministers, was rejected by 14 votes to 4, with one abstention.

§ **7**. — Separate votes were taken on the different clauses.

— « The Senate represents the States ».

An amendment seeking to omit this clause was rejected.

The clause was *adopted* by 18 votes to 0.

— « It is the second Chamber of the Parliament ».

Adopted by 18 votes to 0.

— « It has the same powers and the same rights as the Peoples' Chamber ».

Adopted by 16 votes to 0, with 2 abstentions.

The last two clauses were adopted in the text of an amendment to the report of the Sub-Committee on Political Institutions.

It was made clear — this clarification having the force of an interpretative declaration in regard to §§ 7 et seq. — that if the Statute were subsequently revised, the right of revision would extend to the provisions concerning the composition of the Senate, in the same way as to any other provisions.

§ **8**. — *Adopted* by 17 votes to 0, with one abstention.

§ **9**. — An amendment seeking to exclude the possibility, which was provided for in the original text, of the members of the Senate being appointed, by mutual agreement, by the National Parliaments and governments, was adopted.

§ 9. — As thus amended, was adopted without opposition.

§ **10**. — An amendment, in accordance with which all the States would be allowed the same number of seats in the Senate, was rejected by 12 votes to 1, with 2 abstentions.

§ 10 was *adopted* by 12 votes to 1, with 2 abstentions.

§ **11**. — *Adopted* without opposition.

§ **12**. — An amendment seeking to omit sub-paragraphs (b) to (f), and to replace them by a clause providing for regular joint meetings of the representatives of the Community's institutions and those of the Associated State was withdrawn, it being understood that it would be referred to in the report.

An amendment seeking to enable observers of third States, members of the Council of Europe, admitted to the Peoples' Chamber, to speak on the invitation of the President — as already provided in the case of observers in the Senate — was rejected by 12 votes to 4.

§ 12 was *adopted* by 16 votes to 0.

Legislative procedure.

An amendment, seeking to introduce a new Section defining the legislative procedure (right of initiative in regard to legislation, procedure for the adoption and promulgation of laws), was reserved for further study after the Assembly's session.

§ **13**. — *Adopted* by 15 to 0, with one abstention.

§ **14**. — An amendment seeking to eliminate the Council of National Ministers and the Conference with the representatives of the Associated States was reserved.

§ 14 was *adopted* by 15 votes to 0.

§§ **15** *and* **16**. — *Adopted* without opposition.

§ **17**. — It was agreed to refer § 17 to the Assembly, without taking any decision about it, together with the other proposals submitted to the Committee by some of its members. The proposals in question will be found in a note to § 17 of Resolution III (cf. Part VI, Conclusions of the Constitutional Committee).

§ **18**. — Separate votes were taken on the different clauses.

— « Subject to the reservation in § 6, **ii** of the resolution on the integration of the E. C. S. C. and the E. D. C. in the Community, the European Executive Council is collectively responsible to the Parliament of the Community ».

Adopted by 13 votes to 2.

— « The members of the European Executive Council must resign office in case of the adoption by either of the Chambers, by a majority of the votes cast, of a motion of censure in regard to them ».

An amendment providing that a motion of censure could only be carried by *a two-thirds majority* was rejected by 9 votes to 8, with 3 abstentions.

An amendment seeking to introduce a procedure of « constructive censure », similar to that provided in the Fundamental Law of the German Federal Republic, was reserved for study after the Assembly's session.

The second part of § 18 was *adopted*, it being understood that the Assembly's attention would likewise be drawn to the first amendment (requirement of a two-thirds majority for the adoption of a motion of censure).

§ **19**. — An amendment whereby the Council of National Ministers would only be invested with power to issue Opinions, was rejected.

An amendment seeking to limit the requirement of an « approval » (avis conforme) by the Council of National Ministers solely to the decisions of the European Executive Council, and to make it clear that the corresponding provisions of the E. C. S. C. and E. D. C. Treaties are not affected by the text of the paragraph, was adopted without opposition.

§ 19, as thus amended, was *adopted* without opposition, with one abstention.

§ **20**. — *Adopted* without opposition.

§ **21**. — *Adopted* without opposition.

§ **22**. — An amendment seeking to replace the « approval » of the Council of National Ministers by simple consultations, at regular intervals, with the European Executive Council was reserved for study after the Assembly's session.

§ 22 was *adopted* without opposition.

§§ **23** *and* **24**. — An amendment seeking to make the laws adopted by the Parliament subject to the « approval » (by a simple majority) of the Council of National Ministers was rejected.

§§ 23 and 24 were adopted without opposition.

§ **25.** — An amendment laying down that the Community's administration could be provided for by the creation, with that object, of decentralised and autonomous Specialised Authorities, which would, however, be subordinated to the Community and placed under its control, was reserved for study after the Assembly's session.

An amendment seeking to do away with the « approval » of the Council of National Ministers, required under the last sub-paragraph of § 25, was reserved for study after the Assembly's session.

§ 25 was *adopted* without opposition.

§ **26.** — *Adopted* without opposition.

§ **27.** — An amendment seeking to give the Community an extensive right of intervention was reserved for study after the Assembly's session.

§ 27 was *adopted* without opposition.

§ **28.** — *Adopted* without opposition.

It was agreed to draw the Assembly's attention to some passages in a note on the Economic and Social Council drawn up by M. DEHOUSSE, the Rapporteur (cf. above).

§ **29.** — *Adopted* without opposition.

3. *Note on the composition, operation and competence of the Economic and Social Council.*

a) The Economic and Social Council of the Community must be organised in such a way as to ensure an effective representation of the great workers and employers associations.

In this connection it will no doubt be fitting to make room, separately, for the international associations — so far as they exist — which are common to the Six countries.

The Assembly will also have to consider how far it will be desirable to organise the representation of the middle classes and the consumers, as such ; this may be thought difficult on the plane of the Community and may also encounter complications within certain countries.

Similarly, the question will arise whether — following the example of the I. L. O. — the Economic and Social Council of the Community should include representatives of the governments (1).

The structure of the Council will naturally depend on the answer given to the above questions.

In any case, it seems desirable not to give that body too large a membership.

The number of the members must however be calculated in such a way as to ensure the inclusion of nationals of cach of the Six countries in the Council, in respect of each of the categories of interests which finally be adopted. It does not, on the other hand, seem necessary to go further and to lay specifying the number for each State, as in the case of the Peoples' Chamber and the Senate.

Lastly, the Assembly will probably consider that, so far as it is concerned, it need only have regard to general indications, leaving the adjustment of all details concerning the Council to the institution which is best qualified in this respect i. e. the European Executive Council. The task that we are considering falls, indeed, within the normal scope of the executive power properly so called.

b) If one accepts the above as a starting point there is no difficulty in agreeing that it will fall to the Economic and Social Council itself, with the approval of the European Exe-

(1) At is common knowledge that the institution of the same name in the United Nations consists solely of governmental delegates. It seems right to point out that the Council we are now considering is not of that character (it is not a diplomatic institution). Besides, the composition of the Economic and Social Council of the U. N. has been sharply criticised, on that very ground.

cutive Council, to frame the regulations by which it will provide for the detailed discharge of its functions: the election of its Bureau, the numbers and frequency of its sessions and the meassures to be taken to comply with urgent requests for Opinions, etc....

c) It would be going too far to empower the Economic and Social Council to take under consideration, *automatically*, every measure which the Community's Parliament or the European Executive Council may be contemplating in the economic and social sphere. Such a procedure would only result in encumbering and delaying the operation of the general machinery.

The rule would rather be that each of the two Chambers and each of the elements of the executive organisation, may, when it sees fit, solicit an Opinion from the Council on any measure of the Community which wight vrovoke reactions on the economic or social plane.

Each of the above-mentioned institutions should also be entitled to allow the Council a time-limit for its answer. This time-limit might be very short in certain cases, and after its expiry the Opinion would of course no longer be receivable.

As is fitting for the Council, all the Opinions it delibers must be given appropriate publicity.

It will also fall to the Assembly to say whether, in addition to giving the Council competence « to issue Opinions », it also favours the idea of allowing it a right of initiative in making *recommendations* to the Parliament or to the European Executive Council. The answer must be in the affirmative, in the Rapporteur's view, it if is desired to enable the Council, whose powers are on such a modest scale, to take really constructive action within the scope of the Community's economic and social policy.

d) The creation of the Economic and Social Council must in no way prejudice the existence or the competence of the *Consultative Committee* of the E. C. S. C., for its existence and competence provide their own justification.

Nevertheless, the European Executive Council, in agreement with the High Authority, should take into consideration as early as possible the regulation of the relations between the Council and the Committee on the basis of mutual co-operation.

PART III

JUDICIAL INSTITUTIONS OF THE COMMUNITY

REPORT

submitted by M. von MERKATZ, Rapporteur

SECTION I

The Committee examined, in the first place, the question of the fundamental nature and the composition of the Court of Justice of the Community.

In making this examination, it had to take account of the following facts :

— The European Coal-and-Steel Community, based on a treaty which was the result of prolonged and careful studies, possesses a tribunal adapted to the particular aims of the E. C. S. C.

— The European Defence Community accepted this Court, (which will adapt itself to the additional requirements) and adopted it as its own.

The two Communities, the E. C. S. C. and the E. D. C., thus already possess a single judicial organisation. It seemed necessary and desirable to invest this Court of Justice with the jurisdiction of the Community. The essential identity in the characters and aims of the Communities, the E. C. S. C. and the E. D. C., makes it possible to maintain a single Court of Justice. The adaptation of the E. C. S. C. Court to the requirements of the E. D. C. was a more difficult task than its adaptation to the requirements of the European Political Community is likely to prove. As the problem of the former adaptation has been solved, one is justified n believing that the latter adaptation can likewise be achieved.

SECTION II

2. The Committee had to consider the question raised by Recommendation N° 36 (1952) of the Consultative Assembly of the Council of Europe, and also by the statement of the Rapporteur of the Comittee on Legal and Administrative Questions of the Consultative Assembly of the Council of Europe (cf. doc. A S (4) 23).

The Rapporteur of the said Committee had said that it was desirable that the European Court of Justice, which was to be created under the auspices of the Council of Europe, should exercise the functions of a Court of Justice for the specialised Communities and for the Community.

3. The Committee took the view that this idea was impracticable, for the following reasons :

a) The organisational work, on the supranational plane, which the Six States have already undertaken and in part accomplished is leading towards the formation of a Community whose aims can only be attained if its constitutional structure is autonomous, in other words, if all the institutions taking part in the construction of this Community are at the same time institutions of the Community and are adapted to its requirements.

The theoretical and pratical conditions of the duties of the judges in the framework of communities as they were at first envisaged, or realised in practice, by the Six States, are fundamentally different from the conditions for the work of a Court of Justice which is required to function on the plane of the Council of Europe.

The nature of an institution of this latter kind is very clearly revealed by the direct statement that, thanks to the creation of a European Court of Justice, the Council of Europe would henceforth have at its disposal, in addition to its « legislative » element and its « executive » element, also a third sort of element, i. e. a judicial institution. This Court must necessarily reflect, in its organisation, the character of an organ of *co-ordination* which is possessed by the Council of Europe.

In view of its duties — and these must find expression in the nature of its competences — the Court of Justice is, in some sort, a « domestic » Court, established in a new setting, since it is the Court of Justice of a new *supranational* Community, to which rights of sovereignty have already been assigned in certain specified spheres.

b) That is apparent in the fundamental conception of the Court of the Specialised Communities, a conception which has governed the wording of the various provisions of their statute, and which shows that, in a possible merger with the Court of the Council of Europe, as has been projected, this regime, which is indispensable for the functioning of the E. C. S. C. and the E. D. C., could not be maintained.

Having regard to the supra-national nature of the Communities of Coal and Steel and Defence (Communities which possess in part the character of a federal State), the Court appears almost exclusively as a sort of federal tribunal and not as an international Court of Justice.

It is only in Articles 42 and 89 E. C. S. C. and in Articles 63 and 65 E. D. C. that we find provisions regarding functions related to international law. And these competences only occupy a secondary position, because the disputes in question would, in ordinary cases, having regard to their connection with the Treaty, be decided within the framework of constitutional domestic justice, so that there only remain actions of a sort which have to be determined in virtue of a compromissory clause contained in public-law agreements concluded by the Communities (Article 42 of the E. C. S. C. Treaty and Article 63 of the E. D. C. Treaty).

c) Moreover, the list of the different functions and competences assigned on the basis of this conception shows that they could not be exercised by a Court of Justice of the Council of Europe, i. e. by an international Tribunal of the usual kind.

4. The Court has, in the first place, a general competence for upholding the rule of law in the interpretation and application of the implementing regulations of the Treaties (Articles 31 E. C. S. C. and Article 51 E. D. C.). In pursuance of Article 84 E. C. S. C. and Article 122 E. D. C., this general clause also covers the annexed provisions, so that the Court is equally competent, for example, for the interpretation and application of the Protocol on privileges and immunities (cf. Article 16 of the Protocol on privileges and immunities of the E. C. S. C. Treaty, and Article 13 of the corresponding Draft of the Legal Sub-committee of the Interim Committee of the E. D. C.) and for the interpretation and application of the Convention concerning the Status of the European Defence Forces (cf. Article 47 of the Convention).

The different matters in respect of which the Court has jurisdiction to settle disputes are enumerated in Resolution IV, § 2.

In addition to these duties, there will be others derived from the Statute of the Community. It need hardly be said that the assignment of new duties will necessitate an adaptation of the rules of procedure and of the provisions concerning the judicial organisation.

5. To sum up, having regard to the number and nature of these attributes of the Court, it seems impossible to transfer them to the Court of Justice of an international organisation, created according to traditional international law. Moreover, the Court, as the supreme instance of the Community, would only constitute one element of the European Judicial organisation, which would also comprise lower courts (cf. art. 53 E. D. C., and especially art. 12, 13, 22 and 30 of the Judicial Protocol) ; and, if this supreme instance is dispensed with, the Courts of lower instance will likewise have to be abandoned. The arrangements made in regard to this infrastructure will also determine the extent to which the Court itself will be confined to the exercise of powers of cassation or revision.

All these separate competences are exercised on the principle of the unity of the jurisdiction. This unity is not based solely on considerations of principle, (for instance, on the desire of the judicial authority to secure, by means of that unity, the strong position to which it aspires as the protector of the law), but also on the fact that it is difficult, in practice, to make a clear distinction between different matters on the basis of general criteria.

The Court must, therefore, decide on all disputes, no matter under which Treaty they may have arisen. It is only within the Court that the customary separation is made between the Court, in plenary session, and the Divisions, but this separation is affected, not according as the questions arose under the E. D. C. or the E. C. S. C., but having regard solely to the legal classification of the disputes ; it follows that matters which are dealt with both in the E. C. S. C. and E. D. C. Treaties can be adjudicated in the same Division. For that reason, when the Court was designed, provision was made for the constitution of separate Divisions for administrative, civil and penal questions.

SECTION III

The Sub-Committee next dealt with the problem of the Court's composition, having regard to the different duties which it has to perform. As regards the subdivision of cases into administrative, civil and penal actions, the Committee unanimously agreed that it might be well simply to adopt the method of subdivision chosen for the Court of the E. C. S. C. and the E. D. C. However, it hesitated to express an opinion on that point because the extent of the legal protection to be afforded to the Community has not yet been determined.

In regard to constitutional disputes, these will have to be decided by a special Division, consisting of the President of the Court and the Presidents of the Divisions.

7. Disputes relating to international law, which might arise between the Community and the Associated States, would impose an entirely new kind of task on the Court. Here a grave problem arises, involving a question of principle which has to be elucidated. It may be stated as follows: Is it really desirable that the International Court of Justice at the Hague should be entirely shut out from the system of legal protection set up by the Community ? To exclude it might be to risk a loss of contact in questions involving international law with the legal evolution of which the Court at the Hague is the centre.

Be that as it may, the Committee considers that the Court of Justice, as composed when dealing with constitutional disputes, should be constituted as an arbitral tribunal and reinforced by judges appointed by the third State, or States.

In that connection the following two problems arise:

1) Should two distinct methods of settling disputes between the Community and the Associated States be provided, viz. a truly judicial procedure and an arbitral procedure ?

2) By what method should States not belonging to the Community appoint judges ?

The Committee decided that these questions could not be answered, in principle and *a priori*, but that the answer to them must be given in the Association Agreement, or perhaps in some other special agreement concerning the judicial or arbitral settlement of disputes between third States and the Community. In any case, the Committee thinks it desirable to draw attention at once to an important point: every effort must be made to avoid anything of an arbitrary description in the method of appointing judges by third States (Associated States). The Committee wondered whether it might not be proposed that, the occupants of certain high judicial posts would be required, ex officio, to discharge the duties of supplementary judges.

SECTION IV

8. The Committee also examined another question: could the Community not become entitled to appear in proceedings before the Court of Justice at the Hague in case of disputes between itself and third States (with which no special treaty has been concluded) or, again, in case of disputes arising between Member States of the Community and third States, and directly affecting the Community, as such ?

9. Another special question arises in connection with the whole problem which has just been discussed: what will be the relations between the Court of the Community and the judicial organisms provided by the Rome Convention ?

The Committee considers that the protection of human rights should be entrusted to the organisms provided by the Rome Convention, subject to the following rules:

The Rome Convention will become an integral part of the Community's Statute. The Member States will be required to undertake, within a time-limit to be specified, to make the declaration laid down in Article 46 of the Rome Convention. In addition, the Community itself will be required to accede to the Convention on Human Rights.

However, the Committee wondered whether a dispute, concerning internal affairs of the Community but having the appearance of a suit relating to human rights and fundamental freedoms, could be submitted to a tribunal extraneous to the Community, for such a course might, in some cases, disturb the legal unity of the Community. With a view to excluding such a possibility, it formulated the following provisions:

Should one of the Member States desire to institute proceedings against the Community under the Rome Convention, the Court would have jurisdiction; its decision would be definitive. Should one of the Member States desire to institute proceedings against another Member State under the Rome Convention, the Community's Court should be seised, in the first instance. Should the Court consider that the case is that of a dispute arising from the relations between two Member States, as such, its decision would also be definitive. If that is not the case, the Court must renounce jurisdiction. The parties can then adopt the procedure laid down in the Convention on Human Rights.

The foregoing provisions are an application of the general principle that the Member States should undertake in conformity with the regime already existing in the European Coal and Steel Community (Article 87 E. C. S. C.), and in the European Defence Community (Article 122 E. D. C.), not to avail themselves of any conventions or declarations existing between them with a view to settling a dispute regarding the interpretation or application of the Statute otherwise than in accordance with the stipulations contained therein.

In the view of one the members of the Committee it was highly desirable that the creation of the Community should in no way affect the jurisdiction of the Court of Justice set up by the Rome Convention. The Committee, however, held that the status of the Community's Court should, so far as concerns matters within the Community's competence, be the same, in relation to the Court instituted by the Rome Convention, as the status of a domestic tribunal of one of the Member States.

SECTION V.

10. During the transitional period the concurrent rules laid down in the E. C. S. C. and E. D. C. Treaties will continue to apply to the status and appointment of judges.

The permanent regime will be based on the following principles:

a) *Number of judges composing the Divisions.*

The Sub-Committee considers that as a rule the number in each Division should not exceed five, except in the case of the Division which would adjudicate upon constitutional disputes, and would at the same time be responsible for preserving the unity of the jurisprudence.

b) *Appointment of the Judges.*

The Committee agreed that they must, in no case, be elected by the parliamentary organs of the Community, as this method might imply inadmissible political influence. The Committee thought that the best plan would be to have the judges appointed by the Governments, such appointments being afterwards approved by the Parliament. It also considered another solution, according to which the governmental lists would be submitted to the Chambers which would carry out the definitive election on the basis of the lists.

The Committe also considered what should be the qualifications required of persons required to undertake the duties of a judge. After detailed discussions it reached the conclusion that long experience in high offices, involving administrative duties, might also be an excellent preparation for the office of judges. It therefore concluded against making it an absolute re-

quirement that a judge of the Court of the Community must be a jurist, in the sense of having read law at a University.

c) *Guarantee for the financial independence of the judges.*

The Committee decided to make the following recommendations : During their term of office as judges their salaries could not be reduced ; the judges would also enjoy complete immunity, also, in criminal cases (the Court would have exclusive competence in disciplinary and criminal proceedings concerning its own Members).

The question of the term of office for the judges was also examined. The Committee did not think that it should recommend appointments for life, as this might unduly reduce the number of candidates. Similarly it did not think it would be desirable to fix an age limit for the judges.

The Committee considered that it was essential, in order to prevent the composition of the Court and of the Divisions from being influenced by political considerations or determined by the requirements of a particular case, that the Court should be entitled to draw up not only its Rules of Procedure, but also its Statute.

11. The Committee confined itself to examining the following points, in regard to which it prefers not to make any recommendations which might prejudge the question :

1) the number of judges ;

2) the effect of the Court's judgments in constitutional cases.

12. As regards the number of judges, the Committee did not think it should make a decision, because it is difficult at this moment to estimate the amount of work which the Court will have to undertake. Moreover, negotiations are now proceeding for the bringing into force of the E. D. C. Treaty. One of the consequences of these negotiations might well be an increase in the number of judges because of the additional tasks that will devolve on the Court in connection with the Defence Community.

13. As regards the second point, the Committee is inclined to think that in the case of constitutional disputes, the judgements of the Court of Justice should only produce the customary effects of a *res judicata*, and would not have the force of law. The Committee believes that, in a social organisation, orderly, and favouring a sound administration of justice, there could be no question of applying to the courts in order to obtain political decisions. Though it is necessary that the courts should enjoy supreme authority, it is none the less true that government by judges is a symptom of decadence.

SECTION VI.

14. Finally, the Committee examined the problem of the creation of a *Conseil d'Etat* and of a special Court of the Exchequer.

In regard to the *Conseil d'Etat*, the Committee considers that, if one accepts, in principle, the fundamental importance of the unity of jurisprudence, the idea of creating a special *Conseil d'Etat* must be abandoned. Moreover, that organ seems to be invested with a dual function, which in part exceeds the field of jurisprudence,

— it may exercise a judicial function — in case of a plea against the jurisdiction, or in regard to misuse of powers, or violation of rules of law — by means of administrative measures, more especially with a view to the protection of public officials ;

— it may deliver advisory opinions; this activity may be obligatory or optional in different cases.

The present organisation of the Court will enable it to deal appropriately with all civil and administrative cases.

15. In connection with the Special Court of the Exchequer the Committee advises against its creation, at any rate so long as the number of cases which may be submitted to it — a number which will be probably very small — cannot be estimated with any precision. The Committee believes that duties of this nature might well be entrusted to a parliamentary committee, which would collaborate, if need be, with the Division for administrative cases, instituted within the Court. A solution of that nature seems all the more appropriate because the task of a Court of the Exchequer is to examine, not whether the expenditure is justifiable, but whether it is in conformity with the law. Furthermore, the Board of Auditors provided for in Article 97 E. D. C. will continue to exercise its functions.

PART IV

RELATIONS OF THE EUROPEAN POLITICAL COMMUNITY WITH THIRD STATES AND INTERNATIONAL ORGANISATIONS

REPORT

submitted by M. SEMLER, Rapporteur.

I. — INTRODUCTION

A. — PROCEEDINGS OF THE CONSTITUTIONAL COMMITTEE AND OF THE SUB-COMMITTEE ON LIAISON.

1. At its session on 23-27 October the Constitutional Committee set up a Sub-Committee on Liaison. Its Chairman was M. van der GOES van NATERS and it appointed MM. WIGNY and SEMLER as its Rapporteurs.

This Sub-Committee held six meetings ; it based its work in regard to the question of association on a note by M. WIGNY, the speech delivered by M. MONNET, President of the High Authority, to the Organising Committee of the Common Assembly of the E. C. S. C., on the statement made by M. MONNET on 17 November 1952 at the first meeting of the « Joint Committee » for the association of Great Britain and the E. C. S. C., and on the statement made at the same meeting by Sir Cecil WEIR, head of the British delegation.

As regards relations with N. A. T. O. the Sub-Committee took as a basis of discussion the two notes of MM. MUTTER and KOPF.

2. The Plenary Committee, at its session on 15-20 December 1952, adopted without any substantial changes the conclusions submitted to it by the Sub-Committee.

3. The liaisons of the Community represent relations of a very varied character, so that it becomes necessary to select, for each type of liaison, a term which can be used consistently in the same sense, once and for all.

Accordingly' it was agreed :

— to use the term « Association » exclusively in the sense indicated in Section II of the present report, in other words to use the term « Associated State » to denote a State which, having declared its willingness to collaborate in certain matters, has concluded a treaty of Association with the Community, specifying the co-related rights and obligations of each of the contracting parties (cf. Section II, § 13).

— to use the term « liaison » to denote all relations which, exceeding the scope of ordinary international or diplomatic contacts, have resulted in certain mutual engagements between the parties concerned. Such would be for instance, the links uniting the Community to the Council of Europe, N. A. T. O., O. E. E. C., and E. P. U.

B. — TERMS OF REFERENCE OF THE COMMITTEE AND RESULTS OF ITS DISCUSSIONS.

4. In conformity with the questionnaire of the six Ministers, the Committee examined the problems arising, in the preparation of the Community's Statute, from its relations

— with other States, in particular, with the Member States of the Council of Europe,

— with the Council of Europe itself,

— with international organisations, associations or other institutions, and also with any new European Communities which may subsequently be set up.

These questions comprised not only legal problems, but also a great variety of political problems. The Committee examined them from two points of view :

(**i**) from that of the structure of the Community ;

(**ii**) and from that of the powers and competence to be conferred on the Community in regard to international agreements which already exist or may subsequently be concluded.

5. *As regards the structure of the Community*, the familiar extreme theories were put forward during the debates.

According to one of these theories, the Community would present itself to third States and to the various international organisations as a new State, coherent, furnished with all the attributes of sovereignty, in favour of which the Member States, hitherto independent, would have relinquished their sovereign rights.

According to the opposing theory, the Community was only a very loose association of States which, while retaining their complete independence, had joined together in order to accomplish — possibly within the framework of the Council of Europe — certain specific and limited tasks.

The Committee considered that neither of these theories was in accord with the conceptions of the States concerned. It preferred to base its studies on the positive facts.

The first of the facts was the transfer of certain sovereign rigths by some of the States to the supra-national institutions created by the E. C. S. C. and E. D. C. Treaties.

The second fact is that the six States have preserved certain rights of sovereignty — subject to some important exceptions — even in the fields in which they were giving competence to the supra-national institutions.

The third fact is the possibility of expanding the circle of members, both in the E. C. S. C. and in the E. D. C. (cf. Article 98 E. C. S. C. and Article 129 E. D. C.).

The fourth fact is the adoption of the Eden Plan, (cf. Opinion N° 3 of 30th September 1952) by the Consultative Assembly of the Council of Europe.

The fifth fact consists of the provisions for collaboration between the E. C. S. C. and the Council of Europe, as set out in the Protocol concerning relations with the Council of Europe.

6. Having regard to these facts, the Committee has noted the following points:

a) The Community will have its own legal personality in virtue of which it will act, within limits which will have to be laid down in the Statute, in its dealings with other States and international organisations.

b) In addition to the Community, each of the six Member States will, in future, enjoy a similar right of action. The Statute of the Community will have to indicate how far the freedom of action of the States, considered individually, will be limited or abolished after the creation of the Community.

c) As the existing treaties have already provided for the admission of new members, the Statute of the Community will have to provide for a similar possibility.

Furthermore, it is manifestly desirable that States which, for any reason, are unable or unwilling to become members of the Community, should be able to link themselves closely to it in some appropriate manner. It is therefore proposed to provide for the possibility of « Association » in the Statute of the Community (cf. Part II of the present Report).

The conditions for admission to the Community, whether as members or as Associated States, should be the same as those which settle the qualifications for membership of the Council of Europe.

d) In conformity with the ideas underlying the Eden Plan and the decisions of the Consultative Assembly of the Council of Europe, the closest possible link must be established between the Community and the Council of Europe.

7. As regards *the powers and competence to be conferred on the Community in foreign affairs*, the following points should be noted:

a) The Member States, or some of them, are parties to various international agreements which specify mutual rights and obligations.

Provision must be made for the possibility either that the Community may accede partially to these agreements undertaking certain rights and obligations, or that it may completely assume the former rights and obligations of the Member States, in place of those States.

The Statute will have to confer upon the Community, while specifying its competences, the ability to take over rights and obligations when acceding to international treaties of this kind.

The chief treaties in this category, in relation to the two existing Treaties (E. C. S. C. and E. D. C.), are the Statute of the Council of Europe, the North Atlantic Treaty, and the O. E. E. C. and E. P. U. Treaties.

As regards future treaties agreement will have to be reached, before they are concluded, between the Member States and the Associated States on the following points:

— the Community's participation in such treaties,

— the relations between the Community and the Associated States, within the ambit of these treaties,

— the relations between the Community and third States parties to these treaties.

A general formula authorising the Community to accede to these new treaties should suffice, when the Statute is being drawn up.

As regards possible new Specialised Communities (« green pool », transport pool, electric power pool, « white pool » etc.), the Committee recommends that the Community's competence be extended so as to enable it:

— to take the initiative in setting up these new Specialised Communities,

— to undertake the administration of these new Specialised Communities,

— to represent the Member States and the Associated States within these new Specialised Communities.

b) In so far as the six Members States transfer rights and sovereignty to the Community under the two Treaties (E. C. S. C. and E. D. C.), the question arises: *who is going to represent the future Community in the international organisms* — in particular, in the various Councils of Ministers (Committee of Ministers of the Council of Europe, Atlantic Council, and Council of the O. E. E. C. etc.) ?

Will the Community have representatives side by side with the ministers of the Member States, or in place of those ministers ? Will the ministers of the Member States undertake the representation of the Community in those organisms ? To whom will these representatives be responsible ? Who will give them their instructions ?

These questions alone — and they could be multiplied — suffice to show that the political problem in this case is not only complicated but, above all, extremely delicate. It is all the more so because it cannot be decided solely by the Six States, seeing that the assent of the other parties to the treaties creating these organisms must also be obtained.

The Committee confined itself to an important observation namely, that the obligations which the future Community would have to assume under the international treaties might, in certain cases, substantially exceed the minimum powers and competence which (as they have already been conferred on the E. C. S. C. and the E. C. D.) must undoubtedly be transferred to the Community.

II. — ASSOCIATED STATES.

8. Immediately after the constitution of the E. C. S. C., several European States, in particular, Great Britain, expressed a desire to establish close and durable links with that Community without, however, becoming members. Under the leadership of Sir Cecil WEIR a British delegation went to Luxemburg to open negociations with the High Authority of the E. C. S. C. in regard to the details of an Association with Great Britain. M. Jean MONNET and the head of the British delegation, Sir Cecil WEIR, explained their positions about such an association. The statements of M. MONNET and Sir Cecil WEIR, which outlined their attitudes towards the question of Association, were examined by the Committee, which took full account of them in its deliberations.

9. The Community will also establish and maintain links of very different kinds and of varying closeness and duration with other States. It is already apparent that the States which, for one reason or another, are unable or unwilling to become members of the Community, nevertheless desire the provision of close and durable forms of liaison with the Community, enabling them to participate in the pursuit of its aims.

10. *a*) In the interest of Europe, as a whole, it is desirable that, in the first place, countries which are members of the Council of Europe, should associate themselves with the Community. The Committee wondered whether it might be expressly stated that Member States of the Council of Europe were entitled to associate themselves with the Community. It has abandoned the idea ; nevertheless, it is unanimously of opinion that if a Member State of the Council of Europe desired to open negociations with a view to the conclusion of an Association agreement such a request could not be set aside. On the other hand, the Community would retain its full liberty of decision in regard to European States not belonging to the Council of Europe.

b) Some Member States of the Community and also some other European States, have constitutional links with overseas States or Countries. The Committee recommends that the possibility should be left open for these overseas States to acquire the status of an Associated State, provided, however, that the European State concerned is itself a member of the Community, or associated therewith. In that case, regard must be had to the special nature of the relations by which the European State is linked to the overseas State.

c) The question arose whether the links of Association, as at present contemplated, could also be established with the United States of America. The Committee considered it highly desirable that the closest possible links, based on confidence and friendship, should be established between the United States and the Community. Nevertheless it considered that these close ties should not be created by an Association agreement, but by the conclusion of a special convention.

11. Some of the observers asked that the forms of Association should be allowed to define and develop themselves, keeping pace with the development of the Community, without this growth being hampered by too precise a definition, in advance, of the conditions of the Association.

The Committee showed itself in sympathy with this idea. Though it would be impossible to dispense with a minimum of rules for defining the concept of « Association » it is desirable to render these rules sufficiently flexible to enable agreements to be concluded in a form that would have regard to the British observers' desire that the Association between the Community and an Associated State should be allowed to develop progressively.

12. In view of the importance which the system of Association presents for the Community, the Committee proposes that the Statute of the Community should contain a chapter entitled « Association » or « Associated States » in which the essential characteristics of an Association would be set forth.

13. *a*) The Committee proposed the following definition of an Associated State :

« The expression "Associated State" denotes a State which, having declared its willingness to collaborate in certain domains, has concluded an Association agreement with the Community, specifying the co-related rights and obligations of each contracting party. »

b) The Committee considered that it was not desirable to determine in advance the fields of the Community's competence, in respect of which an Association might be concluded. It thought it possible, or even probable, that at the outset an Association would only apply to a limited domain, but that in the course of years it would extend more widely. However, it should be concluded in respect of matters of fairly substantial importance.

c) An Association always presupposes *the conclusion of an agreement of Association* between the Community and the Associated State.

An Association engenders *rights and obligations* both for the Community and for the Associated State. The rights and obligations may be of a different nature, on one side or the other. However, the rights conferred on one of the parties must be co-related to the obligations assumed by that party. It would be inadmissible that one party should claim rights while refusing to assume obligations.

It was asked that an Association should be capable of being effected, not only by the conclusion of a treaty, but by agreements of other kinds.

In the view of the Committee, an Association is of such high political importance for the Community that every Association agreement must be submitted by the European Executive Council to the Community's Parliament, for approval; it is not, however, necessary that, in all cases, this agreement should take the form of a treaty subject to ratification. If the Associated State is disinclined to conclude such a treaty, it can become pledged simply by its government's signature; but the Association agreement will not bind the Community, its Member States, or the other Associated States until it has been approved by the Community's Parliament.

14. As an Association is to constitute a close tie for a fairly long period, it would be advisable to prescribe a *reciprocal obligation for the parties to exchange information and to consult together.* Every Association agreement must contain a clause to that effect.

In certain cases it will be desirable to create *permanent mixed committees* between the Community and one or more Associated States. These committees could usefully be instituted both on the plane of the Executive Organisation and on that of the Parliament.

15. The Committee considered in what form, and to what extent the Associated States could participate in *the internal life* of the Community, particularly in the formulation of its decisions.

The Committee was unanimously of opinion that, in the internal life of the Community, certain spheres are exclusively reserved, by reason of their nature, to the Member States. Subject to this reservation, the position of an Associated State within the Community should admit of its being assimilated, to a large extent, to that of a Member State, subject, of course, to the condition that the Associated State fulfils its corresponding obligations towards the Community.

In a case of that description, the Statute of the Community should offer the Associated State the possibility of collaborating, with a right to vote, in the organs of the Community, where such collaboration is provided for in the Association Agreement. This should be done both on the plane of the Executive and on that of the Parliament.

If the parties concerned do not wish to establish so close a link between the Community and the Associated State, provision should be made for the sending of *observers* by the Associated State to the organs of the Community, in which they would sit, in a consultative capacity.

III. — RELATIONS WITH INTERNATIONAL ORGANISATIONS, ADMINISTRATIONS AND INSTITUTIONS.

A. — GENERAL OBSERVATIONS, AND RELATIONS WITH THE NEW SPECIALISED COMMUNITIES.

16. As regards the relations between the Community and the international organisations, administrations and institutions, the Committee draw a distinction between:

(**i**) the international organisations with which relations will be maintained, without any question, in virtue of the provisions of the E. C. S. C. and E. D. C. Treaties,

(**ii**) the other international institutions with which it is possible or even probable, that relations will be established, but in regard to which there is less urgent need — from the standpoint of the Committee's proceedings — to define the methods for the establishment of such liaisons,

(**iii**) the specialised Communities which may subsequently be set up.

17. As regards the first category of organisations, the question of liaison with the Council of Europe is dealt with in M. WIGNY's report (cf. Part V) ; the question of liaison with NATO and O. E. E. C. is dealt with in the present section.

As regards the accession of the Community to G. A. T. T. (General Agreement on Tariffs and Trade), the Committee referred more especially to Title X and Article 85 of the E. C. S. C. Treaty and to the second part of Chapter I of the Convention concerning transitional measures. The Community's competence in matters of commercial policy must correspond to its competence in this sphere in virtue of the E. C. S. C. Treaty.

The relations of the Community with the *European Payments Union* (E. P. U.) will depend on the competence which may be conferred on the Community in the *sphere of monetary policy* and international payments. The Community might be authorised to accede, within the scope of the E. C. S. C. and E. D. C. Treaties, or of other treaties which may subsequently be concluded, to international agreements existing in this field, or it may be authorised to conclude new agreements. Attention is also drawn to the Bretton Woods agreements instituting the International Monetary Fund and the International Bank of Reconstruction and Development.

The situation is the same in regard to the International Labour Organisation (I. L. O.) in virtue of the special provisions ot the E. C. S. C. Treaty, in particular Title I, Article 3 (e), a clause according to which the Community's institutions must :

> « promote the improvement of the living and working conditions of the labour force in each of the industries under its jurisdiction so as to make possible the equalisation of such conditions in an upward direction. »

18. As regards the second category of organisations, the Committee does not find it necessary, at this moment, to make proposals in regard to the methods of establishing relations with these organisations.

19. As regards relations with the new Specialised Communities, in connection with whose creation negotiations have been begun (green pool, transport pool, white pool, electric power pool), the question of the Community's position in regard to these new Specialised Communities calls for consideration.

It seems possible that these new Communities will be formed in spheres outside the scope of the Community's competence. In order to avoid duplication, and a miltuplicity of European organisations — already so numerous — the question arises whether it would not be advisable to direct the Community to take the *initiative* in the creation of these new Specialised Communities, especially where the field of activity of one of the said Communities does not fall within the scope of the Community's general competence. Thanks to the system of Association it becomes possible to allow European States which are not members of the Community to participate in the Specialised Communities, in liaison with the Community.

It should also be possible to entrust the competent institutions of the Community with *the administration of new Specialised Communities*, in case the said Specialised Communities have not been set up actually within the framework of the Community.

If the Member States of the Community or the Associated States desire to participate in a Specialised Community, concerned with an object outside the scope of the Community's competence, it is advisable that they should be enabled to be represented, collectively, by the Community in this new Specialised Organisation. In such a case, the different States concerned might refrain from becoming members of the Specialised Community, and only the Community, as such, would accede to the said Specialised Community in the place of the whole body of its members.

B. — RELATIONS WITH NATO.

20. The Committee took, as its starting-point, the view that the powers and competence of the European Defence Community in the sphere of general policy would be transferred to the Community. This applies especially to relations with the North Atlantic Treaty Organisation.

The Committee gave particular attention to certain clauses in the E. D. C. and NATO Treaties.

21. The E. D. C. Treaty and its protocols contain a number of provisions concerning the liaison between the E. D. C. and NATO and the relations between the States members of the E. D. C. and the States members of NATO.

Mention should be made in particular of the following articles of the E. D. C. Treaty: Articles 2, 4, 5, 10 §§ 2 and 4, 14, 18 §§ 1-4, 32, 47, 68 §§ 2 and 3, 69 §§ 2 and 3, 70 § 3, 77 § 1, 78 bis § 1, 87 bis § 4 *a* and *b*, 91, 94, 102 § 1 *c*, 120 § 2, 123 § 1, 127 §§ 7 and 8, 128; also of articles 7 § 2 and 26 of the Military Protocol, of the Protocol regarding the relations between the E. D. C. and NATO, and of the Protocol regarding mutual assistance guarantees to States members of the North Atlantic Treaty.

22. I think it will be useful, at this point, to quote the texts of the following articles of the E. D. C. Treaty:

Article 32. — The Commissariat shall assure the liaison necessary with Member States, with third party States and, generally speaking, with all international organisations whose assitance may prove to be necessary to achieve the purpose of the present Treaty.

Article 47 § 1. — The Council shall decide whether a joint meeting of the Council of Council of the the North Atlantic Treaty Organisation and the Council of the Community shall be requested.

23. I also reproduce the following paragraphs of the Protocol regarding the relations between the E. D. C. and NATO:

(§§ 1, 2 *and* 3 *are translated from the French text.*)

§ 1. — In regard to questions concerning the common objects of the two Organisations, mutual consultations will take place between the North Atlantic Council and the Council of the European Defence Community, and whenever either Council thinks it desirable, the two Conucils will hold a joint meeting.

If at any time one of the Parties to the North Atlantic Treaty or one of the Parties to the Treaty setting up a European Defence Community considers that there is a threat to the territorial integrity, the political independence or the security of any one of them, or to the existence or unity of the North Atlantic Treaty Organisation or of the European Defence Community, a joint meeting will be organised, at the request of the said Party, with a view to studying the measures to be taken to meet the situation.

§ 2. — With a view to close co-ordination on the technical plane, each Organisation shall communicate useful information to the other, and permanent contact shall be established between the personnel of the Services of the Commissariat of the European Defence Community and the personnel of the Services of the civil organs of the North Atlantic Treaty Organisation.

§ 3. — As soon as the forces of the European Defence Community have been placed under the orders of a Commander belonging to the North Atlantic Treaty Organisation, some members of the European Defence Forces will become members of the said Commander's Headquarters staff and of the appropriate subordinate Headquarters staffs. The Commanders belonging to the North Atlantic Treaty Organisation will establish the necessary liaisons between these forces and the other military organs of the North Atlantic Treaty.

24. I also reproduce the following articles of the North Atlantic Treaty of 4 April 1949:

Article 2. — The Parties will contribute toward the further development of peaceful and friendly international relations by strengthening their free institutions, by bringing about a better understanding of the principles upon which these institutions are founded, and by promoting conditions of stability and well-being. They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between any or all of them.

Article 4. — The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.

Article 8. — Each Party declares that none of the international engagements now in force between it and any other of the Parties or any third State is in conflict with the provisions of this Treaty, and undertakes not to enter into any international engagement in conflict with this Treaty.

Article 10. — The Parties may, by unanimous agreement, invite any other European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty. Any State so invited may become a Party to the Treaty by depositing its instrument of accession with the Government of the United States of America. The Government of the United States of America will inform each of the Parties of the deposit of each such instrument of accession.

25. As regards the competence of the Community in customs and fiscal matters, I would refer to article XI of the « Convention between the Parties to the North Atlantic Treaty concerning the legal position of their troops » ; as regards the territorial field of application of the Convention, I would refer to article XX of that instrument.

26. The Committee also had under consideration the legislation of the United States of America in regard to « Mutual Defence Assistance ».

The recognition of the aims of that legislation, which is formally required by the American Congress as a condition for granting assistance under the « Mutual Security Act », implies the possession of a corresponding competence by the Community, in so far as the latter will benefit, in the future, by assistance of that kind.

27. In regard to the competence of the Community in matters of economic policy, we would refer to article 2 of the North Atlantic Treaty (quoted above under § 4).

28. The Committee considered that the European Executive Council of the Community would have to undertake (perhaps after a period of adaptation, cf. Resolution I, § 7) the task entrusted to the Commissariat by Article 32 E. D. C. (i. e. the task of providing the necessary liaisons with Member States, third party States and, generally speaking, with all international organisations).

29. Article 47 of the E. D. C. Treaty lays down that the Council of Ministers of the E. D. C. shall decide whether a joint meeting of the Council of NATO and the Council of the E. D. C. shall be requested.

Should this right be transferred to the Executive Body in the Statute of the Community, it would become necessary to amend this clause.

30. The same question arises in connection with §§ 1 and 4 of the Protocol regarding the relations between the E. D. C. and NATO.

31. A question which I have already raised in the first part of this report now arises : would the Community, in the future, be represented in the Council of N. A. T. O. side by side with the six Member States or in place of them ?

That question is of particular importance because, according to article 9, sub-paragraph 2 E. D. C., no Member State may recruit or maintain national armed forces other than those for which provision is made in article 10 E. D. C., The military sovereignty of the Member States is thus transferred, in its main features, to the organs of the E. D. C.

Since the Community has to take over the competence of the E. D. C., the Member States will not be able, thenceforward, to take action in that domain save within the limits laid down by article 10 E. D. C.

It will, therefore, be necessary to decide — the existing treaties, including the North Atlantic Treaty, being amended correspondingly — which organ of the Community will, in the final phase, exercise the functions laid down in the E. D. C. Treaty, in the North Atlantic Treaty and in the additional Protocol of the North Atlantic Treaty, of 27 May 1952.

32. In the same connection, it will also be necessary to settle whether the Community will, as such, become a member of NATO.

According to article 10 of the North Atlantic Treaty, any other European State may, in pursuance of an unanimous agreement by the members, be invited to accede to the Treaty, provided that it fulfils certain conditions. It will have to be considered whether the Community can be regarded as a « State » within the meaning of that clause.

If the answer is in the affirmative, there will no longer be any place in NATO for the individual representation of the different Member States. In that case, it will be noted that the problem of the right of voting in the Council of NATO will cease to be of decisive importance because the rule of unanimity applies to all important questions.

C. — RELATIONS WITH O. E. E. C.

33. The Committee considered that it is absolutely essential to settle, on the European plane taken as a whole, the relations between the future European Political Community and the O. E. E. C., so as to take due account of the legitimate interests of the two groups of members.

34. The Committee's opinion was based on the following facts and viewpoints:

a) The whole field of European economic policy, including trade policy, monetary policy and the question of international payments, is at present being studied by various organisations, whose composition varies from one case to another.

b) All Member States of the Community are members of the Council of Europe, which has entered into an agreement with the O. E. E. C. for settling the details of their collaboration.

c) Furthermore, all the Member States of the Community are direct members of O. E. E. C. and the E. P. U.

d) The Community comprises six members, the Council of Europe fifteen and O. E. E. C. eighteen. In addition, the E. P. U. includes overseas States and territories which have connections of a constitutional nature with certain European Member States.

Switzerland, Portugal and Austria belong to O. E. E. C. and the E. P. U., without being members either of the Community or of the Council of Europe.

Within the framework of O. E. E. C. the United States of America are able to participate and collaborate permanently.

e) In accordance with what is stated in its Preamble, the Treaty instituting the Coal and Steel Community was entered into because it was felt that the only way to construct a united Europe is by concrete achievements, and by the estblishment of bases of economic development.

f) In the treaty instituting the E. C. S. C. the Member States of the Community have transferred certain sovereign rights to the organs of the European Coal and Steel Community in connection with matters set forth in the said treaty, which are very closely related to the problems involved in European economic policy.

g) Under Article 93 of the Treaty instituting the E. C. S. C., the High Authority maintains all necessary liaison with O. E. E. C. and keeps it regularly informed of the Community's activities.

35. By virtue of the E. C. S. C. and E. D. C. treaties, the Community will have more or less extensive powers in the following fields of economic policy:

— industrial production and development,

— transport,

— finance,

— customs policy,

— imports and exports,

— commercial policy,

— monetary policy,

— international payments.

All the questions enumerated above are dealt with by O. E. E. C. from the standpoint of European economic policy; as the latter sends its reports to the Council of Europe, these matters form the subject-matter of discussions, recommendations and decisions of the Council of Europe.

36. In view of this situation, the Committee feels it is essential, in order to promote development and consolidation of a European economic policy (which is one of the aims and tasks of O. E. E. C., of E. P. U., of the Council of Europe and of the Community), to take at the earliest possible moment the measures necessary for the co-ordination of the activities of these various bodies so as to define a uniform European economic policy and, in time, to institute uniform political agencies to implement this policy.

FIFTH PART

LIAISON TO BE ESTABLISHED BETWEEN THE COMMUNITY AND THE COUNCIL OF EUROPE

REPORT

submitted by M. WIGNY, Rapporteur.

I. — GENERAL OBSERVATIONS

1. — Terminology.

In the interests of clarity it is desirable to settle, provisionally, some questions of terminology.

At the present moment 15 countries participate in the Council of Europe. A smaller group will constitute the Political Community, whose Statute we are now considering. It will be referred to in this Report as the « Community ».

For the sake of brevity we shall sometimes speak of « the Six » and « the Fifteen ». However, it will be better to speak of the « Concil of Europe » and the « Community » ; for both of these bodies regard themselves as organisations open to further accessions, and that point needs to be brought out in the terminology.

2. — Proceedings of the Constitutional Committee and of the Sub-Committee on Liaison.

At its session on 23-27 October 1952 the Constitutional Committee created a Sub-Committee on Liaison, having as its Chairman M. van der GOES van NATERS ; it appointed as its Rapporteurs MM. SEMLER and WIGNY.

This Sub-Committee held meetings on six days ; it based its discussions, as regards liaison with the Council of Europe, on notes prepared by M. MARGUE, M. PARIS, Secretary-General of the Council of Europe and M. WIGNY.

At its session on 15-20 December 1952 the Plenary Committee adopted, without amendment, the conclusions submitted to it by its Sub-Committee.

3. — The Role of the Constitutional Committee.

The Committee considered that the task assigned to it was to study the different solutions applicable to the problems referred to it, and, in certain cases, to indicate its preference. That course was followed in regard to liaison. The texts which the Committee proposes are in some cases alternative and in some cases complex : in regard to the former category the Assembly will be able to make a selection ; in regard to the second it will only retain — if it sees fit — certain of the conclusions submitted to it.

4. — The problem of liaison.

This problem involves some questions which are quite distinct :

(i) We desire to organise the Community. What links should be established between it and the Council of Europe ?

(ii) Some of the Member States of the Council of Europe may wish to collaborate more closely with the Community without however being completely bound up with it. The result might be the formation of veritable « Specialised Communities » of 7, 8 or 9 States, in an intermediate position between the Community and the Council of Europe. We are thus led to consider what should be laid down in the Statute in regard to the links of « association » between the Community and these States.

(iii) Relations will have to be established between the Community and the larger European or international organisations, already in existence.

The task has been divided between two Rapporteurs. The present note is concerned with the links to be establised with the Council of Europe. Points **(ii)** and **(iii)** will be the subject of a separate report by M. SEMLER.

5. — The difficulty and importance of the problem.

To establish relations between two entities, one of which — the Community — has not been defined, may seem to be, logically, almost impossible. It is however a practical necessity.

The prospects for the acceptance of the Community's Statute are largely dependent on the organisation of effective liaisons.

It would be regrettable to create an atmosphere of mistrust between the Community and the Council of Europe. It might lead the latter to adopt an attitude of antagonism. Even among the members of the Community there are many who believe that the international equilibrium of the group can only be ensured by the external support which would be afforded by the Council of Europe as a whole, or by some of its members.

The establishment of close liaisons is therefore a question which concerns both the members of the Community and those of the Council of Europe.

The desire of the members of the Community in regard to this matter has been manifested in a number of ways. Article 38 of the E. D. C. Treaty which forms the basis of our discussions indicates, in the first place, that the permanent organisation of the E. D. C. « should be so conceived as to be able to constitute one of the elements in a subsequent federal or confederal structure » ; it then directs the Assembly to examine problems arising from the coexistence of different agencies for European cooperation, already established, or which might be established.

The resolution adopted at Luxemburg on 10 September 1952 by the six Ministries for Foreign Affairs requested the Ad Hoc Assembly to associate observers from other countries in its work, especially from countries which are members of the Council of Europe, and to submit periodical reports to the latter. Not content with indicating the procedure, the Six Governments defined the aim : they declared explicitly that they were founding themselves directly on the proposals of the British Government, which advocate the establishment of the closest possible ties between the Community and the Council of Europe.

The Council of Europe, for its part has considered the relations that should be established between itself and the « restricted » communities. Prolonged debates and various interim reports finally led to the adoption of Mr. AMERY's report and to Opinion N° 3 which was adopted by the Consultative Assembly on 30 September 1952.

Reference should also be made, in studying these questions, to the preparatory report on a European Political Authority submitted by M. MARGUE to the General Affairs Committee on 24 May 1952 (doc. AS/AG (3) 80) and to the introductory report of the Committee of Jurists on the problem of a European Political Community (doc. SG (52) 2).

II. — THE TWO TYPES OF LIAISON

6. The links to be set up between the Community and the Council of Europe can be grouped in two general categories : internal liaisons and external liaisons. These liaisons may be combined. The Committee hopes that contacts will be multiplied to the greatest possible extent.

On the other hand, certain proposals can be adopted and others rejected.

A) Internal liaisons.

7. At the present time six States —which hope to see their number increased — are contemplating the constitution of a Community. The nature of that Community — whether confederal, federal, or *sui generis* — is of little importance here. It remains true that its nature will be different from that of the present Council of Europe. That is a serious matter : for, in such a case, it is difficult to dovetail one legal structure suitably into the other : the Council of Europe cannot comprise the Political Community ; and the latter cannot subsequently expand within the framework of the Council of Europe.

If it were possible to transform the Council of Europe so as to give it the same character as the Community it would be very much easier to superpose one of these two groups on the other. The Community would be a more highly developed, more integrated section of the

Council of Europe. The relations between them would be internal and the passage from one to the other would be facilitated.

The Committee was in favour of such a solution. It was therefore led to request the Assembly to submit to the Ministers not only the Statute of the Community, but also proposals for a revision of the Statute of the Council of Europe.

The Council of Europe has sovereign power to accept or reject the suggestions which will thus be made to it.

The acceptance of these suggestions would ensure a more harmonious organisation of Europe and at the same time make it easier to find a place for the different Communities within the framework of the Council of Europe which, at the present time, constitutes the wider group. The rejection of the suggestions must not prevent the members of the Community from elaborating and adopting their Statute. The Committee was very firm on this point. Moreover, it would still be possible to establish effective liaisons, as indicated above.

B) External liaisons.

8. A second general solution would consist in not changing the present Statute of the Council of Europe and confining ourselves to working out the Statute of the Community. In this case it would be necessary to enumerate the « external » liaisons to be created between these two independent organisations, so as to harmonise their operation.

The present report deals, successively, with internal liaisons, which are the closest and most desirable, and with external liaisons. We repeat that all these liaisons are capable of being combined.

III. — FIRST SOLUTION. — INTERNAL LIAISONS

9. If the Assembly adopts the views of its Committee, it will therefore propose, simultaneously, a Statute for the Community and a modification of the Statute for the Council of Europe. It will be remembered that the Consultative Assembly itself unanimously decided, as early as September 1949, that the aim of the Council of Europe must be « the establishment of a European Political Authority endowed with limited functions but with real powers. »

In the further paragraphs of this Report we have amplified the proposals put forward by the Committee with a view to making the Council of Europe a broader Political Community, capable of taking in that of the Six. In a note submitted by M. PARIS, Secretary General of the Council of Europe, in his personal capacity (Note appended to the present Report), it is emphasised that the implementation of these proposals would only involve slight amendments in the Statute, which have often been called for by the Consultative Assembly. In certain cases, even, it will suffice to confirm officially certain interpretations which already prevail.

A) General Principles.

10. Article I, *a*) of the Statute of the Council of Europe lays down that « the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress. »

Some members of the Committee proposed that the expression of this intention should be made more forceful by a change in the wording: « the Members of the Council of Europe *pledge themselves* to achieve a greater unity between themselves for the purpose of safeguarding the principles which are their common heritage and facilitating ..., etc. »

Whether this amendment be agreed to or not, the Members of the Community are bound by the pledge which they gave as early as 1949 on entering the Council of Europe. By deciding to set up the Community they could not — and did not wish to — weaken the import of those pledges unilaterally.

The Council of Europe, for its part, has always recognised the possibility of agreements among certain Members. The problem was studied, in particular, in connection with the « specialised authorities », which are recognised as legitimate provided that they do not retard the progress towards a closer unity among the members of the Council as a whole. This principle is worthy of being generalised and clearly set forth in the Statute of the Council of Europe (for instance in Article 23 *b*).

It would be desirable on psychological grounds that, at the time of the signature of the Community's Statute, the general pledges resulting from the Statute of the Council of Europe should be explicitly reaffirmed by all its members, and particularly by those which are also members of the Community. These pledges contain the substance of the Eden Plan.

The wording of the Statute of the Council of Europe should at the same time be clarified in order to establish more effectively the liaison between the Council of Europe, the specialised authorities and the Community.

B) Competence of the Council of Europe.

11. To ask the Member States of the Council of Europe for renunciations of sovereignty would be to invite certain defeat. However, the powers and competence already vested in the Council of Europe, or demanded by a large majority of the Consultative Assembly, are sufficiently extensive for their rationalisation to constitute an aggregate, the political import of which is far from negligible.

(**i**) The Member States of the Council of Europe are already able to consult each other on all matters of general European interest. In a democratic world this exchange of views is highly valuable, and can bring about unification of policies. We must maintain this system of preliminary consultation and possibly, in certain cases, make it compulsory.

(**ii**) The organs of the Council of Europe might be competent to prepare draft treaties, or draft laws on parallel lines (i. e., domestic laws which would be identical in the different Member States). That is the procedure which has been followed for many years past by the I. L. O. The Council of Europe has itself, by a similar procedure, prepared the European Convention on Human Rights.

It would be a great advantage if this competence were explicitly stipulated in the Statute of the Council of Europe. It is an open question whether the right of initiative should be reserved to the Council of Ministers or be vested in the Consultative Assembly.

(**iii**) The Consultative Assembly has persistently urged that the European administrations which have substantially the same territorial competence as itself should be integrated in the Council of Europe. The principle ones concerned are the O. E. E. C. and the E. P. U.. The super-position would not be perfect but the « additional » members might be given the status of States co-operating in certain specialised matters. (The term « Associated State » has been rejected because it already possesses a different meaning in the Statute of the Council of Europe).

It is easy to conceive how greatly this concentration would add weight to the Committee of Ministers of the Council of Europe and importance to the discussions of the Consultative Assembly.

If such an integration is found to be impracticable, a committee set up under the sponsorship of the Council of Europe and including representatives of the Council of Europe, the Organisation of European Economic Co-operation and of the European Payments Union should study the possibility of coordinating the two last-named bodies with the Council of Europe.

12. It would appear that these proposals, submitted in this modest form but nevertheless already filled with veritable substance, could not possibly alarm any member of the Council of Europe. Should any of them be hesitant as to a given point, they could be given the status of a co-operating State.

In conclusion, it must be emphasised that the collaboration of the Member States is based not only on their participation in a Council whose political competence is limited but real, but also on their accession to the European Convention on Human Rights.

C) The organs of the Council of Europe.

13. Our efforts, therefore, as far as the Council of Europe is concerned should be applied less to an extension of its competence than to a readjustment of its organs, so as to make them homogeneous with those of the Community and thus to facilitate the interlocking of the two organisations. Here, again, only slight changes might be needed.

i) *The Assemblies.*

14. The Parliament of the Community comprises two Chambers. Which of them will « interlock » with the Consultative Assembly ? In the Committee's view it should be the Chamber which, by its composition, most closely resembles the Consultative Assembly, i. e. the Senate. The fact that the Council of Europe will only have contact with the Senate, seems to imply that, under the internal procedure of the Community, it would be to the Senate that draft laws must first be submitted. In that way, the benefit of the opinions of the observers from the Council of Europe would be secured from the very beginning.

15. The Committee considered that the members of the Community's Senate should be the representatives of the Six Countries in the Assembly of the Council of Europe. This should make it easier to secure acceptance of an arrangement whereby the other members of the Consultative Assembly could continue to co-operate with their colleagues (though now with the status of observers) when the latter were discussing matters peculiar to the Community.

It will be noted that the members of the Community's Senate have to be appointed by the national Parliaments, as is the general rule in appointing representatives in the Consultative Assembly. The only outstanding question seems therefore to be the harmonisation of the number of seats allotted to the respective members of the Community in the Senate and in the Consultative Assembly. A mere decision by the Committee of Ministers of the Council of Europe should be sufficient to settle the point.

16. What rights should be given in the Community's Senate to the representatives of non-member States ? Internal liaison is thus seen to be dependent, in substance, on the possibility of achieving close co-operation within the Senate.

The following points must be emphasised :

— Certain European States which are not members of the Community, will nevertheless be Associates. Their status, which is defined in M. SEMLER's report (cf. Part IV), confers on them correlative rights and obligations : in particular participation, with a right to vote or in a consultative capacity, in the proceedings of the Senate or in the periodical conference on the level of the Executive Organisation (cf. Resolution III § 14).

— States which are not Associates cannot lay claim to these rights solely on the ground of membership in the Council of Europe. The Committee, desirous of promoting co-operation, suggests that observers with limited rights be admitted to the Senate of the Community. Representatives in the Consultative Assembly of countries not members of the Community might attend the meetings (except during secret sessions) without the right to speak. They would have no advisory capacity but could speak when invited to do so by the Senate. They could submit memoranda in writing, the printing and circulation of which would be decided by the Bureau of the Senate.

(ii) *The Executive Institutions.*

17. As regards the Council of National Ministers of the Community, the same individuals might sit in that Council and in the Committee of Ministers of the Concil of Europe without the need for any amendment of the latter's Statute.

18. Can the Community, as such, be represented in the Committee of Ministers of the Council of Europe ?

The Committee considered that, in addition to the six Ministers representing their countries, individually, in the Committee of Ministers, a seat should be given to an additional member who would be the official representative of the Community. Such a decision would appear to require amendments to Articles 13 and 14 of the Statute of the Council of Europe

19. Coordination being thus achieved, the question arises what rights will be enjoyed in the Community's Executive organisation by Ministers representing States in the Council of Europe which are not Members of the Community.

The Committee considered that, although the status of Associate implies certain privileges in these matters (cf. Resolution III, § 14), the mere fact of being a member of the Council of Europe would not justify them. However, the members of the Council of Europe who are concerned might be invited to take part in certain proceedings.

The question also arises what will be the position of the Ministers of Member States of the Community in the Committee of Ministers of the Council of Europe, supposing that one of their decisions came up for discussions there ? It seems obvious that they will be bound by their decisions. It would be inconceivable that the minority should reiterate its objections before a larger body.

(iii) *Court of Justice.*

20. The Consultative Assembly of the Council of Europe adopted, on 27 September 1952, a Recommendation 36, advocating the institution of a single European Court of Justice. The Committee did not however endorse this proposal (cf. Part. III and Resolution IV, § 1).

D) Conclusions.

21. The following conclusions are to be drawn from the foregoing statement, which defines the scope of internal liaisons :

a) The Assembly should propose at the same time the Statute of the Community and a modification of the Statute of the Council of Europe, with a view to making internal liaisons possible and to facilitating close co-operation between the Community and the Council of Europe.

This will however involve two distinct juridical acts, which cannot be comprised in one and the same instrument. They cannot be adopted simultaneously, and the amendment of the Statute of the Council of Europe cannot be made a condition for the adoption of the Community's Statute.

The changes here proposed in the Statute of the Council of Europe are legal rather than political, and do not entail any waivers of sovereignty. But they have the great advantage of enabling us to set up a logical framework in which, not only the Community, but also any other community which may be set up hereafter can be given a place. Such a harmonious arrangement will facilitate super-positions of communities, which may often present great diversity in their territorial extent.

The twofold proposal of the Assembly will moreover have great psychological importance. It will prove the determination of the Member States of the Community not to be separated from the rest of Europe but, on the contrary, to strengthen the Council of Europe.

b) The fact that the institutions of the Community are comprised in the broader institutions of the Council of Europe must however in no way limit or condition the Community's sovereignty ; while facilitating co-operation there can be no question of subordination.

IV. — SECOND SOLUTION — EXTERNAL LIAISON

22. « External liaisons » do not offer the same advantages as « internal liaisons » which facilitate the adjustment and interlocking of the organs and institutions that together make up the whole European machinery. They may have to be adopted as a second-best solution if the structures of the two Communities are not sufficiently homogeneous. External liaisons however offer a valuable assurance of collaboration ; they were examined in Opinion No. 3 of September 30, 1952 adopted by the Consultative Assembly of the Council of Europe on « the best means of implementing the proposals of the United Kingdom (Eden Plan) ».

The Committee considered that external liaisons should supplement internal liaisons. If the Statute of the Council of Europe is not amended, external liaisons will alone be possible. It is in view of that contingency that certain points already enumerated in the first solution are taken up again in the second.

23. The Committee submits the following suggestions :

a) The Community and the Council of Europe might have their seat in the same locality and in the same premises ; this could be done without any loss of sovereignty by either of them.

b) Certain relations, based on the procedure of the internal operation of each organisation, are conceivable, for instance :

(**i**) Exchange of information, statistics and annual reports (cf. in particular the protocol of the E. C. S. C. Treaty concerning relations with the Council of Europe).

Similar information should be transmitted to the Council by the States which are not members of the Community, thus providing reciprocity.

(**ii**) The possibility of mutual consultation.

(**iii**) The possibility of mutual recommendations and the obligation to report on the action taken in regard to these recommendations (cf. the Protocol of the E. C. S. C. Treaty and the statutory resolution of the Councill of Europe concerning specialised authorities.

b) Other liaisons might be set up, based on a combination of personal functions, e. g. :

— The identity of the members of one Chamber of the Community's Parliament (the Senate) and of the Consultative Assembly.

— Identity of the Ministers sitting in the Community's Council of National Ministers and in the Committee of Ministers of the Council of Europe.

— Identity of the administrative services which might be used, to a certain extent, by the Community and the Council of Europe.

d) The Council of Europe might, subject to conditions to be determined, accredit observers, whose competence would have to be defined, to the different institutions of the Community.

— Attendance at meetings without the right to speak ;

— The expression of opinions, as of right, or on invitation ;

— Communication of written memoranda etc.

e) The Community might decide not to deal with certain matters till it had obtained the opinion of the Council of Europe (Preliminary and compulsory consultation). This would apply, for instance, to all economic questions. It would be regrettable to conclude agreements between the Six without having first studied the possibility of wider coordination.

Some members of the Committee however drew attention to the risk of multiplying organisms and making the procedure too cumbersome.

f) Finally, different situations might be conceived in regard to third States, considered individually.

(**i**) Member States of the Council of Europe would be able to enter the Community (cf. Resolution II, §§ 33 and 34).

(**ii**) States which are members of the Council of Europe might accredit embassies or permanent delegations to the Community (cf. Resolution II, § 10 and the preceding sub-paragraph of the High Authority of the E. C. S. C.).

(**iii**) Co-operation with specified States could be ensured in forms more flexible than affiliation, e. g. by association agreements which, as we have already said, would lead to the setting up of veritable specialised communities of 7, 8, 9 members... (Cf. Part IV of M. SEMLER's report).

ANNEX TO PART V

NOTE

submitted by M. PARIS,

Secretary-General of the Council of Europe

I. — The aim of the Council of Europe, as stated in its Statute, is to achieve a greater unity between its Members.

When it was found that some of the Members of the Council were desirous of establishing closer organic ties with each other — « Specialized Authorities » they were called at that time — it was admitted that this policy was in conformity witht the aim of the Council of Europe — provided, naturally, that it was consistent with a policy of closer union between all the Members of the Council.

All the texts adopted by the Council of Europe in regard to Specialized Authorities and partial Agreements were inspired by the same consideration ; to encourage any policy calculated to tighten the links between a group of Member States within the framework of the aim of the Council of Europe.

It was, indeed, the same idea that inspires the « Eden » proposal.

Accordingly, it should be admitted that the creation of a Community between the Member States of the European Communities of Coal and Steel and Defence is in conformity with the aim of the Council of Europe. This fact might be declared in the Statute of the Council itself, for instance, by the insertion in article 1 of a clause in the following terms :

« The Community created by the Statute signed at..... on the ..... is in conformity with the aim of the Council. The Members of the Council, which do not belong to that Community, remain free to accede to it, or not, or to conclude Association Agreements subject to the conditions laid down in the Community's Statute. »

The rules in regard to the liaison to be established between the Community and the other Members of the Council of Europe could be logically deduced from the above declaration. The aim of such a liaison would be : to encourage the action of the Members of the Community with a view to the simultaneous achievement of a closer union between all the Members of the Council of Europe.

II. — The Committee considered that it might be easier to establish what it calls internal liaison between the Community and the Council of Europe, if the political character of that Council were given greater emphasis.

It was recognized, on the other hand, that it would be « politically impossible and practically useless to ask the Members of the Council of Europe for an abandonment of sovereignty. »

As the consultative character of the Council of Europe would therefore have to be maintained, the Committee proposes to ask the Members of the Council of Europe to make preliminary consultation of the Council obligatory in certain cases.

Here it may be observed that a similar proposal had already been submitted by the Consultative Assembly to the Committee of Ministers, but it had failed to obtain the approval of that body.

Could we not, however, seek to strengthen the consultative action of the Council of Europe by strengthening the undertakings given by the Members regarding the achievement of the Council's aim, on the lines, for example, of the clauses which bind the Member States of the Brussels Treaty (articles 1, 2 and 3) ?

III. — The Committee has also suggested that the Council of Europe should have competence to prepare draft treaties, or draft laws on similar lines.

On that point it should be noted that, in a resolution adopted by the Committee of Ministers at its eighth session in May 1951, that Committee declared its intention of giving effect to the following provisions:

Powers of the Committee of Ministers (Article 15 of the Statute).

« The conclusions of the Committee may ,where appropriate, take the form of a convention or agreement. In that event the following provisions shall apply:

(i) The convention or agreement shall be submitted by the Secretary-General to all Members for ratification;

(ii) Each Member undertakes that within one year of such submission, or, where this is impossible owing to exceptional circumstances, within eighteen months, the question of ratification of the convention or agreement shall be brought before the competent authority or authorities in its country;

(iii) The instruments of ratification shall be deposited with the Secretary-General;

(iv) The convention or agreement shall be binding only on such Members as have ratified it.

It would appear, that, by the insertion of that text in the Statute of the Council of Europe, and also by reason of the fact that the Consultative Assembly is already at liberty to propose draft conventions to the Committee of Ministers, the Committee could receive satisfaction on this point.

IV. — It has been suggested by the Committee that the O. E. E. C. and the E. P. U. should be integrated in the Council of Europe, or, if that is found impossible, that a coordinating organ should be set up under the auspices of the Council of Europe.

The first of these suggestions is not one which could be dealt with by a simple modification of the Statute of the Council of Europe; the second would not require such a modification.

The suggestion for the creation, under the auspices of the Council of Europe, of a co-ordinating organ which would ensure the unity of the policy of the Council of Europe, of the O. E. E. C., and of the E. P. U. does not call for any observations. Nevertheless, attention should be drawn to the agreements which now govern the relations between the Council of Europe and the O. E. E. C. These agreements already enable the Council of Europe, and in particular the Consultative Assembly, to assume an important consultative role in regard to the economic policy which the Members of the O. E. E. C. pursue in that organization.

V. — In order to assist in bringing the organs of the Council of Europe into harmony with those of the European Political Community, the Committee has put forward certain suggestions:

a) The number of representatives in the Consultative Assembly should be proportionate to the number occupying seats in the Senate of the Community.

The adoption of this proposal would only require a suitable modification of article 26 of the Statute. As a fact the proposal is already comprised in the « Eden Plan » and its adoption would not be likely to encounter serious difficulties. Nevertheless it raises the question of the maintenance of the system of Substitutes.

It would be possible to envisage the insertion of a clause in the Statute of the Council of Europe, according to which the Members of one of the Chambers of the Community would, automatically, be the representatives of the Member States of the Community in the Consultative Assembly.

N. B. An examination of the foregoing questions could not be usefully undertaken until the Assembly has stated its views on the Committee's proposals in regard to the Community's Parliament.

b) The Committee has examined the problem of the representation of the Executive Organ of the Community in the Committee of Ministers of the Council of Europe.

It is difficult to say what modification will have to be made in the Statute for that purpose, until the character of this representation, and the role to be assigned to it, have been made clear.

It is, however, evident that such a representation might appreciably effect the present procedure of the Committee of Ministers.

VI. — It appears, speaking generally, that a suitable method of creating liaison between the Council of Europe and the Community would be the transmission of reports to the Council of Europe by the competent organs of the Community. That system has already been advocated in the statutory text concerning the Specialized Authorities, and has been adopted in the Protocol appended to the Treaty instituting the European Coal and Steel Community.

However, it would be advisable to make it clear under what conditions these reports would be drawn up and submitted to the Council of Europe (See in regard to that point § (*viii*) of the statutory text concerning the Specialized Authorities).

Furthermore, it would be desirable to consider what action the Council of Europe could take on these reports, and what would be the consequences of any resolutions which the organs of the Council of Europe might adopt in regard to them.

VII. — It would also be desirable to adopt the idea of exchanges of information, documents and statistical data between the Political Community and the Member States of the Council of Europe not belonging to the Community (See § (iv) a) sub-paragraph 2 of the statutory Resolution concerning the Specialized Authorities). These exchanges might be effected through the Secretary General of the Council of Europe, and they would enlarge the role which the Council of Europe might assume as an organ of liaison.

PART VI

CONCLUSIONS
ADOPTED BY THE CONSTITUTIONAL COMMITTEE

RESOLUTION I

The integration of the European Steel and Coal Community and of the European Defence Community in the Community.

Transfer of the Powers and Competence of the E. C. S. C. and the E. D. C.

1. The Community shall possess the powers and competence conferred on the European Coal and Steel Community and on the European Defence Community by the treaties which set up those Communities.

Methods for the integration of the E. C. S. C. and the E. D. C. in the European Political Community (1).

The Community, together with the E. C. S. C. and the E. D. C. shall constitute a single legal within this entity the E. C. S. C. and the E. D. C. shall be separately administered in accordance with the provisions respectively applicable to those Communities.

a) *Parliamentary Institutions.*

3. The Parliament of the Community will forthwith take the place and assume the powers and competence of the Common Assembly of the E. C. S. C. and the E. D. C.

b) *Council of National Ministers.*

4. The Council of National Ministers of the Community will forthwith take the place and assume the powers and competence of the Councils of Ministers of the E. C. S. C. and the E. D. C.

c) *Institutions for the settlement of disputes.*

5. The judicial powers of the Community will the assigned to the Court of Justice provided for the E. C. S. C. and E. D. C.

d) *Executive Institutions.*

TRANSITIONAL REGIME.

6. Until the expiry of a period of adaptation, the duration of which shall be determined.

(i) The High Authority of the E. C. S. C. and the Commissariat of the E. D. C. will continue in office, but will discharge the functions assigned to them by the E. C. S. C. and E. D. C. Treaties under the direction and supervision of the European Executive Council;

(ii) The President of the High Authority of the E. C. S. C. and the President of the Commissariat of the E. D. C. will sit « ex officio » upon the European Executive Council with a right to vote, but they will retain their personal status resulting from the E. C. S. C. and E. D. C. Treaties, in particular from Articles 24 of the E. C. S. C. and 26 of the E. D. C.

(iii) During the period of adaptation the Community, in collaboration with the President of the High Authority of the E. C. S. C. and the President of the Commissariat of the E. D. C., will prepare the necessary protocols for the complete, progressive integration of the E. C. S. C. and the E. D. C. in the Community (2).

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(1) Hereinafter referred to as the Community.

(2) No decision has yet been taken as to the methods by which these protocols are to be adopted and put in force.

DEFINITIVE REGIME.

7. At the expiry of the period of adaptation the European Executive Council will take over the functions of the High Authority of the E. C. S. C. and of the Commissariat of the E. D. C., in conformity with the rules laid down in the E. C. S. C. and E. D. C. Treaties, in so far as those rules have not been modified by the Community in accordance with the procedure laid down in § 8 of the Resolution on the powers and competence of the Community.

RESOLUTION II

The powers and competence of the Community.

A. — GENERAL PRINCIPLES.

1. A Political Community, supranational and indissoluble, founded on a union of the peoples, is instituted by the present Statute.

2. The Community has the following mission and general aims:

— to assist in protecting human rights and fundamental freedoms in the Member States;

— to assist, in co-operation with the other free nations, in ensuring the security of the Member States against all aggression;

— with that object, to co-ordinate the foreign policy of the Member States;

— to contribute, with due regard to the general economy of the Member States, to economic expansion, to increasing employment and to the raising of the standard of living of the Member States by means, in particular, of the progressive establishment of a common market;

— to assist in the attainment by the Member States, in liaison with the other States parties to these Treaties, of the general objectives laid down in the Convention on Human Rights, the Statute of the Council of Europe, the European Convention for Economic Co-operation and the North Atlantic Treaty.

3. The Community can discharge its mission only within the limits of the competence which is expressly conferred on it by its Statute and under the conditions specified therein.

The competence and powers conferred on the Community by its Statute shall be restrictively interpreted.

4. The Community is a legal personality.

In international relations, the Community shall possess the legal personality necessary to enable it to discharge its duties and to aschieve its objects.

In each of the Member States, the Community shall possess the widest measure of legal capacity which is enjoyed by national corporate bodies; in particular, it may acquire, or dispose of, immovable and movable assets and may appear before the courts.

5. The Member States undertake to take all the general or special measures necessary to ensure the performance of the obligations resulting from the decisions or recommendations of the Community's institutions and to assist the Community in the accomplishment of its mission.

The Member States undertake to refrain from any measure which would be incompatible with the provisions of the present statute.

B. — CONCERNING POWERS AND COMPETENCE WITHIN THE COMPASS OF THE E. C. S. C. AND E. D. C. TREATIES, AND THE REVISION THEREOF.

6. The Community shall possess the powers and competence conferred on the European Defence Community and the European Coal and Steel Community by the treaties which instituted those bodies, and, in addition, any other powers and competence conferred on it by the present Statute or by subsequent amendments thereto.

The Community shall exercise its powers and competence under the conditions laid down in the resolution on the integration of the E. C. S. C. and the E. D. C. in the Community.

7. Excepts in urgent cases, the normative measures that have to be taken by the executive institutions under article 95 of the E. C. S. C. (sub-paragraph 1) and article 124, of the E. D. C. (in cases not provided for in the E. D. C. and E. C. S. C. treaties) must be submitted for previous appro val by the Parliament of the Community. In urgent cases, the measures in question shall be submitted subsequently for ratification by the Parliament of the Community.

8. (**i**) The provisions of the E. C. S. C. and E. D. C. Treaties concerning the competence, the powers and the institutions of those two Communities can be amended only by the constitutional procedure for revision referred to in section F.

(**ii**) After the expiry of a transitional period, the Political Community may revise those provisions of the E. C. S. C. and E. D. C. Treaties which are not covered by sub-paragraph (**i**) above, under the following conditions:

a) The provisions concerning the powers assigned to the respective institutions of the Communities or concerning the allocation of powers between them, or concerning the prerogatives of the governments within these Communities (in particular, the powers and competence of the Councils of Ministers of the E. C. S. C. and the E. D. C.) may not be modified by the legislative organs of the Political Community except with the unanimous concurrence of the Council of National Ministers.

b) The other provisions of the E. C. S. C. and E. D. C. Treaties which are not cosvered by sub-paragraphs (**i**) and (**ii, a**) of the present paragraph shall be considered laws of the Community and may be amended by the legislative organs of the Political Community under the conditions laid down in the Statute.

c) If a State considers that an amendment adopted under the procedure referred to in sub-paragraph (*b*) is calculated to provoke grave and persistent disturbances in its economy, it may appeal tot he Court, which may consider whether or not the complaints is well-founded and decide to annul the amendment.

(**iii**) In case of a dispute concerning the procedure applicable to a proposal for an amendment (or in regard to the compatibility of the said amendment with the maintenance of human rights and fundamental freedoms, or with certain other fundamental principles of the Statute, which must be defined subsequently) the Court may be seized of the question by an institution of the Community or by a Member State. The examination of the proposal by the Community's institution shall be suspended until the Court has given judgment.

(**iv**) In the case of the E. D. C., the agreement of the non-member States which are concerned must be obtained in regard to the compatibility of the amendments to the Treaty with the engagements for mutual aid undertaken by the E. D. C. and the United Kingdom, on the one hand, and the E. D. C. and the States parties to the North Atlantic Treaty, on the other hand, so long as the said treaty continues in force.

C. — POWERS AND COMPETENCE WITHIN THE GENERAL SCOPE OF THE SYSTEM CREATED BY THE E. S. C. S. AND E. D. C. TREATIES.

Powers and competence in matters of foreign policy.

9. The Community shall lay down, by the methods referred to in paragraphs 13 and 14, the common objectives in foreign policy of the Member States within the spheres of competence of the E. C. S. C. and the E. D. C.

The attainment of the objectives thus laid down shall be ensured both by the Community and the Member States.

10. The Community shall possess the right, within the sphere of its competence, of accrediting and receiving representatives.

11. The Community may conclude international agreements concerning the matters referred to in paragraph 6. It may conclude agreements for Association with third States.

These agreements shall bind the Community and each of the Member States. The latter may not conclude international agreements which would conflict with the Community's prior engagements.

12. (i) Agreements previously concluded by the Member States, in matters within the Community's competence, which conflict with the Statute or with international agreements subsequently concluded by the Community, must be denounced or revised as soon as is possible under international law.

(ii) Draft agreements which Member States sign separately with third States concerning matters within the Community's competence are to be transmitted to the European Executive Council for an opinion before ratification. The latter body may seek a ruling from the Court as to the compatibility of the draft agreement with the earlier engagements of the Community. In such cases, ratification will be postponed until the Court has given judgment.

In case the whole or a part of the agreement is found to be incompatible, the Court may forbid its ratification (1).

13. Until the expiry of a transitional period (the length of which remains to be defined),

— the common objectives of the Community's foreign policy will be defined by the European Executive Council, subject to the unanimous concurrence of the Council of National Ministers, and under the control of the Community's Parliament.

— the European Executive Council may, within the limits of the general policy thus laid down, negotiate international agreements on behalf of the Community. These agreements will be signed by the latter after authorigation has been given by the unanimous agreement of the Council of National Ministers, and will, if necessary, be submitted to the Community's Parliament for leave to ratify.

The provisions of §§ 12 and 13 will not affect the powers which have already devolved, upon the executive organs of the E. C. S. C. and E. D. C. in regard to the conclusion of international agreements.

14. The definitive régime is to be settled before the expiry of the transitional period by the legislative organs of the Community, following the unanimous agreement of the Council of Ministers (2).

Powers and Competence within the sphere of the policy of the Specialised Authorities.

14 bis. Rapporteur's note : this question is to be carefully studied in the Committee after the session of the « Ad Hoc » Assembly.

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(1) The procedure laid down in paragraph 12 (ii) does not cover the case of a Member State concluding an international agreement in conflict with the common political objectives laid down by the Community.

This question is linked to the more general question of the observance by Member States of the Community's decisions, and the means of constraint which the Community might adopt towards them, should they default in their obligations. It is clear that if the default related to a political obligation, it could not be dealt with by a purely judicial decision. On the other hand, if it were referred to a political organ for appraisal, this might lead to a conflict between the Community and one of its members. So long as the system of a dual competence concerning the same subjects continues to exist, it will be impossible to avoid one or other of these disadvantages.

(2) This procedure is the same as that laid down for the revision of the powers of the Councils of Ministers of the E. C. S. C. and the E. D. C. (cf. § 8, (ii), (a) above).

Financial powers.

15. (i) The Community shall have a single, annual and comprehensive budget.

(ii) The budget shall be prepared by the Community's Executive Organ, according to its own rules of procedure. It shall be voted by the Parliament of the Community.

(iii) The European Executive Council shall have a right of initiative in matters of expenditure. The Parliament may exercise its right of amendment within the limits of the grand total of expenditure.

(iv) If an annual budget has not been approved by the Parliament before the beginning of the financial year, the budget of the preceding year will continue in force for a quarter at a time, pending the adoption of the new budget.

16. The receipts of the Community shall include :

— receipts which are to be levied directly by the Community ;

— contributions paid by the Member States.

The contributions of the Member States shall be settled by agreement between the Community and the Member States.

A basic law, adopted by the Parliament of the Community and subject to the unanimous agreement of the Council of National Ministers will determine the methods for determining the assessment, the rates and the method of collection of the Community's taxes.

The taxes will be voted each year by the qualified organs of the Community, under conditions laid down in the said organic law.

No privileges will be allowed in regard to fiscal matters.

17. The Community shall have the power to issue loans.

No loan may be issued without the approval of the Parliament, except when necessary to provide for the annual balancing of accounts by the Treasury.

18. The administration of the budget shall be undertaken and controlled by the qualified organs of the Community, bearing in mind the requirements of the economies of the Member States, and avoiding any measures which might prejudice their economic or financial stability.

19. During the transitional period, a provisional régime will be established on the following bases :

(i) The budgetary régime and system of receipts and expenditure as laid down in the E. D. C. and the E. C. S. C. Treaties will continue in force.

The single common budget will be subdivided into three separate chapters, governed by different legal systems. The beginning and end of the budgetary years will be the same for the three chapters.

The three chapters will all be communicated to the Parliament, but in so far as expenditure relating to the E. D. C. and the E. C. S. C. is concerned the Parliament will exercise only those functions specified in the E. D. C. and E. C. S. C. Treaties.

(ii) The expenditure other than that provided by the E. D. C. Treaty and by the E. C. S. C. Treaty will be covered by the governmental contributions.

The amount and the method of assessing these contributions will be decided by common agreement between the Community and the Member States. Until this agreement has been reached, the allocation of these charges will be made on the basis of the quotas laid down in the E. D. C. Treaty.

20. During the transitional period the organs of the Community shall prepare the definitive régime based upon the principles stated in §§ 15 to 18 above.

D. — *ECONOMIC POWERS.*

In order to achieve the general tasks set forth in § 2, and more particularly with regard to questions linked to the progressive attainment of a common market on the lines of the E. D. C. and E. C. S. C. Treaties, the Community may deliver opinions, addressed either to the Governments or to the Parliaments of the Member States under conditions laid down by the Statute.

22. Before the Member States adopt :

— measures restricting the free movement of goods, in particular monetary measures, or

— measures effecting exchanges of manpower,

the Community must be consulted first as to the conformity of these measures with the principles laid down in the E. D. C. and E. C. S. C. Treaties.

In urgent cases, the Community must be informed forthwith, so that an opinion may subsequently be delivered.

23. The Member States are bound to ask the opinion of the Community on any new treaty which they have concluded within the fields indicated in § 22, before submitting it to their Parliaments for permission to ratify.

24. The provisions referred to in § 25 below concerning the powers conferred upon the Community in order to create a common market, will be embodied in a special Protocol, which will be submitted to the Member States for ratification at the same time as the Statute, but which will not form an integral part of the Statute.

25. The said Protocol shall be drawn up on the basis of the following principles :

I. The Community shall have the power, in accordance with the procedure laid down in sub-paragraph II :

(**i**) *In regard to the liberalization trade.*

a) to prohibit the introduction of any measure by the Member States imposing fresh quantitative restrictions on the free movement of goods between the Member States.

b) to decide on the gradual reduction and final abolition of quantitative restrictions between the Member States.

(**ii**) *In regard to customs dues*

a) to take the necessary steps for the progressive establishment of a common customs régime vis-à-vis third States ; these measures to be calculated to promote the development of international trade ;

b) to decide on the gradual reduction and final abolition of customs duties between the Member States ;

(**iii**) *In regard to monetary questions.*

to take the necessary steps to ensure the stability of the exchange rates and the progressive unification of the monetary systems in Member States.

II. The decisions referred to in § I above shall be taken upon the proposal of the European Executive Council, by the Parliament of the Community. The First Chamber will decide by a simple majority, and the Second Chamber (Chamber of States) by a two-thirds majority. They may adopt the measures necessary to ensure the efficient functioning of the common market, and also transitional measures rendering it possible to grant compensation to certain enterprises or categories of workers, on the lines of article 56 of the E. C. S. C. Treaty.

E. — POWERS AND COMPETENCE TO ENSURE THE SAFEGUARD OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS.

26. The Community and each of the Member States shall guarantee to every person under their jurisdiction the rights and freedoms laid down in the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on 4th November 1950 and in the Protocol thereto signed in Paris on 20th March 1952.

The Community shall have the necessary competence to ensure the maintenance of these rights and freedoms in Member States, under the conditions laid down in the Statute.

F. — PROCEDURE FOR THE AMENDMENT OF THE STATUTE.

27. The initiative for a revision of the Community's Statute shall appertain to the Parliament and to the European Executive Council, as well as to each Member State.

Proposals for amendments shall be submitted to the Parliament of the Community, to the European Executive Council and to the Council of National Ministers.

28. Amendments to the provisions of the E. D. C. and the E. C. S. C. Treaties referred to in § 7, (i) above, and amendments relating to:

— the provisions of the Statute referred to in section A of the present resolution,

— the powers and competence of the Community or its institutions, shall be adopted by the Community following the agreement of the Parliament (voted by a qualified majority in each Chamber), of the European Executive Council, and the unanimous agreement of the Council of National Ministers. They shall be transmitted to the Member States for communication to the Parliaments and shall not come into force until such time as they have been approved by the Parliaments of all the Member States (1).

29. Amendments concerning the powers assigned to the respective institutions of the Community and the allocation of powers between the institutions adopted by the Community in virtue of the agreement of the Parliament of the Community (both Chambers deciding by a qualified majority), the agreement of the European Executive Council, and that of the Council of National Ministers deciding by unanimity. They shall come into force immediately upon their adoption.

30. Amendments relating to clauses of the Statute other than those referred to in §§ 28 and 29 above shall be adopted by the Community following the agreement of the Parliament of the Community, deciding by a qualified majority, the agreement of the European Executive Council, and that of the Council of National Ministers deciding by a majority. They shall come into force immediately upon their adoption by the Community.

31. In case of dispute regarding the procedure applicable to a given proposal for an amendment, or regarding its compatibility with the maintenance of human rights and fundamental freedoms (and certain other basic principles of the Statute which remain to be defined later), the matter may be referred to the Court by an institution of the Community or by a Member State. The examination of the proposal by the institution concerned shall be suspended till the Court has given judgment.

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(1) The following alternative proposal was submitted to the Committee, which the latter agreed to bring to the notice of the Assembly:

« The amendments (enumerated in § 28) after having been adopted by the Community in virtue of the unanimous agreement of the Council of National Ministers, (or by a majority ?), shall be the subject of a treaty concluded by the Governments of the Member States and submitted for ratification by the States in accordance with the constitutional rules of the respective countries. »

G. MEMBERSHIP

32. The Community shall be instituted between the Six States which are members of the European Coal and Steel Community and of the European Defence Community.

33. The following may apply for membership of the Community:

— the Member States of the Council of Europe,

— any other European State regarded as capable of complying with the principle that every person under its jurisdiction shall enjoy human rights and fundamental freedoms.

34. The qualified organs of the Community decide upon the request for admission and specify the conditions for admission according to the procedure laid down in the Statute. This procedure takes the form of Act additional to the Statute, in the which provision may also made for any consequential adjustments in the Statute that may become necessary. This Act shall be submitted for ratification by the Member States.

35. The Community may conclude agreements for Association (1):

— with European non-member States;

— with non-European States attached by constitutional links to a Member State or to a European Associated State.

36. *Membership (Consistence)*

Note by the Rapporteur: the Committee considered that this important problem might be more usefully studied after the session of the « Ad Hoc » Assembly in January, when the main lines of the Statute will have been settled.

RESOLUTION III

The political institutions of the Community.

A. — THE PARLIAMENT OF THE COMMUNITY.

a) *The Peoples' Chamber.*

1. — Members of the Peoples' Chamber shall be elected by direct universal suffrage.

2. — The seats in the Peoples' Chamber shall be allotted as follows:

— Germany, France and Italy will each be allowed 63 seats; Belgium and the Netherlands 30 seats each, and Luxembourg 12 seats.

3. — Each country shall be at liberty to make the voting for the European elections compulsory.

4. — Electoral disputes shall be submitted to the Peoples' Chamber itself. The latter shall be at liberty to consult the Court of the Community on any legal points which it thinks desirable to submit to it.

(1) The nature and the contents of the Association Agreements are dealt with in Resolution 5.

5. — Each deputy shall represent the Community as a whole. Voting upon mandatory instructions shall not be allowed.

6. — The question of immunities and prerogatives shall be regulated by a provision similar to that of article 40 of the Statute of the Council of Europe.

b) *The Senate.*

7. — The Senate shall represent the States.

It shall be the Second Chamber of the Parliament, and shall have the same powers and the same rights as the Peoples' Chamber.

8. — The Second Chamber cannot be a simple Council of National Ministers.

The members of the Second Chamber shall not be bound by mandatory instructions from their governments.

9. — The members of the Senate shall be elected by the National Parliaments.

They will thus be qualified to sit in the Consultative Assembly of the Council of Europe and in the Senate of the Community at the same time.

Each country shall be competent to decide, on the basis of its own Constitution, how the term « National Parliament » is to be construed.

10. — The States shall be represented in the Senate on the principle not of parity, but of a qualified distribution of seats.

Germany, France and Italy will be allowed 21 seats each ; Belgium and the Netherlands 10 seats each and Luxembourg 4 seats.

11. — Members of the Senate shall vote individually.

c) *Liaison.*

12. *a*) The European Executive Council will negotiate the agreements which associate third States with the Community. The Parliament of the Community shall ratify these agreements. Such approbation shall bind the Community and the Member States.

b) The agreements for Association may provide for the admission of representatives of the Associated States into the organs of the Community. They shall lay down the rights and obligations of these organs of the Community.

c) The Senate may decide to admit observers appointed by third States which are members of the Council of Europe. These observers may attend the debates of the Senate and of its Committees ; they may not speak unless invited to do so by the President.

d) The Peoples' Chamber may decide to admit observers appointed by third States which are members of the Council of Europe. These observers may attend the debates of the Chamber. They shall not be entitled to speak.

e) In no case may observers take part in the voting.

f) The question of the admission of observers of countries not members of the Council of Europe is reserved.

B. — THE EXECUTIVE.

13. — The Political Community shall have no Head of State.

14. — The Executive Organ of the Community comprises the European Executive Council and the Council of National Ministers. These two Councils will meet periodically in conference with the representatives of the Associated States.

15. — The European Executive Council shall be represented by its President in matters of ceremony and on the international plane.

16. — The European Executive Council shall be organized in such a way as to enable it to function continuously.

17. — The European Executive Council shall be appointed as follows (1):

— The President will be appointed by a procedure to be laid down subsequently, by the Council of National Ministers, in accordance with the provisions of § 24.

— When the President has been appointed he will select six members of the European Executive Council, either from among members of the Community's Parliament or from among persons not belonging to it.

18. — Subject to the reservation in § 6 (**ii**) of the resolution on the integration of the E. C. S. C. and the E. D. C. in the Community, the European Executive Council shall be collectively responsible to the Parliament of the Community. The members of the European Executive Council must resign from office if a motion of censure is passed in regard to them by a majority of either of the two Chambers.

19. — All decisions concerning the competence of the European Executive Council shall be submitted for approval to the Council of National Ministers. This clause shall in no way affect the corresponding provisions of the Treaty of the E. C. S. C. or of the Treaty of the E. D. C. or of the present Statute.

20. — Apart from a general competence to declare its approval, as provided in the present Statute, the Council of National Ministers shall have powers of decision in matters for which provisions is made in the E. C. S. C. and E. D. C. Treaties, according to the methods laid down in those Treaties.

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(1) The Committee has referred the present paragraph to the Plenary Assembly without taking any decision upon it, and has attached to it the other proposals which were submitted by members of the Committee.

Proposal by MM. Mollet and Jaquet.

The European Executive Council shall consist of a President and eight members appointed by the Peoples' Chamber by a two-thirds majority, on the proposal of the Committee of National Ministers.

Proposal by M. Becker.

The European Executive Council shall be appointed as follows:

The first President will be appointed by the Ministers for Foreign Affairs of the Six Member States by a two-thirds majority.

Subsequent Presidents will be elected by the two Chambers in joint session. The election will be decided by a absolute majority of the members entitled to sit. Should such a majority not be obtained at the first or second ballot, a third ballot will be held ; the election will then be decided by a majority of the votes cast.

The President will select six persons, either from among the members of the Community's Parliament or from persons not belonging to that body, who, together with himself, will constitute the European Executive Council.

The European Executive Council will remain in office for two years. It may be overthrown before the expiry of that period by a vote of confidence passed by the Senate in pursuance of a motion made to the Senate by the Peoples' Chamber.

The vote of no confidence may be passed either with reference to a single Minister, or to the Council as a whole. If it is moved in regard to the President or in regard to the Council as a whole, it is only valid if the new President of the Executive Council is named in the motion.

Proposal by MM. Bergmann, Persico and Santero.

The European Executive Council will be constituted as follows:

Its first President will be appointed by the Ministers for Foreign Affairs of the Member States by a two-thirds majority.

Subsequently, the Presidents will be appointed by a two-thirds majority of the two Chambers in joint session, at a first or a second ballot. Should a third ballot be necessary, a simple majority will suffice.

When the President has been appointed he will select six members of the European Executive Council, either from among the members of the Community's Parliament or from among persons not belonging to it, and will obtain a vote from the Peoples' Chamber confirming the composition of the Council.

The Executive Council will be appointed for two years. It may be overthrown before the expiry of its mandate if the Peoples' Chamber adopts a motion of censure and the Senate confirms the motion.

The members of the European Executive Council shall be associated in these deliberations in a consultative capacity.

21. — The European Executive Council shall prepare the work of the Council of National Ministers.

22. — Subject to the approval of the Council of National Ministers, the European Executive Council shall undertake the general direction of the Community.

23. — The Council of National Ministers shall consist of the Ministers entrusted with European affairs in their respective governments.

24. — Except as otherwise specially provided, the Council of National Ministers shall express its opinions by a two-thirds majority of its members.

Character of the Community's administration.

25. — The Community's administration shall be, in principle, an administration delegated to the national administrations. The administration of defence will constitute an exception.

The Community shall, however, be entitled to establish an administration of its own if the Parliament authorizes it so to do.

Should the execution of the measures enacted by the Community be entrusted to the administrative departments of the Member States, the European Executive Council shall be entitled to supervise the execution by any appropriate means of investigation. It may, for instance, call for reports, undertake enquiries on the spot, examine documents, hear witnesses and inspect records and documents.

To ensure the smooth functioning of the Community's administration in harmony with the national administrations, the European Executive Council may establish councils and mixed administrative or consultative committees.

The measures for implementing the rules above laid down will be taken on the initiative of the European Executive Council and, consequently, with the approval of the Committee of National Ministers.

Basic Principles of the European Civil Service.

26. — The European Executive Council shall draw up staff regulations for civil servants of the Community.

Posts in the Community's Civil Service shall be filled on the basis of free access to the said service and of an equal footing for applicants. subject to the issue of rules providing for the distribution of the Community's posts among the various nationalities in accordance with a balanced system.

Right of intervention (« *federal executive procedure* »)

27. — Every Member State, of the Community, shall be required to uphold and maintain human rights as defined in the Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4th November 1950 and in the Protocol signed on 30th March 1952.

Acceptance of the Community's Statute shall automatically involve unreserved adherence to the clause conferring compulsory jurisdiction on the European Court of Human Rights.

The Community shall be assimilated to the signatory States of the European Convention for the protection of human rights and fundamental freedoms as regards the judicial mechanism (Committee and Court) provided by that Convention.

The European Executive Council may institute proceedings before the Committee and the Court according to the procedure laid down in the Convention in order to maintain

constitutional order, democratic institutions and fundamental human freedoms, in case the latter should be gravely and persistently menaced in the territory of any of the Member States of the Community.

The European Executive Council shall be further authorized to afford direct assistancel within the scope of the treaties in force, if invited to do so by the competent constitutiona, authorities of the Member State concerned.

C. — ECONOMIC AND SOCIAL COUNCIL.

28. — An Economic and Social Council shall be set up and invested with a consultative function.

Should the Council of Europe, in its turn, set up an Economic and Social Council, the one belonging to the Community shall be absorbed by that of the Council of Europe. In that case, the Economic and Social Council of the Council of Europe would exercise the consultative function in economic and social matters vis-a-vis the Community, it being understood that, if needed, the opinion of that Economic and Social Council could be obtained in a dual form : an opinion by a majority of the representatives of the Member States of the Council of Europe, and an opinion by a majority of the representatives of the Member States of the Community.

29. — No transitional régime will be established. The institutions provided by the Statute shall be set up as soon as the latter comes into force.

RÊSOLUTION IV

The judicial institutions of the Community.

1. The jurisdiction of the Community shall be assigned to the Court of Justice provided for the European Coal and Steel Community and for the European Defence Community.

Accordingly, it has been decided that the jurisdiction of the Community should not be assigned to the Court of Justice provided for in Recommendation 36 (1952) of the Consultative Assembly of the Council of Europe.

Disputes arising within the Community, which fall under the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms must be submitted to the Community's Court of Justice.

If the Court of Justice of the Community finds that a dispute regarding a question of law coming under the European Convention affects at the same time for the Protection of Human Rights and Fundamental Freedoms both the relations between Member States and the Community and relations between Member States as such, it will give final judgment on the matter (in conformity with the principle laid down in articles 87 E. C. S. C. and 122 E. D. C.). Should this not be the case, the Community's Court of Justice will renounce jurisdiction, thus enabling the parties to bring the matter before the judicial authorities provided for in the European Convention for the Protection of human rights and fundamental freedoms.

2. The Court shall adjudicate upon disputes arising in the following fields :

A. — DISPUTES UNDER CONSTITUTIONAL AND ADMINISTRATIVE LAW.

a) Appeals for annulment of general or individual acts of the Community's institutions' in particular of the decisions or administrative acts of the European Executive Council (or

of the High Authority or of the Commissariat in conformity with articles 33 and 38 E. C. S. C and articles 54, 57 and 58 E. D. C.).

b) Appeals on the ground of failure to take action, or demanding that the European Executive Council (or the High Authority or the Commissariat) should fulfil its obligation to take certain action (cf. art. 35, E. C. S. C., 55 E. D. C.).

c) Appeals on the ground of action, or failure to take action, of such a nature as to provoke fundamental and persistent disturbances in the economy of a Member State (cf. art. 37 E. C. S. C. 55 E. D. C.).

d) Disputes concerning the general contractual obligations of Member States, and concerning the penalties imposed for the failure to observe these obligations (cf. art. 88 E. C. S. C., 117 E. D. C.).

e) Disputes arising in cases where the legislation of a Member State has conferred jurisdiction (cf. art. 43, para 2, E. C. S. C., art. 64, para 2, E. D. C.).

f) Appeals on points of law concerning cases in which a national tribunal contests the validity of the decisions of the European Executive Council (or of the High Authority, or of the Commissariat in accordance with art 41 E. C. S. C., 62 E. D. C.).

B. — DISPUTES UNDER CRIMINAL LAW.

a) Fixing the amounts of fines (pecuniary sanctions or fines) and daily payments (cf. art. 36 E. C. S. C., art. 107, para 6, and 108, para 2, E. D. C.).

b) Military criminal cases (art. 61 and 67 E. D. C., and art. 19, 22 and 23 of the Judicial Protocol attached to the E. D. C. Treaty.).

C. — DISPUTES UNDER CIVIL LAW.

a) Appeals concerning injury due to an official act, including the whole extensive category of claims for damages (cf. art. 40, 34, para 2, E. C. S. C., art. 60 E. D. C. in conjuction with Chapter 1 of the Judicial Protocol and art. 114, § 2, of that Treaty).

b) Appeals concerning contracts (cf. art. 42, E. C. S. C., 63 E. D. C.).

D. — MATTERS OF EXECUTION.

a) Suspense of compulsory execution of a decision or recommendation of the Community (cf. Art. 39, para 2, and art. 92, E. C. S. C., art. 59, para 2, E. D. C.).

b) Executions affecting the assets of the Community as a result of decisions by organs of the Member States (cf. art. 1 of the Protocol on the privileges and immunities of the E. C. S. C., art. 1 of the Draft Protocol on the privileges and immunities of the E. D. C.).

c) Interim action (cf. provisional measures, laid down in art. 39, para 3, E. C. S. C., art. 59 E. D. C.).

E. — JURISDICTION IN CERTAIN CASES IN VIRTUE OF SPECIAL PROVISIONS OF THE ANNEXED TREATIES OR CONVENTIONS (cf. art. 43, para 1, E. C. S. C., art. 64, E. D. C.), in particular:

a) Redesignation and revocation of members of the High Authority and of the Commissariat (in conformity with art 10, para 11, and art. 12, E. C. S. C., art. 23, E. D. C.).

b) Disputes between the High Authority and buyers arising from the prohibition of contracting (cf. art. 63, § 2, E. C. S. C.).

c) Loss of pension rights by members of the Commissariat (cf. art. 20, § 2, para 4, E. D. C.).

d) Decision regarding the obligation of Member States to give information to the Commissariat (cf. art. 114 E. D. C.).

e) Collaboration in the modification of the powers and competence of the High Authority at the expiry of the transitional period (cf. art. 95, E. C. S. C.).

3. In these procedures, jurisdiction shall be exercised in accordance with the principle of the unity of jurisprudence.

Accordingly, the Court shall give judgment in all disputes, irrespective of the Treaty under which they originated. It is only within the Court that the allocation of cases between the Plenary Court and the Divisions of the Court will be effected.

In the organisation of the Court it will therefore be necessary to create separate Divisions for administrative, civil and criminal cases.

4. A special Division will settle constitutional disputes. This Division will consist of the President of the Court and the Presidents of the Divisions.

5. The Division which is competent to adjudicate upon constitutional disputes, afforced by judges appointed by the Associated State, or States, will also function as an arbitral tribunal for disputes with the Associated States.

6. As a rule, the Divisions will consist of a maximum of five members.

7. During the transitional period, the concurrent rules laid down by the Treaties setting up the European Coal and Steel Community and the European Defence Community will continue to govern the status and the appointment of the judges.

Under the definitive régime the status of the judges shall be established in accordance with the following principles :

a) The judges are appointed :

— either by the governments, the appointments being approved by the Parliament of the Community ;

— or by the Parliament of the Community on the basis of a list furnished by the Governments ;

b) The judges' salaries may be reduced during their term of office.

c) Judges shall enjoy a right of immunity. The Court shall have exclusive competence in disciplinary and criminal proceedings concerning its own members.

d) Judges shall not be elected for life. No age limits shall be laid down.

e) The Court shall be competent to draw up its own internal regulations and rules of procedure.

RESOLUTION V

Relations of the Community with third States and international organisations.

A. — ASSOCIATED STATES

A chapter on Association, laying down the general conditions for an Association, shall be inserted in the Statute of the Community.

The expression « Associated State » denotes a State which, having declared its willingness to collaborate in certain fields of action, has concluded an agreement of Association with the Community, specifying the co-related rights and obligations of each of the contracting parties.

2. The legal status of an Associated State may be acquired :

a) by any European State which is not a member of the Community ;

b) by any overseas State, when constitutional links exist between it and a European State which is a member of the Community or is associated therewith.

3. An Association may be concluded for the Community's whole field of activity, or in regard to one or more matters.

4. In principle, Association pre-supposes the intention of creating a link for a relatively long period of time.

5. An agreement of association creates rights and obligations both for the Community and for the Associated State.

The rights conferred on either of the contracting parties must be co-related to the obligations which it assumes.

6. Association is effected by the conclusion of a agreement of Association, or such other arrangement, having the same object in view, as may be agreed in common.

7. An agreement of Association must contain the following essential provisions :

a) indication of the matters in respect of which the Association is concluded ;

b) specification of the rights and obligations of both contracting parties ;

c) indication of the means to be employed for giving effect to the Association.

These means include :

— the accrediting of permanent representatives, or observers, of the Associated State to the organs of the Community, in which they will sit, either in a consultative capacity or with a right to vote ;

— the appointment of permanent mixed committees on the executive or on the parliamentary level ;

— the undertaking by the parties to keep each other informed and to consult together.

For the rest, an agreement of Association may contain conventions of any kind which are connected with the aims of the Association.

B. — NATO

1. In consequence of the integration of the European Defence Community in the Community, the powers and competence of the European Defence Community are transferred to the Community.

The Community must observe the articles of the E.D.C. Treaty which determine external relations with third parties, in particular, articles 2, 5, 13, 18, 32, 47, 68, 69, 70 ,77, 78 bis, 87 bis, 91, 94, 120, 123, and the two protocols appended thereto.

3. Consequential modifications will have to be made in the North Atlantic Treaty the Treaty setting up the European Defence Community in the form of supplementary agreements (additional articles or protocols).

RESOLUTION VI

Links to be established between the Community and the Council of Europe.

a) *General observations.*

1. The links between Community and the Council of Europe must be as numerous as possible.

2. They may be of two kinds:

(**i**) internal links, which imply the participation of the Council of Europe in the internal activities of the Community;

(**ii**) external links intended to co-ordinate the functioning of the two organizations, which would remain independent.

All these links must be dovetailed. The Assembly specially recommends the establishment of internal links. This will involve certain amendments to the Statute of the Council of Europe. If that proves impossible, the external links will nevertheless be adequate.

b) *Internal links.*

3. The Assembly, desirous of giving expression to the wish of the participating States to strengthen the Council of Europe, of which they also are members, and to make it the general political framework for Europe by facilitating the dovetailing of the Community's institutions with the corresponding institutions of the Council of Europe, suggests that the amendments indicated in the following paragraphs should be made in the statute of the Council of Europe.

4. The Statute of the Council of Europe should be amended, or its meaning should be clarified, in order to provide for:

— first, prior consultation, which in certain cases would be obligatory, on all questions of European interest;

— secondly, the right of initiative in the preparation of all draft treaties, or legislation on similar lines, which relate to the above questions;

— lastly, the competence resulting from the integration of the C. E. C. A. and the E. P. U. within the framework of the Council of Europe.

In the absence of such integration, a mixed committee, set up under the auspices of the Council of Europe, should study the co-ordination of the activities of all these organisations.

5. The Statute of the Council of Europe should be amended, or its meaning should be clarified, in such a way as to enable the structure of the Council to be adjusted to that of the institutions of the Community.

The member States of the Community should be enabled to send the same representatives to the organs of the Council of Europe as to the corresponding organs of the Community.

Conversely, all the members of the Committee of Ministers of the Council of Europe and all the Representatives to the Consultative Assembly of the Council of Europe would be able to participate, to an extent which would be laid down, in the work of the Council of National Ministers and of the Parliament of the Community.

The Assembly in particular has in view: attendance without the right to speak; or with the right to speak when invited to do so; or to express a consultative opinion without restriction; or again the right to communicate written reports, the publication and dissemination of which would be decided by the authorities of the Community.

6. If some of the States should wish to participate more closely in the life of the Community, without however becoming members, they are at liberty to acquire the status of Associated members, which may entitle them, under specified conditions, to take part in decisions, subject to reciprocal obligations (1).

7. The Assembly considers it essential that the following fundamental principle should be observed : that privileges should be proportionate to obligations.

8. The collective participation of the Council of Europe and, in consequence, of the nine States which are not members of the Political Community, is designed to ensure the most effective contacts and the fullest consultation. It cannot involve any limitation of the sovereignty of the Political Community.

9. If the Council of Europe is associated with the Community, it is desirable that, conversely, the latter should be represented as a collective entity, independently of the representation of its own members in the different institutions of the Council of Europe. In particular, there should be an additional member in the Committee of Ministers of the Council of Europe as the official delegate of the Community.

10. The Council of Europe is free to accept or reject the suggestions put forward above for the amendment of its Statute. If it accepts them, internal links could be established between the Community and the Council of Europe at the same time as the external links indicated above.

If it rejects them, external links only can be established.

c) External links.

11. The external links proposed in the following paragraphs may be forged either as a whole or in part.

12. The Community and the Council of Europe might have their seat in the same town and in the same building without in any way sacrificing their mutual independence.

13. Some external links based upon the actual working of the two organisations might be envisaged, in particular :

a) the exchange of information, statistical data and annual reports, on a basis of reciprocity ;

b) the possibility of engaging in mutual consultations ;

c) the possibility of making recommendations, on a basis of reciprocity, and the obligation to report upon the effect given to such recommendations.

14. Other links might be based upon a personal combination of functions, in particular :

a) identity of the members of one of the Chambers of the Community's Parliament and of the members of the Consultative Assembly of the Council of Europe ;

b) identity of the Ministers participating in the Council of National Ministers of the Community and in the Committee of Ministers of the Council of Europe ;

c) the utilization to a certain extent of the same administrative services, by the Community and the Council of Europe.

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(1) Ihis quertich is dealt with in Resolution 5 (section A) concerning the Community's relations with third States.

15. Under conditions to be laid down, the Council of Europe may appoint observers, whose rôle must be defined, in the different institutions of the Community.

16. The Community will consider certain matters only after the opinion of the Council of Europe has been obtained.

SPECIAL RESOLUTION

Certain measures to be taken forthwith by the Governments.

The Assembly,

Considering it indispensable that European public opinion should be made more conscious of the progress that has been made towards achieving the unification of Europe.

Believing that the attainment of this aim might be helped by the immediate adoption of certain measures,

Recommends that the Six Governments :

a) abolish visas for the movement of citizens of the Member States between the Six countries by the time the E. D. C. Treaty enters into force at the latest ;

b) consider the issue of uniform postage stamps for the Six countries.

ANNEX

COMPOSITION OF THE CONSTITUTIONAL COMMITTEE

MM.

VON BRENTANO Heinrich, *Chairman* (German Federal Republic). C. D. U. (Christian Democratic Union).
BENVENUTI Lodovico, *Vice-Chairman* (Italy). Christian-Democrat Party.
BRUINS SLOT J. A. H. J. S., *Vice-Chairman* (Netherlands). Antirevolutionary Party.
AZARA Antonio (Italy). Christian-Democrat Party.
BECKER, Max (German Federal Republic). Liberal-Democrat Party.
BERGMANN Giulio (Italy). Republican Party.
BLAISSE P. A. (Netherlands). Christian Popular Party.
BRAUN Heinz (France, Representative of the people of the Saar). Social-Democrat Party.
DEBRÉ Michel (France). Rally of the French People (R. P. F.).
DEHOUSSE Fernand (Belgium). Belgian Socialist Party.
DELBOS Yvon (France). Radical-Socialist Party.
GOES VAN NATERS Jonkheer M. van der (Netherlands). Socialist Party.
KOPF Hermann (German Federal Republic). C. D. U. (Christian Democratic Union).
LEFEVRE Théodore J. A. M. (Belgium). Christian-Social Party.
MARGUE Nicolas (Luxembourg). Christian-Social Party.
VON MERKATZ Hans Joachim (German Federal Republic). Free German Party.
MOLLET Guy (France). Socialist Party.
MONTINI Lodovico (Italy). Christian-Democrat Party.
MUTTER André (France). Peasant Union.
PELSTER Georg (German Federal Republic). C. D. U. (Christian Democrat Union).
PERSICO Giovanni (Italy). Socialist Party.
SANTERO Natale (Italy). Christian-Democrat Party.
SCHAUS Eugène (Luxembourg). Liberal Party.
SEMLER Johannes (German Federal Republic). C. D. U. (Christian-Democrat Union).
TEITGEN Pierre-Henri (France). M. R. P.
WIGNY P. L. J. J. (Belgium). Christian-Social Party.

COMPOSITION OF THE SUB-COMMITTEES

1. Sub-Committee on Powers and Competence

MM.

BLAISSE P. A., *Chairman* (Netherlands). Christian Popular Party.
BENVENUTI Lodovico, *Rapporteur* (Italy). Christian-Democrat Party.
BECKER Max (German Federal Republic). Liberal Democrat Party.
BERGMANN Giulio (Italy). Republican Party.

DEBRÉ Michel (France). Rally of the French People (R. P. F.).
DEHOUSSE Fernand (Belgium). Belgian Socialist Party.
DELBOS Yvon (France). Radical Socialist Party.
KOPF Hermann (German Federal Republic). C. D. U. (Christian Democratic Union).
MARGUE Nicolas (Luxembourg). Christian Social Party.
SANTERO Natale (Italy). Christian Democrat Party.
WIGNY P. L. J. J. (Belgium). Christian Social Party.

2. Sub-Committee on Political Institutions

MM.

TEITGEN Pierre-Henri, *Chairman* (France). M. R. P.
AZARA Antonio, *Rapporteur* (Italy). Christian Democrat Party.
DEHOUSSE Fernand, *Rapporteur* (Belgium). Belgian Socialist Party.
BRAUN Heinz (France, Representative of the people of the Saar). Social Democrat Party.
LEFEVRE Théodore J. A. M. (Belgium), Christian Social Party.
VON MERKATZ Hans Joachim (German Federal Republic). Free German Party.
MONTINI Lodovico (Italy). Christian Democrat Party.
PELSTER Georg (German Federal Republic). C. D. U. (Christian Democrat Union).
SCHAUS Eugène (Luxembourg). Liberal Party.
VAN DER GOES VAN NATERS M. (Netherlands). Socialist Party.

3. Sub-Committee on Jurisdictional Institutions

MM.

PERSICO Giovanni, *Chairman* (Italy). Socialist Party.
VON MERKATZ Hans Joachim, *Rapporteur* (German Federal Republic). Free German Party.
AZARA Antonio (Italy). Christian Democrat Party.
DEBRÉ Michel (France). Rally of the French People (R. P. F.)
LEFEVRE Théodore J. A. M. (Belgium). Christian Social Party.
SCHAUS Eugène (Luxembourg). Liberal Party.
TEITGEN Pierre-Henri (France) M. R. P.

4. Sub-Committee on Liaison

MM.

GOES VAN NATERS, M. VAN DER, *Chairman* (Netherlands). Socialist Party.
SEMLER Johannes, *Rapporteur* (German Federal Republic). C. D. U. (Christian Democrat Union).
WIGNY Pierre Louis J. J., *Rapporteur* (Belgium). Christian Social Party.
KOPF Hermann (German Federal Republic). C. D. U. (Christian Democratic Union).
MARGUE Nicolas (Luxembourg). Christian Social Party.
MOLLET Guy (France). Socialist Party.
MONTINI Lodovico (Italy). Christian Democrat Party.
MUTTER André (France). Peasant Union.
SANTERO Natale (Italy). Christian Democrat Party.

WORKING PARTY

MM.

VON BRENTANO Heinrich, *Chairman* (German Federal Republic). C. D.U. (Christian Democratic Union).
BENVENUTI Lodovico, *Vice-Chairman* (Italy). Christian Democrat Party.
BRUINS SLOT J. A. H. J. S., *Vice-Chairman* (Netherlands). Antirevolutionary Party.
AZARA Antonio (Iraly). Christian Democrat Party.
BLAISSE P. A. (Netherlands). Christian Popular Party.
DEHOUSSE Fernand (Belgium). Belgian Socialist Party.
MARGUE Nicolas (Luxembourg). Christian Social Party.
VON MERKATZ Hans (German Federal Republic). Free German Party.
MUTTER André (France). Peasant Union.
PERSICO Giovanni (Italy). Socialist Party.
SEMLER Johannes (German Federal Republic). C. D. U. (Christian Democrat Union).
TEITGEN Pierre-Henri (France). M. R. P.
VAN DER GOES VAN NATERS M. (Netherlands). Socialist Party.
WIGNY P. L. J. J. (Belgium). Christian Social Party.

OBSERVERS

MM.

BOLAND Gérald (Ireland), M. P., Fianna Fail.
ELMGREN Bengt (Sweden), Member of the Riksdag. Social Democrat Party.
ERGIN Feridun (Turkey), M. P., Democratic Party.
ERKMEN Hayrettin (Turkey), M. P., Democratic Party.
Lord John HOPE (United-Kingdom). M. P., Conservative Party.
JAKOBSEN Frode (Danemark), Member of the Riksdag. Socialist Party.
Lord LAYTON (United-Kingdom), Liberal Party.
MERCOURIS Stamatios (Greece), M. P., Liberal Party.
ROBENS Alfred (United-Kingdom), M. P. Labour Party.
STEFANOPOULOS Stefanos (Greece), M. P., Greecian National Rally.
STROM Arne (Norway), Member of the Storting. Labour Party.
Miss THORSTEINDOTTIR Rannveig (Iceland), M. P., Progressist Party.
WISTRAND Karl (Sweden), Member of the Riksdag. Conservative Party.
KOHNSTAMM M., Secretary of the High Authority of the E. C. S. C.
PARIS J.-C., Secretary-General of the Council of Europe.
CALMES Christian, Secretary of the Special Council of Ministers of the E. C. S. C.

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