Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

**Doc. 13**
05 May 1951

# Nature, characteristics and structure of Specialised Authorities nd their relations with the Council of Europe

**Report**
Committee on Political Affairs and Democracy
Rapporteur: Ms Margaretha Albertina Maria KLOMPE, Netherlands

## A. Draft Resolution

*Draft General Declaration on Specialised Authorities*

The Committee on General Affairs submits the following draft Resolution to the Assem-bly:

" Th e Assembly,

" Havin g taken note of the studies undertaken since its 1950 Session,

" Submit s the following general observations on the nature, characteristics and structure of the European Specialised Authorities whose establishment has been recommended.

1. A specialised Authority, is an institution upon which, or upon certain organs of which, the participating States confer definite powers within a clearly specified field for the purpose of reaching a solution to problems of common concern or of taking certain action in the common interest.

2. Th e delegation of such powers may be effected in various ways, and in particular as follows :

*a.* "The transfer to the Authority, by each participating country, of all the powers of the State in the particular field of competence of that Authority.

*b.* The transfer to the Authority of executive powers only, in respect of decisions taken by the unanimous agreement of the participating States. The implementation of such decisions constitutes in this case a joint exercise by the participating States of their powers in the field in which the Authority is competent.

3. Every Specialised Authority is responsible for certain executive action. It this action is to be effective, the Authority must have an Executive Organ, to which real means of taking action have been granted and which subject to democratic control.

4. In the case of a supranational Authority (cf. 2, i) the Executive shall be responsible for the realisation of the aims and objects of the Authority; it shall take the necessary decisions for the inplementation of the Treaty establishing the Authority and shall ensure or control the execution of such decisions. " Wher e executive powers alone have been assigned to the Authority (/c. 2, ii), it is desirable that the Executive invested with them shall be given wide powers of initiative and interpretation.

5. The Executive shall generally assume some such form as a Board or Council, whose membership may include statesmen and leading figures in the field concerned. In such cases, its decisions shall be taken by majority vote.

6. The democratic control of the Executive shall be exercised by a Governmental Body and a Parliamentary Body.

7. " In accordance with the terms of the Treaty, the Governmental Body shall appoint and dismiss the Executive. It shall be responsible for the relations between the Executive and the national Governments and shall guide and influence the activities of the Executive by means of joint consultation. " I n the case of a supranational authority the decisions of the Governmental Body shall normally be taken by majority vote. If the Treaty so specifies, these votes may be weighted.

8. Th e Parliamentary Body (Assembly) shall be composed of representatives elected by the Parliaments of the participating States. The seats shall be distributed in proportion to the populations of these States and bearing in mind their economic and other resources in the field of activity in question.

9. In the case of a supra national Authority the Assembly shall communicate opinions and recommendations to the Executive; shall ensure the parliamentary control of the Executive, and shall be entitled to pass votes of confidence in the Executive. " I f the Governmental Body is responsible for the policy of the Authority (§ 2, ii), the Assembly shall have the right to examine that policy, and to submit to the Governmental Body its observations and recommendations.

10. "In the early stages of a supranational Authority it may be advisable for the Treaty establishing the Authority to provide for certain of the powers conferred on it to be jointly exercised by the Executive and by the Parliamentary and Governmental Bodies of the Authority.

11. " Th e right to introduce certain amendments to the Treaty establishing the Authority may be conferred on the Parliamentary and Governmental Bodies in accordance with the conditions laid down in the Treaty. Governmental Bodies in accordance with the conditions laid down in the Treaty.

12. " A European Court shall be established. The jurisdiction of this Court shall be recognised under the terms of the Treaty establishing a supranational Authority, in order to guarantee the respect for the law in all points of interpretation of the Treaty.

13. " Th e Assembly considers that the ultimate goal of the policy of Specialised Authorities is the establishment of a European Political Authority. ." Thi s requires :

*a.* that the Authorities created shall as far as possible be supranational, to which the participating States will transfer all their powers in the field covered by those Authorities ;

*b.* that suitable relations shall be established between the corresponding bodies of the various Specialised Authorities, and

*c.* that close contact shall be made and maintained between each Authority and the Council of Europe, in accordance with the provisions of Recommendations 1, 4 and 52, 1950, already adopted by the Assembly."

## B. Explanatory Memorandum

### 1. Introduction

1. In August, 1950 the Consultative Assembly adopted a first report on Specialised Authorities which was intended to direct the attention of the Council of Europe to new possibilities of development. Some months later the Committee of Ministers gave its approval in principle to the developments proposed. - The policy of Specialised Authorities appeared to be the only means of enabling those States which wished to establish "closer organic links" among themselves, to do so, while at the same time preserving the necessary-unity within the Council of Europe and keeping open the door to further progress in the direction of the unification of Europe as a whole. - The experience of the work of the Committee in November confirmed these first impressions. At the same time, on the initiative of our colleague, Mr. Mackay, Special Committees were formed to study two concrete problems : the constitution of an Agricultural Authority and that of a Transport Authority.

2. During these debates emphasis was laid on the need to analyse the concept of Specialised Authorities. On the proposal of its Bureau the Committee on General Affairs devoted particular attention to this analysis. - A number of important preparatory studies were submitted. In reply to the "Working Programme" submitted by the Rapporteur preliminary memoranda were presented by MM. Bardoux, Maccas, Mackay, Guy Mollet and von Rechenberg, on the basis of which a Preparatory Report was drawn up. Discussion of these memoranda took up the major part of the meetings of the Committee held from 13th to 16th 1951. The matters broached in Chapter III of this Report were, moreover, again taken up at the eighth meeting of the Committee on 23rd and 24th April 1951.

3. In the course of its session in March the Chair was taken by M. Bidault, Chairman of the Committee. The latter, however, and also M. Guy Mollet, Vice-Chairman, were unable to continue to attend owing to their important duties in the French Government. Since M. Ohlin, the Vice-Chairman, was also absent, the Chair was taken by M. van der Goes van Naters. The following members were present : - MM. Georges BIDAULT (France), Chairman (and SCHERER, Substitute), Guy MOLLET (France), Vice-Chairman (and MOUTET, Substitute), MM. BASTIANETTO (Italy, Substitute for M. CAPPI), BOHY (Belgium), BARDOUX (France, Substitute for M. BONNEFOUS), CROSBIE (Ireland, Substitute for M. NORTON), von FRIESEN (Sweden, Substitute for M. OHLIN), GERSTEN-MAIER (German Federal Republic), KAPANI (Turkey), JAKOBSEN (Denmark), MACKAY (United Kingdom), MANDALINCI (Turkey), MARCONCINI (Italy, Substitute for M. CINGOLANI), von RECHENBERG (German Federal Republic), SANDYS (United Kingdom), STRAUS (Saar, SubstU tute for M. MULLER), TREVES (Italy), TSAL-DARIS (Greece), VALEN (Norway), DE LA VALLÉE POUSSIN, (Belgium, Substitute for M. STRUYE), WISTHAND (Sweden) and Mlle KLOMPÉ, Rapporteur. - M. MOMMER (German Federal Republic) took part in the meeting of April 1951.

4. It is necessary before proceeding, to reply at once to the criticism that a purely theoretical study such as this is of no value. - Your Committee has been fully aware of the importance of the work undertaken by the Special Committees on Agriculture and Transport. A number of eminent members of those Committees consented to report to your Committee thereon. The importance of the studies on which they have been engaged in itself enhances the need for a more general enquiry; otherwise there is a danger that the concept of Specialised Authorities may in the end come to have no substantial meaning. - For that reason it appears necessary to formulate an unambiguous definition of the term Specialised Authorities; to establish their main characteristics, and to lay down the minimum requirements which an Organisation must satisfy before it can properly be termed Specialised Authority (the nature of its powers and function, essential organs, etc.) - Such is the limited purpose of the "General Declaration", which was unanimously adopted by the Committee.

5. I wish in the first place to indicate summarily some of the points which were made during the discussion ;

5.1. Specialised Authorities may adopt any one of a variety of different forms of constitutions. It is not a question of imposing a general standard plan on which should bo based the constitution of all Specialised Authorities. While drawing attention to two widely different alternative possibilities, the Committee recognised thatin practice any one of many intermediate formulas might be found suitable for adoption. - The very nature of the work undertaken by the Committee made it impossible to enter into constitutional details. The purpose of this Report is to indicate certain general principles which can be adjusted to meet each individual case.

5.2. Ultimate objective.The goal of the policy of Specialised Authorities is the establishment of a European Political Authority—in short, of a European Federation. The structure, powers and functions of each Specialised Authority should be designed to lead towards this goal.

5.3. Role of the Council of Europe. The Council of Europe is faced with a two-fold task :

*a.* to act as the co-ordinating body between all the Authorities and thus to ensure the possibility of eventually achieving the union of Europe as a whole;

*b.* to take the initiative in proposing the creation of new Specialised Authorities which will take their place within the framework of the Council.

6. Various opinions were expressed in the preliminary memoranda. The unanimous vote which was finally obtained, was not the outcome of a compromise but represented a solid agreement on certain general principles. I sincerely trust that this spirit of agreement will be reflected in the Assembly and will help to place the policy of Specialised Authorities on firm foundations.

7. Various Resolutions were adopted by the Committee during its successive meetings :

*a.* The Committee first of all drew up the "General Declaration" on Specialised Authorities which has already been mentioned (para 4). The Committee expresses the hope that this Declaration, if adopted by the Assembly, will be widely circulated to Governments and Parliaments. It might also serve as a guide for the preparation of the General Convention on Specialised Authorities which is referred to later in this Report;

*b.* In March the Committee drafted a recommendation on liaison between the European Coal and Steel Community (Schuman Plan) and the Council of Europe. The Bureau of the Assembly agreed to communicate on 17th March the draft Protocol prepared by the Committee to the Governments taking part in the Paris Conference.

*c.* The text submitted by the Committee was duly considered by the Conference and the Assembly will observe (cf. Chapter III below) that almost all the suggestion made by the Committee on General Affairs were agreed.

*d.* At its April meeting the Committee undertook an exchange of views on the political consequences of the signing of the Schuman Plan and the Joint Declaration of the six Governments. It decided that these should be studied in detail in the course of its forthcoming discussions.

8. The second part of this Report consists of the texts adopted by the Committee. The Committee thought fit to entrust its Rapporteur with the responsibility of drafting the " Introductory Statement" and of submitting it to you in its name. The statement is based on the Preparatory Report submitted to the Committee by the Rapporteur, account being taken of the observations expressed during the discussions - May I venture to express to M. Bidault my great appreciation of his unfailing assistance and advice which were of the greatest possible value to me; and to thank all my colleagues most sincerely for their confidence and their kindness towards me personally, which has helped to make the task of acting as their Rapporteur such a pleasant one. I would also like to express my thanks to the Secretariat- General, and particularly to the Secretariat of the Committee, for their efficient assistance which has done much to lighten my labours.

## 2. CHAPTER I

### *2.1. Characteristics and Structure of Specialised Authorities*

#### *2.1.1. Charasteristics of a Specialised Authority*

##### *2.1.1.1. Real Powers.*

9. In most existing Organisations (the 0. E. E. C, Council of Europe, Brussels Treaty Organisation, etc.) there is only a joint parallel exercise of the powers of the States. The agreement of all participating States is necessary before decisions are reached (0. E. E. C, E. P. U.) and the latter are enforced by each of the States insofar as they are severally concerned. In certain cases the decisions may even take the form only of a « Recommendation » : the fact that the representative of a Government in the Organisation concerned accepts such decisions does not absolutely commit the Government in question. The mere fact that questions of importance to the individual States are examined within the framework of an international Organisa-tion instead of in isolation involves in itself a weakening of the absolute sovereignty of the States concerned. The smooth running of the Organisation concerned continues to depend, however, either on the traditional play of political or economic influences, or simply on the goodwill of each individual Member State to the extent that its immediate national interests are not seriously affected. Clearly, institutions such as these in no way

correspond to our conception of Specialised Authorities. Though their utility cannot be denied, it should be pointed out that it was in réaction to their obvious weaknesses and inadequacies that the Assembly established its policy with regard to Specialised Authorities.

10. Your Committee is of the opinion that the first essential characteristic of a Specialised Authority is that the participating States should confer on it real powers over the particular field in which it is competent. The extent of these powers will vary according to the type of Authority. The Committee felt it might be of use to indicate two extreme possibilities :

*a.* The transfer to the Authority by each participating State of all the powers of the State in the particular field in which the Authority is competent. - In practice, the Treaty establishing the Authority might in such cases constitute a genuine "European Law" in the framework of which the participating States would confer on the Authority thé power to take certain political decisions (in short, the power to issue administrative rules and regulations) and executive power. - It may be assumed that only institutions of this type can be regarded as genuinely supranational authorities.

*b.* The transfer to the Authority of executive powers only. -In such cases all political decisions are taken by the unanimous agreement of some suitable governmental body, representing the participating States, but for the implementation of these decisions, each State delegates the necessary executive powers to an appropriate body; this may be called a joint exercise of the powers of the State. - An example may be found in the case of the North Atlantic Treaty Organisation : the Atlantic Council having unanimously taken the political decision to create a unified Atlantic Force, the Supreme Commander is made responsible for the implementation of this decision.

11. Can this last type of institution really he considered to he a Specialised Authority? To retain the unanimity rule and leave the "leadership" to the governmental body, which alone would be authorised to take decisions, seems to constitute a return to the traditional formulas already rejected (para. 9). It does nevertheless present a number of advantages which give reason to hope that a simpler or more elastic solution may be found for certain problems : for instance, the terms of reference of the Authority need only be very broadly defined in the Treaty, it being left to the governmental body of the institution to assign specific functions or duties to it at a later date. If, moreover, the executive organ of such an Authority be given a certain freedom of action and some power to exercise its own initiative and to interpret its instructions within the limits of the directives or decisions of the governmental body, this would be tantamount to granting it a certain very limited power of political decision, as in the case of a " supranational" Authority of the first type (cf. also paras. 14 to 16 below). Strictly speaking, therefore, there is no incompatibility between the two types of Authority proposed.

12. In calling attention to these two types of Authority, your Committee evidently does not wish to imply that they are the only ones which are possible. On the contrary, its intention in so doing was to emphasise the many different kinds of institutions which it would be possible to create while developing the policy of Specialised Authorities. Doubtless as the result of compromises accepted in the course of negotiations a large number of intermediate formulas will be found. The Schuman Plan, for example, specifics that certain important measures may only be decided by the unanimous agreement of the "Council of Ministers". It must, however, be stressed that in both the cases mentioned above there is a transfer of powers (this transfer being in the first case much more far-reaching in the second). In both cases the Specialised Authority is endowed with definite powers, real powers; it is assigned a certain share—varying in importance—of the sovereign rights of the participating States. This consideration has led your Committee to formulate the definition of a Specialised Authority which is contained in paragraph 1 of the General Declaration on Specialised Authorities (cf. Part. Two). The paragraph in question and paragraph 2, were unanimously adopted.

*2.1.1.2. An Executive.*

*Need for an Executive—its prerogatives.*

13. Your Committee unanimously agreed that an Executive, really capable of taking action, was an indispensable feature. The Executive is the essential organ of any Specialised Authority and on it rests the responsibility for ensuring that its activities shall be effective. On the other hand, the question of the prerogatives of the Executive was the subject of lengthy discussion.

14. In the case of a "Supranational Authority" (cf. para. 10 (i) ) the majority of the members of the Committee considered that the Executive was the essential organ and that it could not be subordinated to the Governmental body. In English terms it must be an "Executive" and not simply an "Implementing Body". A minority of the members, on the other hand, considered that the Executive should be completely "in the

hands" of the Governmental body and that the latter should, by means of suitable directives or decisions (taken, perhaps, by majority vote) actually direct its activities. This proposal was rejected by 14 votes to 2 when presented as an amendment to para. 7 of the General Declaration.

15. In order to understand more clearly how the majority of the members of the Committee envisage the powers and functions of the Executive of a Specialised Authority, a comparison may be made with the constitutional procedure adopted in parliamentary systems. As was stated above (para. 9, i) the Treaty establishing an Authority would be similar to a "European Law" defining the competence of the Authority concerned. The "European legislative power" would thus remain in the hands of the States acting by means of international agreements. The task of the Executive is to implement this "European Law" by means of suitable administrative decisions—that is to say, imple-mentary "decrees" or "orders". In this it is subject to the democratic control exerted by the representatives of the Governments and Parliaments of Members States, who are entitled to pass votes of confidence in it. In making these decisions the Executive would clearly pay close attention to the wishes or opinions of these controlling bodies. On the other hand, the latter should not be encouraged to encroach on the responsibilities of the Executive—that is to say, on its power to issue administrative rules and regulations. It is on the Executive that will rest the responsibility of realising the aims of the Authority; and it is the Executive which will be blamed if these aims are not realised. It is thus the Executive which should be in a position to make use of the powers with which the Authority is endowed. In other words, it is for the Executive to exercise the supranational powers transferred to the Authority.

16. On the other hand, in cases where the Authority is endowed only with delegated executive powers (para. 10 ii), the Executive is strictly subject to the governmental body, in whom the power of decision is vested. If the Executive is granted sufficient freedom of action, as is desirable, a similar situation to the above may in fact exist : the decision of the governmental body which has assigned a specific task to the Authority becomes — once approved, where this is necessary, by the constitutional Authorities of each State — equivalent to a "European Law" which it is the responsibility of the Executive to implement.

*Is there a danger of technocracy?*

17. The chief objection to this conception of the character of the Executive is the danger of leaving the way open to the development of a technocracy. Your Committee felt that this danger could be averted by arranging for strict parliamentary and governmental control of the Executive exercised through the ultimate sanction of a vote of confidence. The technocratic clanger would only materialise if this control—in the sense of a direct parliamentary control—were not guaranteed or were only exercised imperfectly (as is the case with most of the existing governmental Organisations). It will be our task to bring this particular consideration to the special notice of the Governments in connection with the Statute of the Authorities whose creation is at present under consideration. It should be added, without any desire to be facetious, that while the Parliamentary Assembly of a Specialised Authority may perfectly well pass votes of no confidence in the Executive, it is difficult to see what recourse it would have against a governmental body ("Council of Ministers" were the latter to bear the main responsibility for the Authority's actions. Subject to the proviso contained in para. 14 above, paras. 3 and 4 of the draft General Declaration (cf. Part Two) which summarise the above-mentioned considerations, were adopted unanimously.

*Composition of the Executive.*

18. The Committee was almost equally divided on the question of the utility at this stage of submitting general considerations regarding the composition of the Executive. A majority of members felt that it would be premature to request that a Specialised Authority be directed by a "Minister" or "High Commissioner". Such a formula would only be acceptable if the Executive of the various Authorities were already grouped within a "European Government" (cf. para. 29 below). For the present it would be preferable that the Executive should assume some such form as a Board or Council, its decisions being taken by majority vote. Its members should be not only senior officials, but also statesmen, leading professional figures in the field concerned, etc. chosen in such a way as to assure the standing and competence of the institution. The members of the Executive would be appointed by common agreement between the participating States. Although the formula proposed (para. 5 of the Draft Declaration) is expressed in very general terms, a number of the members of the Committee preferred the following version which is less detailed and does not imply alternative solutions : " I f the Executive assumes some such form as a Board or Council, its decisions shall be taken by majority vote." Para. 5 of the Declaration was finally adopted in its present form by nine votes to seven.

*2.1.2. The controlling bodies*

19. In the case of a Supranational Authority (para. 10, i), your Committee felt that in view of the far-rèaching prerogatives which it is proposed to grant to the Executive, a triple, control would be essential—governmental, parliamentary and judicial. Important rights will be vested in the governmental and parliamentary controlling bodies, in particular the right to pass votes of confidence in the Executive. Some doubts were raised as to the need for a parliamentary controlling body. Certain Representatives considered that in the case of a Defence Authority, for example, it might be unwise to consider the creation of a parliamentary Assembly. The majority of the members of the Committee considered it essential, however, that institutions should be developed which would make possible the direct exercise of parliamentary control at a European level. The need for such a control appears yet more necessary when account is taken of the long-term aims of the policy of Specialised Authorities (cf. paras. 29 to 31 below). Thus, after having rejected by 13 votes to 2 the provisional formula proposed : "The democratic control of the Executive may be exercised by a governmental body and (or) a parliamentary body", the Committee agreed to adopt the following version (cf. para. 6 of the General Declaration, Part Two) : "The democratic control of the Executive shall be exercised by a governmental body and a parliamentary body."

20. In cases where the Authority is vested with Executive powers only (para. 10, ii), the governmental body, besides its right of control, will also have certain other very considerable prerogatives which have already been mentioned. Even then, the Committee considered that a parliamentary Assembly should exist, with relatively less important powers. A juridical body of control would, however, in such cases be less necessary.

*2.1.2.1. Governmental Control.*

21. The Governmental body ("Council of Ministers") will be responsible for appointing the Executive. It will assure the liaison between the Executive and the national Governments. It will guide and influence the action of the Executive by means of mutual consultations. As has been stated above (para. 14), certain Representatives considered that in the case of a Supranational Authority the powers and functions of the governmental body should be considerably increased at the expense of those of the Executive. The majority of the members of the Committee were, however, of the opinion that such a development would rob the Executive of its essential character and would divest the concept of Specialised Authorities of all practical meaning. The Committee rejected such proposals by 14 votes to 2 (when voting on amendments to para. 7 of the General Declaration). The Committee appears to have considered that an Executive composed of "European" personalities would be more likely to act purely in the interests of the European community than a "Council of Ministers" with which the national interests of the countries represented would be confronted, even if the decisions of such a council were to be taken by majority vote. At the present stage of development an arbitrator is required : it is up to the Executive to play this rôle. Later, when the federal stage were reached, the relations between a "Federal Parliament" and a "Federal Government" might take an entirely different form.

22. The frequent consultations which would take place between the Executive and the governmental body would amount to a quasi-permanent control, backed by the weapon of a vote of confidence. The same control would be exercised by way of the Authority's budget and decisions with regard to the amount of funds to be allotted to it. In the case of a Supranational Authority, the decisions of the governmental body would generally be taken by majority vote. The Treaty might stipulate that the vote should be weighted and establish the number of votes to be granted to each participating State. Certain members of the Committee stated that, in view of the considerable differences in the importance of the various European countries, they could only accept the principle of a majority vote on condition that the votes were weighted. The views of others on this question were less absolute. Article 7 of the General Declaration (cf. Part Two), which summarises the above considerations, was unanimously adopted.

*2.1.2.2. Parliamentary Control.*

23. The parliamentary control over the Executive (financial control, examination of reports with regard to its activities, etc.) would be exercised by an Assembly whose members would be elected by the Parliaments of each participating State (pending future developments which might lead to their being directly elected by universal suffrage). It is probable that the seats in the Assembly would be distributed proportionately to the size of the populations concerned and to the economic potential of each country in the particular field of activity of the Authority in question. In the case of a Supranational Authority this control would be exercised over the Executive; and your Committee considers it essential that the parliamentary body should be entitled to pass votes of no confidence in the Executive, this right being exercised, however, in such a way that the Authority's fundamental stability would not be compromised. The parliamentary body (the Assembly) would also be associated with the Executive's activities through the fact of its sessions being convened at regular

interval? ; through the meetings of its committees held in the intervals between sessions; as the result of its right of enquiry or interrogation of its members, and by means of all the other normal forms of parliamentary procedure. The Assembly should also be entitled to express opinions and make recommendations (without binding force) to the Executive

24. In cases in which the Authority is vested with executive powers alone (para. 10, ii), the responsibility for its activities would rest with the governmental body and not with the Executive. There would then be no question of votes of confidence, and it would be the governmental body with which the Assembly would be associated. That being so, the Assembly would only have a "right to examine" the activities of the Executive and the policy of the governmental body and would communicate to the latter its observations and recommendations.

*Formulation of Directives.*

25. It has already been emphasised (paras. 14 and 15) that in a Supranational Authority the controlling bodies should not be allowed to encroach on the Executive's power to take political decisions. It might nevertheless, in the early stages, be as well to apply certain interim provisions. The Treaty establishing the Authority might stipulate, for instance, that in certain cases the governmental body and the Assembly would be authorised to impose binding directives on the Executive, or again that in the case of certain decisions the Executive might be required to obtain the prior approval of these bodies.

26. At all events this prior approval would be essential whenever the Executive stepped outside the strict limits of its terms of reference; if, for example, it took measures which might seriously affect other sectors of the economy of the participating countries, or if it demanded an amendment of the Treaty—that is to say, of the "European Law" establishing the Authority. This last hypothesis gave rise to special discussion in the Committee. To give the parliamentary and governmental bodies the right in certain circumstances to amend the Treaty would amount to granting to them in a certain degree actual legislative powers at the European level, — in other words the transition would be made from a mere Specialised Authority to an Organisation of a federal character. The Committee merely wished to mention this possibility (para. 11 of the General Declaration) which might in the initial stages be confined to the minor clauses of the Treaty. Articles 8 to 11 of the General Declaration (cf. Part Two), which sum up these considerations, were unanimously adopted.

*2.1.2.3. Judicial control.*

27. The Committee thought that a controlling body of a judicial nature would only be required in the case of a Supranational Authority (para. 10, i). Moreover, it considered that a single European Court should be set up (containing special Divisions for each Authority), rather than a separate Court for each Authority. .... The jurisdiction of this Court- would be strictly confined to ensuring respect of the law in the interpretation of thé Treaty. Although a right of appeal must be allowed in the case of Supranational Authorities, so far as the other type of Authority proposed is concerned (para. 10, ii) it would be optional to allow a right of appeal, since fewer disputes would arise owing to the fact that decisions would only be taken by unanimous vote. The suggestion was made that this court should be the same as that specified in the Convention on Human Rights. It was noted, however, that the Court of Human Rights was not yet functioning and that it would doubtless be necessary to make somewhat radical modifications in it in order to adapt it to these new tasks. Paragraph 12 of the General Declaration (cf. Part Two) which sums up the above-mentioned considerations, was unanimously adopted.

*2.1.3. Relations between the Specialised Authorities*

28. Your Committee felt it highly desirable that direct liaison should be established between the various Specialised Authorities. Without this liaison the development of the policy of Specialised Authorities would tend to lead to the disintegration rather than to the integration of Europe. It would be impossible, for instance, to avoid overlapping and duplication of effort, or even conflicts between Specialised Authorities, despite the fact that each of them would have its own clearly defined field of activity. On the other hand, it is difficult at this stage to say precisely what form should be given to the liaison between Specialised Authorities. Among the suggestions which were made, we haA'e already mentioned the proposal that all Authorities should recognize the jurisdiction of a single Court of Justice. Another is to the effect that regular meetings be arranged between the Chairmen of the Executives and that one single Parliament should be set up to exercise parliamentary control over all the Authorities. This last suggestion would give rise to certain difficulties owing to the fact that not all the same countries take part in all the Authorities; nevertheless, the considerable advantages presented by this proposal would justify its serious examination. The single Parliament of the Specialised Authorities would be linked with the Assembly of Strasbourg. It might even be regarded as a "Special

Committee" of our Assembly (cf. Re-. commendation 4, Doc. 123,1950). Indeed, as has been emphasised in previous resolutions, this would be the best means of linking the parliamentary bodies of the various Specialised Authorities with one another and with the Parliaments of the other European countries. It has already been recommended that the parliamentary delegates in each Specialised Authority should be selected from among the Representatives to the Consultative Assembly. If for some reason certain parliamentary delegates to the Special Assembly of an Authority were not Strasbourg Representatives (e. gowing to the insufficient number of representatives of the country concerned at Strasbourg), it would be of advantage later to modify the Rules of Procedure of our Assembly so as to enable these delegates to take part in the latter's debates, though without the right to vote.

*2.1.4. Aims of the policy of Specialised Authorities*

29. For the Assembly the ultimate goal of the policy of Specialised Authorities is the establishment of a European Political Authority— that is to say, of a European Federation open to as many States as possible. This question has so far not been developed at length, and the previous proposals have only been based on certain practical considerations. However, when we consider practical examples before us (such as the Agricultural or Transport Authority) we should bear in mind the fact that we are at present in a "pre-f ederal" stage and that we should try to bestow on the Specialised Authorities the kind of structure that will ultimately enable them to be converted into a "European Government".

30. These considerations confirm the conclusion to which the observations made at the beginning of this Report had already led (Para. 11)—that is, that we would do best to direct our efforts to the establishment of genuine Supranational Authorities. Some members of the Committee, however, felt that it was not desirable to give such definite expression to this conclusion, which might serve to alienate certain countries from the policy of . Specialised Authorities. In these circumstances it was proposed that Paragraph 13 (i) of the General Declaration should be eliminated. The Committee, however, retained this paragraph by 12 votes to 3, with one abstention, thus indicating its own political choice, while emphasising that this was not the only possible formula.

31. How can one envisage the construction of a Federal Government in the future? The controlling bodies (parliamentary and governmental) are in fact only the nucleus of a "Federal Parliament"... The governmental bodies of each Authority would be replaced by an "Upper Chamber" (Chamber of States) endowed with certain special powers. The parliamentary bodies would become the specialised divisions of a "Lower Chamber" (Chamber of Representatives). The "Federal Parliament" would control the Executive, but it would also be empowered to promulgate the additional "European legislation" which the circumstances might require. The "legislative authority" in certain fields, instead of being exercised as at present through the conclusion of treaties between States, would be transferred to the Federal Parliament. The Executives of the various Authorities would become the "European Ministries" of the Federation, thus bearing out our previous suggestions as to the nature and extent of the powers to be accorded to them. The single "Court of Justice" of the Authorities would act as the "Supreme Court" of the future European Federation. I trust that the Assembly will excuse this anticipatory statement, based as it is on highly uncertain assumptions. Let us not forget that no Specialised Authority is yet functioning ! Let us conclude simply that what has been said confirms the importance of the close relations which must be established between the Specialised Authorities and the European community as a whole represented in the Council of Europe.

32. Para, 13 of the General Declaration (cf. Part Two) which sums up the above-mentioned considerations was unanimously adopted. The General Declaration as a whole, which had been submitted by the Committee to the Assembly, was unanimously adopted. owing to the insufficient number of representatives of the country concerned at Strasbourg), it would be of advantage later to modify the Rules of Procedure of our Assembly so as to enable these delegates to take part in the latter's debates, though without the right to vote.

## 3. CHAPTER II

### *3.1. Relations with the Council of Europe*

33. I should like to emphasise the very great importance which attaches to the establishment of close links between the Authorities and the Council of Europe. The adoption of the policy of Specialised Authorities involves certain risks; the principal risk being that the efforts made to achieve co-operation will become dissociated and will lead to the establishment of institutions which are highly specialised and have no real connection either with one another or with the various European Organisations (Council of Europe, O. E. E.

C). This danger of disintegration should not be under-estimated. The Assembly has since its earliest days attempted to overcome it by seeking ways and means of linking these Authorities with the Council of Europe (Recommendations 1, 4 and 52, Docs 121,123and 154,1950).

34. The following principles emerge from the Recommendations :

*a.* It is the Council of Europe's express task to encourage the establishment of Specialised Authorities ;

*b.* Where Specialised Authorities are established on the initiative of Member States outside the framework of the Council of Europe, the States in question should take steps to associate them with the Council of Europe;

*c.* The Council of Europe has a two-fold task to perform;

*a.* It should act as the guardian of the interests of the European community vis-à-vis the Specialised Authorities,

*b.* It should facilitate and assist in the co-ordination of the various Authorities. If this task is to be fulfilled it is necessary that the Council should be possessed of certain means of obtaining information and of taking action.

*d.* Efforts should be made to find formulae for integrating certain organs of the Council of Europe with those of the Specialised Authorities. The question of the association of the Specialised Authorities with the Council of Europe should not, however, be allowed to hold up the everyday work of the Authorities. The greatest flexibility is required in finding means of giving practical effect to the principles set out above.

35. Your Committee considered whether the liaison to be establishment between the Specialised Authorities and the Council of Europe should be established by means of treaty texts. It was faced in this connection with an initiative taken by the Committee for the Revision of the Statute of the Council of Europe, appointed by the Committee of Ministers. This Committee had considered various additional provisions for the Statute relating to the Specialised Authorities (cf. Doc. 10, Head E, and Appendix, Section 6), and these were referred to your Committee. The latter was of the opinion that these new provisions, slightly modified by the Committee of Ministers, contained reservations which did not appear to justify the conclusion of a Protocol of Amendment of the Statute and the putting into force of a procedure for ratification. The Committee thought it preferable that a Convention or special Protocol should in due course be established, defining a general framework, obviously of a flexible nature, within which would be developed the policy of Specialised Authorities linked with the Council of Europe. This Convention would require to be brought into line with sections of the United Nations Charter relating to the Specialised Agencies.

36. The signing of the Treaty instituting the Coal and Steel Community (and of the Protocol on liaison with the Council of Europe), forthcoming negotiations concerning the Authority on Agriculture and discussions in the Assembly on Specialised Authorities constitute—or will constitute—basic information which is a prerequisite to consideration of such a Convention. The taking of any precipitate stand which might retard development of the policy of Specialised Authorities should be avoided. Your Committee asks that the Assembly authorise it to undertake, at a suitable moment, initial work on the preparation of a preliminary draft for a Convention on Specialised Authorities.

## 4. CHAPTER III

### *4.1. Liaison between the European Coal and Steel Community and the Council of Europe*

37. At its meeting in March, the Committee on General Affairs was faced with a clear-cut problem requiring immediate solution : The Conference on the Schuman Plan, to which Recommendation 6 (Doc. 132,1950) was referred by the Committee of Ministers, was at the time examining the provisions to be inserted in the Treaty and its Appendices for the purpose of establishing relations between the European Pool for Coal and Steel and the Council of Europe. The imminent conclusion of the negotiations led the Committee to take immediate action in order that the Governments of the countries participating in the Conference might be informed of the suggestions, if not of the Assembly itself, at least of one of its organs. A draft Recommendation was prepared (unanimously adopted with one abstention), containing a draft Protocol to be annexed to the Treaty establishing the Coal and Steel Community (cf. Appendix II to the present Chapter).

38. The Conference of Ministers of the Schuman Plan considered the text prepared by your Committee and on 18th April signed a Protocol concerning liaison with the Council of Europe, the text of which (cf. Appendix I to the present Chapter) is almost identical with that drawn up by the Committee on General Affairs. The

alterations made by the Conference are of a purely drafting nature and tend only to improve the form of the document. It is only in Article 3 that a change of any importance has been introduced : the first sentence ("The High Autority shall keep the Council of Europe regularly informed of the activities of the Community ") has been eliminated, but it recurs almost word for word in the body of the Treaty.

39. The Committee on General Affairs noted with satisfaction that such complete agreement should have been reached on a matter of obvious importance. The provisions agreed to by the Governments signatory to the Schuman Plan will have considerable repercussion on the development of the policy of Specialised Authorities within the framework of the Council of Europe. The proposals of your Committee had not yet been ratified by the Assembly. The Committee believes, however, that they did indeed reflect the concern of all Representatives. It is particularly fortunate and significant that these proposals should have been endorsed, and this very fact once again bears out the realistic nature of the matters to which the Assembly devotes study.

40. The Committee furthermore studied the important Joint Declaration of the six Governments signatory to the Treaty. It deemed that it should be the subject of special study by the Assembly and in committee, so that practical measures should be defined whereby the Council of Europe might assist in achieving the political objectives laid down in the Declaration. Following this exchange of views, the Committee adopted two Resolutions, to be submitted to the Assembly. They were agreed to by 14 cotes to 1. One representative who voted against the Resolutions gave as his reason that he and his friends were not in agreement with the Treaty instituting the Community. The first Resolution on the Protocol relating to liaison between the Coal and Steel Pool and the Council of Europe is worded as follows : "The Committee on General Affairs, "Having taken cognisance of the Protocol on the liaison between the European Coal and Steel Community and the Council of Europe, signed on 18th April, 1951, "Notes with satisfaction that the signatory Governments of the Treaty have given consideration to the draft established by the Committee and have supported its principal considerations. " Note s that close collaboration can thus be established between the Council of Europe and the Community as soon as the Treaty establishing it has been ratified. " The second Resolution on the Joint Declaration made on 18th April by the signatory Governments reads as follows : " Th e Committee, " Afte r having taken cognisance of the joint Declaration of the six Governments signing the Treaty instituting the European Coal and Steel Community, " Propose s that the Assembly study during its next Session the Declaration in question and the objectives formulated therein, " Deem s that the forthcoming work of the Committee should in particular be directed towards the manner in which the Assembly might contribute to the realisation of the European political objectives."

*Observations on the Protocol concerning liaison between the Schuman Plan and the Council of Europe*

41. In adopting its draft Protocol, the Committee laid special stress on the fact that the ultimate aim should be a genuine integration of the Coal and Steel Community within the Council of Europe. Certain members of the Committee considered that the Protocol might subsequently have served as the basis for the establishment of a model Protocol concerning relations between Specialised Authorities and the Council of Europe. Your Committee was of the opinion that a clear distinction should be made between two categories of Autority ; those established within the Council of Europe and those established outside the Council on the initiative of certain Member States. The Assembly has already clearly stated its preference for the creation of the Authorities within the Council itself, which would involve far closer association with the Council. The Protocol set forth below could therefore be extended only to those Authorities established outside the Council.

42. The following comments may be made with regard to the actual Articles of the Protocol (cf. Appendices I and II). .. Articles 1 and 2 are directly inspired by Recommendation 6 (Doc. 132, 1950) officially addressed by the Committee of Ministers to the Member Governments of the Schuman Plan. Article 3 is designed to meet the desire of the two Organs of the Council of Europe that they should receive periodical reports from the Specialised Authorities. The High Authority, as the Executive of the Coal and Steel Community, should submit such reports. The Assembly of the Community furthermore submits in a special Reports its own observations on the activities of the Community and an account of its own proceedings (art. 2). Article 4 establishes the legal validity of Recommendations addressed by the Council of Europe to the Community. These Recommendations are clearly not of a coercive nature; the High Authority merely undertakes to give them due consideration and subsequently to announce whether it has been possible to take any action in their respect. Article 5 has a symbolic value. Article 6 : the purpose of this Article of the draft Protocol is to reserve the right to open negotiations at a later date should it appear possible and desirable to establish closer relations, which would especially be the case if a Convention on Specialised Authorities (cf. Section 35) strengthened the terms of reference of the Council in this respect.

**Appendix 1 PROTOCOLE - on the relations between the European Coal and Steel Community and the Council of Europe, signed on 18th April, 1951.**

**THE HIGH CONTRACTING PARTIES,**

FULLY AWARE of the need for establishing the closest possible links between the European Coal and Steel Community and the Council of Europe and in particular between their respective Assemblies;

TAKING DUE NOTE of the Recommendations of the Assembly of the Council of Europe;

HAVE AGREED on the following provisions

ARTICLE 1

The Governments of the Member States shall be requested to recommend to their respective Parliaments that the Members of the Assembly whom they are to appoint should preferably be selected from among the Representatives to the Consultative Assembly of the Council of Europe.

ARTICLE 2

The Joint Assembly of the Pool shall submit an annual report on its work to the Consultative Assembly of the Council of Europe.

ARTICLE 3

The High Authority shall submit to the Committee of Ministers and to the Consultative Assembly of the Council of Europe the annual general Report stipulated in Article 17 of the Treaty.

ARTICLE 4

The High Authority shall inform the Council of Europe of action taken in respect of the Recommendations made to it by the Committee of Ministers of the Council of Europe, in pursuance of Article 15 (b) of the Statute of the Council of Europe.

ARTICLE 5

The present Treaty and its Appendices shall be deposited with the Secretariat General of the Council of Europe.

ARTICLE 6

Agreements between the Community and the Council of Europe may provide inter alia for any other form of mutual assistance and co-operation between the two Organisations and in due course for the appropriate forms to be taken such assistance or co-operation.

**Appendix 2 DRAFT PROTOCOL - in respect of relations between the Schuman Plan and the Council of Europe, established on 16th March, 1951 by the Committee on General Affairs**

**THE HIGH CONTRACTING PARTIES,**

CONSIDERING that it is necessary to enable the European Coal and Steel Community to be associated with the Council of Europe,

HAVE AGREED on the following provisions :

ARTICLE 1

The High Contracting Parties shall recommend to their respective Parliaments that the members of the Joint Assembly of the Community whom they are to appoint shall be selected from among the Representatives to the Consultative Assembly of the Council of Europe.

ARTICLE 2

The Joint Assembly of the Community shall submit an annual report on the latter's activities to the Consultative Assembly of the Council of Europe.

ARTICLE 3

The High Authority shall keep the Council of Europe regularly informed of the activities of the Community. It shall submit to the Committee of Ministers and the Consultative Assembly of the Council of Europe an annual general Report as stipulated in Article... of the Treaty.

ARTICLE 4

The High Authority shall inform the Council of Europe of the action taken in respect of the Recommendations (within the meaning of the Statute of the Council of Europe) communicated to it by the Committee of Ministers of the Council of Europe.

ARTICLE 5

The present Treaty and its Appendices shall be deposited with the Secretariat-General of the Council of Europe.

ARTICLE 6

Agreements may be concluded between the Community and the Council of Europe providing for other forms of mutual assistance and co-operation between the two Organisations and, in due course, for the integration of their subsidiary bodies.

Note : The draft Protocol takes into account the following considerations :

The Committee on General Affairs submits the following Recommendations to the Assem-bly,

"The Assembly,

"Desiring that in the interests of European union the European Coal and Steel Community formed by certain of the Member States should ultimately become an integral part of the Council of Europe,

" Considerin g that close relations between the Council of Europe and the Coal and Steel Community should be established forthwith,

"Having regard to the Recommendations already approved by the Consultative Assembly concerning the Schuman Plan and the Specialised Authorities (Recommendations 1, 4, 6 and 52, 1950.)

"Deems it advisable to insert in the Treaty on the Schuman Plan (or its Appendices) provisions on the following lines :

*a.* "Article proposed for inclusion in the Treaty : " Th e European Coal and Steel Community shall be associated with the Council of Europe in accordance with the terms laid down in a special Protocol ".

*b.* "Appendix I to the Draft Protocol."