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Draft Treaty embodying the Statute of the European Community adopted by the Ad Hoc Assembly

Report[1]
Committee on Political Affairs and Democracy
Rapporteur: Mr Georges BOHY, Belgium, Socialist Group

1. 1953 - 5th Session - First part

A. Draft Recommendation (I)

The Assembly,

Having considered the draft Treaty embodying the Statute of the European Community adopted by the Ad Hoc Assembly, 10th March, 1953, and communicated to the Consultative Assembly in accordance with the Resolution adopted in Luxembourg, 10th September, 1952, by the six Ministers for Foreign Affairs of the Member States of the European Coal and Steel Community;

Recalling its unanimous Resolution of 6th September, 1949, that the " aim and goal of the Council of Europe is the creation of a European political authority with limited functions but real powers ";

Recalling t h a t it has sought to define these functions and powers, and t h a t accordingly on 26th August and 23rd November, 1950, it voted in favour of the draft Treaty instituting the European Coal and Steel Community; on 11th May, 1951, welcomed the signature of the said Treaty; on 11th August, 1950, adopted a Recommendation calling for " the creation of a unified European army under the authority of a European Minister for Defence, subject to proper European democratic control " ; on 30th May, 1952, requested that the European Defence Community be subordinated to a Political Authority; and has subsequently given its support to the draft Treaty instituting the European Defence Community;

Regarding the creation of the Specialised Communities as somany preliminary steps towards the creation of the European Community;

Expressing the gratitude of the free peoples of Europe to the authors of the draft Treaty who have with ability and devotion fulfilled the task they undertook upon the invitation of the six Ministers for Foreign Affairs;

Believing that, if the creation of the European Community is to be compatible with the interests of the Member States of the Council of Europe as a whole, there must be closer unity between these Member States;

Emphasising that such closer unity of Europe has always been regarded as an imperative political necessity in the economicand social fields as well as in that of defence, and helieving therefore that even a possible reduction of tension between the U.S.S.R. and the free world would not eliminate this necessity;

Bearing in mind that the success of the European Community will in large measure depend on the extent to which links are maintained and reinforced between t h a t Community and the States not members thereof on the one hand and between that Community and the Council of Europe on the other, and on the efficiency of the working relationships which are introduced between them

Drawing the attention of those responsible for the further negotiation of the draft Treaty to the suggestions contained in its Recommendation...[2]concerning the European Community,

Recommends to the Committee of Ministers :

a. That the Governments of the Member States of the Council of Europe which propose to set up the European Community proceed to the speedy conclusion of the task they have undertaken;

b. That the Governments of all Member States make determined efforts during the coming year to develop closer unity within the framework of the Council of Europe between all the nations therein represented, so that this larger unity may develop contemporaneously with t h a t achieved in the European Community.

Draft Recommendation (II)

The Assembly,

Having considered the draft Treaty embodying the Statute of the European Community adopted by the Ad Hoc Assembly on 10th March, 1953, and communicated to the Consultative Assembly in accordance with the Resolution adopted in Luxembourg, 10th September, 1952, by the Six Ministers for Foreign Affairs of the Member States of the European Coal and Steel Community;

Recalling the terms of its Resolution 26 of 17th January, 1953, as follows :

" The Assembly,

2. See Draft Recommendation (II) below.

Called upon for an opinion on the directives transmitted by the Ad Hoc Assembly to its Constitutional Committee,

Expresses its unreserved appreciation of the quality of the work hitherto performed by the Constitutional Committee ";

Mindful also of its Resolution... 1 concerning the questions of Association and Liaison;

Considering therefore that it is its duty to formulate precise proposals for the amendment of the draft Treaty with the object of ensuring the unity of the Member States of the Council of Europe within the framework of the latter, and at the same time of seeking to introduce improvements into the draft Treaty,

Recommends to the Foreign Ministers of the Member States of the European Coal and Steel Community :

a. That in Article 116, paragraph 1, the words " and to any other European State which guarantees the protection of human rights and fundamental freedoms as defined in Article 3 " be omitted;

b. That in Article 25, paragraph 1 :

the first sub-paragraph be worded as follows : " No restriction shall be placed upon the freedom of movement of the Members of the Parliament within the territory of the Community ";

in the second sub-paragraph the word " visa " be replaced by the word " passport ";

c. That in implementing Article 71, paragraph 2, due regard be had to the draft European Convention for the peaceful settlement of disputes;

d. That Article 83 be reconsidered ; and that due regard be given to the draft European Convention for the reciprocal treatment of nationals;

e. That, in the spirit of Recommendation 26 (1952) of the Consultative Assembly (" Strasbourg Plan ") , the provisions for consultation contained in Article 4, § 3, of the Protocol on links with the Council of Europe be made mandatory in respect of the policy of the Community, whenever the latter has a bearing on the interests of the overseas territories constitutionally linked with a Member State of the Council of Europe;

f. That, with the possible exception of the Court, all institutions of the European Community and of the Council of Europe be located permanently in the same town;

g. That one of the members of the European Executive Council be specifically charged with the responsibility for the implementation of Articles 3, 4 and 5 of the Protocol on links with the Council of Europe.

B. Draft Orders of the Assembly

1. The Assembly instructs the President to transmit Recommendations , together with the Report of the Committee on General Affairs, to the President of the Ad Hoc Assembly and the Presidents of the Chambers of Parliament of the Member States of the European Coal and Steel Community.

2. The Assembly instructs the Committee on General Affairs to report to the Assembly in due course on the progress made towards the conclusion and implementation of the draft Treaty embodying the Statute of t h e European Community.

C. Explanatory Memorandum

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1. PART ONE - Introductory Report

1.1. Aim and scope of the Report

1. In January, 1953, the Assembly adopted an Order in the following terms : " The Assembly instructs the Committee on General Affairs to prepare a report concerning the said texts, to be discussed during the First Part of the Fifth Ordinary Session ". How should this Order of the Assembly be interpreted??

2. Your Rapporteur does not wish to hide the fact that initially he hesitated before beginning even a brief exegesis of the whole draft Treaty setting up the European Community. But considerable misunderstanding arose in certain quarters last January concerning the nature of the Report which I then had the honour to submit to the Consult a t i v e Assembly on behalf of the Committee on General Affairs[3] . On that occasion the Report was interpreted as evidence that the Assembly was more concerned with its own relationship to the six-Power Community in process of creation than with the significance which the creation of t h a t Community would have upon the whole pattern of Western cooperation.

3. In these circumstances it is well to recall the precise terms of the Committee's first Report. It was stated that it " was not concerned with the Report of the Constitutional Committee as such ", but that its " sole function was to ascertain whether or not the proposals of the Ad Hoc Assembly ran the danger of weakening the links between the Member States of the Community and the other Member States of the Council of Europe "

4. The reasons for this limitation of the scope of the Committee's first Report wore two-fold. In the first place, the Assembly rightly considered the need to maintain the unity of all the Member States of the Council of Europe as being of paramount importance. It was therefore both natural and right that, initially, the Assembly should emphasise these considerations. As a result most of the desiderata expressed by the Assembly in January have been incorporated[4] .The second consideration was purely technical. In the three days available to it, it would have been impossible for the Committee on General Affairs to give its final view on so important a text, which was, moreover, at that time still incomplete.

5. The Committee therefore limited the scope of its first Report deliberately, but added the rider : " Your Committee believes t h a t it is desirable that the Consultative Assembly should undertake a detailed examination of the draft Treaty for a European Political Authority as soon as t h a t text is ready ".

6. Your Rapporteur was nonetheless tempted to devote only a brief introductory part of his Report to this subject, and to dwell at greater length in the two ensuing parts on those provisions of t h e Treaty of a kind likely to facilitate the creation of a larger Community by establishing effective links from the beginning between the Community and the Members of the Council of Europe regarded as a whole; and thereafter to draw attention to those provisions of the Treaty which appeared to run t h e risk of weakening such links, together with a possible Recommendation on this subject. Such a Report, it will be observed, would have followed the same pattern as the Report adopted by the Assembly in January, though in greater detail.

7. However, it speedily became clear to your Rapporteur that this plan, though it had the merit of modesty, nevertheless involved certain grave disadvantages.

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3. Sec Extraordinary Session, 1953 : Doc. 104, and Resolution 26, adopted by the Consultative Assembly at its 34th Sitting, 17th January, 1953.
4. This forms the specific subject of the Report submitted by Lord John Hope (see 5th Session, 1953 : Doc. 118). Doc. 118).

8. Of these, the first was that it is impossible to analyse the provisions which occur throughout the Treaty having a bearing upon the relations between the Community and the other Member States of the Council of Europe by isolating them completely from their context. Such a method would run a grave risk of deforming and misrepresenting these provisions, and thereby provoking a series of long and confused debates.

9. The second disadvantage involved in the procedure envisaged in paragraph 6 was of a political and psychological order. We have recalled above the reasons which led the Committee in January to a narrow delimitation of its Report. Nevertheless, a close study of the various comments in the press to which the discussion of the Report in the Assembly gave rise indicates clearly that the Committee's purpose was not only unperceived or misunderstood, but entirely misrepresented. The brevity of the Report was construed as " an attempt to put a brake on the efforts of the Six ". Other newspapers talked of a text which " although circumspectly phrased, proves without ambiguity that the ' Big Europe ' wants to put a brake on the ' Little Europe ' at all costs, in order to bring i t likewise to a standstill ". Others again referred to " a disappointing debate " or even " evasive action " on the part of the Assembly. The fact that commentaries of this kind should have been widespread both in Europe and outside suggests that equivocation might honestly have been read into the Committee's Report.

10. Is it necessary to recall that the text adopted by the Assembly clearly stated that the Assembly " expressed its unreserved appreciation of the quality of the work of the Constitutional Committee "? For these reasons it behoves the Assembly to make a detailed analysis of the Treaty in this Report in order to disprove the unjustified accusations of bad faith which have been levelled against it. We must therefore speak out unambiguously.

1.2. Our essential task

11. Your Committee thus found itself faced with the same choice as in January, namely either to carry out in full the Assembly's instructions to undertake a detailed study of the Treaty, or else to confine itself to seeking in the text of the draft Treaty any provisions which might help to forward the establishment of a broader community or which, on the contrary, might weaken the links established by the Council of Europe.

12. Your Committee no longer had the same reasons as in January for not undertaking the first of these tasks. The draft Statute now before you is no longer a series of " directives ", but a clear-cut text, drawn up article by article, with its legal and political scope fully and clearly denned. Some members of your Committee, however, objected to this full examination of the draft Treaty, pointing out not unreasonably t h a t the text was submitted only for the consideration and comments of the Ministers; that it therefore amounted only to a draft; and that, having regard to its provisional nature, it did not call for detailed study. We believe t h a t due allowance should be made for this view, and our general examination will deal with the essential provisions of the draft Treaty, rather than with the detail of its t e x t ; but the instructions given to us by the Assembly were too formal for your Committee to evade them. It may, on the other hand, be argued from the provisional nature of the text t h a t the continuation of the task undertaken in January •—• namely the specific study of the articles of the draft Treaty likely to affect the links existing between the future Community, on the one hand, and the other Member States of the Council of Europe and the Council itself, on the other — is of greater importance and urgency than ever. It is indeed this tentative character of the text which ensures t h a t our contribution will serve a useful purpose. As a result, your Committee resolved to evade neither issue, but to devote its attention first of all to specific proposals for amendment of the draft Treaty. The Explanatory Memorandum is therefore divided into three parts, namely:

a. An introductory Report.

b. An examination of those articles of the draft Treaty which have a direct bearing upon relations between the " Six " and the " Fifteen " within the Council of Europe.

c. Part III of the Explanatory Memorandum in which your Rapporteur has endeavoured to fulfil the Assembly's instructions to examine the Treaty as a whole.

13. Your Committee has tabled two draft Recommendations, the first of which arises from a general examination of the draft Treaty, while the second deals with the more precise and limited questions, which your Committee also studied last January.

1.3. The guiding principles which underlie the drafting of this Report

14. The Committee will recall the atmosphere in which its work was performed last January, consisting as it did of a strange mixture of hope and fear. Of hope, because the work of the Constitutional Committee revealed unmistakably the will to take a further important step towards the building of a United Europe; of fear,

which, I would say, had two sources : in the first place, the fear evinced by all those (whether belonging to the six States represented in the Ad Hoc Assembly or not) who feel that a common Authority whose powers are too wide might increase dangerously the resistance of national opinion to any far-reaching surrender of sovereignty; and, secondly, the fear shared both by those who accept a Community thus limited in its membership only as a temporary second best, and by those who feel t h a t such a Community, if too restricted in scope, will merely constitute a kind of " foreign body " in Europe considered as a whole and furnish an obstacle to its future unification.

15. In the hasty report submitted by your Committee to the Assembly last January, i t must be admitted that the fears were more pronounced than the hopes, and it may well be that it was because certain sections of the Press noted this that they interpreted our attitude in the unfortunate way referred to above. The main concern of your Rapporteur — and I think I may say of the Committee as a whole, since it allowed me to say so unequivocally in its January Report — was to ascertain whether the texts submitted to us dealing with the establishment of the Community would have the effect of strengthening the bonds linking some Members of the Council of Europe in complete harmony and unity with all the others, or whether too tight a union among a small number of Member States would erect a dangerous barrier between the States in question, Members of the Community, and the other Members of the Council of Europe. From this point of view your Committee is happy to note the satisfact o r y evolution which has taken place between t h e publication of the general directives and the adoption of the draft of the Treaty now before us. On the one hand, the general texts submitted to us in January now appear in the form of precisely-drafted constitutional articles, whose very precision has dispelled many of our fears. It is true that the powers of the new Community to some extent go beyond those with which the Coal and Steel Community and the Defence Community are specifically endowed, but they do so to far less a degree than might at first have been feare and the perils to which the attribution of too wide a scope and too great powers might have given rise are now, if not completely removed, at least greatly diminished. On the other hand, the solution of the problem of liaison has now assumed a more definite and encouraging shape. It will be recalled how inadequately this important problem was dealt with in the directives of January, 1953. The Ad Hoc Assembly has this time given particular care to this question. In this respect, it has even been said that in the Ad Hoc Assembly the " minimalists " have triumphed more often t h a n the " maximalists ". How far this is t r u e is, however, uncertain : it might be more accurate to say that the former have won a sufficient number of successes to remove the majority of t h e perils which we feared.

16. Your Committee would call the attention of the Council of Europe to its efforts to be constructive in its criticisms and amendments. It would once again urge the Council of Europe not to act as a brake on t h e establishment of the new Community. The Council must be coldly realistic and take account of two hypotheses only : the success of the proposed Community, or its failure. If it succeeds, the Council must be in a position to be able to claim that it did all it could to assist its establishment, and this in the most favourable way possible for the subsequent development of the union of the whole of Europe. If it fails — and however improbable this eventuality may be, it must be taken into account, in view of the internal political reactions in certain countries participating in the elaboration of the Community — it is vital for the whole future of the Council, which would then have to face up to a number of fresh responsibilities, that it could never be asserted that the Council of Europe had any responsibility whatsoever for that failure.

1.4. Study of the Recommendations in Committee

Your Committee feels it should submit two draft Recommendations to your Assembly. The first is the result of the general study made of the Treaty in accordance with the instructions given to the Committee by the Assembly last January.

The second, which is perhaps the more important owing to its realistic and constructive nature, is designed to meet certain definite and pressing problems, and contains a number of amendments to the draft Treaty for which justification is given. Your Rapporteur has therefore considered Recommendation II first.

Draft Recommendation II

17. The Explanatory Memorandum recalls the previous Resolutions of the Assembly, which lay down the mandate conferred upon your Committee, and then enunciate the general principles according to which the Committee thought these should be interpreted. The seven precise proposals enumerated in the Recommendation may thus be considered without further comment.

18. The first is worded as follows : " Recommends that in Article 116, paragraph 1, the words : 'and to any other European State which guarantees the protection of human rights and fundamental freedoms, as defined in Article 3, be omitted. "

19. Your Committee feels it should draw the close attention of the Assembly to this point. It would add that the Ad Hoc Assembly adopted the present text of the Article in question by only a very small majority. In view of the special preoccupation of your Committee to ensure t h a t nothing in the new constitution should be allowed to weaken the relations between the Member States of the new Community and the Member States of the Council of Europe, this text has very grave implications. Were it allowed to stand, the result would be that States could accede to the new European Community without being Members of the Council of Europe. Your Rapporteur ventures to recall that during the debates in the Consultative Assembly last January he insisted on the need for the new Community as a whole to take shape within the Council of Europe, and was gratified to find that the Assembly gave him unanimous support. Clearly, this principle has been wholly ignored in the text adopted, and all the endeavours of the Council of Europe and others to ensure that the establishment of the new Community should not be allowed to jeopardise the general efforts to achieve the unity of all European countries will have been in vain if this text were to be maintained. The fact, moreover, that this text has met with strong opposition in the Ad Hoc Assembly, doubtless for the same reasons, confirms our feeling that your Assembly should press this amendment vigorously.

20. Paragraph (b) of the draft Recommendation is worded as follows : " Recommends that in Article 25, paragraph 1 :

> *the first sub-paragraph be worded as follows : 'No restriction shall be placed upon t h e freedom of movement of the Members of the Parliament (of the Community) within the territory of the Community';*
>
> *in the second sub-paragraph the word 'visa' be replaced by the word 'passport'."*

This return, with amplifications, to the original text adopted by the Ad Hoc Assembly, which the Working Party of the Constitutional Committee decided to modify, may appear to your Assembly to have little bearing on the considerations which led to the drafting of the other points of this Recommendation. Your Committee, however, decided to insert it among the others, on the insistence of several members of the Committee, who felt that by taking this opportunity of securing complete freedom of movement and action for the members of the Parliament of the new Community, your Council would pave the way for granting the same very necessary facilities for the Representatives to the Consultative Assembly.

21. Paragraph (c) of the Recommendation proposed that, in implementing Article 71, paragraph 2, regard be paid to the draft European Convention for the peaceful settlement of disputes. For the sake of clarity the full text of Article 71 is given below : " The Community shall :

> 21.1. institute a procedure for consultation among the Member States, so t h a t a common attitude may be adopted at any international conferences where the interests of the Community may be involved;
>
> 21.2. prepare a draft pact for the peaceful settlement of any disputes which may arise between the Member States and which do not come within the competence of the Court;
>
> 21.3. establish the procedure of conciliation and arbitration required for the implementation of Article 73;
>
> 21.4. draft other treaties or agreements among the Member States or between certain individual Member States.

The European Executive Council shall invite the Member States to implement such treaties or agreements in accordance with their usual constitutional procedure. "

Your Rapporteur sees no point in enlarging upon the necessity of this Recommendation put forward by your Committee, sufficient justification for which may be found in the second part of the Explanatory Memorandum.

22. The text of your Committee proposes: " t h a t Article 83 be reconsidered, and that due regard be given to the draft European Convention for the Reciprocal Treatment of Nationals ". Article 83 is worded as follows : " From the date on which the present Treaty becomes effective, nationals of Member States who have completed their service in the European defence forces shall have freedom of movement within the Community and freedom to choose their domicile in the territory of any Member State under the sa.me conditions as are applicable to nationals of that State. The same facilities shall be afforded to nationals of Member States born after the present Treaty has come into force. "

23. Your Committee believes that the Ad Hoc Assembly adopted this Article without paying sufficient attention to its consequences. It would further point out that this Article did not appear in the first draft adopted by the Constitutional Committee; t h a t it was submitted to the Ad Hoc Assembly only towards the end of its March session; and t h a t it was then adopted after a very short debate. Your Committee fully appreciates the laudable motives which induced the Ad Hoc Assembly to follow the suggestion of one of its members in this matter. It is clear t h a t one of the most important objects in establishing the European Community is to ensure t h e free movement of goods and persons within its boundaries, and that this provision attempts to achieve this aim. It therefore did not appear desirable to your Committee, by proposing the straightforward rejection of this article, to give the impression of repudiating a principle to which it subscribes. That is why it has taken the more prudent course of stating t h a t Article 83 should be "reconsidered". However, it has no wish to conceal from your Assembly its view that such reconsideration will entail prolonged and complex research. Economic realities are inexorable, and it serves no useful purpose to pretend that this desirable principle can be applied without careful and progressive planning. We consider t h a t it will be essential to embark upon this preliminary research and to draw up a provisional plan before preparing a new text for Article 83. For this reason, and because it is not equipped for such research, your Committee has felt justified in not submitting a new text.

24. In paragraph (e), your Committee recommends that, in thè spirit of Recommendation 26 (1952) of the Consultative Assembly (" The Strasbourg Plan "), the provisions for consultation contained in Article 4, paragraph 3 of the Protocol on links with the Council of Europe be made mandatory in respect of the policy of the Community whenever the latter l has a bearing on the interests of the overseas . territories constitutionally linked with a Member State of the Council of Europe.

25. This wording is the result of lengthy discussions in your Committee and refers particularly to paragraph 2 of Article 91 of the draft Treaty. Basing himself on comments which will be found in the second part of the Explanatory Memorandum, your Rapporteur considered initially t h a t this paragraph should have been worded as follows : " That, upon the establishment of the Community, a Joint Committee for Overseas Territories be set up between the Community and the United Kingdom, in pursuance of Article 91 paragraph 2 ."».

26. The reasons for wording the paragraph in this manner are obvious, and were first expressed in the brilliant speech of M. Senghor in the Ad Hoc Assembly. It had appeared to your Rapporteur, however, that the political prospects of " Eurafrican " solidarity, attractive as they are, would be further enhanced by the introduction of a measure of this kind, which would provide an indispensable element of balance. Your Committee welcomed this intention, but, on the initiative of some of its members, succeeded in finding a much more suitable solution, in that the text submitted to you refers directly not only to previous Recommendations and Resolutions of your Assembly but also to the Protocol on links with the Council of Europe.

27. In paragraph (/), your Committee recommends that, with the possible exception of the Court, all institutions of the European Community and of the Council of Europe be located permanently in the same town. This point has so often been emphasised in your Assembly t h a t it is hardly necessary to enlarge on it once more. It is clear that any dispersal of the various European institutions cannot but hamper the progressive strengthening of those links between them which we all so earnestly desire.

28. Finally, in paragraph (g), your Committee recommends that one of the members of the European Executive Council be specifically charged with the implementation of Articles 3, 4 and 5 of tho protocol on Links with the Council of Europe.

29. The text of these Articles is as follows:

30. " Article 3

31. The European Executive Council shall transmit a report on the activities of the Community at least once a year to the Consultative Assembly and to the Committee of Ministers of the Council of Europe.

32. The members of the European Executive Council may attend all meetings of the Consultative Assembly. At meetings at which such reports are discussed, they shall be heard if they so request.

33. Article 4

34. 1.The Council of Europe shall exercise ois-a-vis the Community the competences conferred on it by Article 15 of its Statute.

35. 2. The European Executive Council shall inform the Council of Europe of measures proposed by the Community which are likely to affect the interests of other Members of the Council of Europe.

36. 3. The European Executive Council may consult the Council of Europe before taking the measures referred to in the previous paragraph.

37. 4.The European Executive Council shall inform the Council of Europe of the effect which it has given to any Recommendations received from the Committee of Ministers of the Council of Europe, in accordance with the provisions of Article 15 (b) of the Statute of the Council of Europe.

38. Article 5

39. The Committee of Ministers and the Consultative Assembly shall place on their respective Agenda any requests for opinions addressed to them by the European Executive Council and any proposals the latter may make for the preparation of treaties or parallel legislation on questions of common interest to the Community and other Members of the Council of Europe. "

40. It is clear from these texts that the implementation of these Articles, which are essential for the unity we desire, will depend entirely upon the Executive Council of the new Community. It has been the concern of your Committee that there should be no division of the responsibility for implementing these Articles of the Protocol, and that parliamentary control of this implementation should be facilitated by the appointment of a member of the Executive clearly and specifically responsible therefore to the Assembly.

41. Your Rapporteur feels it his duty to make mention also of an eighth amendment to the draft Treaty proposed by one of the members of the Committee, to the effect that the sentence " It (the Community) shall be indissoluble " should be deleted (Article 1). The author of the amendment adduced two arguments : t h a t no Treaty was permanent; and that this provision would be likely to hinder other Members of the Council of Europe joining the Community. The majority of the Committee did not, however, feel these arguments to be justified, and considered, moreover, t h a t it would be difficult to adopt an amendment which, when proposed to the Ad Hoc Assembly, had been rejected by 41 votes to 6.

42. It is your Committee's belief that, if the seven proposals referred to and commented upon above are adopted by your Assembly and are accepted by the Committee of Ministers and by the Ad Hoc Assembly, the unity of the European nations within the Council of Europe will be considerably strengthened, and, moreover, that it will be made easier for the new European Community to play the role which we consider that it can and must play in promoting that unity.

43. The Committee adopted draft Recommendation II by 13 votes to 0, with 3 abstentions.

Draft Recommendation I

44. It was observed at the beginning of this chapter that this draft Recommendation derived more particularly from the general mandate given to your Committee by the Assembly to consider the draft Treaty as a whole. It may well be that the Preamble is more important than the substantive text of the Recommendation itself.

45. The first paragraph of the Preamble simply recalls the terms of reference on which the Recommendation is based.

46. The same might be said of the second paragraph, since this merely quotes the Resolution adopted unanimously by your Assembly on 6th September, 1949, which stated that : " the aim and goal of the Council of Europe is the creation of a European political authority with limited functions but real powers ". There can, however, be no doubt that in the Assembly, as was the case in Committee, some will object t h a t at the time when your Assembly voted this Resolution it plainly had in mind an organisation of all the member countries of the Council of Europe, and not an organisation limited to a certain number of them. Without wishing to take sides, even in his own name, your Rapporteur feels he should insist that the question is one of deciding whether, in the intention of the Assembly at that time, the Resolution would have been rejected had one or more Members of the Council of Europe felt that they were unable to participate in the setting up of the Author i ty contemplated. In order, so it seems to us, to determine whether the new Community can argue from the Resolution in question, to justify its inception, it should first of all be ascertained whether its institution will compromise, or will arouse new hopes for the full realisation of, the desires and aspirations for the unity of all Member States evinced in the Resolution of 6th September, 1949. Thus at the root of the whole problem there lies the question of discovering in what conditions the new Treaty can serve, or render a disservice to, the unity of Europe as a whole. Your Assembly will have observed with what care your Committee has. sought to meet this preoccupation in its draft Recommendation II..

47. The third and fourth paragraphs, which also recall a series of former Resolutions and Recommendations, will perhaps call for similar comment although less strongly expressed.

48. Paragraph 5 summarises, in another form, the Resolution adopted in January which expressed the Consultative Assembly's " unreserved appreciation of the quality of the work hitherto performed by the Constitutional Committee ".

49. The following paragraph requires no comment. It states that the institution of a European Community can meet the aims of the Council of Europe only if the closer union of all Member States is implied thereby

50. The next paragraph has a political importance to which it is felt the attention of your Assembly should be particularly directed.

51. This is neither the time nor place to discuss the prospects opened up by what has become known as t h e " Soviet peace offensive ". These will be variously interpreted according to the information available and according to whether the person concerned has a tendency to optimism or pessimism. This part of the Recommendation relates both to the state of mind which may result from the new turn taken by international politics, and to the way in which this state of mind may harden or develop if t h e hopes born of these new developments reveal themselves in the next few months to have been well founded. It would appear t h a t , in certain strata of public opinion, this latter possibility leads some people to think t h a t any effort towards European unification in the field of politics, economics or defence would then serve no useful purpose. Your Committee calls on the Assembly to alert public opinion with regard to the dangers of such a mistaken appreciation of the situation. To give credence to such error is to deny the very meaning and the past history of our efforts. It is tantamount to asserting that when a certain number of responsible politicians tried for the first time seven years ago to give tangible form to the old theme of European unity, they were thinking only in terms of European defence. That is absolutely untrue. The first voluntary organisations which blazed the trail for the Council of Europe came into being before there was any question of military and diplomatic tension or of a cold war. The hope of European unity, t h e long history of which will be found outlined in the third part of the Explanatory Memorandum, received new impetus as a result of the devastation caused by the last war. The countries of Europe took stock of their confusion, their poverty and their lack of strength, while their wounds were still unhealed. They realised that, alone, they were unable to ensure cither their recovery or their political independence. They hoped that by mobilising the causes of their weakness they could build new strength. It cannot be too strongly emphasised, however, that this new strength to which they aspired was not of a military character—that preoccupation arose later—but reflected their urgent and active will for peace.

52. Whatever may be the developments in international politics, most of the members of your Committee and, we trust, most of the Representatives to the Assembly, consider the hope for the closer unity of the peoples of Europe to be a permanent and enduring fact which will survive, as it preceded, the present East-West tension.

53. The last two paragraphs of the Preamble refer purely and simply to the need, so often stressed in this Report, for strengthening the links among all Member States.

54. Your Committee considers that it can, in conclusion, propose two Recommendations. The first is concerned with the speedy conclusion of the task undertaken by the States wishing to institute a closer Community among themselves, and calls for one comment. Some members of your Committee have insisted t h a t they do not wish to declare themselves for or against the creation of this Community; that they do not intend cither to hasten or to impede it; that they consider this problem to be one whose solution will be found, so to speak, outside them, and for which they are unable to take either a negative or a positive responsibility. But your Committee was almost unanimous in agreeing that an end must be put to the present uncertainty. The efficient organisation of relationships between the Member States of the Council of Europe demands t h a t the latter should know as soon as possible whether the Community is to exist, and, if so, what are to be its institutional characteristics. Paragraph («) of the draft Recommendation reflects this idea, and is limited thereto.

55. The second clause of. the draft Recommendation once more stresses what can never too often be repeated, the importance of efforts made to reinforce existing relationships among the Member States of the Council of Europe as such.

56. Between the two parts of this Recommendation and in the original draft of your Rapporteur there was originally a third paragraph relating to the problem of liaison. In order to ensure a better organisation of our work, and also in view of t h e personal authority he enjoys in your Assembly, Lord John Hope was asked to prepare a special report on this aspect of the general question.

57. Your Rapporteur could not, in view of the decisions of the Committee and of the Assembly, himself deal with the question thus happily entrusted to Lord John, Hope. It was nevertheless difficult for him completely to ignore this aspect of t h e problem without disturbing the balance of his own report. The text originally proposed by your Rapporteur therefore covered, in p a r t at least, those matters dealt with in the conclusions of Lord John Hope's Report. Your Rapporteur, therefore, felt he was justified in asking t h e Committee to authorise him to set aside the paragraph of his own Recommendation in question, and to explain his reasons for so doing. Your Assembly may think it desirable to make one single Recommendation of t h a t presented, on t h e one hand, by Lord John Hope and, on the other, by your Rapporteur.

58. The Committee adopted draft Recommendation I by 13 votes to 1, with 5 abstentions.

Draft Orders of the Assembly

59. Your Rapporteur sees no purpose in commenting on these draft Orders, which are merely working texts for the operation of the draft Recommendations upon which he fears he has dwelt at great length.

2. PART TWO - Examination of the Articles of the draft Treaty which have a direct bearing on relations between the " Six " and the " Fifteen " within the framework of the Council of Europe

60. One of the difficulties of isolating any aspect of the draft Treaty embodying the Statute of the European Community is that it creates a false emphasis. Nevertheless, before proceeding to the more general consideration of the draft Treaty contained in the third part of the Explanatory Memorandum, your Rapporteur feels it necessary to examine in detail those articles which have a direct bearing upon the relations of the " Six " and the " Fifteen " within the Council of Europe. This part of the Explanatory Memorandum therefore relates to the second draft Recommendation, and should be read in the light of the general approval given to the provisions concerning Association and Liaison in the draft Resolution submitted by Lord John Hope[5] In certain cases, this examination leads to the suggestion of amendments to the draft Treaty. It is not, however, intended thereby to create the impression that this Report is concerned more with the criticism of detail than with a just appreciation of the Treaty as a whole : the division of subjectmatter between the second and third parts of the Explanatory Memorandum arises solely from the considerable technical difficulties involved in producing a report on so farreaching and detailed a text. The Rapporteur therefore hopes that Representatives will temper their criticism accordingly.

61. It was proposed initially to divide this part of the Explanatory Memorandum into two chapters, dealing first with those articles in the Treaty which seem likely to ensure the closest links possible between the " S i x " and the " Fifteen", and then with those that might, in certain circumstances, have the opposite effect. These two aspects remain the chief preoccupation in this part of the Report, but for the sake of clarify, the headings have been arranged according to subject-matter.

2.1. Membership of the Community and of the Council of Europe

62. The question of membership of the Community from the point of view of the political will of any one of the " Eight " to join is considered in the third part of the Explanatory Memorandum. M. Cassimatis requested during the Extraordinary Session in J a n u a r y[6] that " the Member States of the Council of Europe shall automatically become Members of the Community two months after a declaration by their national authorities that they desire to adhere thereto ". While this proviso has not been incorporated as such in Article 116 of the draft Statute, and the adherence of a new Member would involve certain technical delays, t h e conclusion is drawn in the third part of t h e Explanatory Memorandum that any Member State of the Council of Europe which wishes to join would be welcomed by the Community[7].

63. The amendment submitted by M. de Menthon (Doc. 12 of the Ad Hoc Assembly, Amendment No. 99) raises a different issue. The amendment requested the suppression of the words " and to any other European State which guarantees the protection of human rights and fundamental freedoms as defined in Article 3 " , and it was defeated in the Ad Hoc Assembly by a very narrow majority (22 : 19) in an atmosphere of some confusion.

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5. See 5th Session 1953 :Doc. 118 and Resolution 27, adopted by the Assembly at its eighth Sitting, 11 th May, 1953.
6. See Extraordinary Session 1953 : Doc. 104, Amendment No. 1.
7. See paragraph 109 below.

64. The issue at stake is whether all Members of the Community must necessarily be Members of the Council of Europe. It would appear, from the fact that the Council of Europe is to be " the general political framework of Europe ", that this is in harmony with the general spirit in which the relations of the two political groupings have been envisaged. A more precise reason which necessitates this is Article 1 of the Second Protocol, which lays down that " the Consultative Assembly shall consist of the Members of the Senate of the Community and of a corresponding number of representatives of the other Members of the Council of Europe". If States can become Members of the Community without also becoming Members of the Council of Europe, the lynch-piii of the whole system of liaison is broken.

65. One word should, however, be said about the argument used that in effect this would give the " E i g h t " a veto over new Members entering the Community. It is as inconceivable t h a t this theoretical power should be used by the Council of E u r o pe[8]as it is that any one of the " Six " should veto the entry into the Community of a State already a Member of the Council of Europe (Art. 116, paragraph 3). Political goodwill evaporates too easily in discussing entirely theoretical issues of this kind for there to be any point in pursuing them further. Moreover, it may well be asked what practical likelihood there is of Finland, Portugal, Switzerland, Austria, Yugoslavia, or any of the Eastern European countries when liberated wishing to accept the greater obligations of the Community, before being prepared to accept even the consultative arrangements linking the countries of the Council of Europe.

66. The membership of the Saar in the European Community will be considered in the Report on the Saar problem as a whole which will presented to by the Consultative Assembly during the second part of the Fifth Ordinary Session.

67. The question of the overseas territories of Member States is considered in its broader political aspect in t h e third part of the Explanatory Memorandum (paragraph 114). These provisions of Article 101 are important from the point of view of the " Fifteen " because of the relationship of this " Euraf r i c a n " concept with the African territories of another Member State of the Council of Europe, Great Britain. It is instructive here to take a map of Africa and observe the precise area which will initially come within the orbit of the Community; the area which may later do so (Art. 101, paragraph 3); and the area which either comes under the British Colonial Office, or which has already achieved Dominion status. It will be difficult to give material form to the " Eurafrican" concept if those territories, which in the main depend upon Great Britain, are set aside. It has become a commonplace to say t h a t t h e former " Colonial Powers " should not allow differences of administrative method to prevent them following a co-ordinated policy. Such coordination will become even more urgent follow-ing the establishment of the European Community. It is therefore to be hoped that advantage will be taken of the provisions of Article 91, paragraph 2 to set up a Special Joint Committee consisting of representatives of the Community and of Great Britain, whose task i t should be to study t h e problems involved, and later to ensure the closest co-ordination of a policy initially worked out in common.

2.2. Aims of the Community and of the Council of Europe

68. In general the Community and the Council of Europe have the same aims, and mention is specifically made of the Statute of the Council of Europe in Article 2. The only exception is the question of defence.

69. It would, in our opinion, be wrong to embark on an academic discussion of the extent to which prior obligations remain valid when one contracting p a r t y becomes a Member of a Federal State. There is a difference of opinion among international jurists on this subject, and, as is pointed out in the third part of the Explanatory Memorandum, the European Community cannot be classified as either Federation or Confederation. The point at issue is not the juridical one of whether, after t h e creation of the Community, the " Six " will still be bound by their international obligations under the Statute of the Council of Europe (in our view this would be the case), but the political one that the whole aim of both groupings is the greater unity of Europe. In spirit, the whole Community comes within the framework of a Partial Agreement. As long as t h e greater unity of as many European countries as possible remains the genuine aim of all Member States, no clash is possible.

8. Article 20 (c) of the Statute of the Council of Europe requires a two-thirds majority for the accession of a new Member.

70. The specific aims of the Community are fourfold (Article 2). Of these aims the difference in competence in matters of defence has already been noted. The provisions of Article 3 ensure that the aims of the Council of Europe and the Community remain identical in the protection of human rights. (The adequacy of t h e technical means of achieving this will be t h e subject of a Report by t h e Committee on Legal and Administrative Questions.)

71. The establishment of a common market among the " Six " will form the subject of a Report by the Committee on Economic Questions. It is, however, permissible to point out at the present stage t h a t the establishment of a common market implies a general expansion of the whole Western European economy, plans for which are at present under consideration at 0. E. E. C. and are linked up with the Strasbourg Plan.

72. Article 83 concerning internal migration is, furthermore, open to serious objections. The problem of surplus population is a problem for Europe and for the whole world; it cannot be solved in the automatic fashion envisaged in Article 83. This article makes an undesirable distinction between those who are capable of military service and those who are not. There is also need to harmonise it with the Council of Europe's own draft Convention for the Reciprocal Treatment of Nationals.

73. Reference is made to the question of foreign policy in the third part of the Explanatory Memorandum (paragraphs 139 to 142). In Resolution 26 the Consultative Assembly expressed concern that : " adequate care must be taken to ensure t h a t the harmony between the foreign policies of the countries represented in the Assembly... shall in no way be jeopardised or rendered more difficult of attainment ". The Assembly would be deceiving itself if it regarded this harmony as a thing already achieved, and which might therefore be jeopardised. It is rather " one of the constant aims of the Council of Europe", as Resolution 26 expressed it. This docs not make it less important, however, to scrutinise closely the provisions of Chapter III of the draft Statute of the European Community.

74. Underneath appearances the essence of flic problem can be clearly perceived. The crux of the matter is that if the Community becomes a reality, the Council of Europe will be faced with a single common will of the " Six " on many of the matters which intimately concern it. Art. 69 envisages the European Executive Council acting as the " common representative of'Member S t a t e s " ; Article 71, paragraph 1 refers to " a common attitude... at any international Conferences where the interest of the Community is involved". Article 89 further states : " The Community may represent its Members in the organs of those European Specialised Authorities or Communities to which all Members have adhered. "

75. The issue outlined in the preceding paragraph is the central issue presented to the Council of Europe by the whole project of a European Community. The Council of Europe is based upon fifteen Members. If six of these become in effect a single State with regard to many issues, the picture becomes that of one grouping of 155,000,000 population, one of 50,000,000, and of a series of smaller countries, of which only one (Turkey) has a population of more than 8,000,000. This clearly would give rise to disparities so great that only the creation of a Western Political Community could resolve them[9] However, we are clearly not yet at this stage, and it is only with regard to economic policy and foreign policy that the problem presents itself acutely.

76. In the matter of foreign policy it is as yet far from clear to what extent the European Community will replace the traditional national basis of the foreign policy conducted by the " Six ". The text of the Statute could be developed in time to cover almost every aspect of foreign policy; it might equally be no more than a particularly close form of liaison and co-operation. Initially, the second hypothesis is more likely; later, the former may become reality. The easiest way to discover whether the unity of the " Fifteen " in foreign policy might be endangered is to assume the extreme hypothesis concerning the degree of unity among the " Six ".

77. As is laid down in Article 2, there is no conflict in the aims of the Community and those of the Council of Europe. Therefore no exception could be taken to treaties or agreements negotiated to achieve those ends (Articles 67 and 68). The method of achieving the co-ordination of foreign policy among the " Six " is not here our immediate concern. The idea of common representation of the " Six " (Articles 69 and 71) involves considerations of wide import concerning the structure of the Council of Europe (c/. paragraph 66 above), but it does not affect the harmony of aim. In the negative sense, treaties which run counter to the purposes of the Community (Articles 72 and 73) might also be expected to run counter to the purpose of the Council of Europe. Finally there is the question of a pact for the peaceful settlement of disputes (Article 71, paragraph 2). This will require careful integration with the similar pact envisaged for all Member States of the Council of Europe.

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9. Cf. third part of the Explanatory Memorandum, paragraphs 169 to 176 below.

78. An examination of the four specific aims of the Community therefore confirms the judgement on the general aims of the Community contained in paragraph 59 above, namely that no provision in the draft Statute concerning the aims of the Community can be discerned which is in conflict with the provisions of the Statute of the Council of Europe. The provisions for ensuring t h a t this community of aim obtains in practice will be examined later (paragraphs 71 to 76 below).

79. Even this brief examination of the aims of the Community, together with that contained in the third part of the Explanatory Memorandum (paragraphs 135 to 144) will have revealed how wide are the potential differences among the " S i x " themselves as to the aims of the Community, for instance concerning a single market, excess population (Article 83), overseas territories, or territories in Eastern Europe (Article 103). The list could perhaps be extended, but it seemed preferable to mention only the fundamental questions. It is doubtless true that the Executive, which will in theory be competent to settle these problems, and which will have the support of the Parliament of the Community, will be engaged in continuotis negotiation with the Council of National Ministers. From this angle, the Community seems likely to become an agency for permanent negotiation of a particular type, which will be called upon specifically to solve these fundamental problems and any others that the future may reveal. It cannot be too often repeated that the reality of these differences is the measure of the importance of the European elections. Hardened within a purely national framework, differences on such fundamental issues would be irreconcilable. Within a truly supranational framework, the differences do not disappear, but they are subject to the " give and take " involved in submitting them for decision to a European electorate. It should, however, be stressed that not one of the problems referred to can be solved on a six-Power basis without the co-operation of other countries. This is true of the political integration and economic development of the overseas territories, the common market and particularly the problem of surplus population. Whatever degree of authority the Community may derive from an Assembly elected by universal suffrage, in the last analysis these problems can be solved only by negotiations extending considerably beyond the framework of the " S i x " . They will have to be tackled by the Council of Europe, by 0. E. E. C, by I. C. E. M., with the aim of finding the most comprehensive solution possible. This is a measure of the heavy responsibility which devolves upon the Organisations concerned.

2.3. Institutions of the Community and of the Council of Europe

80. The links between the Council of Europe and the Parliament of the Community depend upon the " personal union " ensured by the Senators' being also the representatives of the " Six " in the Consultative Assembly. This is the lynch-pin of the whole system of liaison, and was fully dealt with in Resolution 26. It will necessitate a certain increase in t h e membership of t h e Consultative Assembly to correspond to the figures laid down in Article 17 of the draft Statute of t h e Community. It will render unnecessary joint meetings between the Consultative Assembly and the Common Assembly (the Parliament of the Community replacing the latter, Article 60). Article 25, before modification by the Working Party, provided that Members of Parliament of the Community should be exempted from passport formalities when travelling between Member States. This was a valuable provision, and might well have been extended to all Representatives to the Consultative Assembly. In the final text, however, reference is made only to visa formalities. This represents a very slight degree of improvement on the existing state of affairs for, although visas are still required, in certain cases, in Germany, Greece, the Saar and Turkey, these hindrances to freedom of travel are in process of being abolished[10] In these circumstances, the original text of Article 25 should be restored.

81. The chief problem concerning the European Executive Council is that of the attendance of its members at meetings of the Committee of Ministers in a deliberative or in a consultative capacity. The position has been carefully summarised by the Rapporteur, M. Wigny 2[11],and no further comment is necessary at this stage [12], other than to underline that the attendance of members of t h e European Executive Council at meetings of the Committee of Ministers will ensure t h a t the latter are able to hear the views of the authors of the annual Report made under the provisions of Article 3 of the Second Protocol[13].

82. It is to be hoped that the members of the Council of National Ministers will also represent the " Six " in meetings of the Committee of Ministers of the Council of Europe, thereby ensuring a " personal union " similar to that between the Senate and t h e Consultative Assembly. It may also be that this increased number of meetings between the six Ministers of Foreign Affairs will lead the Committee of Ministers of t h e Council of Europe to hold more frequent meetings in their turn.

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10. Cf. Report on the Simplification of Passport, Customs and Currency formalities.
11. Doc. 12of the Ad Hoc Assembly, First Part, p. 02..
12. Cf. paragraphs 64 to 66 above.
13. Cf. second footnoto to paragraph 127 of the Third Part of the Explanatory Memorandum..

83. The position of t h e Court of the Community vis-ä-vis the potential creation of a European Court of Human Rights under the provisions of Articles 46 and 56 of the Convention [14],is to be the subject of a Report by t he Committee on Legal and Administrative Questions.

84. The Economic and Social Council is to be the subject of Reports by both the Committee on Economic Questions and the Committee on Social Questions. From the general political point of view it seems highly desirable that the Council of Europe should proceed speedily with its plans for the creation of a fifteen-Power body of this nature, rather than be faced with the task of " integrating " one more organisation within its own framework[15] .Experience has proved how difficult it is to unite any organisations which have had time to develop a " sovereignty-consciousness " and a staff of permanent officials.

85. A final point concerning the institutions of the Community must be made concerning their seat. There is a regrettable tendency at the moment to retreat from the concept of a single European " capital " , where all European institutions would be grouped. The preoccupation of certain Powers—that they, too, should have the benefit of one of the institutions having its seat on their territory—is understandable. But it must be clearly realised t h a t the price of acceding to these requests is seriously to jeopardise the chances of setting up an efficient European Government. Reasons of a psychological and technical order make it essential that, with the possible exception of the Court, all European institutions should be grouped in a single town. The reasons advanced in the Memorandum of the Italian Government have never been controverted; and it is difficult to claim that a dozen institutions scattered in a dozen different towns would have an effect on local opinion which could remotely compensate for the loss of time and efficiency involved in the mere act of sending telegrams between them. If European public opinion is ever to rally to t h e concept of a single European political authority, it must be able to identify this with a single town. This is not to say t h a t Strasbourg should necessarily be the town chosen[16] . The important thing is to ensure that both the Council of Europe, and the institutions of the new Community have their seat in the same town. In this connection it is necessary only to reiterate the explicit words of the Report of Lord John Hope concerning Article 6 of the Second Protocol[17]

2.4. The Relationship between the Community and the Council of Europe in practice

86. Apart from the important question of membership of the Community (Article 116), no Article of t h e Statute calls for major criticism from the point of view of links established between the " S i x " and the " Fifteen", provided that, as was shown, for example, in paragraph 70, the creation of a European Political Community, even if initially limited to six Powers[18] is genuinely and honestly welcomed in all its far-reaching implications.

87. Even supposing, however, that the European Community is welcomed by the " Fifteen", and that, provided Article 116 is amended, there is no major criticism to be made of the articles concerning relations between the " Fifteen " and the " Six it does not follow t h a t in practice all will work smoothly in ensuring the unity of as many European countries as possible. Careful attention must also be paid to the technical provisions in the Statute for ensuring organic liaison between the two groupings.

88. It is true[19] that it is difficult to be certain about the way the provisions of the Second Protocol will work in practice until the Community has actually begun to function. Clearly much will depend on the political will on both sides devoted to making the " twoway " traffic envisaged in Article 4 of the Second Protocol function properly[20] . The effectiveness of Articles 3 and 5 will depend on the time the European Executive Council devotes to implementing them. ft would be desirable that one of the Ministers of the European Community should be specifically charged with the task of ensuring that the provisions of Articles 3, 4 and 5 arc fully carried out, and that he should have a well-staffed department to aid him. The political will to make relations between the " Six " and the " Fifteen " as close as possible will depend upon the " personal union " established under Articles 1 and 2. It is likely, however, that all the goodwill which has led to these articles being accepted

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14. Out of the eight ratifications so far received, only two countries (Ireland and Denmark) have accepted the jurisdiction of the Court. Eight declarations accepting the jurisdiction of the Court are needed (Art. 56).
15. Cf. Part Three of the Explanatory Memorandum (paragraphs 133 and 134). The creation of an Economic and Social Council attached to the Council of Europe would be in conformity with Article 24 of the Statute of the Council of Europe.
16. The difficulties of gaining agreement concerning any alternative should not be made an excuse for falling back on the easy yet fatal path of " giving an institution to every country to satisfy its national pride and its national purse ".
17. See 5th Session 1953 : Doc. 118.
18. So limited only by the will of the non-participants.
19. Cf. Part Three of the Explanatory Memorandum (paragraph 154).
20. This in turn will depend in part on the mutual advantages accruing. An example of the value of the " Fifteen " to the " Six " could be afforded by diplomatic support for the " S i x " from the " Fifteen " at the United Nations.

will prove fruitless unless the Community and the Council of Europe have their seat in the same town, and share the same civil service to a certain extent. Experience has proved that technical provisions of this kind are decisive at this stage of European development.

89. In the third part of the Explanatory Memorandum, stress is laid upon the need for strengthening the Council of Europe as such, and the first draft Recommendation specifically urges the Governments of all Member States " to make determined efforts during the coming year to develop closer unity within the framework of the Council of Europe among all the nations therein represented, so that this larger unity may develop contemporaneously with that achieved in the Political Community."

90. The reason for this Recommendation was that the European Community clearly cannot succeed unless the greater unity of the " F i f t e e n " develops also. But, equally, the Council of Europe has a right to think of the problem from its own point of view. How can it as a loose consultative body contain a tightly-knit Europiean Community? Clearly, it can do so only if it greatly strengthens the " framework " within which the vigorous new political child is to be " contained " . The aim is not to allow the Council of Europe to decline into a mere talking-shop, or even into the technical means used by non-Member States who 'wish to associate with the Community. It is rather to continue the development of the Council of Europe as a political community in its own right, looser than the six—Power Community it is true, but still developing, and always seeking to enlarge its membership to include those European States which have not hitherto been able, or have not wished, to join the common effort of building European unity.

91. This aspect of the problem is particularly important since, as was stressed above, the Council of Europe and indeed other European organisations must necessarily have an increased feeling of responsibility with regard to the creation of a European Community. To show sympathy is not enough. Some positive action must be taken. The problem of over-population calls for a solution both on a European and on a world-wide scale. That of the political integration of the overseas territories entails the association of other countries. That of t h e common market, though not of the same urgency as the two others, also presupposes general conditions which go beyond the limits of the " Six ".

3. PART THREE - Examination of the Draft Treaty as a whole

3.1. The Drafting of the Statute

3.1.1. The spirit in which the drafting of the Statute was undertaken

92. In words to which we shall have occasion to r e t u r n the Preamble of the Treaty states : " We the Peoples... Resolved to substitute for our historic rivalries a fusion of our essential interests by creating institutions capable of giving guidance to our future common destiny... " No consideration of the spirit in which the members of the Constitutional Committee and of the Ad Hoe Assembly undertook their task would do justice to these men, unless their efforts were seen against the background of all that the European peoples have suffered because of their division during the years since 1914. This common experience provided a common bond which underlay all the Committee's work. It was not always obvious during the discussion of each hotly-debated article : but without it neither would the Ministers have requested, nor would parliamentarians have devoted so many months of their time to, the drafting of the Statute of the European Community. It found worthy expression in the speech of a German Representative at the close of the Ad Hoc Assembly. M. Strauss, speaking on behalf of the German Christian Democrat Party, said : " Let no one say : ' I should give my approval if this Europe were a German, a French or an Italian Europe, or the Europe of any other national State '. The spirit of the work we have accomplished in this draft Statute absolutely excludes, and must exclude, the idea t h a t this Europe reflects the hegemony of a single people. This would be in direct opposition to the meaning and spirit of our work. Our new Europe must bo one which will allow all its peoples to work together in a single common effort. As a German, who has himself been a victim of political developments in the last twenty years, I declare that we reject categorically the notion that Europe should be dominated either by Germany or by any other country, because any such notion would destroy the very basis of Europe's development. It would be criminal, I say, to adopt any such notion. Nor do we want an amorphous European unitary State. Europe cannot be separated from its tradition, but tradition must not become ossified, old and tired; it must not come to resemble a museum exhibit or an old family heirloom. Tradition must be adapted to political circumstances and historical necessities. Like many of my colleagues, I spent the best years of my life as a soldier in the first or second world war, and this leads me to say something more. The voice of the dead has been quoted here as expressing the anxiety and fear of the dead lest something be destroyed which had hitherto been their fatherland. There is no question of destroying their fatherland. On the

contrary, if we listen to the voices of the millions of dead who vainly gave up their lives in Europe, we hear them cry to us : 'If our death is not to have been in vain, then this enterprise must succeed, so that war between European peoples shall be forever rendered impossible. "[21]

93. No one who was present at the discussion of the Constitutional Committeecould avoid feeling the European fellow-feeling which enabled its members to overcome the barriers of suspicion and of self-interest created by the past. An example of this was provided by the discussion of the Saar problem. Whatever the subsequent fate of the agreement contained in Article 102 may be, the discussion at which it was reached in the Constitutional Committee will always remain as proof that the historic tragedy of Franco-German rivalry can be overcome by Europeans of good will. The same might also be said of the discussion concerning the French overseas territories. In both these cases it is all too easy for the cynic to point to motives of self-interest. These there were inevitably, because the subjectmatter of politics is power. But it would be a complete misinterpretation if any future historian interpreted the work of t h e Constitutional Committee chiefly in these terms. It would be equally wrong to see the members of the Constitutional Committee as working solely from fear of the results of failure. The observer might have said, " If these men fail, then no others will ever succeed. The brief flicker of hope for Europe's future held out by their enterprise will be extinguished, and a once great civilisation will follow the fate of all its predecessors. " Instead, the members of the Committee worked from a positive belief that the creation of the European Community would provide the European genius with a framework in which she could once more make her true contribution. As they were practical men, engaged in a task of drafting of extraordinary difficulty, there was not often time to speak of these wider issues. But no judgment on their work would be true unless it weighed duly the spirit of the word " Community. " It does not reflect the work of a group of constitutionmakers, constructing some abstract legal system. Nor was it an attempt to create a super- State. It was an attempt to build a Community, together, with all the meaning of " belonging together " and of common beliefs, traditions and ways of life which that great word implies.

3.1.2. Those who took part in the drafting

94. In his concluding speech, M. Spaak talked of the roll of honour of those who had taken part in the work of t h e Ad Hoc Assembly. As we are meeting in the Council of Europe, it is well to recall t h a t most of them have been our colleagues in the Consultative Assembly during the past four years. Without this common experience, in which for the first time European parliamentarians came to know and to trust one another, the work of the Ad Hoc Assembly would have been impossible.

95. It has been widely remarked t h a t the drawing up of the draft Statute of t h e Commun i ty was entrusted not to civil servants, but to parliamentarians. This, however, was the natural course of events. The Ad Hoc Assembly was not a Constituent Assembly, nor did it possess a mandate to commit t h e peoples represented to a final text. But the subject of discussion was a new form of political organisation for the six nations. Only elected representatives could have a right to discuss such a matter, since it is with national Parliaments that the final decision to surrender national sovereignty must rest. The t r u t h is t h a t the six nations represented in t h e Ad Hoc Assembly are passing from the stage of diplomatic to t h a t of organic relations. In theory, it would have been more logical for each national Parliament to elect representatives to a drafting Convention, and then refer the draft Constitution directly to Assemblies specially elected for the purpose of ratification in each Member State. This was thé procedure followed in America in 1787.1 But, as is frequently pointed out, the present situation in Western Europe is not analogous to t h a t which obtained in America in 1787.[22]But, as is frequently pointed out, the present situation in Western Europe is not analogous to t h a t which obtained in America in 1787. National traditions, and above all the national civil services, are so much more firmly entrenched among the six nations that the procedure adopted in 1953 was bound to bear a closer relationship to the traditional diplomatic practice with which the new Community marks the decisive break. Thus, although the drafting was entrusted to parliamentarians, as with the European Coal and Steel Community, the surrender of sovereignty is given t h e guise of an international treaty, signed by the representatives of Governments. These, however, are only outward forms. In this case, the Community created b y t h e Treaty is declared to be indissoluble (Article 1); and the reality will lie more and more with the elected representatives in the Peoples' Chamber legislating upon matters of common concern.

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21. Official Record of the Debates of the Ad Hoc Assembly, Sitting of March 10th, 1953, p. 292.'

22. The American Constitution as adopted at Philadelphia on 17th September, 1787, was laid before the Confederal Congress on 20th September, debated briefly on 26th-27th September, and on 28th September transmitted to the States. The Constitution was then debated in each State Convention, the assent of nine States being required for the Constitution to come into force. The ninth ratification was that of South Carolina, which took place on 23rd May, 1788. It is interesting to note that the representatives of only seven of the thirteen States took part in the initial drafting of the Constitution.

96. The choice of parliamentarians was largely influenced by Resolution 14, adopted by the Consultative Assembly on 30th May, 1952. This in turn sprang naturally from the parliamentary experience of the Council of Europe. What is often forgotten is t h a t in this transitional phase the whole experiment in European parliamentary institutions depends upon men who also have heavy responsibilities in their own national Parliaments. Especial tribute must therefore be paid to the members of the Constitutional Committee who gave so freely of their time during many months, and in many cases made numerous long journies to and from the meetings of the Constitutional Committee.

97. Tribute must also be paid to the Secretariat of the Constitutional Committee. Only those who were members of t h a t Committee are in a position fully to appreciate how much is owed to the labour of this handful of civil servants. The vast number of printed documents—all of which were produced in five languages-—is only a small indication of the measure of the labour involved. All those engaged in this work at the Palais d'Orsay deserve the warmest praise for their indefatigable labour. In one case, your Rapporteur feels that the services rendered were so great that the tradition of the anonymity of civil servants should be ignored, and that specific mention should be made of the part played by M. Emile Noel.

3.1.3. The six months : 10th September, 1952, to 10th March, 1953

98. The mandate given in the Luxembourg Resolution of 10th September, 1952, gave the Ad Hoc Assembly and its Constitutional Committee only six months in which to achieve its work. Few thought when the mandate was accepted on 13th September of last year t h a t it would be possible to complete the task in time. It was one of a complexity infinitely greater t h an t h a t which faced the delegates of t h e American States to the Federal Convention in Philadelphia, who succeeded in drafting the Constitution of the United States in a little over four months[23] . Yet the fact t h a t the draft Statute of the Community was drawn up in time does not reflect an avoidance of difficulties. On the contrary, every article was given careful and often repeated consideration. No fewer than 105 amendments were submitted when the text was considered by the Ad Hoc Assembly in March. In one case, a single article was the subject, in all, of 23 different drafts.

99. It is important to emphasise the care with which the draft Statute was considered, lest it should be thought to be the hasty work of parliamentarians, safe in the knowledge that their handiwork would subsequently be considered by Government experts. The t r u t h is t h a t the draft Statute was initially entrusted to parliamentarians because of the question of political responsibility considered in paragraph 86 above; that the Ad Hoc Assembly contained among its ranks some of the ablest constitutional lawyers among the six nations; and t h a t the Constitutional Committee worked devotedly for a period of six months with the aid of a considerable body of experts. The result is certainly not a t e x t for which any of its authors would claim perfection. But it is equally one that has a clear constructional unity. From the point of view of drafting, some improvement can certainly be made by the governmental experts when they come to study t h e t e x t . But t h e political concept which the draft Statute contains cannot be rejected on the ground t h a t it is ill-constructed or unclear: it can be opposed only on grounds of opposition to the trend which it represents. This in turn is a political decision, and as such is the responsibility of the elected representatives of the people, and of them alone.

3.1.4. The tremendous difficulties of the problem facing the Ad Hoc Assembly

100. The tremendous difficulties of the problem facing the Ad Hoc Assembly of the attempt to create a United Europe since the Gstaad Conference in 1947, and the Congress of the Hague and the Interlaken Conference in 1948. The problem of creating unity in only a portion of an already truncated Europe, and the hesitations this has caused, are too wellknown to need repetition. But from the moment when Great Britain and other European Powers did not take part, it was inevitable that plans for continuing with projects for greater unity should encounter parallel abstentionist tendencies, or even hostility.

101. The second order of difficulties arose from the whole problem of applying supranational government to historic nation-States The existence of long and infinitely complex traditions of government, built up against a pattern of widely differing social habits and institutions, constitute an indisputable but not insurmountable obstacle to the creation of a common political authority. This is true even among the six Powers, which, in terms of military insecurity; in their desire for independence; in the hope of economic advantage; in geographical contiguity; in a similar democratic tradition, and in some form of prior association, present a close analogy with the United States in the 18th Century. Community of neither race, religion nor language obtained in Switzerland in 1848, nor in Canada in 1867. Nor did all the Thirteen States feel a strong bond of common nationality in the U.S.A. in 1787. If common social institutions existed in Australia in 1901, the same

23. 14th May-17th September, 1787.

had not been true of Canada, U.S.A. or Switzerland. But none of these federations were super-imposed upon different governmental systems having a long and complicated history; and in Western Europe, these governmental systems are not merely matters of administrative tradition, but part of the fabric of the countries themselves

102. Part of the answer to this problem will be found when we consider the nature of the Community to be created, and the extent to which it leaves intact the traditional national structure. But, equally, it must be realised that the most effective opposition to any surrender of sovereignty comes from those who are members of the great professional orders of society. The mass of the population may be roused (though less readily now) by nationalist slogans, but they also remember the thirty million dead of two world wars. If their traditional leaders are prepared for Federation, then the people will follow. Yet it is just these men for whom the sacrifice is the most difficult. The civil servant, proud of a long tradition of efficient and civilised government, finds it difficult to see how the system can be adapted without losing its most valuable features. The legal system is t h e cement of society. By codifying conduct, i t renders a service essential to civilised life. Yet, because this very codification has taken place on a national basis, lawyers have difficulty in conceiving how European legislation could ever succeed in practice. The same kind of professional myopia is found in many other professions, as, for example, among t h e officers in the various national armies. It is important to realise that this kind of particularism, this unpreparedness to sacrifice the mental vested interests accumulated over a lifetime, is no more defensible than is the attitude of the industrialist who is making handsome profits within his national market, and is afraid the same might not be the case in a European market. These are all parochialisms which Europe can no longer afford. The course of unity involves risks, but Europe only became sufficiently strong to survive her increasing institutional sclerosis of t h e last fifty years by takingsuch risks. The inheritance left us is now threatened with exhaustion, and we have to make a new start.

103. In view of what has been said of differing governmental traditions in paragraph 93, it is not likely t h a t the bold metaphor of " making a new start " will be misunderstood. On t h e one hand, there is t h e whole fabric of our institutions, which have been reared on a national basis for some four centuries past : on the other, there is t h e overriding need of organising some aspects of our lives on a European basis. The criterion is t h a t , where national government has proved incapable of meeting t h e exigencies of the time, a European authority must t r y in its place. Defence is an obvious example. In trying to achieve this we encounter the opposition of many who have given valuable service within their own national systems. Our task is to convince them, above all, that the change is necessary, and t h a t in making it the most valuable aspects of their professional traditions will be preserved.

104. These last paragraphs arc immediately relevant to t h e consideration of the second order of difficulties encountered by the Constitutional Committee, those of an internal kind. In the first category came those who held federalist beliefs, but who opposed the plan because they considered the six nations too narrow a basis. In the second category came the straightforward clash between those who were prepared to surrender sovereignty for the common good, and those who refused so to do for motives which inspire respect, but which are no longer compatible with present-day necessities. It would have been much easier to give weight to the views of these latter, had they used arguments of greater validity. On no occasion was the great Conservative philosophy adduced in the Constitutional Committee : that man conforms to political institutions from habit rather than from reason, and t h a t therefore any too rapid or too brutal a change in political environment may set up a chain-reaction of instability, as in France after 1789. If the importance of national traditions was emphasised, it was too often emphasised as an end in itself[24].It is a matter of great importance to realise that, in contrast with this outlook, the members of the Constitutional Committee showed no feckless

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24. It is a matter of great importance to deal hero with a heresy that is growing up with romarkahlo speed. As the creation of a United Europo approaches, its opponents are falling back into tho assertion " Tho only reality is the nation ". This is to some extent a question for them to answer, because in tho solidarity which has inspired tho work of the Ad Hoc Assembly tho contrary has been proved within their immediate experience. Nevertheless wo should devote a little moro thought to this subject. It has already been clearly said that only those who support European unity really believe in the value of each national tradition, bocauso disunity spells their destruction. In part tho misunderstanding arises solely because people have never taken the trouble to understand the fundamental difference between a federal and a unitary constitution. In part also it arises from an insufficient knowledge of European history and an insufficient feeling for the common ties that unite us.
These common lies are not merely the reflection of a civilisation with its " back to the wall ", conscious that less divides it internally than divides it from other continents. They are rather the cultural heritage of diversity. It may seem a paradox to claim that the heritage of diversity offers a reality as ' real ' in every sense as the nation-State. The clue to the paradox is that even in its greatest diversity, European civilisation has sprung from the same common roots. Renan asserted in 1871 that the secret of a people's being consists neither in mere environment nor in the race-myth, but in its spiritual and social heritage : " to have suffered, rejoiced and hoped together means more to mankind than all your national customs systems and strategic frontiers ". All European peoples have shared certain common experiences :

iconoclastic zeal, ready to pull down in half an hour traditions it has taken years to build. The hall-mark of their work was rather great—some have claimed excessive, but we consider praiseworthy— caution in order to ensure the preservation of the valuable things in each national tradition. Arguments similar to that of M. Benvenuti were repeatedly used : " We are all attached to the tradition, the cultural and special characteristics of our different countries. The Community could never he entitled to infringe them, to absorb them or to confuse them with one another, thereby destroying their originality. On the contrary, it must be the task of the supranational institution, to which our States will have entrusted some portion of their sovereign rights, to afford them protection. "[25]"

105. The third category of difficulties faced by the authors of the draft Statute was of a constructional kind. This in t u rn had two different aspects. The first was t h a t of inheritance. The Constitutional Committee's whole work bore the traces of the curious pattern of the development towards a United Europe since the signature of the Statute of the Council of Europe in May, 1949. When the first attempt to create a supranational authority for all 15 Member States failed, recourse was had to the method of federation by sectors (Specialised Authorities). But when one such key sector (coal and steel) had been " federated " and the very armed forces themselves of the Six Powers were in the process of being treated likewise,[26], i t was realised t h a t the difficulties involved in the use of the sectional method were becoming insuperable, and that the " f e d e r a t i o n " of sectors of national life so vital as these implied the creation of a European Political Authority. This faced the Constitutional Committee with the difficult problem of incorporating one already existing Specialised Authority, and another in the process of being created, within a single structure, while yet giving unity and cohesion to the whole.

106. The second aspect of the constructional problem was that, if one pillar of the structure had been removed, the whole system of checks and balance which ensured its stability would have been endangered. Thus one Representative was prepared to support the proposal for weighted representation in the Senate, provided the powers of the Council of National Ministers were retained in their original extensive form. When these powers were reduced, the Representative concerned supported the proposal for a demographic representation in the Peoples' Chamber and parity in the Senate. Nor could the whole question of representation be removed from t h a t of the powers of the respective Chambers. These questions will be examined in more detail in the next part of the Report.

3.2. The Nature of the Draft Statute

3.2.1. The Community as leading to a Federation of the Six Powers

107. Originally, the Consultative Assembly saw the European Community as a strictly limited body, designed to ensure only democratic control of the European army, and thus increase the chances of the ratification of the European Defence Community. This followed logically from the policy of piecemeal engineering, of federation by sectors, which had been t h e recourse of those who wanted European unity, after they had understood that Great Britain was unable to follow them in that cours[27]. But with the Luxembourg Resolution of 10th September, the situation changed. This Resolution marked the point at which those who were

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Greek philosophy and Roman law, the long adventure of the Christian missionaries, the first seven centuries of an undivided Christendom and the unifying force of the Western Catholic Church thereafter until the X V I t h Century; the outburst of ecorporate energy which produced the free cities ; the Reformation and Counter-Reformation; the conquest of the great colonial empires; the liberal revolutions, and the beginning of industrialisation—these belong to no one European nation alone. In face of this, to claim that the existence of a score of sovereign States is the only reality that counts, as though the facts of human life and the principles of human conduct changed with every change in the uniform of customs officers* is, to speak frankly, historical nonsense.
* The sovereign States in Europe numbered 16 in 1875 and 22 in 1914. After the first World War they increased to 25. In the same period (1914-1919) the length of European customs barriers increased from 12,000 to 18,000 kms.
Common origins may, however, be forgotten by those who have an insufficient feeling or knowledge of the past. What cannot be forgotten or ignored is the common attitude to certain fundamental problems of human society which is held throughout Western Europe. Devotion to the twin principles of personal liberty and social order is so widespread as to form a European patriotism. And in spite of famous names from Macchiavelli to Hobbes, and from Hobbes to modern theorists of raison d'État, there lies behind this European patriotism a common denial of the finality of human institutions, which has nourished men's courage to resist tyranny in a stretch of time which dates baek from the present to the days when Antigone defied Creon in the name of
"...aypaxta. xa&palfj Ostou vdjtijAa..."
For all these reasons and a hundred more, drawn from a history which makes all European peoples partners, to say that the only reality is the nation is false.

25. Doc. 12 of the Ad Hoc Assembly, First Part, page 19.

26. Rationally speaking, this should have been the coping-stone of the edifice, rather than its foundation. But the exigencies of defence know no law.

27. Cf. paragraph 96 above.

prepared to form a Federation initially limited to the six Powers decided to go ahead. From that moment it was to be expected that the attempt would exceed the limits of a device designed to ensure the democratic control of a Specialised Authority.

108. The preceding paragraph should not be read as suggesting t h a t those who are pursuing these plans have resigned themselves to the limitation of t h e Community to six Powers. On the contrary, the majority among them believe-—-whether rightly or wrongly—that the surest way to convince the doubting countries to join the Community is to make the latter succeed. Nor would it be correct to suggest that hope has been abandoned that the European Community will favourably influence the ratification of the European Defence Community Treaty. M. Dehousse writes t h a t the " Constitutional Committee, by a great majority, considers that the draft of a political Treaty is likely to have a deep and favourable influence upon the fate of the Treaty setting up the European Defence Community »[28].

3.2.2. Meaning of the term " Federation "

109. At this juncture it is necessary to examine more closely what is meant by " Federation ". The Constitutional Committee wisely refused to use either t h e t e rm " Federation " or the t e rm " Confederation " because of the utter confusion existing between them[29].But, whatever terminology is used, the problem of power remains. Federalism is only a name for a certain division of power which creates two co-ordinate authorities. It has been best defined by Sir Robert Garran : " A form of Government in which sovereignty or political power is divided between the central and local governments, so t h a t each within its own sphere is independent of the other "[30]. However, even this classic definition does not enable us fully to appreciate the situation in Western Europe. The great divide lies between intergovernmental organisations, on t h e one hand, and supranational government on the other. In the first case, there is no irrevocable surrender of sovereignty. At best, only a derived power is exercised. At worst, all decisions are paralysed by the use of the veto. In the second case, there is a final surrender of sovereignty in certain defined spheres. To be legitimate, the political authority exercising this power must possess its own Authority derived directly from the people of the Community as a whole. Such a Community has not achieved full federation, however, unless it also possesses the power to t a x the people of the union directly, and can enforce federal laws by police action against the individual who disobeys them[31].

3.3. The well-founded contention that the European Community is " sui generis "

110. Much emphasis has been, laid on the fact that the draft Statute of the European Community is not a Federal Constitution of the classic pattern, but an entirely new construction suited to the needs of Europe to-day. It has frequently been called sui generis. Provided we bear in mind the fundamental issue considered in the preceding paragraph, this is a useful, and not merely an escapist, description. The Community is unique because of the circumstances of its birth : it inherits two Specialised Authorities, and these still represent its most effective powers. At the same time, many Articles of the Treaty bear the mark of attempts at infer-national organisation. Thus the Community does not become a single legal entity in the sense that it embraces all Member States, which merely become territorial divisions within it. On the contrary, it is the same kind of legal entity as is the European Coal and Steel Community, only on a larger scale. Equally, the right to "

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28. Doc. 12 of the Ad Hoc Assembly, First Part, page 55, but cf. also paragraph 156 below.
29. e. g. The Constitution of Switzerland, which is a true Federal State, is officially called " The Federal Constitution of the Swiss Confederation. "
30. Report of the Royal Commission on the Australian Constitution (1929), page 230.
31. In view of the difference of opinion that exists between the various international jurists on this subject, such as Fauchille, Scelle, Kelsen and Oppenheim, it is useful to have recourse to what remains the clear est statement on this subject, which was made by Hamilton in Nos. X V and XVI of The Federalist:
"The great, and radical vice, in the construction' of the existing confederation, is the principle of Legislation for STATES or GOVERNMENTS, in their corporate or collective capacities, and as contradistinguished from the INDIVIDUALS of whom they consist... The consequence is, that, although in theory, their resolutions concerning these objects are laws, constitutionally binding upon the members of the union, yet, in practice, they are mere recommendations, which the States observe or disregard at their option... But if we are unwilling to be placed in this perilous situation; if we still adhere to the design of... a superintending power, under the direction of a common Council, we must resolve to incorporate into our plan those ingredients which may be considered as forming the characteristic difference between a League and a Government; we must extend the authority of the Union to the persons of the citizens—the only proper objects of government. " (The Federalist, No. XV).
" A federal government... must carry its agency to the persons of the citizens. It must stand in need of no intermediate legislation; but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions... The government of the Union, like that of each State, must be able to address itself immediately to the hopes and fears of individuals; and to attract to its support those passions which have the strongest influence on the human heart. (The Federalist, No. XVI).

acquire, or transfer, immovable or movable assets and to sue and be sued in its own name " (Article 4) is a right which also belongs to organisations like the 0. E. E. C. and the United Nations. The same concept of another organisation among many others is to be found in the " immunities and privileges " granted to the Community (Article 4), and indeed the Protocol which defines these privileges is taken directly from the European Coal and Steel Community Treaty. It is, however, essentially in the division of powers, and in the provision for their " auto-extension ", that the Community's chief claim to uniqueness resides. In constitutional law the Community is a creation of undeniable originality, which i t is impossible to place in any of the traditional categories.

3.4. Limitations of this Report

111. It must be emphasised that wc are now entering upon an examination of the text of a draft Statute which will be the subject of many learned works by constitutional lawyers. These men will be able to write an appreciation of the text more worthy of the subject than has been possible for your Rapporteur in the short time available to him. What follows therefore is not even an attempt to summarise the provisions of the draft Statute, but only a brief survey, laying emphasis on certain of the draft Statute's characteristics which seem t o be of peculiar importance.

3.5. The federal element in the Statute

112. Although the Statute may accurately be described as sui generis this does not imply the complete absence of all federal elements. The chief provisions which indicate the federal as opposed to its confederal[32] , elements in the Statute are as follows :

(i) As has been pointed out above (paragraph 83) the Preamble opens with the clear statement : " We the Peoples... " ; and it is confirmed in Article 1 t h a t the Community is " founded upon a union of Peoples "[33] ,an amendment to replace this latter phrase with the phrase " an association of nations " having been rejected in the Ad Hoc Assembly by 45 votes to 3.

(ii) The Community is declared to be indissoluble (Article 1). (An amendment to delete this phrase was rejected by 41 votes to 6).

(iii) Article 1 also lays down t h a t the Community is " of a supranational character ", i. e. supranational within its specific spheres of competence.

(iv) The three provisions mentioned above might be held to have little meaning, were it not for the essential provision for direct election to the Peoples' Chamber (Article 13). The Rapporteur, M. Dehousse describes this as " the impelling idea, which, from the very first, has been dominant in the discussions of the authors of this draft "[34] . In this M. Dehousse is right : this is the keystone of the arch. Without it, the whole structure would be little different from that of the innumerable intergovernmental experiments and failures which have preceded it.

So important is the provision for direct elections, that your Rapporteur feels bound to recall M. Reynaud's advocacy of this measure at the Hague Congress five years ago. On that occasion M. Reynaud said :

" We are offered an Assembly of deputies elected by the national Parliaments. Thus the deputies will elect themselves. But what mandate will they possess? It will be purely national. They will have received no European mandate at all. They will have as mandate the defence of the interests of their own country, and, let us be frank, of their constituency. Such an Assembly cannot be a European Assembly. It will be a club of national deputies, to which public opinion in our respective countries will remain entirely indifferent.

It is true that we are left with one hope. We are told, 'Yes, you are right, everyone agrees there must be a European Assembly, only later on, at a date yet to be decided'. I am sorry to say t h a t Europe has no time to wait...

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32. The use of those terms should bo read in the light of what has been said in paragraph 100.
33. It is true that the Preamble has (a) no binding force; and (b) this phraso is taken from the United Nations Charter. But the Preamble to the United Nations Charter was drafted by General Smuts, who remembered the failure of the League of Nations, and in this wrote the most federal statement of the Charter. It was adopted at San Francisco only after heated debate. Cf. also paragraph 104 below.
34. Doc. 12 of the Ad Hoc Assembly, First Part, page 37.

In proposing our Motion we believe i t is we who have ' kept our feet on the ground', for we ask for a European Assembly which will be truly European because it will be elected by direct European universal suffrage to deal with matters of European concern. We believe we must t a p a new source of sovereignty by appealing to a European sovereignty. We believe that the electors should vote, not as Englishmen, Frenchmen or Dutchmen, but as Europeans[35] And we believe t h a t only thus, by striking the imagination of our peoples, shall we succeed in solving the problem... Do not fear the peoples, only appeal to them. It is they who will save you. "

Few were prepared to listen to this appeal in 1948. To-day four years' experience in the Council of Europe has proved that without direct elections it is difficult to achieve decisive progress.

(v) Another major provision of the Statute is t h a t the European Executive Council shall be responsible to the Parliament of the Community. This establishes the normal pattern of governmental responsibility to Parliament, and is clearly essential if the powers of the European Executive Council are later to be increased, and the danger of a technocracy avoided.

The nature and powers of the Executive Council will be examined later[36]. For the moment we are concerned with the parliamentary dynamic of executive responsibility which is being set up : as Article 28 (4) lays down, " The Members of the European Executive Council shall have the title of Ministers of the European Community. "

(vi) The powers of the Court may also be regarded as bringing a federal element to the Statute of the Community. Under Article 41, " The Court shall in its own right take cognisance of disputes arising out of the application or interpretation of the present Statute or of a law of the Community, to which the parties are :

either Member States among themselves;

or one or more Member States and the Community ".

Equally important, are the provisions of Article 44, which give the Court " sole jurisdiction to decide on the validity of decisions or recommendations of the European Executive Council and of deliberations of the Council of National Ministers, in cases where such validity is contested in litigation before a national Court. " The question of development of the powers of the Community by means of judicial review (cf. Article 38) is considered below in paragraphs 131 and 146.

(vii) It may be justly claimed that hitherto only the framework of a European Government has been created, but t h a t , although institutions are envisaged which could develop considerably, all in practice will depend on the competence attributed to them. This subject is examined below in greater detail. In this part of the Report we are considering only those provisions of the Statute which suggest t h a t the resultant Community will be truly supranational from the beginning. At the moment, all the powers envisaged are concurrent, and this makes it impossible to regard the Community as a Federation, which requires t h a t both Federal and States' Governments shall have some exclusive jurisdiction. Thus the Government [37] of the Community will have executive competence in matters of coal and steel and defence. But, even though these are its most considerable powers, they are still subject to the numerous and far-reaching limitations involved in the EDC and ECSC Treaties. In other matters, economic powers, foreign policy, the protection of human rights, and the general right of initiative-—all the powers are concurrent, with the vast proportion retained in the hands of the national Governments. Indeed, this is true to so great a degree that in some articles membership of the Community appears only as a self-denying ordinance : " Member States may not conclude or accede to treaties or international agreements which run counter to the commitments entered into by the Community " (Article 72), and " Member States must consult the. Executive Council before taking economic measures ", such as devaluing their currency (Article 87). All this is undoubtedly true, and it reflects the cautiousness with which the Six Nations are entering the Community. This is not a criticism. On the contrary, it has been normal to find similar caution attendant at the birth of all unions of hitherto independent and sovereign States. What was important was that, even if the initial powers granted to the Community were scanty, as opposed to the powers remaining in the hands of the Member States, provision should have been made whereby these powers could be increased naturally as the Members of the Community gain more confidence in their partners, and see the benefits accruing to them all as a result of the Community's action. The great—perhaps the greatest—merit of the Statute is t h a t it makes this organic growth possible without making i t inevitable, thereby enabling the Statute to be adapted easily to the unforeseeable exigencies of political developments.

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35. See below, paragraph 118. 2. Seo below, paragraphs 120-127.
36. Seo below, paragraphs 120-127.
37. CI. the French text of Article 27 of the draft Statute.

(viii) Among the classic criteria of federalism in a Constitution are those of the method of enforcement of federal laws, and the powers of taxation. This reveals at once the weakness of the case of those who have acclaimed the Statute of the Community as being a " federal " document in the full sense of the word. The whole enforcement of the laws of the Community depends upon the good will of t h e Member States. It is t r u e t h at they pledge themselves to " implement the laws and regulations of the Comnvunity " (Article 105), and that the decisions of the Executive Council are declared to have "executive force in the territory of Member States " (Article 106). But who is to ensure the execution? In the case of the E. C. S. C. the difficulty of possessing no fiscal machinery has been overcome by asking the enterprises to assess themselves and then proceed to pay the taxes thus imposed[38] . In the case of the European Community, enforcement is to be ensured " through normal legal channels " (Article 106). It is true that the national administrations have only to " verify the authenticity of the decision " : assent is not required. But in practice it is clear that all will depend upon the good-will of the various national civil services concerned. Nor is the Community even allowed to deal with these national civil services directly, but it must do so through the national governments (Article 7). And, initially at least, the civil service of the Community itself (Article 8 and First Protocol) will be far more akin to hitherto existing international civil services rather than to a federal administration[39].

All these provisions are, however, inescapable. A European administration with full executive powers cannot be created overnight. Nor would it ever be either possible or desirable to replace the national administrations entirely, because a wide sphere of government will always remain primarily a national rather than a European concern. It can be argued t h a t in this case, even in matters of European concern which lie within the competence of the Community, the Communit y ' s dependence upon other administrations may render its activities nugatory. The answer is that at the present juncture this is in the nature of things. If the Member States enter the Community with a genuine intention to make it succeed, then the initial absence of a European administration will prove no obstacle. If, on the contrary, they should be resolved to limit the activities of t h e Community as far as possible, then nothing can make it succeed.

(ix) In the question of taxation the, federal element in the Statute of the Community is equally weak. This is a critical aspect of the problem, because the right of taxation is a fundamental indication of the distribution of power. Here once again all depends on t h e good-will of the Member States. Every financial provision is subject to the unanimous agreement of the Council of National Ministers (Articles 78 and 80). Nevertheless, the full framework for European parliamentary taxation is set up. Provided the Council of National Ministers agreed, the Community could pass legislation imposing income t a x on every citizen of the Community. This, however, is a distant prospect. For the momerit the finances of the Community are more likely to be limited to the receipts of the E. C. S. C. and the E. D. C , together with the 5 % levy on armament programmes envisaged for the European Re-adaptation Fund [Article 85, § 2 (iii)]. An example of international rather than supranational thinking is to be found in the idea of " contributions paid by Member States " (Article 77). However, the important aspect of the financial provisions of the Statute of the Community is t h a t they offer an opportunity for development in proportion as new needs arise, and in proportion as the Member States become ready to attribute further powers to the Community. It cannot be too strongly emphasised that it is in this possibility of progressive development that the masterpiece of the Community resides.

3.6. The confederal and international elements in the draft Statute

113. It will have been noted t h a t in considering the question of taxation and the enforcement of the Community's laws we were already stepping from the federal to the confederal elements in the draft Statute of the Community. It is in this indeterminate realm t h a t most of the draft Statute resides. Thus Article 1 lays down that the Community is not only a " Union of the Peoples ", but also a " Union of States " (c/. paragraph 103 (i) above). It is important to observe, however, t h a t the draft Statute likewise contains some provisions which spring from the old intergovernmental traditions. Some examples of this should be given t o sketch in the other side of the picture.

113.1. The whole draft Statute is contained in an international Treaty. It is to be signed by the Government plenipotentiaries, and is subject to the normal process of ratification (the Preamble, Article 1 and Article 117).

113.2. As the division of powers applies even to traditional areas of federal concern, such as foreign policy, Member States retain the right to conclude treaties with States which are not Members of t h e Community, although, it is true, these Treaties may not run counter to the commitments of the

38. At present the personnel of the collecting office at Luxembourg consists of two accountants and two accounting machine operators.

39. The important provision that civil servants of the Community shall be subject to the Community's taxation is, however, a sign of the incipient change (Article 11 of the First Protocol)...

Community (Article 72), and the European Executivo Council must be informed (Article 73).(This is to be contrasted for instance with Article 1, paragraph 10 of the American Constitution : " No State shall enter into any Treaty, Alliance or Confederation ".)[40]

113.3. An even clearer example of thinking in terms of traditional norms is provided by t h e provision of a pact for the peaceful settlement of disputes[41] between Member States (Article 71, paragraph 2).

113.4. The veto is retained by the Council of National Ministers in numerous import a n t cases : in matters of taxation (Article 78) and national contributions (Article 80) ; measures to establish a common market during five years (Article 84, paragraph 2) ; in all important measures of common foreign policy; in intervention to ensure the maintenance of constitutional order in a Member State (Article 104), as well as in all t h e cases provided for in the E. C. S. C. and E. D. C. Treaties. Likewise, all important amendments require the unanimous consent of the Council of National Ministers (Articles 111 and 112), as does the accession of new Members to the Community (Article 116).

3.7. Conclusion

114. This examination of the various aspects of the draft Statute might be continued in much greater detail. Our aim here has been to give an indication of the spirit of compromise in which t h e draft Statute has been conceived. Clearly the claim that it is sui generis has considerable foundation, since the resull is a juxtaposition of international and federal elements within the same juridical structure which can be fitted in no hitherto known category. Yet the Community is supranational within its sphere of competence. It therefore makes a decisive break with the weary story of alliances and wars which have scarred our common history[42]In this sense the differentiation made in paragraph 100 is of the greatest importance. Unless this breach with the past had been made, i t could have been said that the Constitutional Committee had given birth to a mouse, and the hopes of the European peoples for unity would have been destroyed. But if in this narrow sense the spirit of the Community is federal, it is certainly minimalist. The powers granted initially are infinitely smaller than those granted to any Federation in history. The central submission of this Report, however, is t h a t this is not the cardinal factor. It was clear when the Ad Hoc Assembly ^accepted its mandate that even parliamentary representatives were at this stage unprepared to grant wide powers to the Community. It therefore followed t h a t the battle would be won or lost over the question of institutions. If these institutions offered the possibility of a parliamentary dynamic, of progressive development, then the initial limitations in matters of competence would not matter any more than would their restrictive interpretation (Article 6). The problem which faces all those who draft constitutions is whether they shall attempt to impose an advanced constitution which may not correspond to the wishes of the people, in the belief t h a t institutions form men's thoughts as well as reflecting them, or whether they shall draft a cautious Constitution which will, nevertheless, be given opportunity for expansion[43]. The Constitutional Committee and the Ad Hoc Assembly have followed the latter course. They have placed their reliance in the direct European election to the Peoples' Chamber; and it is by the success or failure of this experience that the Community will stand or fall.

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40. Article 9 of the Swiss Constitution lays down " Exceptionally, the Cantons retain the right to conclude Treaties with foreign States in respect of matters of public economy, neighbourly intercourse and police relations; nevertheless, such Treaties must not contain anything prejudicial to the Confederation or the rights of other Cantons". In practice, however, Cantons wishing to negotiate such treaties always pass through the intermediary of the Federal Government. Cf. also Article 45 of the Weimar Constitution.

41. Cf. however, the application of the rules of international law in the settlement of inter-State disputes in Switzerland (e. g. Canton of Thurgau v. Canton of St. Gallen : Annual Digest 1927-1928, Case No. 289), and in the decisions of the Supreme Court of the United States (cf. 3. B. SCOTT : Judicial Settlement of Controversies between States of the American Union, especially Vol I).

42. " The Community is clearly and unequivocally distinguishable from a coalition or an alliance based solely on Treaties or international agreements. " (Doc. 12 of the Ad Hoc Assembly, First Part, page 11)

43. The worst error is to follow the former course, but allow a periodical opportunity for reconsideration. This was done in Auslro-Ilungary in 1867, when the economic union came up for review every 10 years. As a result there the very basis of Ihe State was decennially called in question.

3.8. The Content of the Draft Statute

3.8.1. Membership of the Community[44]

3.8.1.1. Membership open to all European States.

115. The initial limitation of the Community to the six Powers is not deliberate, but reflects the fact that hitherto only these Six Powers have been prepared to accept a partial and limited abandon of sovereignty. As with the Schuman Plan in 1950, the moment other States are prepared to accept the " rules of the club " they are welcome. This is laid down specifically in the Preamble : " Determined to invite other European peoples, inspired by the same ideal, to join with us in our endeavour... "

116. The only condition necessary to fulfil is that the European State concerned guarantees the protection of Human Rights and Fundamental Freedoms (Article 116). It should be noted, however, that this only partially satisfies the requirements of the amendment tabled by M. Cassimatis (Doc. 104, Amendment No. 1). In practice, however, no difficulty would be created for Member States of the Council of Europe who wished to join the Community after its creation, other t h a n the need to make certain adjustments (cf. paragraph 108 below).

117. This cannot, however, disguise the fact that there is a certain difference between the " foundation " Members of any club and someone who joins later. Nor will the accession of new Members, even if they fulfil the conditions of Article 116, be entirely automatic, since it would necessarily " entail certain adjustments of the Statute, particularly in respect of the composition of the Assemblies, the executive organs and the judicial institutions "[45].

118. When this has been said, however, i t is clear that the new Community is t o be open to all..

119. The provisions concerning Association and Liaison reflect the same spirit, and form the subject of the Report submitted by Lord John Hope[46].

3.8.1.2. The guarantees offered to small States

120. One of the basic difficulties of establishing a Political Community between the six Nations is the enormous disparity between, for instance, France and Luxembourg. As M. Dehousse has pointed out, however, the guarantees offered to the small States are very considerable. In both Chambers of Parliament the weighted representation gives the Netherlands and Belgium 50 % of the seats allotted to the three major partners, whereas an allocation on a demographic basis would give them only some 20 % of the seats. The same is true a fortiori of the position of Luxembourg. These provisions gain still further in importance if certain necessary majorities are recalled, such as the three-fifths required in the Peoples' Chamber for a vote of no confidence in t h e European Executive Council (Article 31). Moreover, the three Benelux countries can by themselves initiate the procedure of a second deliberation, for which one quarter of the Senate is required. All parliamentary experience indicates the power which such a provision confers. To these parliamentary powers must be added equality of numbers in the Council of National Ministers and a (potential) equality of numbers in the European Executive Council (Articles 36 and 28 paragraph 3).

121. The constitutional provisions alone give clear proof t h a t a real effort has been made to protect the rights of the smaller States. There were times, however, during the discussion in the Constitutional Committee when another equally important fact seemed to be in danger of being forgotten. It was natural that the representatives of the smaller States should have been anxious to avoid being " swamped " by their larger partners, or even more, that measures which might ruin their economies might be forced through by the majorities consisting of representatives of the larger Powers alone. To the first, the answer is that the Community offers the sole means whereby the national identity of its smaller Powers can be preserved in the present world of monolithic " blocs ". The answer to the second, is that no. State would consider entering the Community unless it trusted its partners. As M. Dehousse phrases it : " To join the Community while harbouring a lurking suspicion that it is, actually or potentially, a kind of conspiracy by one group against another, would hardly bo compatible with the state of mind that is henceforth to govern relations of the Member States with one another, and which already does govern them to a great extent. "[47]

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44. Cf. Part Two of the Explanatory Memorandum, paragraphs 53-56 above.
45. Document 12 of the Ad Hoc Assembly, First Part, p. 59.
46. Seo Fifth Session, 1953 : Doc. 118 and Resolution 27, adopted by the Assembly at its eighth Sitting, 11th May, 1953.
47. Document 12, of the Ad Hoc Assembly, First Part, p. 43.

3.8.1.3. The right of secession.

122. The provision in Article 1 that the Community shall be indissoluble is an import a n t one. It reflects what M. Benvenuti calls the " transition from the contractual to the constitutional phase " in the relationship of the six Nations. It is thus an important federal element in the draft Statute. The right of secession is incompatible with any Federation, and reflects Lincoln's dictum, " no Government ever had provision in its organic law for its own termination ". The federal principle is t h a t the right to leave t h e Union cannot rest with the State alone, as was clearly enunciated in 1934 by the Select Committee of the Houses of Lords and Commons in Great Britain, concerning the petition of Western Australia. In the U. S. A. and Switzerland it requires the full procedure of constitutional amendment. The reason for this is that if the right of secession were granted it would enable the Governments of Member States to use it as a means of political pressure. It is therefore necessary to crystallise and stabilise the initial common will to be united but not to form a unitary State. If this will subsequently changes, then it cannot be operative unless the other partners assent[48]

3.8.1.4. The conception of " Eurafrica "[49]

123. Few Representatives will have forgotten the notable speech of M. Senghor in the Ad Hoc Assembly in January. Nevertheless, the curious fact that will strike the future his-torian of the creation of the Community is that the great concept of " Eurafrica " entered, as it were, by the back door. This back door was provided by the constitutional fact that the French Republic includes certain African territories. The discussion of Article 101 was so long, and the various implications so carefully worked out in the Constitutional Committee and the Ad Hoc Assembly, that there is no point even in attempting to summarise them. Nevertheless, there is no single article of more importance in the draft Statute. It is true t h a t the map of the potential territory of the Community presents a curious picture, and that large areas of " European " Africa remain outside. But this provision at once lifts the Community out of the rut of defeated nations combining to save what is left of their patrimony. Indeed, it offers hope of a partnership between Europe and Africa, providing an area with an enormous economic potential, and preventing Africa following China to Communism. Those who hoped to ensure the rejection of this concept of a European Community by raising the issue of the unity of the French Republic have been sadly disappointed. Nor should the seven seats given to France above the number given to Italy and Germany " in order to take into account its overseas departments and territories " be scoffed at by cynics as the price paid by Germany for the right so long sought of sharing in the exploitation of Africa. The spirit in which Article 15 and Article 101 were adopted was entirely different. It had as its immediate object the aim of helping ratification in the French Chamber. But, behind that lay the idea of a great partnership of the two continents evoked by M. Senghor. This should not, however, obscure the fact t h a t the implementation of this idea will give rise to considerable problems.

3.8.2. The Institutions of the Community

3.8.2.1. Parliamen

Composition

124. The striking thing about the articles concerning representation is their modernity. In the Peoples' Chamber, the weighted representation is generous to the small States and ensures t h a t " even if all the representatives of two large States were to vote unanimously, t h a t would not automatically put the third State, •— whichever it might he —• in the minor i ty "[50]; The question of the seven extra seats attributed to France has already been considered[51]. What is most important is that a clean break has been made with the demographic principle. Clearly, if this principle had been adopted it would have been impossible in the future for Europe to enter into any union with non-European territories. Federalist thinkers have long been concerned about this problem, and numerous suggestions have been made to overcome it, such as t h a t of representation based on " taxable capacity ", made by Mr. Lionel Curtis. Here no single criterion is laid down, and the " weighting " has been adapted from that of the E. C. S. C- and E. D. C. Treaties. Nevertheless, the adoption of the idea of a qualitative rather than a numerical basis of representation represents a major political

48. In this case it would involve an amendment of Article 1 of the draft Statute under the provisions of Article 111, which requires the unanimous assent of the Council of National Ministers
49. Cf. paragraph 58 above.
50. Document 12 of the Ad Hoc Assembly, First Part, p: 41.
51. The provisions of Article 15 in this respect may be deemed to have satisfied the requirements of the amendment tabled by M. Poisson and his colleagues (Extraordinary Session, 1953 : Doe. 104, Amendment No. 2)

development, and without it no concept of a " Eurafrican " Union would ever have been practical. In the distant future, as M. Dehousse points out, it will form a useful precedent when the structure of the United Nations is revised.

125. It is facile to congratulate the authors of the draft Statute for having avoided parity of representation in the Senate solely on the grounds of the enormous disproportion between some of the Member States. The aim of parity in a Federal Senate is not only to persuade small States to enter the Federation, but also to protect the very real and valuable interests and traditions of each State. It is only to be accepted in the Statute of the Community because of the existence of the Council of National Ministers, for which there is no parallel in any existing Federation. With it, thè smaller States need feel no apprehension. On the other hand, there is an arguable case for avoiding a situation such as t h a t which obtains in the United States, in which t h e eight " Mountain " States elect 16 Senators but only 14 Congressmen. Other examples of parity in the Senate are provided by Switzerland and Australia, but in Canada the system is weighted in favour of the larger provinces, Quebec and Ontario having 48 out of 96 members of the Senate. In the case of the Community, there is also the major consideration that the whole system of organic links with the Council of Europe depends upon maintaining the representation in the Senate laid down in Article 17.

126. The importance of Articles 15 and 17 was shown by the fact that more than one half of the representatives to the Ad Hoc Assembly spoke concerning them. The discussion reflected the concern of Representatives t h a t the system created should be strong enough to withstand the stresses of the widely differing interests to which it gives fair representation. The whole pattern is a tribute to modern, flexible thinking, proving that the Constitutional Committee was no slave to XVIIIth century precedent, and reflecting the greatest credit on its principal architect, M. Dehousse.

Method of election

127. Article 11 provides the electoral theory of the Community, whereby the members of the Peoples' Chamber represent the peoples of the Community as a whole, divided for the purpose into European electoral districts[52] whereas the members of the Senate represent the peoples of each State, and are elected by a national electoral college in the form of their national Parliaments. The quinquennial re-election ensures the necessary degree of stability and avoids straining democracy by an over frequent call to the polls.

128. One Representative vigorously attacked the idea that the first elections (thereafter they will be decided by an electoral law of the Community) should be conducted on a basis of proportional representation (Article 96). His contention was that deputies should stand as representatives of the European idea. The objection to this was raised that when the European Community is established, the decision in favour of " Europe " will already have been taken. Thereafter, voting will represent an intersection of those who support greater powers for the Community, and those who support " States' rights "—both with equal validity—and the traditional differences between the Socialist, Liberal and Christian Democrat philosophies. This fundamental argument of the distinction between the era before and after the creation of the European Community is rendered stronger by the need of a strong party organisation to run any European electoral campaign. It is true the Assembly expressed the wish that the first elections should be at the charge of the Community, but the need for parties will still remain. More difficult—-and still unresolved— was the question of the size of the electoral areas. If a single deputy is to represent perhaps 700,000 people, an electoral system with proportional representation will necessarily imply t h e existence of. enormous electoral areas. How could one man cover 10 Departments, it was asked. In his Explanatory Memorandum, M. Dehousse claims t h a t " owing to the educational value necessarily inherent in any election, they would provide the surest means of leading the public to take a direct share in the organisation of Europe "[53] But popular interest arises in direct proportion to the immediacy of the issues at stake, and of the candidate who is appealing for votes. What interest would be aroused by such a remote system? This is an example of one of the many questions as yet unresolved.

The powers of Parliament in the Community

129. Reference has already been made to the fact that the motive force for the development of the Community's authority is likely to come from the directly elected Peoples' Chamber. The reservations made by a number of Netherlands Representatives concerning the immediate probability of holding such elections are therefore of great importance.

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52. Cf. paragraph 103 (iv) above.
53. Document 12 of the Ad Hoc Assembly, First Part,.

130. Among the powers of Parliament are :

a. A right to initiate legislation, which also belongs to the European Executive Council on any subject within the scope of Article '. 2. This includes questions of security, foreign policy, coal and steel, the establishment of a common market, the protection of human rights and fundamental free-.doms, and also the general aim of promoting greater European and even Atlantic unity. Parliament is also to decide the Seat of the Community's institutions (Article 100), to lay down the electoral law (Article 13), to adopt the annual budget (Article 76), and to adjudicate in electoral disputes (Article 19).

b. The right to make recommendations and proposals. It is only the second of these rights that reflects a limitation not normally known in an elected legislature. The former is designed to cover the case of complex financial or economic legislation in which lois-cadres are necessary and thereafter various implementing regulations (Article 54).

c. The right to institute enquiries (Article 23, paragraph 4).

d. The rights of Parliament over the Executive are considered below (paragraph 125).

e. The assent of Parliament is required for any amendment to the Statute (Articles 111 to 115) or to the accession of another State (Article 116)

131. There is no duration laid clown for the sessions of the Parliament, as is the case in the Consultative Assembly of the Council of Europe (Article 21).

The division of power between the two Chambers

132. This is one of the most difficult subjects in the whole Statute. Bicameral Government is notoriously difficult to work, and only practice will be able to prove if the drafters of the present document have been successful. In theory, the powers of the two Chambers arc equal (Article 11). But the Senate elects the President of the Executive Council (Article 28) and approves the selection of the Judges of the Court by the Executive Council (Article 39, paragraph 1). On the other hand, only the members of the Peoples' Chamber have a direct mandate from the people. In practice, much will depend on whether the President selects his Ministers from the Senate or from the Peoples' Chamber[54].

133. Whichever Chamber proves t h e stronger, there will clearly be need for close consultation between the two Houses. It might, therefore, be of value as from the opening session to institute a procedure analogous to the Senate-House Conferences used in the U. S. Congress..

Relations between the Parliament and the Executive

134. In deciding what kind of Executive should be set up, the Constitutional Committee was faced with three possibilities—the Directorial (as in Switzerland), the Presidential (as in the U. S. A.) or the Parliamentary (as in most of Western Europe). In the event, the unanimity of Western European experience in this matter led them to decide in favour of the third course. Article 31 lays down the manner in which the Executive shall be responsible to Parliament, ingeniously combining both the right of dissolution and the vote of constructive censure. The prin-' ciple of collective responsibility is ensured, and it is to be hoped that the links between the Executive and the Legislature will be reinforced by the members of the Executive Council being chosen from the ranks of Members of Parliament. Article 32 lays down that the President of the Executive Council may dismiss or replace a member of the Council only if this action is approved by both Chambers[55] It should be noted t h a t Members of Parliament have the right of amendment and interpellation, and also that of " putting written and oral questions to the Executive Council, which shall be requested to answer t h e m" (Article 23, paragraph 3).

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54. In theory, members of the Executive Council need not be Members of Parliament at all (Article 29), although they may attend debates and Committee meetings (Article 24), may be questioned by Members of Parliament (Article 23, paragraph 2), cannot be dismissed without parliamentary assent (Article 32), and above all have to seek a parliamentary vote of confidence (Article 31). But to appoint men or women who were not Members of Parliament to be Ministers of the Community would be likely gravely to hamper the development of the Community. The American experiment has not proved a success in this respect and as there is no plebiscitary election of the President of the Executive Council, any Ministerial appointments of non-parliamentarians that might be made would be of doubtful democratic validity. Heavy responsibility in this matter will therefore rest with the first President of the Executive Council, until a parliamentary tradition of ministerial appointment has been established.

55. If this were refused, the President could resign, thereby causing the collective resignation of the Council, but not thereby entailing the dissolution of Parliament.

3.8.2.2. The European Executive Council

135. The provisions of the Statute concerning the Executive or Government of the Community are another example of t h e modern and adult quality of the political thought which has gone into the making of this Statute. The problem which faced the Constitutional Committee was not of the same kind as faced Parliaments in the X V I I I t h Century, that of asserting their control over too strong an Executive. On the contrary, any European Executive will in the nature of things be weak initially, faced with national Governments with great traditional civil services behind them, and in many cases, a long tradition of stable government. Yet at the same time as ensuring t h a t the European Executive Council was both strong and stable, parliamentary responsibility had to be ensured. The Committee showed itself very alive to the danger of a technocracy inherent in the present situation, where an apparent failure of national parliamentary government coincides with the creation of supranational Specialised Authorities.

136. The question of parliamentary responsibility and right of dissolution has already been considered. The Executive Council is charged with the general administration (goucernement) of the Community (Article 27) and has the right to take decisions or make recommendations (Article 33). It also possesses a general right to initiate legislation over the whole range of the Community's competence (Article 23, paragraph 1). Among the specific powers attributed to t h e Executive Council are : those exercised by the Board of Commissioners of the E. D. C.[56], after a transitional period of two years (Article 63); the right to represent the Community and negotiate treaties in its name (Articles 68 and 69), and, in general, powers to ensure the co-ordination of t h e foreign policy of Member States by means of proposals to the Council of National Ministers (article 70[57] and by preventing the conclusion of treaties incompatible with the interests of the Commu-n i ty (Article 73) ; t h e right to propose the Community's budget (Article 76), and impose taxation, subject to the unanimous concurrence of the Council of National Ministers (Article 78) ; to draw up proposals for the establishment of the common market. (Article 84), to administer the European Readaptation Fund (Article 85), and to be consulted before any measure such as devaluation is undertaken (Article 87); and the right to ensure the maintenance of constitutional order in a Member State (Article 104). The decisions of the Executive Council, taken within the framework of these powers, have executive force on the territory of Member States (Article 106) and judges of the Court are chosen by the Executive Council with the approval of the Senate (Article 39)[58] Amendments to the Statute are drafted by the Executive Council (Articles 110 to 116).

3.8.2.3. The Council of National Ministers

137. The initial draft of t h e Statute caused much criticism on the grounds that too great power had been granted to the Council of National Ministers. Those powers still remain very considerable. One member of t h e Council of Ministers can exercise the veto in matters such as taxation (Article 78), measures for the

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56. With the E. C. S. G the European Executive Council appoints only the Members of the High Authority (Article 63, paragraph 2) Cf. paragraph 136 below.

57. It is of importance to note that the draft Statute of the Community has avoided the error made in the Statute of the Council of Europe. Instead of there being a divorce between the Ministers and the Assembly, whereby the former never hear tho views of the latter when they discuss the Assembly's Recommendations, it is specifically laid down in Article 70 that the Executive Council shall " have the right to be heard at all meetings of the Council of National Ministers when these proposals are examined ". The importance of this change is especially underlined by the Rapporteur.
It may be noted in parenthesis that the well-known objection to civil servants working with parliamentarians, which has hitherto always prevented joint meetings of the Ministers' Deputies and the members of the Assembly Committee which drafted the proposal under consideration is unfounded. In Great Britain, for example, civil servants are responsible to Ministers who are in turn responsible to Parliament. It is therefore normal that the link with Parliament should be through the Ministers alone. But at Strasbourg the Committee of Ministers is not responsible to the Assembly, and Ministers rarely attend its meetings. As a result no parallel can be drawn. The criterion therefore is not t o transport an irrelevant precedent, but to examine which method makes for the most efficient working in the Council of Europe. In practice, since, although some Ministers' Deputies attend meetings of the Assembly, they do not attend its Committees, there is no effective link between the parliamentary and the ministerial body. This often means Members of Parliament spend many days drafting a Recommendation, which is thereafter rejected by the Ministers' Deputies because the latter have not appreciated the strength of the political arguments which actuated the Members of Parliament. This is a very serious state of affairs, and it is to be hoped that the example of the European Community will lead to a radical change in the procedure hitherto followed by the Council of Europe in this respect. The only argument that might still be opposed to i t is the thought that civil servants might " come in contact " with members of the Opposition. But the issue is not one of responsibility to parliamentarians, but simply one of ensuring that there is full understanding of the motives which prompted each Recommendation. This can be achieved only in discussion. The principle of joint meetings should therefore be applied at the level where it is effective, namely that of the Ministers' Deputies. In theory this implies a meeting of the Ministers' Deputies with the whole Committee whose Recommendation it is considering; in practice, however, the Chairman and the Rapporteur would be able to ensure that the Committee's view was clearly understood.

58. Potentially a provision of cardinal importance, cf. paragraphs 132 and 146 below.

establishment of the common market (Article 84[59] , intervention to ensure the maintenance of constitutional order (Article 104), the chief activities of the Executive Council in matters of foreign policy (Articles 68 and 69), any major amendment to the Statute (Articles 111 and 112), the admission of a new Member (Article 116), as well as in all those matters where the veto is retained by the Council of Ministers in the E. D. C. and E. C. S. C. Treaties.

138. The criticism of the powers of the Council of National Ministers would not be without foundation, if these powers of veto were subsequently abused, for they could hamstring thereby the whole activity of the Community. But the direct elections to the Peoples' Chamber give reason to believe that no unreasonable use will be made of this right, the maintenance of which was moreover made possible only by t h e introduction of " weighted " representation in t h e Senate. If a large major i ty is returned who have advocated certain measures in their election campaign, then the abtise of the veto would become difficult, unless the vital interests of one particular Member State were affected. In this case, the veto would offer a justified safeguard.

139. This, however, in the belief of your Rapporteur, is the wrong way to regard the Council of National Ministers, although perhaps natural after the experience of t h e Commit- tee of Ministers of the Council of Europe. The central fact is t h a t no European administration exists. In these circumstances, recourse must be had to the national administrations. This in turn necessitates a liaison body. It is this that the Council of National Ministers provides. Its purpose is to " harmonise the action of the European Executive Council with that of the (national) Governments " (Article 35). If it did not exist, it would prove necessary to create it. Later, it may prove otiose. But even this is doubtful. There will always be need for close co-ordination of action between the Governments of the different Member States. It is not inconceivable t h a t the Council of National Ministers may develop in time into something very similar to the Australian Premiers' Conference[60].

3.8.2.4. The Court

140. In federal constitutions, the decision in case of dispute between the Federal and States' Governments as to the application or the interpretation of the Constitution cannot rest with either the Federal or the States' Governments alone. The usual recourse is to a Court of Justice, as is the case in U. S. A. and Australia. In America, the judges are appointed by the President, with the consent of the Senate. In Australia and Canada, they are appointed by the Federal Executive. In the case of the European Community, disputes arising otit of the application or interpretation ôf the Treaty fall within the competence of the Court (Article 41), the members of which are appointed by the European Executive Council, with the approval of the Senate (Article 39). It is worth recalling in this connection the classic statement of the Courts' claim as made by Hamilton : " The interpretation of the laws is the proper and peculiar province of the Courts. A Constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to maintain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconciliable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or in other words, the Constitution ought to be preferred to the Statute, the intention of the people to the intention of their agents. "[61]

141. If the provisions referred to above are read in conjunction with those of Articles 43 and 44, which give the Court extensive jurisdiction to decide whether the decisions of the Executive Council or of the Council of National Ministers are valid or not, it will bo seen that the Court has great power. This is rendered complete by the fact that during their tenure of office judges can be dismissed only by the Court itself (Article 39, paragraph 4). It may be argued in the light of American experience over the New Deal legislation that this wide conception of the Court's powers has its dangers, if, for instance, a majority of one J u d g[62] declared an act to

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59. After six years only " tho concurrence " and not the " unanimous concurrence " of the Council of National Ministers is required (Article 84, paragraphs 2 and 3).

60. One of the serious consequences of Great Britain not being a Member of the Community is that it has not proved possible to make the use that would have been desirable of the constitutional experience of the Federal States of the British Commonwealth, Canada and Australia. The Australian Premiers' Conference is a case in point. This body has met every year since the establishment of the Commonwealth, and at the Conference in 1929 it was decided that the meeting should be held annually in the month of May. The kind of topics considered are the financial relations of the Commonwealth and the States (in close co-operation with the Australian Loan Council); the exercise of industrial powers by the Commonwealth; aviation, health and constitutional reform. The value of the Conference was especially great in evolving plans to meet the depression from 1930-1934. In Canada, a Dominion-Provincial Conference has met from time to time since 1906. In 1939, the Rowell-Sirois Commission recommended that these Conferences be held more frequently, and that a permanent Secretariat should form part of the machinery of Canadian Government. (In the U. S. A. there is also a " Governors' Conference " which has met since 1908.)

61. The Federalist, No. LXXVIII.

62. The Court has to lay down its own rules of procedure (Article 40).

be unconstitutional, which represented the wishes of the large majority of the electorate. The potential power of the Court to hamper the progressive development of the Community could be immense, especially in view of Article 6, which enjoins restrictive interpretation of the powers and competence conferred upon the Community by the draft Statute. The dangers inherent in the case of the Community are far greater than in a Federal Constitution because in the case of the Community all the powers are concurrent, and i t is clear that a Court bent on limiting the activity of the Community to its minimum could in fact destroy the Community's effective existence. Much therefore may depend on the personal evaluation by the judges of the intention of the drafters of the Constitution. On the other hand it may be contended with some weight t h a t the Court would never declare unconstitutional an act which had gained the unanimous concurrence of the Council of National Ministers—as all important measures must—and that the existence of this latter institution makes any American experience i r r e l e v a ns[63].

3.8.2.5. The Economic and Social Council

142. No comment is required on the substance of this long overdue provision, which dates back to the Westminster Conference of the European Movement in 1949, and has frequently been requested by the Trade Unions[64].

143. It is, however, significant that the phrasing of the article reveals the very close desire to establish organic links with the Council of Europe which animated t h e members of the Constitutional Committee. It is not always easy for Representatives who come from States other than the six nations to appreciate how natural is the feeling that if the new Community is to survive, it must be distinct and have a clear-cut definition about its organs. Behind this lurks the feeling among some t h a t to associate the Community with the Council of Europe too closely is to risk " watering down " the already weak federal element in the Community, and that indeed non- Member States would use it for that purpose. Fortunately these fears, expressed when the " Eden P l a n " was first mooted, have now been realised to be unjustified. Of this realisation, conclusive proof is provided by the preparedness to allow the Senate of the Community to be a part of the Consultative Assembly, at least as regards personnel and the Economic and Social Council to be a section of the similar Council which it is hoped will be set up by the Council of Europe (Article 51).

3.8.3. The Powers of the Community

3.8.3.1. A general right of initiative

144. Proposals made by the Executive Council with the approval of both Chambers may be expected to be implemented by Member States, t h e more especially as t h e States concerned are to inform the Executive Council of the action they have taken.

3.8.3.2. The E. D. C. and E. C. S. C.

145. The point of departure of the Constitutional Committee was that it would be folly to disturb the operation of a Specialised Authority which has only just been set up. This preoccupation has perhaps led the drafters of the Constitution into excessive solicitude for the independence of the High Author i ty of the E. C. S. C. The Court, the Assembly and the Special Council of National Ministers are absorbed at once within the Community, but, in the case of t h e Executive, there is a transitional period of two years (Article 59). But, whereas after this period the Board of Commissioners of the E. D. C. is absorbed into the European Executive Council, instead of only working under its supervision as before (Article 61), t h e High Authority is to continue as " a n administrative body having the character of a B o a r d " whose members will be appointed by the European Executive Council on the proposal of the Governments (Articles 5 and 63, paragraph 2); and insofar as the text of the Treaty is concerned, this provision might be permanent (cf. Article 88). The only criterion can be efficiency. If decentralisation proves to be more efficient, then the arrangement should continue. But this should have no relation to the increasing tendency for every European organisation to become a little bastion of sovereignty, jealous of its own rights and privileges—a danger Avhich has frequently been pointed out by your Committee[65] .The other important thing is to ensure adequate responsibility to Parliament. This will be provided by the investiture which the European Executive Council must seek from Parliament, which contrasts favourably with the method of governmental nomination adopted in the case of the Members of the High Authority and of the Board of Commissioners

63. Cf. paragraph 146 below.
64. Cf. paragraph 75 above.
65. a. g. Resolution 25 (1952) concerning the 0 . E. E. C.

3.8.3.3. Economic Attributions

146. The declarations made by t h e Netherlands representatives on the importance they attach to the realisation of a common market are of the utmost importance. For the Netherlands, in fact, the economic powers of the Community are a sine qua non of ratification. This point of view is indeed readily understandable :. it derives at once from economic circumstances which naturally lead all Netherlands Representatives, of whatever party, to adopt this attitude, and form the hope that the resulting economic union will lead to a " levelling up " of wages to the highest level obtaining within the Union.

147. The guarantees against any too sudden dislocation of national economic life are very important. Even after the first six years, there is to be a discussion in both Houses of Parliament with a two-thirds majority required, and the possibility of a second reading being requested. In all cases, there is a European Re-adaptation Fund (Article 85) to smooth the elimination of redundant or inefficient industries. If there is still genuine fear that a measure may " cause fundamental or persistent disturbances " in an economy, recourse may be had to the Court or Arbitral Tribunal (Article 86). Before this time, every decision is subject to the potential veto of the Council of National Ministers. These gradual methods give the much needed reply to those who have tended to equate political union with the sudden removal of all customs barriers. This has never been the case. Thus in Australia the Commonwealth collected customs and excise revenues, but repaid 75 % to the States from 1901 till 1911 to ease the transitional period. More serious is t h e question of whether the creation of a single market among the Six may undo all the painstaking work that has been done to try to ensure greater freedom of trade among all Member States of the 0. E. E. C. The temptation will be, in creating a single market for the six Powers, to raise tariff barriers against other European countries. This is a very difficult problem, but it is one t h a t must be carefully watched, the more especially since the " Strasbourg Plan " of last year made quite clear the total inability of all Western Europe-—let alone a part of it —to balance its dollar deficit unless in association with the countries of the British Common wealth, and the other overseas territories of all the Member States of the Council of Europe.

3.8.3.4. Foreign Policy

148. The powers granted in the realm of foreign policy remain indeterminate. This is inevitably true of any co-ordinate division of powers, but the lack of clarity in this matter should not be overlooked.

149. The Community possesses the powers in matters of foreign policy conferred by the E. C. S. C. and E. D. C. Treaties[66] .Apart from this, it has the responsibility for the general co-ordination of foreign policy (Article 69) in the spheres of competence laid down in Article 2. As has been before remarked, however, the sphere covered by Article 2 is a wide one. It covers the general question of greater European unity; matters covered by the North Atlantic Treaty (including therefore Article 2 of that Treaty concerning greater Atlantic unity); the promotion of a common market; security against aggression, and human rights. The particular clause relating to foreign policy refers to questions " likely to involve the existence, the security or the prosperity of the Community "—a definition which alone could cover many aspects of foreign policy. At the same time, the Executive Council can negotiate treaties on behalf of the Community (Article 68) and act as common representative of Member States (Article 69), with the assent of the Council of National Ministers. The Community has also the right to accredit and receive diplomatic representatives (Article 74), a provision which might mean no more than the present right of the United Nations, but which could in time lead to the end of all direct diplomatic representation in Member States[67] .These wide aims, however, are to be achieved by the most indirect means. The chief method is to be t h a t of continuous consultation, together with the right to make proposals to the Council of National Ministers (Article 70). In such cases, the Executive Council has a right to be heard at the meetings of the Council of Ministers[68] . Lastly, treaties may not be negotiated which run counter to the interests of the Community (Article 73).

150. This imposing array of provisions calls for two comments. It does render somewhat more precise the original vague wording of sub-paragraph 2 of paragraph 9 of Resolution II, of t h e text considered last January[69] .This was the only precise recommendation contained in the Report adopted by the Consultative

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66. E. C. S. C. Treaty : Article 75, Articles 1 and 14 o[the Convention on Transitional Provisions. E. D. C. Treaty : Articles 2, 4, 5, 10, 14, 18, 32, 47, G8, 69, 70, 77, 78 bis, 87 bis, 91, 94, 102, 120, 123, 127, 128. Soo also Articles 7 and 26 of the Military Protocol, the Protocol on relations between the ¥,. 15. C. and N. A. T. O.

67. Member Slates of the German Bitndcsstaat (1871- 1918) retained the right to send and receive diplomatic envoys. Even after 1919, Bavaria maintained diplomatic intercourse with the Holy See. (This in spite of the terms of Article 78 of the Weimar Constitution : " The administrai ion of relations with foreign States is the business of the Federation alone ".)

68. Cf. above, paragraph 127 and second note thereto.

69. Questions likely to involve the existence, the security or the prosperity of the Community " as compared with " the common objectives of foreign policy ".

Assembly on that occasion. On the other hand, less has perhaps been done to still the concern of the Consultative Assembly at the possible jeopardising of the harmony of the foreign policy of all the fifteen Member States of the Council of Europe by the existence of a six Power foreign policy within i t[70] . Water-tight measures to prevent this cannot perhaps be defined in a text, but must await practice before judgment can be passed. Much will depend on the meetings of the Senate " within " the Consultative Assembly, and of the European Executive Council and the Committee of Ministers (Articles 2 and 4 of the Second Protocol). It is, however, encouraging to note the provisions that have been made for consultation. During the Session last January there was a narrow vote on an amendment submitted by M. Spaak to make consultation optional rather than obligatory. As has been noted, t h e decision was misinterpreted in the press as a desire to prevent all effective action by the Community. Nothing could have been further from the mind of the Committee on General Affairs. The aim was to lay down a principle, realising that in practice it would not always be possible to fulfil it to the letter. This was fortunately well realised by the Constitutional Committee. M. Wigny, as Rappor- teur, summarises the position skilfully[71] : Information in advance is made obligatory, and must not be a " mere notification of established facts ". Prior consultation remains optional, but there is little to quarrel with in this, since in practice it is inevitable. What matters is t h a t t h e clause concerning prior information shall be interpreted generously (Article 4, paragraph 2 of the Second Protocol). If this is done, the unity in foreign policy between the Fifteen will be much easier of achievement •—-and there is every evidence that the article concerned will be interpreted in this way. The more general issue of Western unity is considered below (paragraphs 169 to 176).

151. The second comment is t h a t the provisions of Article 68 appear to obviate successfully the possibility that the European Executive Council might legislate for the Commun i ty by means of treaty. The difficulty in federal States in this matter is traditionally not the conclusion of treaties, but their performance. If it should depend entirely on the assent of Member States, then there would be no certainty of international agreement for foreign Governments[72] ; if it should depend entirely on the Federal Government, then the door is opened for " back-door legislation ".

3.8.3.5. Droits de l'Homme

152. This question falls within the competence of the Committee on Legal and Administrative Questions. By the provisions of Article 3, t h e provisions of Part I of the Human Rights Convention and the Protocol thereto become an integral part of t h e Statute, but the rights of interference to prevent the subversion of democratic order are greatly strengthened in comparison with the Rome Convention (Article 104)

3.8.3.6. Finance

153. We have already considered this question briefly (paragraph 103, ix).

3.8.4. Provisions for Amendment of the Statute

154. The provisions of Articles 111 and 112 are extremely severe. In effect they make all major modification of the Statute impossible by means of constitutional amendment, unless they receive the unanimous assent of Member States expressed in the Council of National Ministers. This is a more radical provision than exists in any Federal Constitution. In the U. S. A., ratification requires the assent of three quarters of the States' legislatures (36 States). Article 128 of the Australian Constitution lays down that an amendment proposed by both Houses requires the approval of a majority of all voters in the Commonwealth in a referendum, together with a majority of two-thirds of t h e States (4 out of 6). If the amendment affects one State in particular, the assent of that State is necessary. In Canada, the second British North America Act (1949) as a temporary measure gave the Dominion Parliament the right to amend any provision not affecting Provincial rights, education or the two languages. This was followed by a Constitutional Conference on 10th January, 1950, which recommended unanimously t h a t :

154.1. provisions which affected Parliament alone could be amended by Parliament;

154.2. provisions which affected provincial legislatures alone could be amended by the provincial legislatures ;

154.3. provisions which affected Parliament and some Provinces required the assent of Parliament and the Provinces concerned;

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70. Cf. above, paragraphs 65-66.
71. Document. 12of the Ad Hoc Assembly, First Part, pps. G3-G4.
72. e. g. As with the two I. L. 0 . Conventions signed by Canada in 1935.

154.4. provisions which affected Parliament and all the Provinces required parliamentary assent, and of such majority of the Provinces as may be decided;

154.5. certain fundamental rights required the assent of Parliament and of all the Provinces for their modification (education, the two languages and amendment of the amending procedure).

In Switzerland an amendment requires a referendum indicating the approval of a majority of all electors voting and a majority of electors voting in a majority of the Cantons.

155. It was claimed earlier in this Report t h a t one of the merits of the Statute was that i t gave the possibility of " auto-extension " within its allotted spheres of competence. As this competence includes defence, foreign policy and a common market (together with monetary credit and financial policy), this was held to be sufficiently wide. But if a need were felt to extend competence outside these spheres, then the whole Community could be at the mercy of the veto exercised by any of its Members. However, in the experience of federal Constitutions as a whole, the development of federal powers by means of constitutional amendment has been limited. In Switzerland, 48 out of 89 proposed amendments have been adopted since 1874. In Australia, every single request for increased federal power has been rejected, including even control over aviation. In the U. S. A. there have been 11 amendments since 1781. In Canada there have been 12 amendments since 1867, but only that of 1940 (unemployment) affected the division of powers. More important is likely to prove the device of judicial review, especially in view of the element of uncertainty in any provision for concurrent powers[73] Thus, additional powers in other fields could well be considered necessary as arising from matters involving defence or foreign policy. Some fears have been expressed above concerning the possible effect of a reactionary Court upon the development of the Community. It is therefore worth quoting a judgment of the American Supreme Court, which was once considered to be the classic example of a reactionary Federal Court, when it accepted the New Deal Social Security Act in 1937 : " Nor is the concept of the general welfare static. Needs that were narrow or parochial a century ago may be interwoven in our days with the well-being of the nation. What is critical or urgent changes with the times."[74]

3.9. The attitude of Great Britain and America towards the European Community

3.9.1. Great Britain and America jointly

156. The first official recognition of the desirability of a Continental Community came into the Washington Declaration of 14th September, 1951 : " The three Foreign Ministers declare t h a t their Governments aim at the inclusion of a democratic Germany, on a basis of equality, in a continental European Community which will itself form part of a constantly developing Atlantic Community ." To this end, the creation of the European Defence Community was referred to as a " major step ". 148. The joint communique issued on 7th March, 1953, after Mr. Eden's recent visit to America, re-stated this policy : " The United States and the United Kingdom Governments are concerned that the European Defence Community Treaty be ratified as soon as possible, so as to provide further continental unity, which is essential to the most effective operation of the North Atlantic Treaty Organisation. "

3.9.2. Great Britain

157. In spite of Mr. Churchill's speech in the Consultative Assembly on 11th August, 1950, when he launched the idea of a European Army[75] , the attitude of the Conservative Party since 1946 has not changed. Like all other countries, Great Britain has found t h a t it is no longer possible to base a nation's foreign policy aiming at peace upon t h e principles followed before the war. In the present circumstances Great Britain no longer has the same reasons for opposing a closer union of the Continental countries, even if this results in burying what little may still be alive of the outworn formula of the European balance of power. At times the United Kingdom has even given the impression of wishing to help forward the creation of this closer union, as was evidenced by the recent statement of Mr. Eden in New York on 12th March, 1953[76] .It must be made quite clear, however, that with a few individual exceptions, t h e British leaders, even if wholehearted

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73. Cf. paragraph 132 above.
74. Helvering v. Davis (1937), 301 U. S. 619, p. 641.
75. " We should make a gesture of practical and constructive guidance by declaring ourselves in favour of the immediate creation of a European Army under a unified command, in which we should all bear a worthy and honourable part " (Official Report, p. 228, col. 1).
76. Speech made by Mr. Eden to the Foreign Policy Association in New York on 12th March 1953.
" The six European countries who have set up the Coal and Steel Community arc opening up a new chapter in European history. Their avowed aim is to develop an eventual federation. This is something now in Europe. And so it is not surprising that

supporters of the European idea, have never accepted the principle of a Community, federal or otherwise, which would involve any formal surrender of sovereignty. In our opinion their attitude to the new Community may be summed up with fair accuracy as follows :

157.1. The participation of the United Kingdom in the Council of Europe is a proof of its willingness to collaborate in building greater unity among t h e free peoples of Western Europe.

157.2. The United Kingdom will not attempt to hamper the creation of closer constitutional links between some of these countries, even if these links arc of a federal character.

157.3. The United Kingdom does not, however, intend to undertake any responsibility for the building of this new political structure.

157.4. Without at the present stage committing itself further, the United Kingdom wishes to create close links with the now Community.

158. In the light of the above summary, it is worth while recalling the actual words used by Mr. Churchill at Zürich on 19th September, 1946 : " Under and within that world concept (the United Nations) we must re-create the European family in a regional structure called, it may be, the United States of Europe. The first step is to form a Council of Europe. In all this urgent work, France and Germany must take the lead together. Great Britain, the British Commonwealth of Nations, mighty America, Russia—for then indeed all would be well—must be the friends and sponsor[77]of the new Europe and must champion the right to live and shine. "

3.9.3. The United States of America

159. The American attitude towards a Continental Community has been one of consistent and generous encouragement towards a potential rival. Although it was not made a formal condition of the receipt of aid, it was in the belief that European unity would be the result t h a t the American people made the enormous sacrifice Marshall Aid involved. It is worth while recalling that the total sum given to Europe between April 1948 and September 1952, was $ 13,468,300,000. It is also worth recalling the terms of Section 101 of the Mutual Security Act (1951) which laid down officially that a major purpose of the Congressional grant was to " encourage further the economic unification and the political federation of Europe ".

160. The attitude of General Eisenhower is well known. In his report as Supreme Commander on 2nd April, 1952, he said : " The unification of Europe is the central goal, and the only possible way of creating reasonable security, and ensuring, at the same time, the improvement in living standards which characterises Western civilisation. Such efficiency demands the closest kind of political and economic co-operation, particularly in the area of Western Europe. For if the free nations of this region were really a unit, tremendous benefits would accrue to them individually and to N. A. T. O. Yet progress towards full co-operation has been limited by the intricate and artificial maze of national obstacles erected by man himself. Customs barriers, conflicting economic structures, currency regulations, and countless other road blocks curtail drastically the movement of men, manufactured products, raw materials and money upon which Europe's economic life depends. They are expensive and wasteful encumbrances, pyramiding cost of production with tariffs, overheads, taxes, and middlemen. In the political field, these barriers compound inefficiency with distrust and suspicion. "His inaugural speech as President on 20th January showed t h a t he had not changed his opinion : " In Europe, we ask t h a t enlightened and inspired leaders of the Western nations strive with renewed vigour to make the unity of their peoples a reality. Only as free Europe unitedly marshals its strength can it effectively safeguard, even with our help, its spiritual and cultural treasures... " This view the President repeated with yet more force in his Message on the State of the Union on 2nd February, 1953 : " But the problem of security demands closer cooperation among the nations of Europe than has been known up to date. Only a more closely integrated economic and political system can provide the greatly increased economic strength needed to maintain both necessary military readiness and respectable living standards. Europe's enlightened leaders have long been aware of these facts. All the devoted work that has gone into the Schuman Plan, the European army, and the Strasbourg conference has testified to their vision and determination. These achievements are the more remarkable when we realise that each of them has marked a victory—for France and for Germany alike-—over the divisions that in the past have brought such tragedy to these two great nations and to the world. The needed unity of Western Europe manifestly cannot be

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there should be difficulties in some of the countries about ratifying the European Defence Community.
It is sometimes suggested that it would be easier for these Parliaments to approve the treaties if Groat Britain would take a load. We have in fact done so. Wo have supported these projects from the beginning. Wo want them to succeed, and we have done everything wo possibly can to help and encourage them. "
This statement should bo compared with the text of the Washington declaration of 14th September, 1951, quoted in paragraph 147 above.

77. The idea of sponsorship is incompatible with that of membership.

manufactured from without. It can only be created from within. But it is right and necessary t h a t we encourage Europe's leaders by informing them of the high value we place upon the earnestness of their efforts towards this goal. Real progress will be conclusive evidence to the American people t h a t our material sacrifices in the cause of collective security are matched by essential political, economic, and military accomplishments in Western Europe. "

161. The most specific encouragement given to the Statute of the European Community was given by Secretary of State Dulles when he received the members of the Working Party of the Constitutional Committee in Rome on 31st January, 1953. On this occasion he said : " I believe that to-day there is no enterprise which is more important than the one for which you are working. This enterprise is of historic significance. The European Coal and Steel Community provides a magnificent starting point. The European Defence Community, once it comes into being, will also represent a notable advance. But it is insufficient to set up separate Communities; they must all be grouped into one Political Community. Seeing you here forces me to think of our own history, when men like Jefferson, Hamilton and Jay dedicated themselves to the task of founding our Federal Union, within which each State retains a large measure of its sovereignty. I am convinced t h a t the States of Europe can reach the same goal, thanks to the tremendous potential energy which is available for them to tap. Allow me to say once more that at this moment of history there is no more, noble or more essential task than that of achieving European unity. My most profound good wishes go with you oh your path. "

3.10. The Ratification of the Treaty Embodying the Draft Statute of the European Community

3.10.1. The Role of the Council of Europe

162. If Britain has declined to become a full member of the European Community, she has nevertheless shown every desire for practical association. This has been due in part to the proposals of the Council of Europe, and to the fact that British Members of Parliament have been given a chance in Strasbourg to measure the importance and weight of the experiment that is being undertaken. But there is little or nothing new that can be usefully added to the numerous recommendations and opinions of the Consultative Assembly on this subject. On the questions of the " Eden Plan ", of Association and of links between the Council of Europe and the Community, the Council of Europe has given its opinion. More cannot usefully be added until the Community is actually set up, and we can see how the methods of association and liaison envisaged work in practice..

163. As the Assembly can neither bring about Britain's adherence to the Community, nor bring much new to the question of Association until a later stage, i t has been questioned by some whether there is much that can usefully be done at Strasbourg in May. To this there are four replies :

163.1. The Assembly could certainly gravely diminish the chances of ratification if it were to reverse the position adopted in its earlier Resolutions and pass a vote hostile to the Community.

163.2. A large majority in favour of the Community would certainly encourage those in the six nations who are striving for. its establishment.

163.3. The Council of Europe should persist in pointing out, as it has done in a number of previous Resolutions, that a contemporaneous development in collaboration among the fifteen Nations is the fundamental condition of the creation and development of the six-Power Community.

163.4. Above all, the Council of Europe can outline possible future developments with the wider Western Community, which should still many fears at present expressed concerning the six-Power Community.

3.10.2. Ratification in the Six countries

164. In our national Parliaments we are all familiar with differences of opinion which coincide in general with party differences. As we have reason to know, however, the character of our own Assembly is more complicated. An analysis of trends and opinions within both the Member States and the partios represented leads to a A'ery complex pattern of voting. If, however, we try to discern general national tendencies, we shall see that the idea-—which emanated from France—that the creation of a European army was a step of a political importance too fundamental to be undertaken without at the same time setting up a European political authority to control it, has impressed political circles in other countries to such an extent that a number of politicians have almost come to regard the establishment of a Political Authority as an essential condition of the ratification of the Treaty setting up the European Defence Community. This is not the place to trace the

various developments which have led to a radical change of attitude in this respect. The fact is that the dividing line has fundamentally shifted in all countries and now runs between those who are prepared and those who are not prepared to make certain surrenders of sovereignty.

165. It is equally difficult to distinguish the various currents of opinion according to a single party line. . On the international plane i t is impossible to speak, either in the Council of Europe or among the " Six ", of a Socialist, Liberal, Christian-Democrat or Conservative attitude. Some of the parties have formed a national " bloc". Others are divided on all the points at issue. There is the attitude of the German Socialist Party, but there is no one single line taken by the Belgian Socialist Group. Similar examples might be given for the other political parties.

166. Interesting though it would be, it would take too long for your Rapporteur to analyse here the reasons for these differences. All he can do is to urge alLparties alike not to allow themselves to be swayed in their vote or their choice by immediate considerations of internal policy which, worthy though they may be in themselves, bear no relation to the distressing realities we have to face, or by precarious calculations as to party majorities within the new Community. History teaches us how quickly majorities can change, and how quickly the Opposition can become the Government and vice versa.

3.11. The Position of the six-Power Community within the fifteen-Power Community of the Council of Europee

167. The questions of Association and Liaison have been considered in another Report[78],with the main emphasis on the institutional aspects, one could almost say the statutory and technical aspects. But the arrangements made have certain political implications which demand examination in this Report also.

168. The blunt truth, and it cannot be too strongly emphasised, is t h a t if the Council of Europe were to die, the six-Power Community would die with it, however hard its promoters struggled to keep it alive. The proof of this contention is that one of the major partners, France, firmly refuses to adhere to the six-Power Community unless she is assured of the closest British association : which means the implementation of the " Eden Plan " for reinforcing the Council of Europe. And a large part of Belgian opinion follows the lead of France in this matter.

169. It would, however, be a psychological and political error to suppose that this factor—essential though it may be—will alone decide all these issues. If it is true (and it is very important that the most fervent supporters of the six-Power Community should be convinced of this), t h a t an active and effective Council of Europe is vital for the existence of the six-Power Community, the converse is also true : t h a t , provided the problem of association and liaison is suitably solved, the existence of t h e six-Power Community, in the present political conjuncture, is essential to an active and effective Council of Europe. We must try to regard these two political formations, not as entirely independent of each other, but as two aspects, two lines of approach, corresponding to two different needs, in a common effort towards permanent unity between the Western democracies.

170. We are all agreed upon one thing, t h a t the Nation State, maintaining its narrowly nationalist traditions, can no longer fulfil all the functions of government required in the XXth century. The aspiration of the Western world to closer unity does not spring from dreamy idealism or doctrinaire theorising; it arises from a clear perception of stern economic and political necessity. It is only on methods that we differ. Different nations will choose different paths. But, whether directly or by more prudent detours, all these paths converge upon the same distant goal, because they are based on a common realisation that we belong together.

171. The European countries all have, in varying degrees, this sense of belonging together and this desire for unity; the aim of the proposed European Community is simply to unite those who feel the need for unity most acutely. This does not, however, mean that the Community ceases to be an integral part of the whole attempt to achieve unity among all the Western democracies. For this reason i t takes its rightful place within the Western Community of free nations.

172. The relations of the six Powers must therefore be considered within the framework of the Western Community taken as a whole. The " Six " are essential to the " Fifteen " and vice versa.

173. We shall not dwell further on the reasons which make the creation of the Six Power Community an end desirable in itself. The fact t h a t it is the surest means of healing the bitter and centuries-old quarrel between France and Germany helps one to realise the considerable, and indeed indispensable, impetus it will give to

78. See 5th Session, 1953Doc. 118 and Resolution 27, adopted by the Assembly at its eight Sitting, 11th May, 1953.

the unity of the " Fifteen " in the Council of Europe. We have endeavoured to make clear how vital is the contribution of the Council of Europe to the survival and success of the " Six ". We will add that the support it can give to the creation of the six-Power Community will save the Council of Europe from the so often repeated and so unjust accusation of immobility. We will go further and say that only the Council can avert the unfortunate consequences of the formation of a "bloc"; can prevent this " bloc" from becoming isolated and solidified; can create the necessary atmosphere of harmony; and can keep open the door to the unity of all Europe which is our only hope of peace and prosperity.

174. This raises the issue of how greater unity among the " Fifteen " can best be achieved. Various suggestions have been made by the Consultative Assembly, such as the integration of 0 . E. E. C. and the Council of Europe, and developments on t h e lines indicated by the " Strasbourg Plan. " To these we may add the ratification of the European Convention for the Protection of Human Rights, which is still awaited, two and a half years after signature, from France, Italy, the Netherlands, Belgium, Luxembourg, Turkey and Iceland; and of the various Conventions still before the Committee of Ministers, on Social Security, Social and Medical Assistance, Equivalence of University Diplomas, the Classification of Patents, etc. There is also t h e whole series of proposals made by the Consultative Assembly during the last four years, ranging from a European postage stamp to a European passport. It is not for the Assembly to repeat them, but it would perhaps not be inopportune to urge t h a t they should be taken out of t h e pigeon-holes where they appear to lie forgotten.

175. In the same context, it should not be overlooked t h a t any initiative or negotiations for the establishment of a Specialised Authority —such as the " Green Pool "—outside the framework of t he Council of Europe, is contrary to the spirit of the " Eden Plan, " and risks impeding t h e harmonious and progressive development of European unity as laid down in the Preamble and Article 1 of the Statute.

176. This section of the Report may appear somewhat complicated. It would perhaps have been preferable to draw a sharper division between the practical issues affecting the ratification of the Treaty setting up the European Political Community and its more general political repercussions. But the two sides of the problem are inseparable; each can only be considered in the light of the other. Nevertheless, our chief concern at this present moment must be with the constructive texts. Eight years have elapsed since t h e war, and nine-tenths of our work still lies before us.

3.12. The Position of the six-Power Community within the wider Western Community[79]

177. The opposition to the six-Power Community mingles two streams. The one frankly fears that the six-Power Community is too small, in the political sense that it is likely to lead to German—or Catholic-Conservative—• predominance, in the economic sense that the dollar deficit can never be solved in any grouping smaller than one which includes America and the British Commonwealth. These are valid fears, and those who hold them must be given a valid answer if the Community is to succeed. The second stream is t h a t of traditional nationalism. It would be difficult to maintain that this has in the course of preceding years and centuries succeeded in preserving peace. The argument has already been adduced that there is no alternative to the six-Power Community. This is true, but it does not still the fears outlined above.

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79. There is considerable difficulty involved in the use of this terminology, as indeed there is now in all the various meanings that are attributed to the adjectives " European " and " Western ". From the geographical point of view " European " may be considered to include all Eastern Europe, and it was already claimed in 1949 that to apply the word to the Council of Europe itself was a misuse of language. To call the six-Power Community " European " would by the same argument appear even more inadmissible. On the other hand it is argued that Europe is not only a geographical concept (cf. first footnote to paragraph 95 above), that it is " not only a market, but a civilisation ". In this case, the historic nations who propose to form the Community may truly call that Community " European ".
Apart from the difficulty of the word " European " thore is a yet greater difficulty attached to the word " Western". Mr. Bevin originally used the phrase " Western Union " to apply to the five Powers of the Brussels Pact. Thereafter, when one has wished to refer to the group of nations which includes Great Britain and America, one has talked of the " Atlantic Community ". But our Swedish colleagues have objected to this phrase, on the grounds that it refers to a military Community to which they do not belong. Equally the " Atlantic Community " includes Canada, but not the other Members of the British Commonwealth. Some have also claimed—again on geographical grounds —that it is no more logical to call Turkey a " Western " Power than it is to call her an " Atlantic " Power; though in our view erroneously. To escape from this dilemma, it has been proposed to return to the phrase " wider Western Community " to express that Community which includes all the Member States of the Council of Europe, of the British Commonwealth, and the U. S. A. It is in this sense that i t is used here. However it is clear that this risks confusion with Mr. Bevin's " Western Union ". On the other hand, it is difficult to talk of a " Community of free nations " because this might be held to include all Members of the United Nations not under Russian domination; or of a " Community of democratic Nations " because of the devaluation of the word " democratic " by Russian propaganda and the so-called " Peoples' Democracies " (cf. also second footnote to paragraph 172 below).

178. What is required in a word is t o find in the Western Community the guarantees which are lacking in a. Community limited to the six Powers[80].

179. At this stage, an enormous effort of imagination and sympathy is required. The threads of thought interlace : on the one hand,.the guarantees afforded by the Western Community, and, on the other, the conditions of creation and the stability of t h a t Community itself.

180. The solution of a three-pillar[81] West-: ern Community is only the second best. The best of all would have been for a prior union of the British Commonwealth and Western Europe. This would have provided a partner capable of balancing the power of America (in 1952 the American defence budget was 84 % of the total defence expenditure of the Western Powers), and was a point stressed by our colleague Mr. Mackay as long ago as 1951. 2 However, events have willed otherwise. It may, moreover, prove t h a t within the Western Community a tendency will develop rapidly for the two less powerful partners to associate on many practical issues.[82]. However, events have willed otherwise. It may, moreover, prove t h a t within the Western Community a tendency will develop rapidly for the two less powerful partners to associate on many practical issues.[83].

181. The question begged by all this reasoning is whether or not America would be prepared to enter into such a political union with the European Community and the British Commonwealth. It is true that in military matters she is already in N.A.T.O. But in political matters, little weight can be attributed to the frequent resolutions advocating Atlantic Union tabled in Congress, in spite of the large number of signatures these often receive. Although America has been free in her exhortations to others to surrender certain parts of their sovereignty, she has shown little readiness to do so herself. A recent example was provided at the meeting of the Inter-Parliamentary Union at Berne in September 1952. On this occasion the American delegation (which included several members of the American delegation to Strasbourg in November 1951) abstained on a cautious resolution which stated that if collaboration between the free nations was to be effective " it will require certain sacrifices and certain compensations through a partial relinquishment of sovereignty, " adding that " the constitution of joint authorities, to which certain powers would be delegated, should therefore be encouraged, each country nevertheless retaining the greatest number of prerogatives of sovereignty ".

182. This indicates that before the wide concept outlined above can be realised, a great development will have to take place in the attitude of America. If, however, it were fairly and squarely put to her that only by helping to construct a Western Political Community— although inevitably of an extremely loose kind—can she ensure the unity of Europe, i t is conceivable that her attitude might alter. This indicates a complete disbelief in the theory t h a t America has encouraged European Unity only to be able to relapse into isolationism after its achievement. On the contrary, it is likely t h a t America's successful encouragement of European unity will result in her entering further into the Western Community t h a n could ever have been conceived possible at the beginning of Marshall Aid.

183. The only practical way whereby we can make these views felt in America is by meeting with American Congressmen. It is therefore important to consider whether it would not be opportune to hold a second meeting, and indeed a whole series of meetings between European, American and Canadian delegations. In a sense, a second meeting cannot usefully be held until the European Community has been set up, since at all costs we must avoid giving t h e impression of bewildering disunity, as in 1951. The European delegation must present a single attitude to the American delegation, and face them with a series of specific requests concerning the American attitude towards Western Unity. A suitable topic for debate would be the motion recently tabled in the British House of Commons : " That this House welcomes the decision of the six Western European Nations to consider the framing of a European Political Authority, and hopes t h a t this will develop into a European Federation; believes t h a t the Council of Europe at Strasbourg should then be enlarged so t h a t the European Federation, the British Commonwealth of Nations and the United States of America shall each be there corporately represented; and further hopes t h a t out of such a new Council may develop a supranational political authority with limited but real legislative powers. "

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80. The aspect of finding certain guarantees within the development of Fifteen Power unity in the Council of Europe has already been considered. In this part of the Report the subject is the position of the whole movement towards European unity —whether of the Fifteen or of the Six—-within the wider Western Community.

81. This expression is open to criticism as it takes no account of the Scandinavian Powers, and Ireland, Greece, Turkoy, or even the eventual inclusion of the Eastern European countries at present under the yoke of Russia. These complex problems are of fundamental importance for the future of the Western Community, and must be given careful study. They arc not, however, the immediato subject of this Report.

82. Doc. AS/AG (3) 43, pps. 8 to 10.

83. They will also be linked by the continuing tradition of Fifteen Power co-operation..

184. These are large and important concepts. They must not be hurried, nor developed before the time is ripe. They are put forward, not only as suggestions for the future activity of the Council of Europe after the European Community has been set up, but also as concepts which may incline some waverers to vote for the ratification of the Community itself

3.13. Historical retrospect

185. In the political interregnum through which we are living, i t is difficult to say anything constructively about the lines of future development after the ratification of the European Community. That project will, moreover, absorb all the best energies of the six Nations for many years to come. Still less, when the chances of its being created are still in the balance, does it appear fitting to indulge in historical retrospect as though the day were already won. Nevertheless, the adoption of the Statute of the Community by the Ad Hoc Assembly on 10th March, 1953, b y 55 votes to 0, with 5 abstentions, does mark a decisive moment in the history of European unity. It is therefore fitting that we should cast a very brief glance back over the road we have travelled.

186. One of the most striking things about the advocates of European unity is that the large majority have been French. It suffices to mention two. They include the first man who ever thought of European unity in modern terms, t h a t of a Union formed by Nation States : Pierre Dubois. In a work entitled De Recuperatione Tcrrai Sanctis, this French lawyer from Coutances wrote in 1305 of a federation of European States, with an Assembly of princes meeting at Toulouse, and a Court of Arbitration. If the decisions of this Court were ignored, economie sanctions might be imposed[84] . He also showed modernity in suggesting that by this means not only would Europe's external position as opposed to the Turks be strengthened, but also that France would gain the diplomatic leadership of Europe thereby. The second French precursor who cannot be omitted is Victor Hugo, for it was he who first used the phrase " the United States of Europe "[85]. in a European Parliament. This occurred in a debate in the French Chamber on 17th July, 1851, when Victor Hugo said : " The French people have hewn from indestructible granite and placed in the very centre of the old monarchical continent the foundation stone of the great building of the future, which will one day be called the United States of Europe. "

187. In the five centuries that separated Pierre Dubois and Victor Hugo many thinkers sketched plans for different kinds of European unity. Their names are well known—Sully's Grand Design (1638), William Penn's European Parliament (1693), John Beller's Some Reasons for a European State (1710), the Abbe de Saint-Pierre's Plan for perpetual peace in Europe (1729) and Rousseau's commentary thereon entitled A lasting peace through the Federation of Europe (1774). Jeremy Bentham's Plans for Universal and Perpetual Peace (1786) and Kant's Perpetual Peace (1795) mark the turning point. Thereafter the unity of Europe was no longer discussed as being identical with the peace of the world. Bentham and Kant were concerned with world peace, and their plans were prototypes for the League of Nations. But their appearance did not mean the end of European projects. Of these there were a great many in the 19th century, from Saint-Simon (1814) to Godin (1883). One of t h e most interesting was t h a t of Krause (1814), who visualised a European Federation, but as only one of a number of continental groupings in an ultimate world federation.

188. Hitherto these plans had had no political reality. This ceased to be true in the years between the two world wars. The foundation of Pan-European Union by Count Coudenhove- Kalergi in 1923; t h e first official appeal for a United Europe made by M. Herriot, 29th January, 1925, when he was Prime Minister and Foreign Minister of France, and above all the Briand Memorandum of 1st May, 1930, were all indications t h a t the idea was growing in reality. But as yet no real understanding of the problem was shown. The Briand Memorandum itself laid down : " In no case and in no degree may the formation of the Federal Union desired by the European Governments affect in any way any of the sovereign rights of the States which are members of such a de facto association. " With the rise of Hitler to power, all such ideas were forgotten.

189. It required the second world war to persuade a substantial body of Europeans that the surrender of national sovereignty which Briand had eschewed might nevertheless be necessary. This is a period during which nearly every member of the Consultative Assembly has taken part in the work for a United Europe in one or another capacity. Since the story of the last years is known to all, it is permitted to be eclectic. There is no need to recall the indispensable work of the various voluntary movements or the events that led up to the

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84. Quod nullus ad terras eorum deferat victualia, arma, merces, et alia quæcumque bona, etiam quacumque causa sibi debita (paragraph 5).

85. The phrase itself was first used by Victor Hugo when he opened the " Congress of Friends of Peace " in Paris, 2nd August, 1849. But as a matter of historical accuracy it had already been used several times by others, for example by Carlo Cattaneo and Émile de Girardin.

foundation of the Council of Europe. What is important is the extent to which we have succeeded in facing the central problem. In a sense, everything really dates from the Hague Congress and from the Conferences at Gstaad and Interlaken. In the Political Commission of the Hague Congress, the issue was squarely put in the opening speech by Mr. Mackay, who was then the leader of the British delegation. Referring to the Briand Memorandum, he said : " M. Briand laid down that under no conditions must there be interference with the sovereign rights of States. We are wasting our time here if we are not in any way interfering with the sovereign rights of States. That is what we must be doing, and unless we are prepared to do so, we may as well go home. " The critical vote was on clause 3 of the Political Resolution. In it the Congress " declares that the time has come when the European countries must transfer and merge some portion of their sovereign rights so as to secure common political and economic action for the integration and proper development of their common resources. " In September of the same year at Interlaken the European Parliamentary Union elaborated a full federal Constitution for Europe. From this moment the line of development was clear until t h e 6th September, 1949, when the Consultative Assembly decided by 88 votes to 0, with no abstentions, that " the aim and goal of the Council of Europe is the creation of a European political authority with limited functions but real powers ".

190. To-day, we have the draft Statute of the Political Community. Some may wonder at the speed of this development, so few years after the war had revived all the slumbering fires of nationalism. Others may wonder if the European decision to unite, one century and a half after that taken by America, has not come too late. Certainly it is too late for Europe ever to regain the position she could have held had she united in the X V I I I t h o r e v e n t h e XIXth century. But t h e way in which t h e long series of plans for a United Europe were ignored is an indication that there was no political reality at an earlier stage. What we seek as Europeans to-day is not to regain world hegemony, but to be sufficiently masters of our own fate to make a contribution to world progress which is worthy of our past. Unfortunately, the traditional process of development from Confederation to Federation has in this case meant reducing the number of Member States—at least initially —from 15 to 6. This, however, has not prevented the members of the Ad Hoc Assembly pursuing their task, conscious that they represent, in Mr. Dulles' words, an area of tremendous potential strength[86]. The object of this Report has been to give some appreciation of their work. When one attributes due weight to the enormous difficulties they have already faced and overcome, it gives a good augury for the future. In the words with which the President of the Ad Hoc Assembly closed their historic session : " In later years you will say joroudly :I was a member of the Ad Hoc Assembly; it was my work, my self-control, my efforts, and the great ability which some members of the Assembly displayed, that brought our work to success and our mission to a fitting conclusion. I repeat — it is the note on which f shall end — we shall leave here well content with what we have done. But we realise the obstacles t h a t we have still to overcome. Our respite over, we must all vow to take up the fight again and secure the success of the ideals of which we have to-day laid the foundations, so that one day in the not distant future, in a greater and more solemn Assembly, the birth of the United States of Europe and the indissoluble union of our countries shall be at long last definitively proclaimed. "[87]

86. See paragraph 153 above.
87. Official Roport of the dohates of the Ad Hoc Assembly, at its Sittng on 10th March, 1953, p. 298.