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The Association Agreements of the European Communities:

A Comparative Analysis

WERNER FIELD

SINCE the establishment of the three European Communities (the European Coal and Steel Community [ECSC] in 1952 and the European Economic Community [EEC] and the European Atomic Energy Community [Euratom] in 1958)¹ four agreements of association with non-member states have been concluded. The first of these was signed by ECSC and the United Kingdom on December 21, 1954.² The other three agreements, concluded by EEC with Greece, with a number of newly independent African states and Madagascar, and with Turkey, were signed on July 9, 1961, July 20, 1963, and September 12, 1963, respectively.³ During the last few years other

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¹ For the texts of the ECSC, EEC, and Euratom Treaties, see *Treaty Establishing the European Coal and Steel Community* (Luxembourg: High Authority, n.d.); *Treaty Establishing the European Economic Community* (Brussels: Secretariat of the Interim Committee for the Common Market and Euratom, n.d.); and *Treaty Establishing the European Atomic Energy Community (Euratom)* (Brussels: Secretariat of the Interim Committee for the Common Market and Euratom, n.d.). The member states are France, West Germany, Italy, the Netherlands, Belgium, and Luxembourg.

² For the text of the ECSC-United Kingdom Agreement, see Publications Department of ECSC, *Agreement Concerning the Relations between the European Coal and Steel Community and the United Kingdom of Great Britain and Northern Ireland* (Luxembourg, n.d.) (hereinafter cited as the ECSC-United Kingdom Agreement).

³ For the text of the Association Agreement between the Kingdom of Greece and the European Economic Community, see *Amtsblatt der Europäischen Gemeinschaften*, February 18, 1963 (Vol. 6), pp. 293/63-358/63 (hereinafter cited as the Greek Agreement). For the Convention of Association between the European Economic Community and the associated African and Malagasy states, see *Amtsblatt der Europäischen Gemeinschaften*, June 11, 1964 (Vol. 7), pp. 1431/64-1471/64 (hereinafter cited as the Convention of Yaoundé). For the text of the Association Agreement between Turkey and the European Economic Community, see *Amtsblatt der Europäischen Gemeinschaften*, December 29, 1964 (Vol. 7), pp. 3685/64-3708/64 (hereinafter cited as the Turkish Agreement).

It should be noted that the EEC Treaty itself provided in Part 4 for an association of the overseas dependencies of France, Belgium, Italy, and the Netherlands with the Common Market. Some features of this association will be discussed later in connection with the EEC agreement with the African states.

countries in Europe and Africa have expressed a desire to become associated with EEC, and preliminary discussions that may eventually result in additional association agreements are now under way with Austria, Nigeria, Kenya, Tanganyika, and Uganda.⁴ Only Euratom has so far refrained from negotiating an association agreement although the Euratom Treaty contains provisions identical to those of the EEC Treaty for the conclusion of such agreements.⁵

It requires little imagination to perceive the potentially far-reaching economic and even political implications which the association agreements of the European Communities might have on the external relations of both member and nonmember states. Not only is the existing pattern of international trade likely to be altered by some of these agreements, but subtle shifts in the distribution of political power in the international arena might also occur. In view of the economic and political effects that might be produced by the present and future association agreements of the European Communities, it may be both interesting and useful to examine on a comparative basis the salient features of the accords thus far concluded. What are their legal bases? What are their long-range and intermediate-term objectives and how are these objectives to be attained? What are the institutional structures devised for the functioning of these associations? The answers to these questions may make it possible to put forth some valid generalizations regarding the nature of the association agreements and, moreover, furnish insights into the implications which these and future agreements might have for the European Community and other centers of international power.

LEGAL BASES

The association agreement concluded between ECSC and the United Kingdom in 1954 is based on the Convention containing the Transitional Provisions attached to the ECSC Treaty. Section 14 of this Convention, which is now defunct, stated that immediately after the ECSC High Authority had assumed its duties, the members states were to "undertake negotiations with the governments of third countries, and particularly with the British government, on general economic and commercial relations concerning coal and steel between the Community and such countries."⁶ The ECSC-United King-

⁴ *Bulletin of the EEC*, March 1964 (7th Year, No. 3), pp. 27-28, and June 1964 (7th Year, No. 6), pp. 10-11. The other states that have expressed an interest in association agreements have been Sweden, Switzerland, Spain, Portugal, Cyprus, and Tunisia.

⁵ See Article 206 of the Euratom Treaty and Article 238 of the EEC Treaty.

⁶ This provision reflected the disappointment of the framers of the ECSC Treaty that the United Kingdom did not find it possible to join the Community as a member, and it intimated their hope that at least some other means could be found to establish close cooperation between the United Kingdom and the Community. For details, see William Diebold, Jr., *The Schuman Plan: A Study in Economic Cooperation 1950-1959* (New York: Frederick A. Praeger [for the Council on Foreign Rela-

dom Agreement is a joint accord on the part of the Community; not only the ECSC member states but also the High Authority representing ECSC as a legal person are signatories of the Agreement.⁷

As stated expressly in the preambles to the Association Agreements of the European Economic Community with Greece and Turkey, the legal foundation of these accords is Article 238 of the EEC Treaty. This Article stipulates that the Community "may conclude with a third country, a union of States or an international organisation agreements creating an association embodying reciprocal rights and obligations, joint actions and special procedures." The negotiations for such agreements are in the hands of the EEC Commission but it is the Council of Ministers which, acting by means of a unanimous vote and after consulting the European Parliament, concludes the agreement.⁸

Despite the fact that Article 238 authorizes the Community, as an international legal person,⁹ to conclude an association agreement in its own name, the member states are also contracting parties to the Greek and Turkish Agreements. The reason for this joint venture is that during the negotiations of the Greek Association Agreement it became clear that the accord, in order to be useful and effective, had to contain undertakings on the part of the Community which might lie outside its competence as provided by the EEC Treaty.¹⁰ As a matter of caution, therefore, the negotiators resorted to the

tions], 1959), pp. 48-60, 502-506; and Jean de Soto, "Les relations internationales de la Communauté Européenne du Charbon et de l'Acier," *Actes Officiels du Congrès International sur la Communauté Européenne du Charbon et de l'Acier* (Milan: Centro Italiano di Studi Giuridici, 1958), Vol. 3, pp. 221-226.

⁷ According to Article 6 of the ECSC Treaty, the Community possesses an international legal personality and it has the capacity to act in international relationships insofar as "necessary to exercise its functions and to achieve its purposes." For a comprehensive discussion of the treaty-making power of ECSC, see H. J. Hallier, "Die Vertragsschlussbefugnis der Europäischen Gemeinschaft für Kohle und Stahl," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 1957-1958 (Vol. 18, No. 3), pp. 428-447.

⁸ Article 228 of the EEC Treaty. The requirement of consultation must not be understood to mean that the Council is bound by the advice of the Parliament. The Council in fact did not consult the Parliament before concluding the Greek and the Turkish Agreements. However, in order to comply at least with the spirit of Article 238 a reservation was added to the Council representative's signature which declared that the Community would be obligated by either of the agreements only after "the procedures described by the EEC Treaty, particularly the consultation of the European Parliament, had been completed." The Parliament strongly objected to this method of applying Article 238. See Europäische Parlament, *Sitzungsdokumente 1961-1962*, Document 61, September 18, 1961, pp. 4, 5; and Europäisches Parlament, *Sitzungsdokumente 1963-1964*, Document 94, November 23, 1963, p. 1. See also the resolution of the Parliament approving the Turkish Agreement in *Amtsblatt der Europäischen Gemeinschaften* (hereinafter cited as *Amtsblatt*), December 12, 1963 (Vol. 6), pp. 2906/63-2908/63. In support of the Council's procedure, see Thomas Oppermann, "Die Assoziation Griechenlands mit der Europäischen Wirtschaftsgemeinschaft," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 1962 (Vol. 22, No. 3), pp. 498-502.

⁹ See Articles 210 and 211 of the EEC Treaty. For a discussion of the meaning of these two Articles and the problems connected with the international legal personality of the Community, see Pierre Pescatore, "Les relations extérieures des Communautés Européennes, contribution à la doctrine de la personnalité des organisations internationales," *Recueil des Cours de l'Académie de Droit International*, 1961 (Vol. 103), pp. 27-52.

¹⁰ Especially the financial aid undertakings. The breadth of the agreements will become evident later when their details are discussed. See also, Pescatore, *ibid.*, p. 145. The problem of who would be the

technique of an agreement which would be concluded jointly by the Community and the member states, and the same pattern was followed in the case of the Turkish Association Agreement.¹¹

In contrast to the Agreements with Greece and Turkey, the preamble to the Convention of Association between the European Economic Community and the associated African¹² and Malagasy states, known as the Convention of Yaoundé, does not specify the legal basis for the accord. This Convention is an outgrowth of the association with the overseas dependencies of France, Belgium, Italy, and the Netherlands which in 1958 was established under Part 4 (Articles 131-136) of the EEC Treaty for a period of five years.¹³ Article 136 stipulates that prior to the expiration of the five-year period "the Council, acting by means of a unanimous vote, shall . . . determine the provisions to be made for a further period." However, since the majority of these dependencies were to become independent countries, it was obvious as of January 1, 1960, that the continuation of the associational relationship with these states could not be carried out by a unilateral decision of the Council of Ministers.¹⁴ Rather, the associational arrangement had to be based on an international law treaty between the Community and the member states on the one hand and the African states and Madagascar on the other. For such a treaty only Article 238 offered a satisfactory legal foundation, regardless of whether Article 238 was expressly mentioned or not in the preamble to the Convention of Yaoundé.¹⁵

proper contracting parties for the accord could also have been solved by submitting this question to the Court of Justice of the European Communities in accordance with Article 228(1). This procedure, however, was considered to be too time-consuming.

¹¹ In order to avoid confusion as to which parties contracting for the Community are to take certain actions or have certain rights under the respective Agreements, an interpretive declaration regarding the notion of "contracting parties" has been annexed to both accords (Annex 2, paragraph 5, of the Greek Agreement and the Annex to the Final Act of the Turkish Agreement).

¹² The African states involved are Burundi, Cameroun, the Central African Republic, Chad, the Congo (Brazzaville), the Congo (Leopoldville), Dahomey, Gabon, the Ivory Coast, Mali, Mauritania, Niger, Rwanda, Senegal, Somalia, Togo, and Upper Volta. For a brief account of the negotiations for this agreement, see G. van Benthem van den Bergh, "The New Convention of Association with African States," *Common Market Law Review*, September 1963 (Vol. 2, No. 3), pp. 162-165.

¹³ For details of this association see, apart from Articles 131-136 of the EEC Treaty, the Implementing Convention relating to the Association with the Community of the Overseas Countries and Territories which was signed on March 25, 1957, and which is annexed to the EEC Treaty.

¹⁴ This was indeed the method used for the continuation of the association with the dependencies. See *Amtsblatt*, June 11, 1964 (Vol. 7), pp. 1472/64-1483/64. The substance of the Council's decision follows the pattern of the Convention of Yaoundé except for the institutional features which are omitted.

¹⁵ That Article 238 must be viewed as the legal basis of the Convention is also the conclusion reached in the report of the European Parliament's Committee for Cooperation with Developing Countries (Europäisches Parlament, *Sitzungsdokumente 1962-1963*, Document 77, October 10, 1962). Both the Community as a legal person and the EEC member states are parties to the Convention.

Article 136 was a convenient handle to temporarily extend the commercial advantages to the African associates when the original association agreement expired at the end of five years. Every effort seems to have been made at that time to avoid the appearance that the association between the Community and the newly independent African states might be interrupted and that the rights and advantages granted the associated states in the 1958 agreement would be terminated. But while these rights and

THE OBJECTIVES OF THE ASSOCIATION AGREEMENTS

In the most general terms the objectives of an association agreement are the creation of a relationship exceeding that which can be attained by the conclusion of a trade or commercial accord but falling short of the acquisition of full membership.

In the absence of specific provisions the ECSC Treaty does not offer any additional definition for the objectives of an association.¹⁶ The EEC and Euratom Treaties (in Articles 238 and 206 respectively) stipulate that "reciprocal rights and obligations, joint actions and special procedures" are to be features of an association, but no indication is given of what may be the objectives or the substance of an association agreement. While the three Treaties thus do not furnish a definition of the objectives, certain possibilities come to mind. For an association with EEC which itself is based on the concept of a customs union, a first objective might be the extension of this union to include the associated state. For European associates desiring to join the Community as full members¹⁷ but unable to fulfill the economic conditions for accession, the establishment of a customs union might serve a secondary purpose—preparation for full membership. Another objective of an association with EEC might be the creation of a free-trade area in which case the customs duties between the Community and the associated country would be abolished, but no common external tariff would be established. Under Article 24, paragraph 5, of the General Agreement on Tariffs and Trade (GATT) both customs unions and free-trade areas may qualify under certain conditions for exceptions from the terms of the most-favored-nation clause.¹⁸

For association agreements that might be concluded by ECSC and Euratom, likely objectives would be cooperation and consultation with third countries. Such agreements might include provisions for technical assistance and financial aid. If such agreements envisaged special regulations regarding tariffs and quotas, they would of course have to be communicated to GATT. Regular consultation would ensure the effectiveness of the measures agreed upon and their constant adjustment to technical or trade developments. Long-range ob-

advantages have indeed continued in the Convention of Yaoundé, it is, as the preamble states, a "new Convention of Association" concluded "on the basis of complete equality" and differing in many respects from the original association. See van Benthem van den Bergh, *Common Market Law Review*, Vol. 2, No. 3, p. 163, and the report by Gaston Thorn in Europäisches Parlament, *Sitzungsdokumente 1963-1964*, Document 65, September 13, 1963, pp. 5-6.

¹⁶ It should be recalled that the basis for the association agreement with the United Kingdom was the general mandate for negotiations on coal and steel with third countries, particularly the United Kingdom, contained in section 14 of the now defunct ECSC Convention containing the Transitional Provisions.

¹⁷ Only European states may become members of any of the Communities (Article 98 of the ECSC Treaty, Article 237 of the EEC Treaty, and Article 205 of the Euratom Treaty).

¹⁸ For other possibilities, see the excellent report of the Political Committee presented by Willi Birkelbach in Europäisches Parlament, *Sitzungsdokumente 1961-1962*, Document 122, January 15, 1962, pp. 18-20.

jectives of all association agreements might be the raising of living standards and economic levels in the associated countries.

Under the provisions of the EEC and Euratom Treaties referred to earlier, reciprocity between the rights and obligations of the contracting parties is a principle which must be observed by the agreement when detailing the methods for the attainment of the association objectives. This implies that in the agreement some sort of balance must be struck between the advantages and obligations of the association partners. Thus in the case of EEC, the associated state, while enjoying the benefits of the eliminated interior customs duties and the external tariff, may also have to subject itself to certain restrictive rules of the EEC Treaty such as the regulations on competition which are designed to guarantee a fair market in the territory of the Community.

Of course, no hard-and-fast rule can be given as to what constitutes a balance of advantages and obligations between the Community and the associated states. Each case must be judged individually and a broad view must be taken in which consideration has to be given to the comparative economic strength of the association partners and to the economic needs of the associated country. While economically weak countries should undertake some formal obligations in order to benefit from the economic advantages offered them by the association with the Community, the criteria for what may be considered a reciprocal distribution of rights and obligations will differ from those applied to an association with an industrially and economically advanced country.¹⁹

Proceeding now to the examination of the objectives of the association agreements thus far concluded by the Communities with third countries, the discussion will focus firstly on the Agreement between the Coal and Steel Community and the United Kingdom, secondly, on the EEC Agreements with Greece and Turkey, and finally, on the Convention of Yaoundé.

The ECSC Agreement with the United Kingdom

The basic objectives of the ECSC–United Kingdom Agreement are a “continuous exchange of information” and “consultation in regard to matters of common interest concerning coal and steel and, where appropriate, in regard to the coordination of action on these matters.”²⁰ Matters of common interest are defined in the Agreement and include conditions of trade in coal and steel between the Community and the United Kingdom; supplies of coal and steel; supplies of raw materials for coal and steel industries; market and price trends; technical developments and research; main lines of investment policy; competitive sources of energy; and arrangements for the promotion of the safety, health, and welfare of persons employed in the coal and steel indus-

¹⁹ *Ibid.*, pp. 15, 16.

²⁰ Article 6 of the ECSC–United Kingdom Agreement. According to Article 14, the Agreement is to run for the duration of the ECSC Treaty which was concluded for a period of 50 years.

tries.²¹ Thus, the area of consultation and of possible coordination is broad and perhaps somewhat vague. However, some definite limits are set in the Agreement by the provision that only matters to which the ECSC Treaty applies are to be objects of consultation and coordination.²²

The mutual consultation on problems of trade, so important for the relations between the association partners, has been singled out for special treatment in the Agreement. Article 8 calls for an examination of restrictions or other factors affecting the normal flow of trade in coal and steel between the United Kingdom and the Community (such as quotas, tariffs, and exchange control measures) with a view to either reducing or eliminating these restrictions. Such an examination, which was mandatory during the transitional period of the ECSC Treaty, can be requested now by either the High Authority or the United Kingdom government. As a consequence of this provision, an important commercial accord was concluded in 1957 between the United Kingdom and the Community which materially reduced the tariffs of the association partners for a number of steel products and which provided for preliminary consultation if one of the contracting parties desires to raise the tariffs.²³

In the case of difficulties arising from a decline in the demand for coal or steel or from a shortage of these commodities, the High Authority, the ECSC member governments, and the United Kingdom government are required to consult each other on contemplated new trade restrictions so that coordinated action can be considered in order to provide mutual assistance in effectively meeting the troublesome situation.²⁴ In circumstances in which prior consultation is impracticable, the association partners are called upon to consult each other immediately after the restrictions have been instituted. As a consequence of this Article and also pursuant to the accord of 1957 between the United Kingdom and the Community, the United Kingdom government was informed of the impending decision of the High Authority to raise steel tariffs early in 1964.²⁵ On the other hand, the British government's decision to impose a 15 percent surcharge on manufactured and semimanufactured goods entering the United Kingdom after October 27, 1964, was communicated to the High Authority only after the decision had been made.²⁶

Thus, in terms of objectives, the association agreement between the Com-

²¹ Article 6(2) of the ECSC-United Kingdom Agreement.

²² Article 6(3) of the ECSC-United Kingdom Agreement.

²³ For details, see the text of the accord published by the Service des publications de la Communauté Européenne (Luxembourg, n.d.). The accord was signed on the part of the Community not only by the High Authority but also by the ECSC member states. For the background of the accord, see Diebold, pp. 476, 477, 508-512. For the effects of the accord, see Louis Lister, *Europe's Coal and Steel Community* (New York: Twentieth Century Fund, 1960), pp. 352-357.

²⁴ Article 7 of the ECSC-United Kingdom Agreement.

²⁵ *European Community*, January 1964 (No. 68), p. 8; and ECSC High Authority, 128 *Rapport Général* (Luxembourg, March 1964), p. 50. See also, *Amtsblatt*, January 22, 1964 (Vol. 7), p. 99/64.

²⁶ *European Community*, November-December 1964 (No. 78), pp. 7, 18.

munity and the United Kingdom aims mainly at consultation and exchange of information, with coordination of action playing only a minor role. The attainment of these objectives is likely to benefit both association partners to more or less the same degree, and both partners have the same rights and obligations with regard to the achievement of the goals of the Agreement. Therefore, in terms of advantages and obligations for the association partners, the Agreement between the Community and the United Kingdom seems to have struck an equitable balance.

The Agreements with Greece and Turkey

The objectives of the Greek and Turkish Association Agreements are considerably more far-reaching than those of the ECSC Agreement with the United Kingdom. The overall, long-range objective of both Agreements is "to promote a continuous and balanced strengthening of the commercial and economic relations between the contracting parties with full consideration of the need to ensure the accelerated development of the economy of Greece (Turkey) as well as the elevation of the level of employment and of the living standards of the Greek (Turkish) people."²⁷ To reach this broad goal the two Association Agreements envisage the attainment of two important intermediate objectives: the gradual establishment of a customs union and the harmonization of the economic policies of the association partners to ensure the proper functioning of the association. A tentative long-range objective of both Agreements is the accession of Greece and Turkey to full membership in the Community.²⁸

Since the levels of economic development in Greece and Turkey differ, the regulations governing the introduction of the customs union are not the same in both Agreements. In the Greek Agreement the principle is established that with the entry into force of this Agreement customs duties will be gradually abolished over a twelve-year period.²⁹ There are, however, certain exceptions to this principle. First, the member states were required to cut their tariffs immediately on imports from Greece to the level already reached by the Community in its progressive reduction of internal tariffs. Second, in order to protect its young industries Greece is permitted during the first twelve years and within prescribed limits to apply new duties or to increase existing ones on the condition that they are abolished or reduced to their previous levels within nine years and then gradually removed. Third, Greece may over a 22-year period space out its tariff reductions for a number of items produced in Greece and representing about one-third of Greece's imports from the Community.³⁰

²⁷ Article 2(1) of both the Greek and Turkish Agreements.

²⁸ Articles 2(2) and 72 of the Greek Agreement and Articles 4(1) and 28 of the Turkish Agreement.

²⁹ The Association Agreement covers all trade between Greece and the Community except coal, coke, steel, iron ore, and scrap. See Articles 6 and 69 of the Greek Agreement.

³⁰ Articles 12, 15, and 18 and Annex 1 of the Greek Agreement.

The common external tariff of the Community will be adopted by Greece in accordance with the mutual tariff cuts outlined above; for products subject to the twelve-year transition period the alignment of Greece's external tariff to the common external tariff will be made in three steps, whereas four steps are stipulated for products permitted a 22-year transition period. In order to protect certain agricultural products vital to the Greek economy such as tobacco, raisins, olives, rosin, and turpentine oil, the Community has agreed not to alter without the consent of Greece the common external tariff beyond certain limits during the twelve-year transition period.³¹

At present, quantitative restrictions on trade between the association partners are at a standstill, but they will be eliminated according to a special timetable by the end of the transition period. In this respect the Community also extends to Greece the arrangements already obtaining among the member states with the exception of some measures for agriculture. On the other hand, for purposes of protecting certain of its economic activities, Greece may introduce new export restrictions on basic products, but in this case Greece must open a global quota for trade with the EEC member states.³²

Turkey's low level of economic development and its economic difficulties arising from an imbalance between growing import requirements, especially capital goods, and inadequate export earnings did not make it feasible to follow the example of the Greek Agreement and to institute machinery for progressively establishing a customs union at the same time as the Agreement entered into force. Rather, a "preparatory" period was considered necessary during which Turkey would strengthen its economic posture with the aid of the Community but without making any specific concessions to the Community in return. During this period, which is to last at least five years, the Community will grant Turkey preferential tariff quotas for tobacco, dried grapes, dried figs, and fresh or dried nuts, representing roughly 40 percent of Turkey's exports to the Community. Moreover, financial aid worth the equivalent of \$175 million will be made available through the European Investment Bank.³³

The advance from the preparatory period to the "transition" period during which the customs union will be gradually established is not automatic. The association partners must evaluate the Turkish economy after four years in order to determine whether Turkey is prepared for the changeover to the transition period. In the event that Turkey is not considered to be ready for this changeover, the preparatory period will be extended and a new determination will be made at a later date. It will also be possible to extend the preparatory period beyond the tenth year of the Agreement. On the other

³¹ Article 20(1-2) and Protocol 10 of the Greek Agreement.

³² For details, see Articles 22-31 and Protocol 6 of the Greek Agreement.

³³ See Article 3 of the Turkish Agreement and the Provisional and Financial Protocols attached to the Agreement which contain the details for the preparatory stage.

hand, if Turkey is judged ready for the transition period, a Supplementary Protocol will fix the terms, conditions, and timing for the transition stage.³⁴

The transition period should not exceed twelve years although under certain conditions a prolongation is possible. It will be followed by a "final" period during which the customs union will be fully established and an increasing degree of coordination between the economies of the contracting parties will be entailed, including the adoption of the Community external tariff by Turkey.³⁵

The Turkish Agreement lacks the detailed provisions of the Greek Agreement regarding the gradual establishment of the customs union because these details cannot be spelled out until it is determined that Turkey is ready for the introduction of the customs union and because the necessary provisions must take into consideration the economic and legal situation that will exist at that time.

Turning now to the harmonization of policy, it is not surprising that in view of Greece's primarily agricultural economy the Greek Association Agreement heavily emphasizes the area of agriculture. A consultation procedure, for example, has been established in order to take into account during the formation of the Community's policy the legitimate Greek interests for such products as tobacco. The primary aim of such harmonization of agricultural policies is to assure equal treatment of similar products of the member states and Greece within the markets of the association partners.³⁶

With regard to economic policy in general, the coordination effort is to be guided by the general principles of the EEC Treaty and the endeavor to construct a sound basis for Greece's balance-of-payments situation.³⁷ During the first five years of the Agreement, Greece may obtain loans up to a total of \$125 million from the Community. Restrictions on capital movements are to be eased, particularly with a view to stimulating investments in Greece.³⁸

³⁴ Article 8 of the Turkish Agreement and Article 1 of the Provisional Protocol. The Supplementary Protocol will then replace the Provisional and Financial Protocols.

³⁵ Articles 2(2), 5, and 10 of the Turkish Agreement. The customs union will cover all commodities except those covered by the ECSC Treaty (Article 26).

³⁶ Articles 32 and 33 of the Greek Agreement. Articles 34-43 and Annexes 2 and 3 provide the detailed regulations for the harmonization process.

³⁷ For details, see Articles 58-64 of the Greek Agreement. An interesting provision concerning the harmonization of the foreign-trade policies of the Community and Greece deals with the case of a third country applying to join the Community either as an associate or a full member. In such an event the Community and Greece are to consult each other in order to settle jointly the new relations between Greece and the future associate or member with full consideration of both Greek and EEC interests. This provision, which was applied when the agreement with Turkey was being negotiated, may cause difficulties should the Community want to conclude additional association agreements with other Mediterranean countries. Spain, whose economic structure and interests resemble those of Greece, is at present considering an association with the Community. However, an interpretive declaration in the Greek Agreement specifies that among the interests to be taken into consideration by the Community and Greece is the interest of EEC in permitting friendly third countries to join the Community as members or associates (see Article 64[3] and Annex 2 to the Final Act of the Greek Agreement).

³⁸ Articles 62 and 63 and Protocol 19 of the Greek Agreement.

As a necessary concomitant of the increased influx of private capital into Greece, the right of establishment for nationals of the member states in Greece and for Greek nationals in the member states is to be progressively introduced. Free movement of workers is to be put into effect at the end of the twelve-year transition period and provisions are to be made for the exchange of young working people. In principle, the EEC Treaty's provisions on transportation are to be extended to Greece. Finally, Greece accepted the Community's rules of competition but was granted special latitude regarding state aids intended to assist its economy.³⁹

The comprehensiveness of the economic provisions supporting the harmonization of policies between the association members strongly suggests that the Association Agreement intends to accomplish more than the creation of a mere customs union. The elements contained in these provisions seem to permit the assumption that the aim is the construction of an economic union which can later become the basis for the full integration of Greece into the Community in the years to come.⁴⁰

Under the provisions of the Turkish Association Agreement the harmonization of economic policies does not begin during the preparatory period but during the transition stage when the customs union is being introduced. In view of the uncertainty as to when the transition period will commence, the Turkish Agreement contains few specifics about the harmonization procedure.⁴¹ In terms of overall economic policy, the Agreement requires the association members to pursue a course which will ensure the equilibrium of their balance of payments and maintain confidence in their currency while at the same time assuring a balanced and steady expansion of the economy against a background of stable prices.⁴²

In order to support the progressive harmonization of the economic policies during the transition period, the Turkish Agreement follows the pattern set by the Greek Agreement in providing for the free circulation of workers, freedom of establishment, and the extension to the association of EEC Treaty principles regarding transportation and competition.⁴³ Thus, during the transition period, the same elements of the economic union may be introduced into the Turkish-Community association as are provided under the Greek Agreement for its association. It should be noted, however, that the provisions containing the elements of an economic union are not detailed regulations

³⁹ Articles 44–56 of the Greek Agreement provide the details for these arrangements.

⁴⁰ In this sense, see the report of Mr. Kreyssig in *Europäisches Parlament, Sitzungsdokumente 1961–1962*, Document 60, September 18, 1961, p. 11; and John S. Pesmazoglu, Deputy Governor of the Bank of Greece, "The Meaning of the Athens Agreement," *Bulletin of the EEC*, September 1962 (5th Year, Nos. 9–10), pp. 7–12. For a different opinion, see Norbert Welter, "Griechenland und die europäisch Integration," *Europa Archiv*, 1961 (Vol. 16, No. 15), p. 424.

⁴¹ Articles 4(1) and 11(1) of the Turkish Agreement.

⁴² Articles 17, 18, and 21 of the Turkish Agreement.

⁴³ Articles 12–16 of the Turkish Agreement.

but only commitments for future action during the transition and final periods which will be spelled out in detail by the Supplementary Protocol.

Do the Greek and Turkish Association Agreements live up to the principle of reciprocity with respect to the rights and obligations of the association partners as required by Article 238 of the EEC Treaty? It will be recalled that the determination of this question cannot be made without consideration of the relative economic strength and state of development of the association partners.

Both Greece and Turkey fall into the category of "developing countries"; the per capita income in Greece is \$364 and the Turkish per capita income only \$180, whereas the average per capita income in the Community is \$917. Both countries have primarily agricultural economies and both are engaged in the process of industrialization. The Community is Greece's most important supplier and market; its share of trade accounts for about 40 percent of both Greece's imports and exports. The Community's trade with Turkey is also an important factor in that country's economy. In 1962 EEC supplied 30 percent of Turkey's imports and bought over 40 percent of its exports.⁴⁴ Thus, by giving preferential treatment to Greek and Turkish agricultural products and by providing financial and technical aid, as well as the special rights granted the two countries for the protection of their economies, the Association Agreements have set the stage for the Community to further strengthen its relationship with Greece and Turkey. The obligations undertaken by the Community, however, appear to be reasonably counterbalanced by the eventual advantages to EEC of greater shipments of Community goods to these countries, a greater supply of badly needed labor for the EEC member states, and the prospects of full integration of Greece and Turkey into the Community with all the economic and political implications which such an integration may carry with it.

The Convention of Yaoundé

The broad aims of the Convention of Yaoundé, concluded for a period of five years, are to expand trade between the associated African and Malagasy states and the EEC member states, strengthen their economic relations and the economic independence of the associated states, and contribute thereby to the development of international trade.⁴⁵ To accomplish these goals the Convention basically continues the free-trade-area system between the Community and the associated states which in 1958 had been established by the EEC Treaty for the overseas countries and territories of some of the member states.⁴⁶ However, the Convention has made a number of important modifications.

⁴⁴ For additional details, see EEC Information Memo P-34/63 of September 1963.

⁴⁵ Article 1 of the Convention of Yaoundé.

⁴⁶ Articles 2(1) and 3(2) of the Convention. These two provisions closely resemble Article 133 (1-2) of the EEC Treaty.

First, while the EEC Treaty provided for a progressive abolition of customs duties not only for trade between the member states and the associated countries but also between the associated countries themselves, the Convention does not contain such a provision. Consequently, the associated states may organize their trade relations between themselves and with third countries as they see fit. In fact, these arrangements may take the form of additional customs unions or free-trade areas provided that such units are not "incompatible with the principles and provisions" of the Convention.⁴⁷ Thus, the possibility exists that instead of one free-trade area between the Community and the eighteen associated countries there may be as many as eighteen free-trade areas. This raises the question as to whether under these circumstances the Convention would qualify as creating an acceptable free-trade area in accordance with Article 24 of GATT.⁴⁸

Second, the abolition of quantitative restrictions, a requirement of the EEC Treaty for trade between the member states, has been extended by the Convention to trade with the associated countries although the latter have four years to comply with this provision. However, the associates may resort to such restrictions again if their development, balance-of-payments situation, or regional market organizations for agricultural products so require.⁴⁹

Third, customs duties for a number of the most important tropical products originating from the associated countries were abolished by the EEC member states as soon as the Convention entered into force, thus affording an immediate benefit to the associated countries. At the same time the reduction of customs duties by the associated countries was speeded up. Exceptions to this rule, however, are permitted if development needs or industrialization requirements of the associated countries make retention or introduction of customs duties necessary.⁵⁰

Finally, the pace with respect to the introduction of nondiscriminatory tariff treatment for member states has been accelerated. If not yet applied, the associated countries have to institute nondiscriminatory tariffs within six months after the Convention has entered into force. Moreover, the associated countries must not treat goods originating in the member states less favorably in any respect than those originating in the "most favored nation."⁵¹

The provisions for the harmonization of policy in the Convention are not

⁴⁷ Articles 8 and 9 of the Convention.

⁴⁸ The Convention is in the process of being considered by the GATT Contracting Parties.

⁴⁹ Articles 5 and 6 and Protocol 2 of the Convention. In case of serious market disturbances, both the member states and the associated countries may take protective measures which include increased duties and quantitative restrictions (Article 13).

⁵⁰ Articles 2 and 3 and Protocol 1 of the Convention. For a list of the tropical products, see the Annex to the Convention and *Amtsblatt*, June 11, 1964 (Vol. 7), p. 1487/64. At the same time, the customs duties for these products were reduced for imports from third countries in order to make the new association more palatable to these countries. See *ibid.*, pp. 1485/64, 1486/64.

⁵¹ Articles 3(1) and 7 of the Convention.

as far-reaching as those in the Greek and Turkish Association Agreements. When formulating its common agricultural policy, the Community must take the interests of the associated countries into consideration with regard to the products raised in these countries that are similar to and competitive with European products. On matters of commercial policy the association partners are required to keep each other informed in order to effectively implement the Convention.⁵²

In order to achieve the long-range aims of the association agreement the Convention contains a number of provisions specifying the amount and manner of financial aid and technical assistance which the Community is prepared to make available for the economic and social development of the associated countries. The total amount to be contributed for this purpose is \$730 million, of which \$666 million will come from the member states and \$64 million from the European Investment Bank.⁵³

Similar to the Greek and Turkish Association Agreements, the Convention also recognizes the right of establishment, but only on a reciprocal basis. The associated countries must, not later than three years after the Convention has entered into force, place nationals and companies of every member state on equal footing with respect to this right.⁵⁴

In assessing the reciprocity of the advantages and obligations of the association partners under the Convention of Yaoundé, the most important consideration must be that this agreement establishes a relationship between highly developed countries on the one hand and states struggling to reach the first rungs of the economic development ladder on the other. While the immediate benefits which the associated countries derive from the Convention are vastly greater than those which the Community obtains, the African states and Madagascar have undertaken certain obligations which are of potential value to EEC member states. For example, the obligation of nondiscriminatory tariff treatment may offer certain opportunities for France's partners in EEC, disappointed by the meager benefits they obtained from the 1958 association, to enlarge their export business to the former French colonies although undoubtedly the economic and cultural influence of France will remain strong in those areas which constitute the bulk of the associated states.⁵⁵ If the Convention should be renewed after five years—and one may anticipate such an event although some modifications may be made—the Community as a whole may eventually derive significant benefits from the financial and technical aid given to the African states.

⁵² For details, see Articles 11 and 12 of the Convention.

⁵³ For details, see Articles 15–28 and Protocol 5 of the Convention. See also van Benthem van den Bergh, *Common Market Law Review*, Vol. 2, No. 3, pp. 171–173, who provides a concise account of the financial and technical aid provisions of the Convention.

⁵⁴ For details, see Articles 29–33 of the Convention. The most-favored-nation clause must also be applied with regard to the right of establishment.

⁵⁵ For details, see van Benthem van den Bergh, *Common Market Law Review*, Vol. 2, No. 3, pp. 156–158, 171, 172.

THE INSTITUTIONAL FRAMEWORK OF THE ASSOCIATION

In its reference to the embodiment of "joint actions and procedures" in an association agreement, Article 238 of the EEC Treaty recognizes the need for institutions and well-defined methods to operate the associations between the Community and the associated countries. An institutional structure is essential if the far-reaching arrangements which the association agreements incorporate are to function properly. At the same time it is the institutional framework which distinguishes an association agreement aiming primarily at co-operation and consultation between the association partners from a mere trade or cooperation agreement.⁵⁶

Since the association agreements are based on international law treaties concluded by equal partners, the principles of bilateralism and parity must characterize the institutional structure and must be controlling elements for the manner in which the associations are administered. At the same time, since the Communities as legal persons are now and may be in the future partners to the association agreements, the autonomy of the Community decision-making process must be safeguarded in the same way as a sovereign government would want to retain its freedom of action in arriving at decisions. Thus, it seems that the associated countries cannot demand to participate in the internal decision-making process of the Community organs on matters affecting the association; rather their participation must be confined to the decision making in the institutions especially constituted for the operation of the association. For, if the Community were joined by a relatively large number of countries all with different association agreements, its freedom of action might be considerably impeded and the notion of association might become tantamount to membership.⁵⁷

The ECSC-United Kingdom Association

The central institution of all association agreements concluded thus far is a Council of Association. The first such institution was created by the Agreement between ECSC and the United Kingdom; in fact, its organization and activities are the core of that accord. The principles of bilateralism and parity are firmly anchored in the provisions of Article 2(1) which states that the Council "shall consist of not more than four persons representing the High Authority and not more than four persons representing the United Kingdom." The ECSC High Authority is, therefore, the only spokesman for the Community and it is placed on the same level as the United Kingdom gov-

⁵⁶ Euratom has concluded several cooperation agreements with third countries, including the United States and Canada. These agreements are not association agreements because they do not provide for a special institutional structure.

⁵⁷ See in this respect the report of Mr. Duvieusart in *Europäisches Parlament, Sitzungsdokumente 1961-1962*, Document 60, September 18, 1961, p. 28; and the report of Mr. Birkelbach in *ibid.*, Document 122, January 15, 1962, p. 21.

ernment, the organ of a sovereign state. With each group having only one vote, consensus is required for all decisions.

Only in specific cases may government representatives of the member states attend Council meetings. Whenever the Council discusses the institution of trade restrictions, a government representative of the state affected by or contemplating the restrictions may participate in the meeting of the Council. Representatives of member governments may also attend as observers any Council meetings at which proposals are considered that may affect the normal flow of trade in coal and steel between the Community and the United Kingdom.⁵⁸

The Association Council is the center of all consultation and cooperation between the Community and the United Kingdom. It is assigned a particularly important role in the case of problems arising from either an oversupply or a shortage of coal and steel products and for the reduction or abolition of restrictions on the coal and steel trade between the association partners.⁵⁹ The Council may appoint necessary committees,⁶⁰ and three committees have been established which are concerned with coal, steel, and trade relations respectively.

During the last decade, the Council of Association has met once or twice every year with the exception of 1962 when the negotiations for the United Kingdom's entry into the Community were being conducted. The committees have met more often, usually twice between Council sessions, and have set up working groups for a number of special areas such as the structure of steel prices and the problem of competition between the various sources of energy.⁶¹

The Greek and Turkish Associations

The Councils of Association provided for in the Greek and Turkish Association Agreements have many identical features. On the one hand, they are composed of members of the governments of the six member states, the Council of Ministers, and the Commission and, on the other, of members of the Greek or Turkish governments. This is a significant departure from the provisions of the ECSC–United Kingdom Agreement under which only the High Authority represented the Community on the Association Council. However,

⁵⁸ Articles 2(2–3) of the ECSC–United Kingdom Agreement.

⁵⁹ See Articles 6–9 of the ECSC–United Kingdom Agreement and pp. 228–230 above for details.

⁶⁰ Article 4(1) of the ECSC–United Kingdom Agreement.

⁶¹ A second, thus far inconsequential, feature in the institutional framework of the ECSC–United Kingdom association is the “special meeting” between the ECSC Council of Ministers and the United Kingdom government which may be called for deliberations on matters that fall within the specific competences of the Council of Ministers of the governments of member states. A “special meeting” may be requested by the governments of the ECSC member states, the ECSC High Authority, or the United Kingdom government. The institution of the “special meeting” seems to constitute a control on the High Authority most likely motivated by the fear that this organ might exceed its powers when participating in the work of the Association Council. See Article 10 of the ECSC–United Kingdom Agreement and de Soto, p. 234.

the principles of bilateralism and parity have also been maintained by the Greek and Turkish Agreements. Since unanimity is required for the proceedings in the Council, the weight of the vote of the associated government is equal to that of the Community representatives who must therefore arrive at a consensus.⁶² Moreover, the chairmanship of the Council alternates every six months between the associated governments and the Community.⁶³

For the achievement of the objectives of the Association Agreements and in the cases specified in these Agreements, the Council is empowered to render decisions which the association partners are obligated to carry out. The Council is also authorized to formulate recommendations for the proper functioning of the association, and it is the central organ for consultation and for exchange of information.⁶⁴ An interesting power has been conferred on the Association Council although the requisite authority was not provided in the Agreements: In the event that common action by the contracting parties is necessary to achieve one of the objectives of the Association Agreements, the Association Council may take the "appropriate decisions" to fill the gap.⁶⁵

Since the Turkish Agreement provides only the broad outline of the customs union to be established during the transition period and emphasizes the action during the preparatory period whereas the Greek Agreement spells out the details for the creation of the customs union, the specific competences of the Association Councils vary under the two Agreements. Under the Greek Agreement the Council plays a major role in the progressive establishment of the customs union⁶⁶ and in the introduction of measures leading to the harmonization of policy.⁶⁷ Under the provisions of the Turkish Agreement the Association Council is given specific competences mainly during the preparatory period. The most important of these is the authority to fix, prior to the beginning of the transitional period, the conditions, methods, and timetable

⁶² Article 65(3-4) of the Greek Agreement and Article 23 of the Turkish Agreement. Following the ratification of the Greek Agreement, procedures for arriving at a consensus of the Community's representatives had to be determined. The solution agreed upon was a unanimous vote of the EEC Council of Ministers after it had heard the EEC Commission, except in matters pertaining to the Community's commercial policy in which case the voting rules of Articles 110-116 of the EEC Treaty apply. This procedure may be changed at the end of the second stage of the transitional period of the Common Market. Action by EEC organs may also be required with regard to decisions and recommendations of the Association Council since the EEC Council of Ministers is the competent organ for their implementation. Again, a unanimous vote is required in that body after it has heard the EEC Commission. For details of the internal agreement procedure, see *Amtsblatt*, February 18, 1963 (Vol. 6), pp. 350/63-351/63.

⁶³ Article 66 of the Greek Agreement and Article 24 of the Turkish Agreement.

⁶⁴ Article 65(1) of the Greek Agreement and Article 22(1) of the Turkish Agreement.

⁶⁵ Article 70 of the Greek Agreement and Article 22(3) of the Turkish Agreement. This "gap-filling" provision resembles Article 235 of the EEC Treaty and Article 204 of the Euratom Treaty which bestow similar powers on the Council of Ministers.

⁶⁶ For details, see Articles 8-10, 17, 18, 20-22, 26-29, 31, and 34-40 of the Greek Agreement.

⁶⁷ For details, see Articles 44-50, 52-53, 56-58, 60-61, and 64 and Protocol 19 of the Greek Agreement.

for the establishment of the customs union and for the harmonization of policy between the association members.⁶⁸

The Greek and Turkish Association Councils are charged with taking all necessary measures to facilitate the cooperation and the contacts between the European Parliament as well as the Economic and Social Committee and the other organs of the Community on the one hand, and the parliaments and corresponding organs of Greece (Turkey) on the other hand.⁶⁹ The first of the decisions taken by the Greek Association Council was to set up a Parliamentary Association Committee composed of fourteen members of the Greek Parliament and fourteen members of the European Parliament. The task of this Committee is to debate certain issues and to make recommendations to the respective Parliaments. It should be noted that this Committee does not take any part in the functions of the European Parliament as laid down by the EEC Treaty, and consequently the principle of the autonomy of the Community organs is not violated.⁷⁰

Following the pattern established by the ECSC–United Kingdom Agreement, the Greek and Turkish Association Councils are authorized to constitute appropriate committees to assist in the accomplishment of their tasks.⁷¹ One of the first actions of the Greek Council was to set up an Association Committee which among other duties is charged with ensuring the continuity necessary for the smooth operation of the Association Agreement. While the Greek Council meets only twice a year, the Association Committee meets twice a month under a chairmanship alternating every six months between Greece and the Community and takes care of all routine matters. Since its inception the Committee has become a very useful and significant cog in the institutional machinery.

What are the means for the settlement of disputes that might arise from the application or the interpretation of the provisions of the Greek or Turkish Agreements? According to the terms of both Agreements, each association partner may submit such a dispute to the Association Council which may either settle the dispute or refer it to the Court of Justice of the European Communities or to any other existing court for settlement. If these methods of adjudication cannot resolve the dispute, the parties may request arbitration for which the Greek Agreement provides an extremely cumbersome and complicated procedure. Under the Turkish Agreement the Council of Association

⁶⁸ Article 8 of the Turkish Agreement. For other competences of the Council, see Articles 1, 4, and 6 of the Provisional Protocol attached to the Turkish Agreement.

⁶⁹ Article 71 of the Greek Agreement and Article 27 of the Turkish Agreement. During the preparatory period, however, the Turkish Agreement permits only contacts between the parliaments.

⁷⁰ See also the report by Mr. Duvieusart who holds that actual participation of Greek parliamentarians in the functions of the European Parliament is unthinkable (Europäisches Parlament, *Sitzungsdokumente* 1961–1962, Document 60, September 18, 1961, p. 30).

⁷¹ Article 66 of the Greek Agreement and Article 24 of the Turkish Agreement.

can determine the procedures of arbitration but it remains to be seen whether this Council will come up with a less complex procedure.⁷²

The Association with the African States

The organization and procedures specified by the Convention of Yaoundé for the Association Council do not vary basically from those found in the Greek and Turkish Association Agreements. The Council is composed of the members of the EEC Council of Ministers and the Commission, who represent the Community, and of one member of the government of each associated state. In contrast to the Greek and Turkish Association Councils, the governments of the EEC member states are not represented individually. Reflecting the bilateralism of the agreement, the collectivity of the associated states and that of the Community have only one vote each which means that all decisions, recommendations, and resolutions must be reached by unanimity. The procedures for the internal decision making of the associated states and of the Community through which their respective positions evolve have been determined by internal agreements.⁷³ An important contrast with the Greek and Turkish Agreements is the provision that proceedings of the Association Council are only valid if half of the members of the EEC Council of Ministers, one member of the Commission, and half of the accredited members representing the governments of the associated African and Malagasy states are present for the deliberations. Meetings of the Council must be called at least once a year, but the Council may be convened whenever necessary in accordance with its rules of procedures.⁷⁴

The main functions of the Association Council are consultation, deliberation, and supervision over the implementation of the Convention.⁷⁵ Since most of the important details of the association have been regulated by the Convention itself, the Council's competence to make specific decisions for the operation of the association is not extensive.⁷⁶ It possesses, however, a general competence to formulate any resolution, recommendation, or opinion that it may

⁷² Article 67 of the Greek Agreement and Articles 8 and 25 of the Turkish Agreement. Arbitration is not available during the Turkish preparatory period.

⁷³ Articles 40 and 43 of the Convention of Yaoundé. For the provisions of the internal agreement of the Community, see *Amtsblatt*, June 11, 1964 (Vol. 7), pp. 1490/64-1492/64. These provisions are similar to those of the Greek Agreement but relax somewhat the rule of unanimity for the EEC Council of Ministers' vote when implementing the decisions rendered by the Association Council.

⁷⁴ Articles 40 and 42 of the Convention. The presidency alternates between the Community and one of the associated states.

⁷⁵ See, for example, Articles 2(5), 3(3), 5(2), 6(4), 12(3), 11, and 13(1, 2, and 4) of the Convention.

⁷⁶ For example, the Council may make certain decisions regarding the introduction of the right of establishment in the associated states, and it may institute "suitable measures" if the application of duties levied by an associated state on exports of its products to the member states leads to serious disturbances in the conditions of competition. See Articles 4(2), 29, and 34, and also 12(3) and 27 of the Convention. The Council does not have the "gap-filling" power of its Greek and Turkish counterparts.

deem necessary to achieve the common objectives of the association and to ensure the efficient working of the associational arrangement. It should be noted, however, that similar to the Greek and Turkish Agreements only decisions of the Council impose an obligation for compliance upon the association members.⁷⁷

The Association Council is assisted by an Association Committee which is composed of a representative of each EEC member state, a representative of the EEC Commission, and a representative of every associated state. One major purpose for the establishment of the Association Committee is to ensure the continuity of the association's satisfactory operation and, for this reason, the Council may "when necessary" delegate to the Committee the exercise of the powers entrusted to it by the Convention.⁷⁸ Since the Association Council will normally meet only once a year, the Association Committee is likely to assume considerable significance just as its counterpart has become a very important part of the institutional machinery of the EEC-Greek association.

The third institution provided by the Convention of Yaoundé is the Parliamentary Conference. In accordance with the principle of parity its membership consists of an equal number of delegates from the European Parliament and from the parliaments of the associated states. The formal powers of the Conference are very limited: The Council of Association is obligated to submit an annual report on its activities to the Conference and the latter may adopt resolutions on matters concerning the association for which debates regarding this report are likely to provide most of the stimulus.⁷⁹

The final institutional feature of the Convention is a Court of Arbitration composed of five members: a president appointed by the Association Council and four judges of whom two are appointed by the Council of Ministers and two by the associated states. The Court has jurisdiction over disputes concerning the interpretation and application of the Convention that might arise between one or more member states or the Community on the one hand, and one or more associated states on the other. However, the dispute must first be referred to the Association Council for amicable settlement. If settlement cannot be reached, it may be submitted to the Court whose decisions are binding on the parties involved in the dispute.⁸⁰

The formal institutional framework created by the Convention of Yaoundé is the most comprehensive of the four association agreements thus far concluded. It should, however, be recalled that the provisions of the Greek and Turkish Agreements also permit the establishment of an association committee, a parliamentary cooperation committee, and an *ad hoc* arbitration

⁷⁷ Article 44 of the Convention.

⁷⁸ Articles 45 and 47 of the Convention.

⁷⁹ Article 50 of the Convention.

⁸⁰ Article 51 of the Convention.

tribunal. In devising the institutional framework the drafters of the Convention have generally followed the suggestions made by the Eurafrikan Parliamentary Conference held in Strasbourg in the summer of 1961.⁸¹ The result has been an institutional pattern which resembles that of EEC itself and which, interestingly enough, is also similar to the structure of the French Community of overseas territories although the *Président de la Communauté* is missing.

It should be noted that the principle of parity, so important to the African quest for identity and self-respect, is applied strictly to the structure and procedures of all institutions of the Convention. The principle of the autonomy of the Community's organs is also fully maintained by the Convention; none of the institutions created for the association of EEC with the African states and Madagascar permits the associated states any formal participation in the internal decision-making process of the organs of the Community.

Since the Convention entered into force only in mid-1964, it is too early to evaluate how effectively its extensive institutional structure is operating in practice. As has been pointed out earlier, most details of the associational arrangement have been settled by the Convention itself and, therefore, in the institutions created by the Convention the scope for making decisions and taking actions is limited. Nevertheless, the psychological effect of African participation in these institutions may well be considerable; the continuous and close intercourse between Africans and West Europeans, especially in the meetings of the Parliamentary Conference and the Association Committee, is likely to bolster the self-respect and confidence of the African members and, as a result, the ties between the associated states and the Community may be materially strengthened.

CONCLUSIONS

From the analysis of the four association agreements concluded by the European Communities certain conclusions can be drawn that may shed light on the nature of the agreements. Clearly, there is a fundamental difference between the ECSC-United Kingdom Agreement and the three EEC association agreements. The ECSC-United Kingdom Agreement, consisting of only fifteen articles and a short protocol,⁸² aims at promoting general cooperation by providing a forum for consultation and exchange of information on subjects of common interest. It does not create detailed obligations on the part of the association partners except for preliminary consultation and for ex post facto supply of information under certain circumstances.⁸³ The three EEC

⁸¹ See *Amtsblatt*, July 22, 1961 (Vol. 4), pp. 942/61-943/61.

⁸² The Greek Agreement has 77 Articles and twenty Protocols, the Turkish Agreement 33 Articles and two very long Protocols, and the Convention of Yaoundé 66 Articles and seven Protocols.

⁸³ See above, pp. 228-230, 237-238.

agreements, on the other hand, impose numerous specific obligations on the part of the contracting parties and set up or prepare to set up (as in the case of the Turkish Agreement) complex economic and legal units such as a customs union or a free-trade area. In fact, these units represent an extension of the Common Market system and permit, as Pescatore has correctly pointed out, the associated states to participate in the attainment of the objectives of the Community.⁸⁴

The institutional frameworks established by the ECSC and EEC agreements for their associations also differ inasmuch as the structures of the EEC accords are more elaborate and contain organs for the adjudication of disputes and for cooperation between the parliamentary bodies of the association partners. Nevertheless, the principles underlying the institutions of all four agreements are the same. These principles are parity and bilateralism with respect to the composition of these institutions and to the exercise of institutional powers and, at the same time, the autonomy of the Community decision-making process. Despite the fact that these principles have been observed by the framers of all four agreements, one must recognize two facts of political reality. First, although the legal equality of the association partners has been safeguarded by the agreements, in terms of political power the association agreements (at least, those of the Common Market) represent a relationship between unequal partners. Second, although the principle of the autonomy of the Community organs has been upheld by the agreements, the manifold obligations for consultation between the association partners and other duties involving close cooperation are likely to have the long-run effect of restricting the freedom of the Community's internal decision-making process. Another factor contributing indirectly to this end will be the difficult Community task of coordinating the activities in the institutions of the existing and possibly future associations, especially if these activities involve economic measures for the different associations or pertain to political problems in the relationship between the associated states.⁸⁵

Finally, the principle of reciprocity between the advantages and obligations of the association partners are features of all four agreements. As has been pointed out earlier, it is necessary to take a broad view, particularly in connection with the EEC agreements in determining whether such a reciprocity exists. In other words, the final result must be kept in mind and it must be viewed in the light of long-range economic and political benefits.

In summary, the association agreement may best be characterized as a contractual arrangement between legally equal partners 1) which creates an insti-

⁸⁴ Pescatore holds that this is the characteristic which distinguishes an association agreement from a commercial accord since the latter is based on the principle of *do ut des* for the accomplishment of the parties' goals (*Recueil des Cours de l'Académie de Droit International*, Vol. 103, p. 141).

⁸⁵ See Werner Ungerer, "Die Assoziierungspolitik der EWG," *Aussenpolitik*, October 1964 (Vol. 15, No. 10), pp. 685-687, 896-897.

tutional structure based on the principles of parity and respect for the autonomy of the governmental organs of the partners and 2) the purpose of which is equitable and continuous cooperation between the associates and possibly, as in the case of the EEC Agreements, participation by the associated state in the pursuit of the Community's objectives.⁸⁶

In view of the institutional apparatus and the pursuit of a common purpose, both characteristics of an association, the question might be raised as to whether an association agreement may not in effect establish a regional international organization. There appears to be no valid reason why an international organization such as EEC, enjoying legal personality under international law and possessing treaty-making power, should not be able to become a member of another international organization. However, the strong bilateralism pervading the concept of association is a persuasive argument against the assumption that an association agreement might create a regional international organization.⁸⁷ Thus, in terms of international politics, the association agreement may best be viewed as simply instituting a regional international system for peaceful change of the status quo through the management of ends, means, and aspirations. Seen in this light, the association agreement constitutes a significant instrument of foreign policy for the European Communities and their member states.

How successful have the association agreements been in obtaining their objectives and what are the prospects and implications for the future?

The ECSC-United Kingdom Agreement, now ten years old, produced the tariff accord of 1957 but nothing else that is particularly noteworthy. During the negotiations for the United Kingdom's entry into EEC, which lasted for more than a year, the activities of the Association Council lay dormant; they were not resumed until September 1963.⁸⁸ Whereas originally the association had political meaning as a possible tool for bringing the United Kingdom into the Community, at present it serves primarily as a means for the maintenance of good relations and the exchange of technical information. Lister's characterization in 1960 that the association, while quite elaborate, "was not more than symbolic"⁸⁹ appears to hold true today and little change may be expected in the future.

The EEC association with Greece, now only in its second year of operation, is still too much in its infancy to permit a sound appraisal. However, it appears that Greek exports to the Community have thus far not fulfilled Greece's expectations in spite of the fact that the Community tariffs have been reduced by 50 percent. Moreover, the Greek government seems to resent its exclusion

⁸⁶ See Pescatore, *Recueil des Cours de l'Académie de Droit International*, Vol. 103, p. 141.

⁸⁷ In this sense, see also Oppermann, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 22, No. 3, p. 503.

⁸⁸ ECSC High Authority, 12^e *Rapport Général*, paragraph 58.

⁸⁹ Lister, p. 352.

from the internal decision-making process of the Community's organs, particularly in relation to decisions which may affect the harmonization of Greek and Community agricultural policies.⁹⁰ It must be understood, however, that the association of EEC with Greece is not a cure-all for that country's economic and social problems but a bold challenge to meet the requirements of a customs union with the Community by the restructuring of its economy. These considerations also apply to the Turkish association with the Community as it begins its operations. In fact, the challenge to Turkey may even be greater because of the very low level of its economy and the adverse effects of the Cyprus crisis.

From the Community's point of view, the short-term economic gains from the Greek and Turkish Agreements in exchange for the far-reaching concessions made to the association partners are likely to be less important than are the long-range economic and political advantages. In terms of international politics the Agreements have demonstrated that the European Economic Community is not a closed society and that the prestige of EEC and the member states has been enhanced by the extension of intra-European development aid to less developed countries along Europe's fringe areas.⁹¹ At the same time, the economic ties linking Greece and Turkey to the Common Market have prevented these countries from slipping into the European Free Trade Association (EFTA) system and have permitted the Community to subtly extend its economic and political influence. Finally, the intimate and continuous contacts between high government officials and parliamentarians of the association partners within an extensive institutional structure are apt to open up opportunities for closer political cooperation between the associated countries.

The Greek Agreement appears to constitute a basic model for future association agreements with other less developed European countries although, as the Turkish Agreement has demonstrated, modifications might be necessary to meet the economic needs of the prospective associate.⁹² Spain, which falls into the category of less developed countries, has recently expressed an interest in an association with EEC. However, no formal negotiations have yet been initiated. Italian newspapers have expressed disapproval of a Spanish association because Spain's economic structure, particularly with regard to agriculture, closely resembles that of Italy and of associated Greece.⁹³ The association may also be opposed on political grounds because influential political circles in Belgium, the Netherlands, and Italy object to Spain's political system.

⁹⁰ See *Neue Zuercher Zeitung*, July 2, 1964, p. 2.

⁹¹ See Welter, *Europa Archiv*, Vol. 16, No. 15, pp. 421, 428.

⁹² It is doubtful whether any other country would be given a veto power over the common external tariff as was granted to Greece. See above, p. 231.

⁹³ It has been suggested that member states which carry the main burden of the economic and political consequences of a new association should be offered certain compensations by the Community. See Ungerer, *Aussenpolitik*, Vol. 15, No. 10, pp. 696-697.

Some of the economically mature European countries such as Sweden, Switzerland, and Austria have also indicated an interest in an associated status with the Common Market. However, only Austria is at present actively engaged in exploratory talks with EEC regarding an association. In these talks, the negotiators face two major problems. One is the reaction of the Soviet Union because Austria is prohibited by the Austrian State Treaty of 1955 from taking any measures likely to promote political or economic union with Germany or to impair its political or economic independence. The other problem concerns whether or not Austria should be permitted to enjoy the benefits of both EFTA and EEC or whether, as has been advocated by Community officials, Austria would have to quit EFTA upon joining EEC as an associate member. Should participation in both trade systems be allowed despite certain administrative difficulties, other EFTA countries are likely to seek similar associations. The end effect of such a development might be a merger between EEC and all or the bulk of EFTA and the demise of EFTA as a separate unit. For some who would like to see the Common Market emerge ultimately as a political union, this merger might arouse mixed feelings because the diversity of political interests and traditions that would exist in the enlarged trade system might impair or even destroy any chance that the political content of the Community will develop into a united Europe.

Since the association between the Community and the seventeen African states and Madagascar, created by the Convention of Yaoundé, became operative only on June 1, 1964, it is therefore too early to evaluate its effectiveness. However, one must remember that it basically continues the free-trade area set up in 1958 which has afforded definite economic advantages to the African countries.⁹⁴ Consequently, the implementation of the Convention may well result in a permanent improvement of the economic level of the associated states, a development which would promote political stability and from which the trade of third countries with these states may also derive some long-range benefits. On the other hand, since the advantages granted to the less developed associated states in their exports to the Community are obtained at the expense of nonassociated states located mostly in Africa and Latin America, one immediate effect of the association has been a spread of discrimination in world trade.

On the part of EEC, the Community can expect to obtain similar long-range economic and political advantages in exchange for its extensive concessions to the African states as it is likely to derive from the Greek and Turkish Agreements. The institutionalized contacts between African and European civil servants and politicians will tend to promote political cooperation and an

⁹⁴ At the conferences leading up to the conclusion of the Convention of Yaoundé it became obvious that the African states preferred the sheltered climate of the association to the open competition of the world market. See van Benthem van den Bergh, *Common Market Law Review*, Vol. 2, No. 3, p. 177.

eventual rise in the economic level of the African associates will make the Community a major beneficiary. However, some of the EEC member states, especially West Germany and the Netherlands, have not been satisfied with the benefits they derived from the 1958 association.⁹⁵ Only time can tell whether the new Convention with its safeguards for nondiscriminatory tariff treatment will enable these countries to penetrate the hitherto French-controlled markets of the associated states.

As mentioned in the introduction to this article, Nigeria, Kenya, Tanganyika, and Uganda, all Commonwealth countries, have requested the opening of preliminary discussions regarding an association with EEC, and formal negotiations are now under way with Nigeria. These countries could either accede to the Convention of Yaoundé which in Article 58 specifically provides for such a possibility, or completely new associations could be created. Since the latter method appears to be favored by the former British colonies, the possibility exists that several closed systems with preferential and discriminatory arrangements and different institutional structures will compete with each other and might result in the splitting up of Africa into opposing camps. Nigeria and the East African countries would like to continue to enjoy Commonwealth preferences even after associating themselves with EEC. However, such dual membership in two systems is not acceptable to the already associated countries.⁹⁶

While undoubtedly the enlargement of the Convention or the creation of additional associations would extend the Community's economic and political influence in Africa, chiefly at the expense of the United Kingdom, they would also tend to strengthen those elements both within and outside Africa which see in these new "spheres of influence" a clear manifestation of "neocolonialism" regardless of the economic and financial benefits which the associated countries enjoy. Moreover, as United States Undersecretary of State George W. Ball has recently pointed out, the existence of several preferential and discriminatory regimes tends to result in a poor use of world resources and to limit the possibilities for effective cooperation among nations seeking an increase of overall world prosperity and world peace.⁹⁷

The foregoing discussion indicates that while it is too early to judge fully the effectiveness and import of the existing association agreements, the implications of these and future agreements in the realm of international relations might indeed be far-reaching. It is also evident that the member states possess in the association agreement a flexible and useful tool with which to extend the Community's benefits to other countries and, at the same time, to enhance

⁹⁵ See Norbert Welter, "Eurafrikanische Entwicklungspartnerschaft," *Europa Archiv*, March 25, 1962 (Vol. 17, No. 6), p. 202.

⁹⁶ See van Benthem van den Bergh, *Common Market Law Review*, Vol. 2, No. 3, p. 156.

⁹⁷ Department of State *Bulletin*, April 27, 1964 (Vol. 50, No. 1295), pp. 657-662.

their own interests. This tool, however, must be used judiciously. Careful coordination between associational policies and the foreign and domestic policies of the member states seems to be essential and the complexity of this coordination is likely to increase as the number of association agreements grows. A proliferation of association agreements, all with their own institutional structures, would impose a heavy burden on the executive and administrative resources of the Communities and might offend earlier associates. Such a course is also likely to arouse hostile reactions from nonassociated countries, reactions that might reduce or cancel out the benefits anticipated by the member states and associates.

Men will not make peace—the absence of struggle and conflict—their paramount ideal. For they have other interests, some of which they cherish more than life itself.

If the universal society is to live and flourish, it must have some more interesting thing to do than to stand by, and now and then to intervene in some quarrel when it breaks out. Defense is a primary and indispensable function of any organized society. But not defense alone. No less indispensable is the promotion of the welfare of the members of the society. This is true of all organized governments, and it is true of the United Nations.

Walter Lippmann, "The Great Revolution,"
UN Monthly Chronicle, April 1965 (Vol. 2,
No. 4), p. 72.