

An outline map of Europe and Africa, with the text 'EUROPE AND AFRICA' overlaid. The map shows the coastlines of both continents, with the Mediterranean Sea between them. The text is in a large, bold, serif font, with 'EUROPE' at the top, 'AND' in the middle, and 'AFRICA' at the bottom.

EUROPE
AND
AFRICA

The Council of Europe was set up in May 1949 to promote European unity, and its Members represent most of the States of Western Europe — Austria, Belgium, Denmark, France, the Federal Republic of Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, Turkey and the United Kingdom.

The Statute of the Council reaffirms the devotion of its Members to the principles which form the basis of all genuine democracy: individual freedom, political liberty and the rule of law; it goes on to lay down as one of the objects of the organisation “the maintenance and further realisation of human rights and fundamental freedoms”.

The distinctive characteristic of the Council is the inclusion of a Consultative Assembly, in which over 200 Members of Parliament from the fifteen countries meet together to discuss the problems confronting Europe today and to make proposals for united action by the member States. The executive organ of the Council is a Committee of Ministers which makes recommendations for action to the Member Governments, either on its own initiative or as a result of proposals made by the Consultative Assembly.

EUROPE AND AFRICA

with a foreword by
Mr. PER FEDERSPIEL,
President of the Consultative Assembly
of the Council of Europe

COUNCIL OF EUROPE
Strasbourg 1960



FOREWORD

The dynamic evolution in the political structure of Africa and in the relations between Africa and Europe in recent years calls for a re-appraisal also of the economic relations of the two continents.

Three basic factors dominate. In the first place, Europe and Africa need each other's products and each other's markets; consequently, there is every reason to maintain and further develop close economic relations, at a time when the nature of the political relationship is evolving. Secondly, Africa needs capital for development, and Europe is one of the principal sources from which that capital can be supplied; it requires incentives, however, if it is to be forthcoming in sufficient volume. In the third place, technical assistance is needed; whether it comes from international, national or private sources, it must be organised and co-ordinated.

These problems require concerted action by Europeans and Africans if satisfactory solutions are to be found. Success in this endeavour will lay the foundation of a new partnership.

The Consultative Assembly of the Council of Europe, which is a parliamentary body of representatives from fifteen countries of free Europe, has studied various aspects of these questions and made a number of precise proposals. It has proclaimed the principle that future relations between European and African countries must be the result of negotiations freely undertaken between partners on a basis of equality. It is against this background that the Assembly's suggestions should be studied.

This booklet explains what are the Assembly's proposals and in what spirit they have been conceived. It is my hope that they will be understood in Africa and that they will help to bring about a new era of co-operation between the two continents.

Copenhagen, 1st September 1960.

PER FEDERSPIEL

President of the Consultative Assembly



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CHAPTER I

EUROPE AND AFRICA

1. *Introduction*

Africa and Europe have been acquainted from ancient times, and they have in common certain chapters of their history.

There was a time when, in that Mediterranean region where their frontiers almost touch, they jointly provided the cradle in which a new civilisation was to flourish. Carthage, on the North African coast, was a prosperous metropolis, a "World Power", before Athens and centuries before Rome. While the rest of the two continents still lingered in ignorance and age-old barbarism, Mediterranean Africa and Europe were each making an irreplaceable contribution to what the West nowadays calls its "spiritual heritage".

There came a period in the first half of the eighth century when Europe was the prey of Moslem invaders from Africa. Toledo fell in 712, and 9 years later the Pyrenees were crossed. It was at Poitiers that the tidal wave which seemed likely to engulf Europe was stopped by Charles Martel, who drove the Moorish armies back.

Seven hundred years later the Europeans in their turn, at an equally dynamic and decisive period in their history, set sail for Africa, the whole of whose coastline was explored by the Portuguese navigators around 1500. On the shores of Africa, European traders founded their first counting-houses and settlements, and a new era was born in the relations between the two continents.

That new era may be viewed in differing perspectives. Many Europeans tend to regard it as a kind of 'heroic' age in which their ancestors, spurred on by an insatiable thirst for knowledge and conquest, plunged into perilous adventures in far-off lands. The European may perhaps also look upon it as the starting-point of the period when he communicated his civilisation, his technical

achievements and some of his cultural ideas to almost all the nations of the world. The African, on the other hand, will doubtless chiefly remember certain sufferings and injustices which were common in Africa from the sixteenth century onwards and which all too frequently bore the stamp of Europe.

But colonisation in the proper sense of the term did not begin until the nineteenth century. It was only after 1870 that the interior of Africa was explored and summarily shared out among themselves by European Powers. Thus deeper and more lasting contacts were established between the European and African worlds at a relatively recent date, and ushered in that period which has given rise to so much bitter controversy between Africans and Europeans.

Was colonisation nothing more than a thoroughly unjust process of exploitation? Or was it, on the contrary, a work of development which, all in all, brought Africa more advantages than disadvantages? Those who, on this side or that, think that they can reduce the problem of relations between Europe and Africa to a few facile catchwords are endangering the very future of those relations. They are preventing the growth of an atmosphere in which genuine discussion between the two continents can begin. What is more, any such attitude anticipates a judgement which properly belongs to the historians of the future. Who can say whether African historians will not one day write about the European colonists in the same way as European historians today write about the colonists of ancient Rome?

There is all the more reason to leave aside this ideological controversy since it has been overtaken by political realities. The major political fact of our times is precisely the disappearance of colonial relationship between Europe and Africa. This development is gathering momentum; during the first eight months of 1960 alone, the Cameroons, Togoland, Senegal and Soudan, the two Congo Republics, Somaliland, Somalia, Madagascar, the Ivory Coast, the Niger, the Upper Volta, Dahomey, Gaboon, Chad and the Central African Republic have become independent. Other African countries will shortly be following suit, invoking the same principles as European peoples have always proclaimed, and the claim to independence of the still dependent countries is to-day generally accepted.

The fact must be faced then that a revolutionary change of outlook has occurred in Europe and Africa alike. A mere glance at the past is enough to enable Europeans, too, to realise how far we have come. The age when the possession of 'colonies' could be coveted as a source of wealth lies far behind. Overseas responsibilities have now become financial burdens, which grow constantly heavier.

2. Under-development : a challenge

This evolution in the political concept of the relations between Europe and its hitherto dependent territories has been accompanied by a new awareness of certain economic facts. Somewhat tardily maybe, but nevertheless very sharply, public opinion in Europe and elsewhere has awakened to the problem of the "under-developed" countries, in which two-thirds of humanity live in poverty. Political developments have contributed towards emphasising the scale and urgency of the problem.

Emergent countries are faced with the problem of under-development in its harshest form. Economic development at the fastest possible speed is their pre-eminent need, for without a minimum economic and social potential their independence is doomed to remain an empty shell. We should not therefore be unduly surprised if these young countries frequently make their political choice and seek their alliances with this vital need as the guiding rule.

Political dependence generally implies considerable economic advantages for the under-developed countries. Nowadays, indeed, certain metropolitan Powers go so far as to make considerable sacrifices in order to help the countries dependent upon them. But, as we have seen, political dependence is fast disappearing. The movement towards political independence or self-government is manifestly irreversible.

European opinion, sensing the wind of political change simultaneously with the problem of under-development, has not been slow to understand that here is a question which will determine the fate of the world of tomorrow. In other words, not only the under-developed countries themselves — those in Africa, Asia and Latin America — but also the countries of Europe and of

other more favoured regions have a vital interest in seeing this problem tackled and solved satisfactorily.

Clearly, however, Europe has very special reasons to concern itself first and foremost with the development of Africa. It is obvious that one of these reasons is the geographical proximity of the two continents.

A second reason lies in the fact that European colonisation, certain appearances notwithstanding, and despite certain crises which have arisen, has created many affinities between the two continents. The imprint of Europe in Africa is deeply felt in culture, language, law and administration.

A third reason, by no means the least significant, is that Europe's presence in Africa has left behind a certain economic and social structure and has created specific needs and ways of life. Europe has bequeathed to the new States a complex inheritance of burdens and preoccupations which it cannot all of a sudden disown. The former colonial administrations set up institutions useful in themselves but either non-profit-making or not directly profitable — for example in the field of public health or education — the maintenance of which will represent a considerable burden for a long time to come.

A fourth reason is that Europe and Africa, on account of their geographical situation — one in the temperate and the other in the tropical zone — have largely complementary economies, especially in agricultural production. Furthermore, their mining and energy resources are to a great extent complementary. The two continents are close enough together to make it easy for them to exploit this situation to the best advantage.

Finally, the complementary nature of their economies is reflected in close commercial interdependence. Thus, two-thirds of Africa's foreign trade is at present with Europe, which, in exchange for large quantities of primary products, supplies Africa with most of its capital and consumer goods.

The foregoing considerations provide more than sufficient grounds for thinking afresh about African under-development as a problem essentially common to the two continents. Both Africa and Europe have the greatest possible interest in seeking a common solution through a common effort.

3. A new formula

The preceding paragraphs have deliberately dealt less with the European and African countries individually than with the two continents each taken as a whole. There is nothing surprising in this approach now that there is so much talk of European unity and of pan-Africanism. In the modern world the future will belong to the large *blocs*. This is yet another conviction which has gained ground since the end of the war.

People may often wonder why the United Nations, as a world organisation, should not be made responsible for doing all that there is to be done in this matter of aid to the under-developed countries. Admittedly, action through United Nations channels is highly desirable, but the fact is that multilateral assistance granted to the under-developed countries through the medium of the United Nations and the Specialised Agencies amounts to only one-tenth of the total assistance received by those countries. Although the creation of the Economic Commission for Africa two years ago and the recently inaugurated United Nations' aid activities in the Congo constitute valuable developments in multilateral action, experience has shown that the anonymous character of United Nations' aid is not calculated to provide any appreciable stimulus towards an increase in contributions.

Thus, at the present time traditional bilateral assistance has in practice remained the mainstay of aid to the under-developed countries. In some cases, where sufficiently important common interests are involved, this form of aid may involve very large sums. Nevertheless, since it is often linked with political motives, bilateralism is viewed by the beneficiaries with some suspicion, and they tend to prefer the anonymous and non-political methods of the United Nations.

It may be seen, then, that both the bilateral approach and multilateral arrangements through the United Nations have their own particular drawbacks. Neither method should, however, be abandoned. The needs of the under-developed are too great and such forms of assistance undoubtedly help to answer some of them. It would therefore seem advisable to consider whether there is not some third form of aid which might be used in addition to the present methods. This might follow a formula somewhere in between universal multilateralism and the traditional bilateral-

ism, whereby assistance would be based on sufficiently powerful common interests for the contributing countries to increase their efforts and for the receiving countries to feel able to accept what was offered without hesitation.

The desired formula can be found on a regional basis. Being broader than a relationship between two countries, the regional framework makes it possible to avoid any possibility of the political subjection of the beneficiaries, while at the same time offering wider economic and commercial possibilities; and, being on a less than world scale, it implies the prior existence of a number of common bonds and interests. Europe and Africa together make up a regional framework which would be ideally suited to the application of such a formula. The size of their resources should enable the countries of Western Europe, acting in concert, to offer Africa what she needs for her development, while also serving the economic and social interests of the European peoples themselves.

From 1957 onwards the Consultative Assembly of the Council of Europe has pioneered this original formula. It has proclaimed the principle that the development of Africa is in the interests of both continents in their entirety, and must therefore be pursued by the two continents working together.

CHAPTER II

PRINCIPLES FOR LASTING CO-OPERATION

1. From the "Strasbourg Plan" to present projects

Since its first session, in 1949, the Consultative Assembly, the parliamentary organ of the Council of Europe, has concerned itself with the problem of the under-developed countries. It was, indeed, quite natural that it should do so. The logical basis for its action has been the realisation that under-development, and particularly the under-development of Africa, was a challenge not only to the whole of that continent but to the whole of Europe, too. On the European side, the Council seems ideally suited to deal with the question, since it is the only European political organisation representing almost the whole of Western Europe.

The lively interest shown by the Assembly in the problems of the under-developed countries was reflected in a whole series of discussions. In recent years its Economic and Political Committees, as well as a group of independent African and European experts, have studied the subject in great detail, and the Assembly has given its views on their work at each stage.

The present booklet cannot attempt to provide a comprehensive review of all these detailed studies, but it is worth while giving a rapid outline of their guiding principles.

Over the years there has been a remarkable evolution in the Assembly's thinking. Originally, in 1949, it was based on a somewhat narrow concept. It was thought that action by member countries of the Council should be directed mainly towards the "overseas countries *having constitutional links with the countries of the Council*". This is the underlying notion of what came to be known as the "Strasbourg Plan".

The Strasbourg Plan, adopted by the Assembly on 25th September 1952, suggested *inter alia* the establishment of a "European Bank for the Development of Overseas Territories", conceived as a practical measure to promote the economic develop-

ment of "the area formed by the countries of Western Europe, on the one hand, and by the overseas countries, namely overseas territories and Dominions, having constitutional links with them, on the other".

The Committee of Ministers of the Council of Europe, the OEEC and, once again, the Consultative Assembly each in turn discussed this plan. In 1955, in the course of these studies, the Assembly's attitude began to take shape around a new and ambitious idea, the idea of a "Eurafrican Community".

On 9th July 1955 the Assembly decided¹ to instruct the Secretary-General "to set up a group of independent experts, including nationals of the metropolitan Powers, of self-governing countries which have constitutional links with them, and of the other member countries of the Council of Europe". The task of the group was to be not only to re-examine the Strasbourg Plan "in the light of the economic and political developments that have taken place" since its adoption, but also to "submit any new proposals likely to encourage the economic and social development of Africa through co-operation on an equal footing within a Eurafrican Community".

The demand for "co-operation on an equal footing" was new. We shall return to it shortly. Meanwhile we would mention only two ideas, in themselves contradictory, which played their part in determining the Assembly's action. On the one hand, the choice of experts was still to be limited to "nationals... of overseas countries which have constitutional links with... member States of the Council of Europe". On the other hand, wider prospects were opened through the proposal to study the development of Africa as such, without any restriction based upon the existence or otherwise of "constitutional links with member States of the Council".

The ambiguity did not long subsist. At their first meeting, in 1956, the group of Experts unanimously considered that their terms of reference should be amended in two particulars. First, they called for the participation of experts from all the African countries likely to be interested and not only from countries having constitutional links with member States of the Council. Se-

1. Order No. 77.

condly, they felt it should be clearly stated that it was no part of the group's task to pronounce any *political* judgements. They therefore requested that terms such as "Eurafrican Community", which had acquired special political overtones, should be excluded from their terms of reference.

The Assembly accepted both these proposals. On 11th January 1957 it amended¹ the Study Group's terms of reference accordingly. The Assembly thus emphasised that its policy did not conceal any attempt to introduce a form of neo-colonialism. If the term "Eurafrican Community" was deleted from its vocabulary, the reason lay in the fact that these words have sometimes been interpreted as an attempt to justify new methods of subordinating Africa politically to Europe. Similarly, departure from the criterion of "constitutional links" also signified a final break with conceptions which were recognised as being no longer valid.

With these new terms of reference, the group of Experts, now expanded to a membership of 12 — 6 Europeans and 6 Africans — got to work and produced a report² whose contents were approved by the Consultative Assembly on 2nd May 1958³.

The Experts' report will doubtless continue for a long time to come to guide the Assembly's work on this question. They carried out a very thorough study of the whole problem of African under-development and put forward a series of practical proposals which will be analysed hereafter. The Le Hodey proposals, which will also be discussed and which relate to the establishment of an Investment Statute, the creation of a Guarantee Fund and an increase in technical assistance are to a great extent the outcome of the work of the Experts.

2. Fundamental principles

Let us now take a closer look at the principles underlying the practical measures proposed by the Assembly. What has been said above explains the ideas in "Order No. 105", which

1. Order No. 105.

2. Doc. 701, 26th September 1957.

3. Doc. 789.

gives precise instructions for the general direction of current work.

Order No. 105 defines the Experts' terms of reference as follows:

"The group of experts should submit proposals designed to encourage and accelerate the economic and social development of Africa and to raise the standard of living of the African peoples, in the interests of the prosperity both of Africa and of Europe, through co-operation on an equal footing between the African countries and the member countries of the Council of Europe."

This text may be said to be based on three concepts :

(1) the economic and social development of Africa and the raising of its peoples' living standards are as much in the interest of Europe as of Africa;

(2) a system of regional co-operation (between the African countries and the Members of the Council of Europe) is the most appropriate way of dealing with the problem of the development of Africa;

(3) such regional co-operation must take place on an absolutely equal footing as between Africans and Europeans.

The Assembly's plans can thus be summarised as aiming at a partnership, based on common interests.

The group of experts added an important detail to its terms of reference. It stated¹ that Order No. 105 should not be too strictly interpreted where it speaks of co-operation between the African countries concerned and the member countries of the Council. According to the Experts, this Order

"does not, for instance, in the least imply that other countries (for example, European countries like Switzerland and Portugal and non-European countries like the United States, Canada and India) could not take part in the joint effort — or that assistance and co-operation within the framework of the United Nations and other international organisations, particu-

1. See the Report of the Study Group on the Development of Africa, Doc. 701, Introduction.

arly the Commission for Technical Co-operation in Africa south of the Sahara (CCTA), would be excluded. The Group considered that, on the contrary, the closest association should be established with the work in this field of these countries and organisations and that the measures proposed by it should supplement though not necessarily supersede the work already undertaken or about to be undertaken.

In other words, the Study Group has endeavoured to devise a system of international co-operation for the development of Africa built around collaboration on an equal footing between the African countries and the member countries of the Council of Europe; this nucleus could be joined by other countries in Europe and elsewhere... and would take into consideration the assistance provided by existing national or international institutions..."

After this clarification, the Group of Experts sets forth what it regards as the six "basic principles" for a joint effort as defined above. These six basic principles reflect, in the technical and economic fields, the general philosophy defined by the Assembly in Order No. 105, and are as follows:

(a) Whilst such a joint effort should be to the advantage both of Africa and of Europe, it should be guided by the fundamental consideration that, in the long run, it is the rise in the standard of living of the peoples of Africa which must provide a main yardstick for measuring its success.

(b) African economic development up to the present time has in large measure taken place under non-African auspices. Future economic developments both of existing and new activities should promote dynamic indigenous economies.

(c) The building of a modern economy calls for effective participation by Africans and, at the same time, for the training of African staff, at all levels, to enable them ultimately to assume responsibilities.

(d) The effect upon local society of any development plans should be given as much consideration as profitability and economic efficiency, so as to promote the harmonious adaptation of social structures.

(e) Although the terms of reference of the Group are directed to economic and social development, it is obvious that political conditions in any country will affect and be affected by such development and must be taken into consideration.

(f) Co-operation on a basis of equality between the African and the European countries is fundamental to the planning concerned; while the present initiative has come from the European side, views, requirements and preferences should in the future be the subject of joint consultation between Europeans and Africans."

On 2nd May 1958, the Consultative Assembly, as we have seen, endorsed the Experts' Report ¹. It thus approved not only the proposals for action contained in the Report, which will be discussed in the following chapter, but also the six principles set forth above. A great advance had been made in what can be described as the "philosophical approach" to the problem.

3. Consultation a prerequisite

Point (f) above expresses the desire for "joint consultation" between Europeans and Africans. This is of primary importance. If the colonial period is over and if aid to the under-developed countries is no longer a charitable undertaking but a business proposition based on common interests, then it is obvious that every assistance project must, from the outset, be the result of joint consultation between equal partners.

Similar considerations led the Assembly to ask that Africans should be associated with its work from the very beginning. The group of experts, composed of six Africans and six Europeans ², had taken as their aim the drafting of proposals which would succeed in reflecting African just as much as European viewpoints. The Assembly has likewise always taken care, during its subsequent work, to avoid submitting proposals couched in strictly legal terms. It takes the view that, while the notion of collaboration between Africa and Europe with a view to African development was a European initiative, all its details should be settled by negotiation.

Such was the spirit which guided the Assembly when, in adopting the Experts' Report, it proposed ³ that the fifteen mem-

1. Recommendation 159, Doc. 798.

2. For names, see inside of back cover.

3. See Recommendation 159.

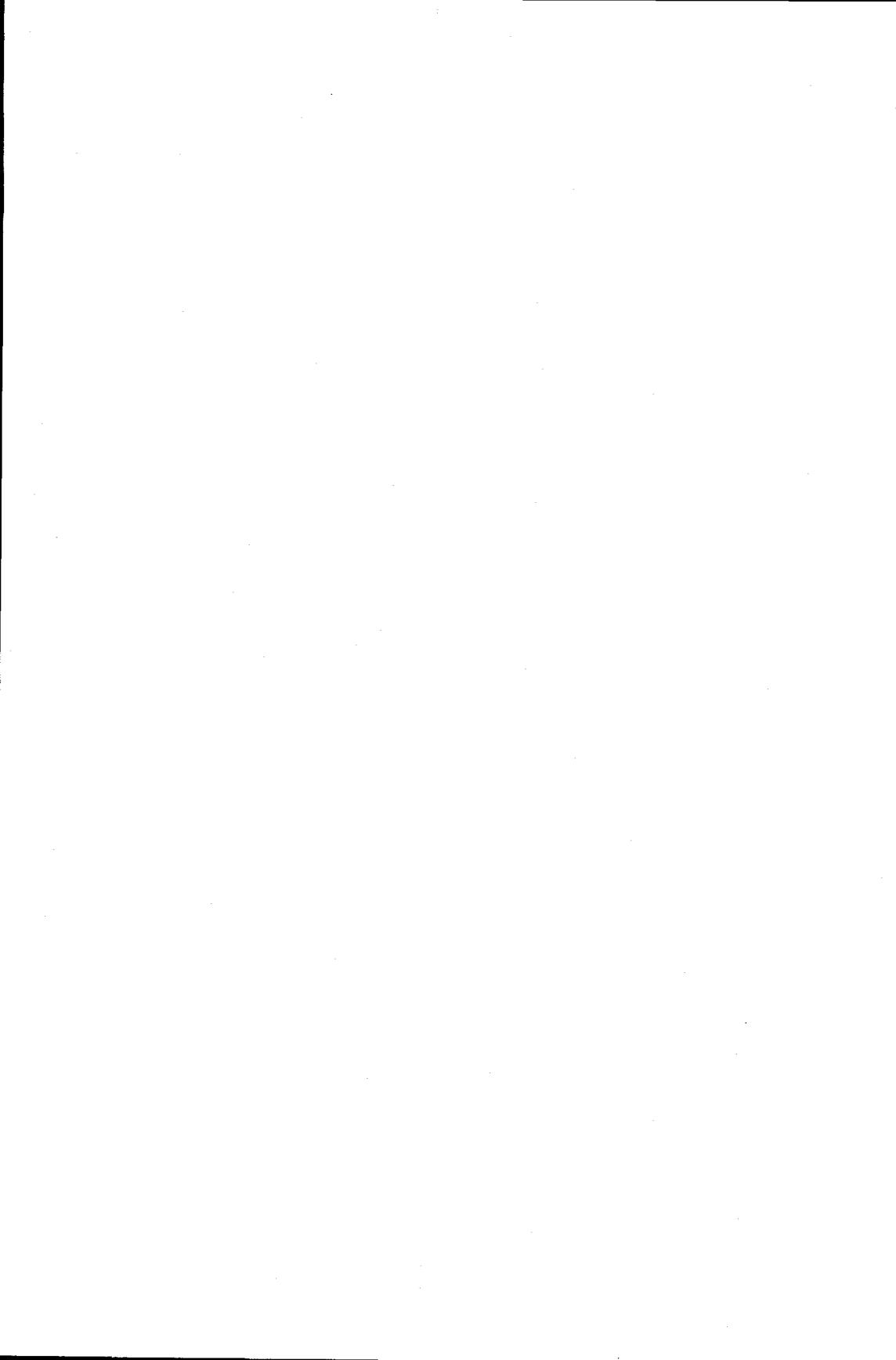
ber Governments of the Council should convene a Conference of European and African Governments to discuss the conclusions of the Experts.

Unhappily, circumstances in 1958 were not propitious for the holding of such a Conference.

In a fresh effort to get consultations started, the Assembly, in January 1960, made new proposals¹. It took up once again the suggestion that there should be a conference of European and African Governments, but this time it proposed that the conference should, if possible, be held in Africa and that all member countries of the Council and all the African countries interested, as well as all the competent international organisations, should take part. It also urged that, in the light of the principles set forth above, the conference should pay special attention to the practical proposals contained in the two reports relating to an Investment Statute and a Guarantee Fund and to technical assistance.

It is now for the Governments, both of Europe and of Africa, to respond to the Assembly's appeal. They alone can ensure that consultations are at last begun between Europe and Africa, thus offering the hope of a lasting co-operation.

1. Recommendation 223.



CHAPTER III

PROPOSALS FOR ACTION

On the basis of the principles which we have just outlined the group of independent experts put forward a series of proposals for action, most of which were endorsed by the Consultative Assembly in Recommendation 159 (May 1958).

The experts considered that it would be desirable for technical purposes to set up a Development Bank for Africa, similar to IBRD¹ and an Investment Fund similar to SUNFED². Conscious, however, that such a proposal would probably be greeted with some hesitation, they confined themselves to suggesting an initial step which they felt to be the essential minimum, namely the establishment of a guarantee fund against the political risks incurred by private investments in Africa. With regard to technical assistance, the experts suggested that, following suitable amendments to its Statute, recourse should be had to the services of an organisation which had already been tried and tested, namely CCTA³. Lastly, as regards commercial assistance, they not only advocated the liberalisation of trade between European and African partners, but also an endeavour to reach common policies among the world organisations competent to deal with the stabilisation of prices for raw materials on the world markets.

In the above-mentioned Recommendation 159 the Assembly requested the Committee of Ministers to convene a Europe-Africa Conference for the purpose of giving effect to the most important of these proposals, namely:

- (a) the drafting of an Investment Statute,
- (b) the establishment of a Guarantee and Financial Assistance Fund,
- (c) the expansion of technical assistance, and

1. International Bank for Reconstruction and Development.

2. Special United Nations Fund for Economic Development.

3. Commission for Technical Co-operation in Africa South of the Sahara.

(d) the setting in motion of adequate machinery for co-operation, comprising the joint examination by African and European Governments of development programmes for the countries of Africa.

The experts' proposal on trade relations and the stabilisation of the markets in raw materials was not endorsed by the Assembly, which felt that these matters could more suitably be handled by the larger-scale international bodies such as GATT¹ and FAO².

Although the Committee of Ministers deferred a decision on the proposed Conference, the Assembly considered that it should not on that account refrain from going ahead with its other plans, and in October 1958 it decided to prepare detailed proposals for an Investment Statute, a Guarantee Fund against political risks, and the expansion of technical assistance, without, for the moment, going into the question of the institutional machinery for co-operation. In September 1959³ and January 1960⁴ its Economic Committee submitted reports dealing with these various points in detail.

1. A Statute for private investments

The proposed Statute must take into account the interests not only of the investors but also of those under-developed countries in which the investments will be made. This is the really original feature of the scheme. It is not merely a matter of protecting the rights and interests of the providers of foreign capital, but of creating an instrument of co-operation that will be profitable both to African and to European countries.

Without claiming to draft a detailed Convention — for that will be the task of qualified negotiators from African and European countries meeting on equal terms — the Assembly wished to go further than a mere declaration of intent and it therefore

-
1. General Agreement on Tariffs and Trade.
 2. Food and Agriculture Organisation (a United Nations Specialised Agency).
 3. Doc. 1027 and Recommendation 211.
 4. Doc. 1073 and Recommendation 222.

sought to define the essential clauses which must be included in such a Convention.

There should first be a Preamble, stating the intentions of the Contracting Parties and clearly defining a number of basic concepts, such as "nationals" and "private foreign investments". On the latter point the Assembly proposed that the Convention should be limited to private investments made subsequently to its entry into force.

Future private investments to be protected by the Statute (including extensions of existing investments) should, the Assembly considered, comprise the following transactions:

— contribution of capital, intangible rights, capital equipment and services (insofar as such services are bound up with the previous contributions) conferring upon the contributor, directly or indirectly, a right of ownership and control;

— the granting of credits and loans (whether tied or untied) for periods of more than five years;

— the concession of intangible rights against payment of dues for periods exceeding five years.

Such operations may concern public or private parties in the debtor country (subscriptions by private individuals to African public loans, contributions to private or semi-private companies, for example).

With regard to the treatment of future foreign investments, the Assembly lays down the basic rule that they must be treated equitably, insofar as they are allowed by one of the Contracting Parties. The conditions to which foreign nationals are subject in respect of the administration and protection of their interests must therefore not be such as to lead to unreasonable discrimination. The Assembly's suggestion is that foreign investors should enjoy treatment not less favourable than that accorded to nationals of the borrowing country as regards:

— the possession and exercise of civil rights in regard to both personal and succession rights;

— full legal and judicial protection of individuals, property, rights and interests — which includes, *inter alia*, free access to

judicial and administrative authorities, the right to be assisted or represented, etc.;

— tax regulations.

While respecting the principle of *pacta sunt servanda*, the Assembly recognised that in some cases commitments entered into in all good faith might in the course of time become burdensome, not to say unjustified. It therefore suggested that in such cases the government concerned may, failing a friendly settlement, have recourse to arbitration in accordance with the procedure provided for in the Convention, in order to obtain relief from its commitments, subject, where necessary, to fair compensation.

As double taxation is a major obstacle to the expansion of foreign investment, the Convention should, it was thought, contain an article in which the Contracting Parties undertake to conclude agreements to avoid such taxation.

A key question which inevitably arises in connection with private foreign investments is freedom of transfer. In tackling this problem the Assembly has tried to reconcile two desiderata which are to some extent contradictory: on the one hand, the investor expects to be able freely to transfer his profits and earnings, and, in certain circumstances, his capital; on the other hand, the under-developed countries are clearly interested in seeing that such investments remain anchored in the national economy, that profits are used where they are made, and that control is exercised over capital exports which might upset the balance of payments of those countries.

For this reason the Assembly suggested distinguishing between current transactions and others. Freedom of transfer would be unconditionally guaranteed for the former, subject to any clauses in existing international agreements — such as that of the International Monetary Fund — which are designed to cope with circumstances rendering transfers difficult or impossible. For the other operations the Contracting Parties would be entitled, not to prohibit transfers, but to impose a reasonable period for their execution.

In a similar spirit of compromise, the Assembly decided not to prohibit the dispossession of foreign investors, whether direct by way of expropriation or nationalisation — or indirect — by exorbitant taxation, a ban on the distribution of profits, the fixing

of selling prices below cost, refusals to grant import or export licences, *etc.* Its aim, however, was to safeguard investors against any losses resulting from such dispossession. It is therefore suggested that the Convention should expressly stipulate that dispossession of the investment:

— may not be effected without appropriate legal procedure (in the case of direct dispossession)

— cannot result from discriminatory or exorbitant measures (in the case of indirect dispossession)

— cannot take place without fair compensation, paid without undue delay and transferable without restriction.

To give adequate guarantees to all the partners, the Convention would provide that no Contracting Party may waive any of its provisions without committing an infringement involving reparation. This principle should be accompanied by saving clauses to cover exceptional circumstances.

The Assembly also recommended a compulsory arbitration procedure for settling disputes arising out of the interpretation or application of the Convention: it is therefore intended that a protocol governing conciliation and compulsory arbitration should be attached to the Convention when the time comes. Recourse to arbitration would be open to the nationals of Contracting Parties as well as to the Parties themselves.

Lastly, in view of the practical impossibility of all the participating countries, jointly and severally, granting investors an automatic guarantee against any failure to observe the Convention, the Assembly has proposed the inclusion of a clause whereby the Contracting Parties undertake to establish in a special Convention, a Guarantee Fund ensuring investors who so request against political risks that may affect their investments in the African countries.

The Assembly's suggestions in this connection are analysed hereunder.

2. International Guarantee Fund for the protection of private investments against political risks

The Assembly's proposals for the creation of an International Guarantee Fund are perhaps the most original part of its

studies on the development of Africa. Such a Fund would have three important features:

— it would be international and be binding upon each and all of the European and African participating countries;

— it would be administered by the participating countries as a whole on a footing of equality;

— it would take for granted that, generally speaking, the participating countries were agreed upon the rights and duties of investors and borrowing countries.

The Assembly considers the creation of an International Guarantee Fund to be the essential complement to the proposed Investment Statute and a necessary means of stimulating private European investments in Africa. Investors will expect not only to receive fair treatment, but also to be given assurances that they will not have to bear non-commercial risks depriving them of the benefits of their investments.

The idea of a Guarantee Fund has called forth certain objections. First, importers of capital would have fewer scruples about interfering with foreign capital if they knew that compensation for loss would be paid in any event. Further, the operation of such a guarantee would result in the abolition of any discrimination between debtor countries, and thus those who were making the greatest efforts to win the foreigners' confidence would be deprived of the benefit of their co-operative attitude. These objections are not wholly unfounded, but, apart from the fact that the manner in which the guarantee is applied (for example, as a partial guarantee) may detract from their force, they will become less serious if the guarantee system can be set up within the framework of an active policy of co-operation between Europe and Africa. On that assumption, all the partners must trust one another and acknowledge in return that they must jointly share the responsibilities they may severally incur.

The Assembly considered that the creation of an international fund would not, *a priori*, preclude the operation of national guarantee funds such as already exist in the United States, Japan and Germany. In the event of national guarantee funds being set up by some of the participating countries, certain links would have to be envisaged between them and the International

Fund (e.g. re-insurance, the use of national funds as agents of the International Fund).

The Assembly attempted to outline a Convention setting up an International Guarantee Fund, without going into all the technical details.

The Convention would, first of all, include a definition of the private investments which might be guaranteed. In view of the optional nature of the insurance system administered by the Fund, only projected investments or those in course of negotiation could be guaranteed, if the investor so requested, but not investments already effected.

The Fund would perform two essential functions: to insure European private investors against political risks incurred in African countries, and to offer on behalf of the participating countries, individually and collectively, through the medium of the Fund, a guarantee for public loans issued by the African countries. The Assembly's suggestions in this connection will be examined in turn.

(a) *Insurance against political risks affecting private investments other than subscriptions to African public loans*

The Assembly suggested that the insurance, subscribed to optionally by the investors through payment of a premium, should be limited to three political risks: lack of or delay in transfer facilities, undue loss by the investors as a result of direct or indirect dispossession, in whole or in part, and losses by the investor as a result of complete or partial destruction by act of war, insurrection, riot or civil war. The Assembly did not propose that other non-commercial risks should be covered, such as exchange losses upon transfer, or natural disasters.

The guarantee against these risks would not be automatic; it would have to be requested by the investor with the consent of the Government of the borrowing country, in order to ensure that the guarantee would be limited to investments authorised by the Governments directly concerned, who would thus expressly incur liability.

To meet the objections mentioned above, compensation by the Fund in the event of any damage suffered would be limited to 80 or 90 % of the insured capital. The investor might also

cover himself for only some of the risks set forth above, or for only a part of his investments.

In the case of any damage for which the Fund paid compensation, the latter would automatically take over the rights of the insured in respect of the debtor's liability.

In regard both to the financing of the Fund and to payments in respect of damage, the Assembly proposes that the liability of the borrower country in which the damage was suffered and the joint guarantee of all the participating countries should come into play simultaneously.

Thus, apart from the premiums, whose rates would be the same for all the African countries participating in the Convention, the Fund would be financed by an initial endowment contributed by all the participating countries on the basis of a scale to be established (thus observing the principle of joint responsibility), and by special contributions to separate reserve accounts for each African country, paid by such countries in proportion to the European investments effected in their territory and guaranteed by the Fund with their agreement (liability principle).

Again, as regards the actual payment of compensation for any loss incurred, the Assembly suggests that compensation be charged in the first place to the special reserve account in the borrowing country — and to the Fund's other resources only in the event of this proving inadequate.

(b) *Covering of risks attaching to African public loans*

The Assembly proposed a system of guarantees for African public loans (by Governments, local authorities and public institutions) issued on the external financial markets or obtained from international finance houses.

The guarantee would have to be requested by the borrowing Government — and it would be granted by the competent organ of the Fund with the express object of making the participants jointly responsible. Once granted, the guarantee would apply without limitation, on terms agreed at the time of issue, to annual payments of interest and to redemptions as well as to the transfer of the sums involved. The placing of such loans could be greatly facilitated by the guarantee, since it is provided that the African securities in question would automatically enjoy certain privi-

leges accorded to national public loans of the participating countries (*e.g.* by making up the portfolio of controlled national institutions such as those administering savings, insurance and pension funds).

It is suggested that compensation under the guarantee would be paid out of the initial capital of the Fund, or, if this is insufficient, by contributions from the participating Governments in accordance with a scale to be determined.

3. Expansion of technical assistance by European countries

Africa's need for technical assistance is vast, and world resources are relatively limited. They are made available in various ways: through the United Nations and through multilateral, regional, bilateral and private arrangements. The problem facing the Assembly was how to find new resources in European countries which would satisfy the existing need and how to apply them on terms acceptable to all concerned, without setting up any new institutions or duplicating the work of others.

First problem: how to estimate requirements

The Assembly considers that it is up to the African countries themselves to work out their development programmes, to define the aims to be achieved and to make a choice between methods. It suggested that in each country this task should be assigned to a special institution, a "Development Agency" which would encourage the local services to undertake the necessary studies, co-ordinate the results and prepare a synthesis of projects and programmes, emphasising what resources were available locally and indicating how far help should be sought from abroad.

The Assembly recommended that national programmes should be centralised by a pan-African institution, so that the problems raised by their execution, particularly the amount of foreign aid needed, could be examined jointly. At this regional level there could be some degree of co-ordination between national programmes, on the one hand, and between foreign aid sources on the other. It was suggested that the choice at this level should lie with the "Foundation for Mutual Assistance in Africa" (FAMA), which is an agency of the Commission for

Technical Co-operation in Africa South of the Sahara (CCTA) at Lagos. At the same time the Assembly advocated closer liaison between that organisation and the United Nations Economic Commission for Africa. Under their statutes, however, FAMA/CCTA are not competent for African countries north of the Sahara. It is proposed either that the statutes be revised to cover the whole of Africa, or that a special organisation should be set up for the North African countries.

Second Problem: ascertaining European resources

The Assembly suggested that a body should be made permanently responsible for investigating the nature and extent of the resources which the various European countries could make available for *technical assistance* to Africa, including the secondment of instructors, teachers, experts and advisers, the training of African technical and scientific staff in Europe and the provision of educational and training material. The European Productivity Agency of the OEEC (EPA) appeared wholly suitable for conducting such an enquiry, since it was already carrying out similar studies for European problem areas, and in addition its work could be made easier by permanent liaison with FAMA/CCTA.

Third problem: applying resources to needs

The Assembly considered that the application of European resources to African needs should take place within FAMA/CCTA by means of joint meetings with EPA. This expedient would make possible a confrontation of points of view and a joint examination of technical assistance problems, while sundry available sources of assistance could be considered and their use to some extent co-ordinated. At these meetings the possibility could be considered of European countries covering Africa's needs, either through bilateral agreements between the Governments concerned, or through jointly financed multilateral projects.

The Assembly's proposals on technical assistance have the advantage that they could, if necessary, be put into effect without any preliminary Europe-Africa Conference. Each of the two institutions concerned, FAMA/CCTA and EPA/OEEC, is in a position to take the necessary action, provided that its Members agree.

CHAPTER IV

TOWARDS A NEW ERA

1. *Two continents*

The proposals outlined in the two preceding chapters represent the only specific plan put forward so far to promote Afro-European co-operation in the development of Africa. There is perhaps no need to dwell further on their boldness and originality, based as they are on the principle of far-reaching collaboration between two continents in their entirety. It is a fact that this notion has gained the support of those, whether Africans or Europeans, who have seriously studied the Consultative Assembly's proposals.

As we know, since 1st January 1958, when the EEC Treaty came into force, the countries of the Community have addressed themselves to the problem of African under-development by setting up the "Development Fund" provided for in the Treaty¹. In the nature of things, however, the Treaty could, on the European side, commit only the six signatory countries; on the African side, only the "countries and territories" which have "special relations" with these six countries are to be "associated" with the Common Market. The Treaty is thus based on concepts which the Consultative Assembly formally abandoned as long ago as 11th January 1957². Action by the Six, on the European no less than on the African side, can be applied only to part of the general problem.

The drawbacks of any such partial action are apparent. In 1957 the Group of Experts mentioned them in its report³ in speaking of the "distortion of trade patterns consequent upon the

1. The six countries are also, of course, Members of the Council of Europe.

2. See above, Chapter II, page 17.

3. Doc. 701, see above, page 17.

association of only part of Africa with the Common Market of the six countries...”

Elsewhere in their report the Experts say: “It is in the long-term interest of African and European countries alike to avoid a situation in which some African countries and territories are associated with the new European Economic Community while others are not given the opportunity to join that organisation”.

The Experts accordingly feel that *all* the African countries and territories, including those not covered by the Rome Treaty, should be able to become associated with a system of economic co-operation linking *all* the West European countries.

It is therefore all the more gratifying to find that today the concern of the Consultative Assembly appears to be shared by the Community, even though the action of the latter is necessarily confined to the framework of the six countries. The President of the EEC Commission, Mr. Walter Hallstein, stated at Strasbourg on 24th June 1960, at the Joint Meeting of members of the Consultative Assembly and members of the European Parliamentary Assembly:

“In the overall setting of development matters the problem of the associated territories in Africa is one for which the Community bears special responsibility. Conditions have changed considerably in this field since the conclusion of the Treaty of Rome, and this extremely important political development requires of the Commission and the other Institutions of the Community a policy which is at the same time positive and dynamic. This development, however, is not confined to those territories of Africa which are linked to the Community — and I think this is a point of very great importance. On the contrary, it covers the greater part of *the entire continent*¹. We therefore not only face the question of what should be the Community’s policy with regard to that area for which it has a special responsibility, but at the same time we have to seek to fit this policy into a wider framework.

Thus the interest and the responsibility of *Europe as a whole*¹ are involved and I should like to make two comments, as follows:

1. The italics are ours.

— We must make sure that the economic development of the African areas concerned is more or less uniform, thereby creating the conditions for a general and harmonious political evolution in these countries.

— Secondly, we must make sure that such co-operation as can already be discerned among the African States shall continue unimpaired and in a constructive spirit.

It follows from this that any solution which we may find for the countries associated with the Community must at the same time take into account the interests of the other African States.

This in turn means that any differences of opinion which may exist between European nations must not be transferred to their policies *vis-à-vis* the African countries. On the contrary, the similarities and the inherent connection between these tasks should become a means of achieving understanding among the European countries themselves."

It need hardly be said that this two-fold expansion of the six countries' endeavour suggested by Mr. Hallstein — two-fold, since he speaks, on the one hand, of "Europe as a whole" and, on the other hand, of "the greater part of the entire (African) Continent" — corresponds exactly to the hopes and ambitions of the Assembly of the Council of Europe.

2. Opportunities for closer contacts

Both in Europe and in Africa we are at present witnessing the emergence of new structures whose aim is a better organisation of the relations between States. In Europe this tendency has made great strides with the setting up of the European Economic Community and the European Free Trade Association. In Africa, too, there are signs that a parallel movement is taking shape, and it is to be expected that African countries will increasingly be led to form groups or federations in order jointly to tackle their common problems.

Against this background, co-operation between Europe and Africa for the economic and social development of the African continent can be seen to result from the application to a much wider geographic area of the same principles which, since the Council of Europe was founded, have had such a salutary in-

fluence on intra-European understanding and collaboration. The Council's vocation is to promote international co-operation on a regional basis. It is itself a regional organisation, of wide geographical scope, and is politically flexible. Practical co-operation in various fields has had the natural result of producing closer contacts between the fifteen member countries.

The discussions which, as we have seen, the Consultative Assembly hopes to promote between Europe and Africa, would be the first step towards a similar *rapprochement* between the two continents. The Europe-Africa Conference proposed by the Assembly should establish the climate of mutual confidence and good will which is the essential psychological prerequisite of any worth-while discussion of the possibilities of future co-operation.

Early in this booklet reference was made to the feelings of mistrust which sometimes affect the relations between the African and European countries. The fact that in the present case the initiative has come from the Council of Europe should help to secure a favourable reception for it in Africa. The Council is an institution where many opinions and many trends are represented. "Non-committed" countries, such as Sweden, Austria and Ireland, are Members of it alongside "committed" Powers; countries with a "colonial" tradition such as Belgium, France, Italy, the Netherlands and Great Britain, and — at an earlier period — the Federal Republic of Germany and Turkey, are represented alongside countries which have never had colonial responsibilities in Africa; Austria, Denmark, Greece, Iceland, Ireland, Luxembourg, Norway and Sweden.

But that is not all: "The maintenance and further realisation of human rights and fundamental freedoms", as it is said in Article 1 of the Statute, are the very foundation of the Council's action. One of the greatest contemporary achievements in the field of international law is the Human Rights Convention of the Council of Europe, which, for the first time in history, establishes an international court for the effective protection of the individual's rights. Today this Convention, which inspires the whole of the Council's work in Europe, finds no less an echo in Africa, and indeed throughout the world¹.

1. The Constitution of Nigeria, as well as the draft Constitutions of Sierra Leone and Kenya, include many of the provisions of the Human Rights Convention.

3. *Building the future*

More than fifteen centuries ago, an African to whom Europe and the world owe much, Saint Augustine, writing on African soil, said that the peace of mankind depended on concord in a well-ordered world¹. Since those far-off days the face of the world has changed. Empires have come and gone, great discoveries have transformed the lives of men, wars and revolutions have overthrown States, and new nations have been born. Yet through all the ages one thing has remained: it is man's constant longing for peace.

Today that longing is reflected in organisations and institutions whose aim is to improve international relations. But world peace requires more than this, for peoples, like individuals, need a basis of prosperity on which they can build a future that will reflect their aspirations and suit their capacities. Some measure of economic independence is essential in order for them to develop their spiritual and physical potential to the full. In short, they must be able to live with dignity as human beings.

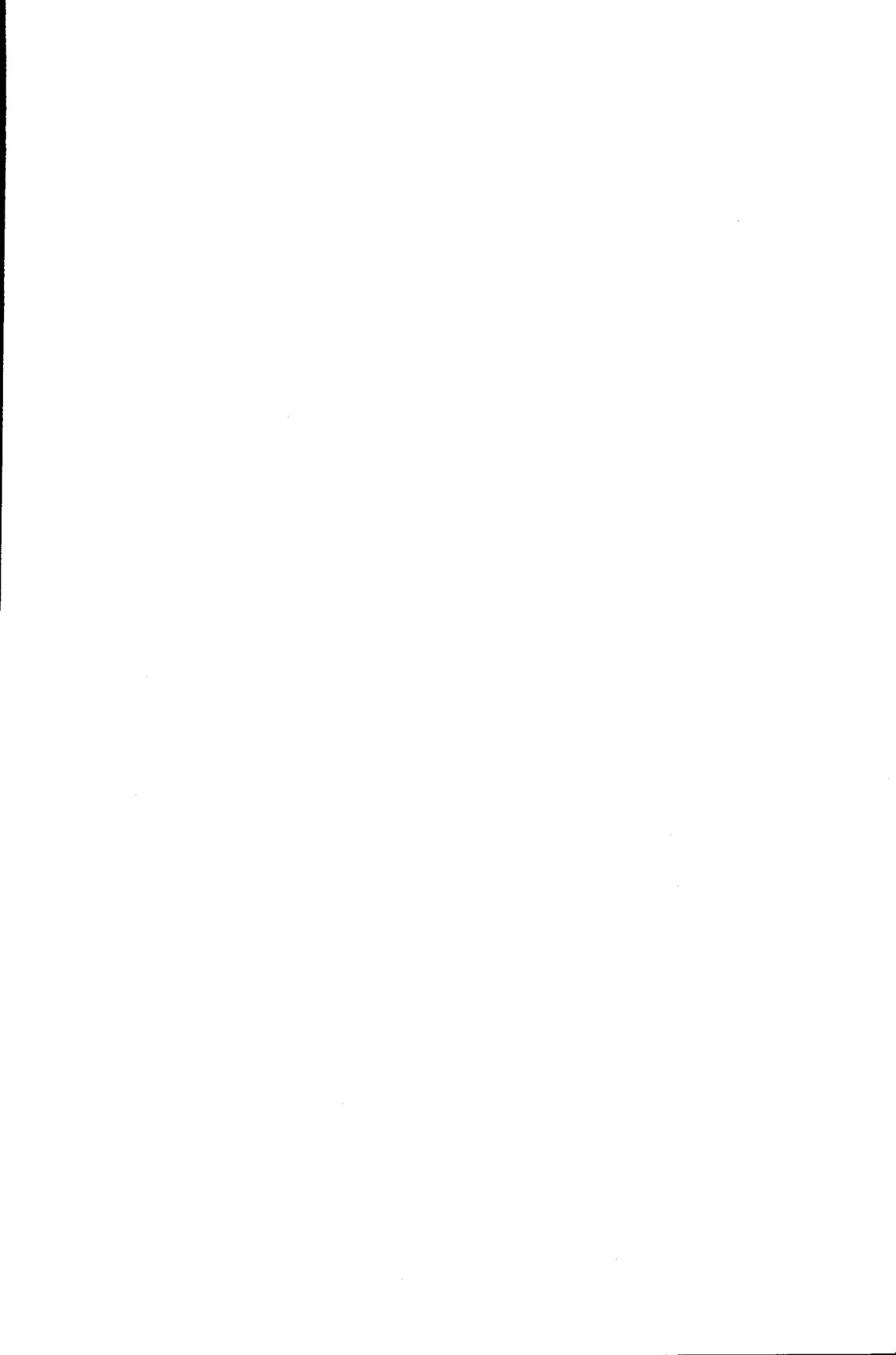
Seen in this light, the Consultative Assembly's projects are not merely a sensible undertaking with a purely material object, even though that aspect may have been strongly emphasised in the preceding chapters. They go further: they symbolise a spirit of co-operation which transcends the boundaries of continents and races.

Throughout history, the accomplishment, in common, of a grand design has provided a sure way of strengthening human solidarity. Today the grand design for both continents is the development of Africa. If the Europe and Africa of tomorrow are to come together in an atmosphere of confidence and concord, a start must be made through practical co-operation in a well-defined field.

Here lies the path along which we can attain the ideal which underlies the Council of Europe: for the Council's constant endeavour is to build a future that will, above all, be grounded in humanity; a future in which the dignity of man will be protected and upheld.

1. Saint Augustine : *De Civitate Dei* XIX, 13.





PRINTED IN FRANCE


STRASBOURG

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