

SOME LEGAL ISSUES INVOLVED IN THE  
ASSOCIATION OF THE EUROPEAN ECONOMIC COMMUNITY  
WITH THE AFRICAN AND MALAGASY STATES

Cormac K. H. O'Malley

Introduction

Relations between the European Economic Community (EEC)<sup>1</sup> and the former African possessions of France, Belgium and Italy have assisted in promoting the economic and social development of these possessions, now 18 independent republics.<sup>2</sup> The preamble to the Treaty of Rome, which established the EEC, indicated that the member states to that treaty desired "to confirm the solidarity which binds Europe and overseas countries" and "to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations."<sup>3</sup> Part IV of the treaty, establishing an Association of Overseas

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<sup>1</sup>Known as the Common Market, it began with the Treaty Establishing the European Economic Community, signed March 25, 1957, 298 U.N.T.S. 11 (effective date Jan. 1, 1958) [hereinafter cited as Treaty of Rome]. Belgium, France, Germany, Italy, Luxembourg and the Netherlands were Member States of the EEC. The community, as it is also referred to, is composed of the European parliament, a council, a commission and a Court of Justice. There is a division of the power of decision between the council and the commission. The former is composed of members of the governments represented, whereas the latter has only government appointees. The commission is the effective administrative body.

<sup>2</sup>The following overseas territories are listed in the Treaty of Rome, Annex IV: French West Africa; Senegal, Guinea, Ivory Coast, Dahomey, Mauritania, the Niger and the Upper Volta; French Equatorial Africa; the Middle Congo, Ubangi-Shari, Chad and Gabon; Madagascar; the autonomous Republic of Togoland; the French Trusteeship in the Cameroons; the Belgian Congo and Rwanda-Urundi; and the Italian Trusteeship Territory of Somalialand.

<sup>3</sup>Treaty of Rome, Preamble, para. 7.

Countries and Territories, stated that the aim of this association was "to permit the furthering of the interests and prosperity of the inhabitants of these countries and territories in such a manner as to lead them to the economic, social, and cultural development which they expect."<sup>4</sup> These overseas countries and territories were colonial possessions in 1957, but by 1962, 19 of them had become independent republics.<sup>5</sup> The association, in both the pre- and post-independence periods, has partly fulfilled these general expectations.

The EEC began when the six European states considered forming an economic community as a result of the success<sup>6</sup> they had achieved in the European Coal and Steel Community, formed in 1957.<sup>7</sup> The question of including the overseas territories of the European states in the proposed community was not fully discussed until February, 1957, just two months before the signing of the Treaty of Rome.<sup>8</sup> At that time France, despite Dutch and German opposition, made French participation in the proposed community dependent upon the establishment of an association of special financial and trading links between the

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<sup>4</sup>Ibid., Part IV, The Association of Overseas Countries and Territories, Art. 131, para. 3 [hereinafter cited as the Association].

<sup>5</sup>In order to avoid the confusion caused by the lack of definition of countries and territories in the Treaty of Rome, in this paper the term "territories" is applied to overseas possessions not yet independent and the term "countries" is applied to territories which have become independent.

<sup>6</sup>H. Junckerstorff, International Manual on the European Economic Community (1963), 25.

<sup>7</sup>Treaty Establishing the European Coal and Steel Community, signed April 18, 1951, 261 U.N.T.S. 140 (effective date July 23, 1952).

<sup>8</sup>Van Benthem van den Berg, "The New Convention of Association with the African States," Common Market Law Review, 1 (1963), 156, 159; P. Okigbo, Africa and the Common Market (1967), 26-27.

community and French overseas possessions.<sup>9</sup> The Dutch and Germans acceded, but only after limiting the association sought by France.<sup>10</sup> The Implementing Convention of the Association<sup>11</sup> was thus confined to a period of five years,<sup>12</sup> even though the treaty itself was for an unlimited period.<sup>13</sup> The association had three main provisions: a free trade area, the European Development Fund, and the right of establishment.

One fundamental aim of the association was the achievement of mutual trading benefits for the members of the Common Market and their overseas territories. The latter were to profit from the same intra-Common Market tariff reductions as the member states,<sup>14</sup> but, in turn, they were not to favor member states with whom they maintained special relations.<sup>15</sup> To assist the fiscal needs of these overseas territories, however, provision was made for special customs duties to correspond to requirements for industrialization and development.<sup>16</sup>

In the Implementing Convention annexed to the Treaty of Rome, provision was made to promote general social and economic development by establishing the first European Development Fund (EDF).<sup>17</sup> The purpose of the EDF was to finance non-profit-making projects run by governments or governmental agencies and funded by out-right grants. The total figure of \$581,250,000 was to be contributed by member states over five years and in varying

<sup>9</sup>Opera Mundi Europe, Press Release No. 476 (Aug. 29, 1968), 1.

<sup>10</sup>Van Benthem van den Berg, supra, note 8, p. 160.

<sup>11</sup>Treaty of Rome, Implementing Convention Relating to the Association with the Community of the Overseas Countries and Territories, Arts. 1-7 [hereinafter cited as Implementing Convention].

<sup>12</sup>Treaty of Rome, Art. 136(1). <sup>13</sup>Ibid., Art. 240.

<sup>14</sup>Ibid., Arts. 12-17, 132-33. <sup>15</sup>Ibid., Art. 132(2).

<sup>16</sup>Ibid., Art. 133(3).

<sup>17</sup>Implementing Convention, Arts. 1-7.

proportions.<sup>18</sup> The EDF was to be administered by the commission,<sup>19</sup> but final decisions were to be made by the council.<sup>20</sup> "The responsible authorities of the overseas ... territories ..." were to submit projects to the Commission after "agreement with the local authorities" had been reached.<sup>21</sup> Beyond this provision, however, these territories had no voice in community decisions affecting their own territory.

The Treaty of Rome sought to abolish obstacles limiting the right of establishment<sup>22</sup> as well as the free movement of persons, services, and capital,<sup>23</sup> but the association between the Common Market and its overseas territories included provisions for only the right of establishment<sup>24</sup> and the free movement of workers.<sup>25</sup> The right of establishment "to engage in and carry on non-wage-earning activities, and also to set up and manage enterprises" in accordance with local laws,<sup>26</sup> was to be extended equally and progressively to all member states operating in the overseas territories.<sup>27</sup> No definite program was included in the Treaty of Rome, but the council was authorized to lay down a program to accomplish these ends.<sup>28</sup>

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<sup>18</sup>Ibid., Annex A.

<sup>19</sup>Ibid., Art. 1, para. 3.

<sup>20</sup>Ibid., Art. 5(2), para. 4.

<sup>21</sup>Ibid., Art. 2.

<sup>22</sup>Treaty of Rome, Arts. 52-58. Article 52, para. 2, defines the right of establishment as "the right to engage in and carry on non-wage-earning activities, and also to set up and manage enterprises" in accordance with the laws laid down by a country for its own nationals.

<sup>23</sup>Ibid., Title III, The Free Movement of Persons, Services and Capital, Arts. 43-73.

<sup>24</sup>Ibid., Art. 132(5).

<sup>25</sup>Ibid., Art. 135. This provision was to be governed by subsequent conventions requiring unanimous agreement of member states.

<sup>26</sup>Ibid., Arts. 52(2), 58.

<sup>27</sup>Implementing Convention, Art. 8; no discrimination was to be shown in favor of a member state with which an overseas territory had special relations.

<sup>28</sup>Treaty of Rome, Arts. 54(1), 189.

The association established by the Treaty of Rome held great potential for assisting the development of the overseas territories. The framework for increased trade and financial cooperation was established, even though the controlling power lay ultimately with the commission and the council. When the territories became independent, the association had to be modified. These structural changes were confirmed by the signing of the Convention of Association in July, 1963.<sup>29</sup> This paper will comment on some of the legal issues created by the evolution of this association from 1957-1968, namely: the devolution of the association upon the independent countries, the transitional provisions after the first five-year period expired, the legal basis and structure of the Yaoundé Convention, the immunities applied to the institutions of the association, the extension of the right of establishment and free movement of capital within the association, and the creation of a Court of Arbitration.

#### Devolution of the Association

The Treaty of Rome made no mention of how the association would function when the overseas territories became independent.<sup>30</sup> This problem raised fundamental questions

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<sup>29</sup>Convention of Association between the European Economic Community and the African and Malagasy States Associated with the Community, signed July 20, 1963, 7 E.E.C.J.O. 1429 (1964) (effective date June 1, 1964) [hereinafter cited as Yaoundé Convention]. After the Yaoundé Convention the African countries connected with the EEC were known as the Associated States.

<sup>30</sup>Since Ghana had become independent on March 6, 1957, the parties to the Treaty of Rome must have been aware of the problem of independence. The French were well aware of these problems. In 1956, the French law No. 56-619 of June 23, 1956 [1956] J.O.R.F. 5782, [1956] D.S.L. 437, authorized the government to start reforms in the overseas territories. The Loi-Cadre, as this law is commonly known, established a constitution, an executive with limited powers and a territorial assembly in each colony. Shortly after the Treaty of Rome was signed, more laws were passed pertaining to the reorganization of the colonies. Decree

concerning the legal basis and duration of the association and how the provisions of the association relating to the former territories would apply to the newly independent countries. The colonial powers had always made decisions for their overseas territories, but, after independence, these territories became sovereign states, capable of making their own decisions. If these new states were to be included in all, or part, of the decision-making-process of the association, then a restructuring was required. An examination of the underlying premises of the association was necessary, but opinions differed on how to resolve the situation.

On the one hand, the association could be considered established for an unlimited period of time.<sup>31</sup> Article 136 of the Treaty of Rome indicated that the Implementing Convention should determine the procedures concerning the Association "[f]or a first period of five years" [emphasis added] and that the council would determine provisions for a future period.<sup>32</sup> On the other hand, Article 238 of the Treaty of Rome provided for the community to conclude an association with third party states "embodying reciprocal rights and obligations, joint actions and special procedures."<sup>33</sup> The French employed Article 136 of the Treaty of Rome to maintain that the association was formed for an unlimited period, whereas the Germans and Dutch favored an entirely new association based on Article 238. A third view, and that which ultimately prevailed in the council, was based on the argument that, firstly, the association had been established

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No. 57-458 of April 4, 1957 [1957] J.O.R.F. 3857, [1957] D.L. 300; Decree No. 57-462 of April 4, 1957 [1957] J.O.R.F. 3869, [1957] D.L. 308.

<sup>31</sup>Treaty of Rome, Arts. 131, 240. Article 131 provided for an association in accordance with the Treaty of Rome for non-European territories of member states and Article 240 indicated that the Treaty was concluded for an unlimited period of time.

<sup>32</sup>Ibid., Art. 136.

<sup>33</sup>Ibid., Art. 238. An association could be made with third countries, a union of states, or an international organization.

for an unlimited period, secondly, that the existing association had not lapsed upon accession to independence of the overseas territories, thirdly, that the new ties of the association would be based partly on article 136 and partly on Article 238.<sup>34</sup>

The timetable for independence in former French West Africa and French Equatorial Africa advanced rapidly and was completed by 1960.<sup>35</sup> Shortly after his election as President of France in 1958, General de Gaulle offered the French people, at home and overseas, a choice between immediate independence or full internal government within a French Community.<sup>36</sup> All of the African territories except Guinea voted to remain within a new French Community.<sup>37</sup> Guinea was then free to apply for association with the EEC under either Article 136 or Article 238 of the Treaty of Rome, as mentioned above. However, since the council had to vote unanimously, and since France had a seat on the council, French opposition could have barred the success of such an application.<sup>38</sup> In fact, no decision was reached because Guinea did not apply for

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<sup>34</sup>EEC Commission, Fifth General Report of the Activities of the Community (1962), 191 [hereinafter cited as EEC Commission, General Report].

<sup>35</sup>Overseas territories became independent as follows: Guinea, Oct. 2, 1958; Cameroon, Jan. 1, 1960; Togo, April 22, 1960; Senegal, June 20, 1960; Mali, June 20, 1960; Madagascar, June 26, 1960; Congo-Kinshasa, June 30, 1960; Somalia, July 1, 1960; Dahomey, Aug. 1, 1960; Niger, Aug. 3, 1960; Upper-Volta, Aug. 5, 1960; Ivory Coast, Aug. 7, 1960; Chad, Aug. 11, 1960; Central African Republic, Aug. 13, 1960; Congo-Brazzaville, Aug. 15, 1960; Gabon, Aug. 17, 1960; Mauritania, Nov. 28, 1960; Burundi, July 1, 1962; Rwanda, July 1, 1962.

<sup>36</sup>French Constitution of Oct. 4, 1958 [1958] J.O.R.F. 9151, D. [1958] D.L. 661, Arts. 76-77; J. Fage, West Africa (1962), p. 211.

<sup>37</sup>J. Fage, West Africa (1962), p. 211.

<sup>38</sup>Treaty of Rome, Arts. 136, para. 2; 238, para. 2.

association. This same problem was to arise again when other overseas possessions became independent.<sup>39</sup>

As other territories reached independence, the EEC had to determine the circumstances under which the association would be maintained. In January, 1960, the President of Cameroon wrote the President of the EEC requesting a continuation of the association under Article 136 of the Treaty of Rome.<sup>40</sup> In April, the President of Togo wrote requesting a new association under Article 238.<sup>41</sup> In the European parliament several questions were asked of the EEC commission as to whether the independent states had the option of association under Article 136 or Article 238, but the commission gave no definitive reply.<sup>42</sup> At the council meeting in June, 1960, the general problems connected with independence were discussed, and the council determined that accession to independence would not end the association.<sup>43</sup> Thereafter, the president of the EEC replied favorably to the requests of both Cameroon and Togo.<sup>44</sup> By October, the council had decided that the association was to be maintained by common agreement until further notice,<sup>45</sup> but, at the same time, the council recognized the relationships between the community and the independent states had to be re-adjusted.<sup>46</sup> By

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<sup>39</sup>Resolution on Problems of Association, E.E.C.J.O., 2 (1959), 1267; See Bull. of the EEC, No. 12 (1962), p. 54. [hereinafter cited as EEC Bull.].

<sup>40</sup>Written Question No. 58, E.E.C.J.O., 3 (1960), 505, 507.

<sup>41</sup>EEC Bull., No. 8 (1960), p. 63.

<sup>42</sup>E.E.C.J.O., 3 (1960), 505, 507; E.E.C.J.O., 3 (1960), 508; E.E.C.J.O., 3 (1960), 610; E.E.C.J.O., 3 (1960), 770.

<sup>43</sup>EEC Bull., No. 6 (1960), p. 52; EEC Bull., No. 7 (1960), p. 53; see Gozard, "L'avenir des Rapports des Pays d'Outre-mer et du Marché Commune," Revue du Marché Commune No. 229 (1960), pp. 317-19.

<sup>44</sup>EEC Bull., No. 7 (1960), p. 53.

<sup>45</sup>EEC Bull., No. 10 (1960), p. 50.

<sup>46</sup>EEC Commission, Fourth General Report (1961), p. 166. Readjustments were to be considered in four fields:



the end of 1960 a procedure was established whereby the president of each new state would write the president of the EEC affirming the desire of his country to remain within the association. The EEC president, after conferring with the council, would reply accordingly. As the 18 territories became independent, they followed this procedure of accession to the provisions of the association.<sup>47</sup>

### Transitional Period

The Implementing Convention was to be effective for five years, until December 31, 1962.<sup>48</sup> But since, as noted above, the Yaoundé Convention had not come into force by that time, transitional provisions had to be established to avoid a hiatus in the operations of the association. The Treaty of Rome had provided for the maintenance of import quotas<sup>49</sup> and right of establishment directives after the five year period.<sup>50</sup> However, no arrangements had been made for the remaining sections of the Implementing Convention. The council<sup>51</sup> and commission meetings in September, 1962,<sup>52</sup> and the European parliament in October,<sup>53</sup> did consider some of these problems, but

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1) direct submission of social and economic projects to EEC by countries, 2) provisions for representatives to the community, 3) ad hoc meetings with representatives and commission, and 4) ad hoc meetings of council and ministers of overseas countries.

<sup>47</sup>EEC Commission, Fifth General Report (1962), p. 188; EEC Commission, Sixth General Report (1963), p. 190.

<sup>48</sup>Implementing Convention, Art. 28. Deadline was five years after Jan. 1, 1958, the effective date of the Treaty of Rome.

<sup>49</sup>Ibid., Art. 14.

<sup>50</sup>Ibid.

<sup>51</sup>EEC Bull., No. 11 (1962), p. 51.

<sup>52</sup>E.E.C.J.O., 5 (1962), 2341. Commission meeting on Sept. 26, 1962.

<sup>53</sup>E.E.C.J.O., 5 (1962), 2673, 1675. European parliament session on Oct. 19, 1962.

attention was focused on preparing the final draft for the Yaoundé Convention before the expiration date of the Implementing Convention.<sup>54</sup> Not until the council meeting of December 17-18 were transitional measures considered in depth.<sup>55</sup> Agreement was reached on the attitude that the member states would maintain at the fifth ministerial meeting of the EEC Council and the representatives of the associated states.<sup>56</sup> That meeting gave final approval to the draft convention,<sup>57</sup> as well as a "Declaration Concerning Transitional Provisions."<sup>58</sup>

The measures set forth in the declaration were considered inadequate to avoid a break in the continuity of the association, and early in 1963 there were demands for additional transitional provisions.<sup>59</sup> The council passed another resolution in March,<sup>60</sup> and a few days later a European parliament resolution called for additional provisions.<sup>61</sup> Italian and Dutch opposition to the signing of the convention delayed action by the council,<sup>62</sup> but

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<sup>54</sup>EEC Bull., No. 12 (1962), p. 69.

<sup>55</sup>Written Question No. 153, E.E.C.J.O., 6 (1963), 667, 668.

<sup>56</sup>EEC Bull., No. 2 (1963), p. 69.

<sup>57</sup>EEC Bull., No. 2 (1963), p. 21.

<sup>58</sup>Yaoundé Convention, Annex I, Declaration Concerning Transitional Provisions, adopted Dec. 19, 1962 [hereinafter cited as the Declaration]. The Declaration was to be effective from Jan. 1, 1963, through Dec. 31, 1963, or until the date of entry into force of the Yaoundé Convention.

<sup>59</sup>EEC Bull., No. 4 (1963), p. 28.

<sup>60</sup>EEC Bull., No. 5 (1963), p. 40.

<sup>61</sup>EEC Commission, Sixth General Report (1963), p. 199.

<sup>62</sup>Ibid., p. 198. It may be noted that President de Gaulle had announced his opposition to British entry into the Common Market on Jan. 14, 1963. The French veto on the British application had repercussions within the council. The Dutch and Italians claimed they could not vote on the convention issue, which was of prime concern to France, until the French had made some concessions on

by May, 1963, the council members had reached agreement and had passed additional interim provisions.<sup>63</sup> By June many transitional measures had been established, including customs duties, import quotas, the right of establishment, and advance funding for programs under the new convention.<sup>64</sup>

It is important to note that the "Declaration Concerning Transitional Provisions" was issued only by representatives of the governments of the member states and the associated states, and not by the council or any other community organ.<sup>65</sup> At that time, the representatives of the associated states were accredited by the community only to facilitate the holding of periodic meetings in which there could be a broad exchange of views.<sup>66</sup> Association affairs were still completely controlled by the community.<sup>67</sup> Thus, the declaration could be considered neither collateral to the Treaty of Rome nor binding upon any of the community institutions. The declaration merely expressed the intent of the governments concerned to take certain action.<sup>68</sup>

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the possibility of extending the association to some of the Commonwealth countries in Africa. When concessions were made in April, 1963, Dutch and Italian opposition ended.

<sup>63</sup>EEC Bull., No. 7 (1963), pp. 42-43.

<sup>64</sup>EEC Bull., No. 8 (1963), p. 41. On June 6, 1963, the commission called a meeting of representatives of member and associated states to discuss: 1) transitional customs arrangements, 2) quota reductions, 3) the effect of the declaration, and 4) the implementation of the newly approved convention.

<sup>65</sup>Declaration, supra, note 58.

<sup>66</sup>EEC Commission, Fifth General Report (1962), p. 188.

<sup>67</sup>See generally: Feld, "Association Agreements with the European Commission: A Comparative Analysis," Int'l. Organization, 19 (1965), 237.

<sup>68</sup>See Restatement (Second), Foreign Relations Law of the United States (1965), p. 115(a) and comment on p. 365.

Throughout this transitional period, from January 1, 1963, to June 1, 1964, no African state passed any legislation with respect to these provisions; only Dahomey enacted a law, when the declaration expired on December 31, 1963.<sup>69</sup> This lack of legislative action, when compared with the extra-community status of the declaration, indicates a consensus that these provisional measures were considered by the governments concerned to be sufficiently binding and self-executing so that there was no need for specific legislation.

### Ratification

The Yaoundé Convention, signed by the plenipotentiaries of the six member states, the 18 associated states, the council, and the commission, was not self-executing, for it did not manifest an intention that its provisions be effective under the domestic laws of the various states at the time it was signed.<sup>70</sup> In fact, provision was made in the convention itself for its coming into force after ratification by a specific number of signatory states.<sup>71</sup> For certain articles of the convention, such as the capital movement provisions, additional implementing legislation was to be enacted apart from the ratification itself.<sup>72</sup>

The ratification process for international agreements varies in each state, depending upon the constitutional provisions involved and the nature of the agreement. The constitutions of the associated states permit the president to negotiate and ratify international agreements, but agreements which modify domestic laws must be ratified by the legislative assembly in accordance with normal procedure for a national law.<sup>73</sup> Since articles in

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<sup>69</sup>Dahomey, Decree No. 20 of March 20, 1964 [1964] J.O.R.D.

<sup>70</sup>See Restatement, supra, note 68 at 154(1).

<sup>71</sup>Yaoundé Convention, Art. 57(1).

<sup>72</sup>Ibid., Arts. 35-37.

<sup>73</sup>A. Peaslee, Constitutions of Nations: Africa, Vol. I (3d ed., 1965), includes the following African constitutions: Burundi, July 1, 1962, Art. 60, at 19;

the Yaoundé Convention were to modify domestic laws, the legislative assemblies had to enact laws authorizing the presidents to ratify the agreement.<sup>74</sup> Only later could the president ratify the convention.<sup>75</sup>

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Cameroon, Sept. 1, 1961, Art. 12, at 34; Central African Republic, Dec. 21, 1962, Art. 33, at 50; Chad, April 16, 1962, Arts. 67,70, at 65; Congo-Brazzaville, Dec. 8, 1963, Art. 61, at 85; Congo-Kinshasa, May 30, 1964, Art. 9, at 102; Dahomey, Jan. 11, 1964, Arts. 92,93, at 151; Gabon, Feb. 21, 1961, Arts. 51,52, at 194; Ivory Coast, Nov. 3, 1960, Arts. 53,54, at 242; Malagasy, June 6, 1962, Art. 14, at 456; Mali, Jan. 20, 1961, Art. 38, at 535; Mauritania, May 20, 1961, Art. 44, at 549; Niger, Nov. 8, 1960, Arts. 53,54, at 578; Rwanda, Nov. 24, 1962, Art. 56(i), at 675; Senegal, March 3, 1963, Arts. 76,77, at 697; Somalia, July 1, 1960, Art. 67, at 776; Togo, May 5, 1963, Arts. 66,67, at 890; and Upper Volta, Nov. 9, 1960, Arts. 53,54, at 1012.

<sup>74</sup>These enactments are as follows: Cameroon, Law No. 63-31 of Nov. 5, 1963 [1963] J.O.R.Cam. Supp. No. 4, at 219; Dahomey, Order No. 13 of Nov. 16, 1963 [1963] J.O.R.D. Special No. 30, at 8; Chad, Decree No. 214 of Nov. 16, 1963 [1963] J.O.R.Tchad 598; Upper Volta, Law No. 39-63 of Dec. 4, 1963 [1964] J.O.R.H.-V.Special No. 52, at 153; Mauritania, Law No. 63-227 of Dec. 19, 1963 [1964] J.O.R.Maur. 7; Ivory Coast, Law No. 63-508 of Dec. 9, 1963 [1964] J.O.R.C.I. 54; Malagasy, Law No. 63-027 of Dec. 24, 1963 [1963] J.O.R.M. 2783; Niger, Law No. 63-052 of Dec. 26, 1963 [1964] J.O.R.Niger 2; Central African Republic, Law No. 63-439 of Dec. 27, 1963 [1964] J.O.R.Centraf. 63; Togo, Law No. 63-21 of Dec. 31, 1963 [1963] J.O.R.T. Special No. 239, at 1; Senegal, Law No. 64-12 of Jan. 24, 1964 [1964] J.O.R.Sen. 370; Mali, Law No. 64-1 of Feb. 20, 1964 [1964] J.O.R.Mali 263; Congo-Brazzaville, Law No. 4-64 of June 18, 1964 [1964] J.O.R. Congo 485.

<sup>75</sup>The presidential ratifications are as follows: Cameroon, Decree No. 63-404 of Nov. 16, 1963 [1963] J.O.R.Cam. 1196; Upper-Volta, Decree No. 622 of Dec. 5, 1963 [1963] J.O.R.H.-V. Special No. 52(b), at 153; Ivory Coast, Decree No. 63-521 of Dec. 20, 1963 [1964] J.O.R.C.I. 72; Niger, Decree No. 63-234 of Dec. 31, 1963 [1964] J.O.R.N. 3; Central African Republic, Decree No.

### The Yaoundé Convention

The general aims of the Yaoundé Convention were similar to those of the association of overseas territories in the Treaty of Rome.<sup>76</sup> These aims are: the development of economic relations with the community; the pursuit of economic, social and cultural progress; the further industrialization and diversification of the economies of the African states; and an increase in international trade.<sup>77</sup> The preamble to the convention included the phrase, "... for co-operation on the basis of complete equality ..." [emphasis added], but this parity, as we shall see, is limited.<sup>78</sup>

The Yaoundé Convention showed the net result of three years of negotiations between the member states, the community, and the newly independent states formerly included as territories in the association. The 64 articles of the convention, along with six protocols and eleven annexes, provided many specific provisions for the implementation of the above objectives. The convention was in five sections: Trade, Financial and Technical Cooperation, Right of Establishment, Association Institutions, and General Provisions.

In trade relations there would be: (1) a progressive reduction of customs duties and charges by member states on specific African products,<sup>79</sup> and by associated states

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63-337 of Dec. 27, 1963 [1964] J.O.R. Centraf. 125; Malagasy, Decree No. 64-040 of Jan. 29, 1964 [1964] J.O.R.M. 337; Senegal, Decree No. 64-431 of June 10, 1964 [1964] J.O.R.Sen. 826; Mali, Decree No. 22 of Feb. 26, 1964 [1964] J.O.R.Mali 237; Dahomey, Law No. 64-12 of July 15, 1964 [1964] J.O.R.D. 558.

<sup>76</sup>Treaty of Rome, Art. 132; Yaoundé Convention, Preamble.

<sup>77</sup>Yaoundé Convention, Art. 1.

<sup>78</sup>Ibid., Preamble, para. 3.

<sup>79</sup>Ibid., Arts. 2-4.

on European products;<sup>80</sup> (2) a termination of quantitative restrictions on European products in African states within four years;<sup>81</sup> (3) a consideration of agricultural<sup>82</sup> and commercial policies;<sup>83</sup> and (4) an elimination of discriminatory trade practices.<sup>84</sup>

To continue the financial cooperation, a second EDF was established along lines similar to the first, but with some fundamental changes. Total funds available were increased from \$581,250,000 to \$800,000,000 and were to be allocated as follows: \$620,000,000 for outright grants; \$46,000,000 for special loans; and \$64,000,000 for regular loans to be arranged through the EIB.<sup>85</sup> Grants and loans were expanded from those for economic and social investments to include those for general technical cooperation and financial aid for diversification, production, and price stabilization.<sup>86</sup> In addition, an Emergency Reserve Fund was created to be used in case of natural disasters.<sup>87</sup> Protocol number five of the convention indicated specific provisions to be followed for the administration of the financial aids, but, as in the first EDF, the council and the commission made the decisions.<sup>88</sup> With more funds thus available, and with greater flexibility in policy, the second EDF was better able than its predecessor to assist in the development processes.

With respect to the right of establishment and services, the principle stated in the Treaty of Rome, i.e. to place on an equal footing all nationals and companies of

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<sup>80</sup>Ibid., Art. 3(2).

<sup>81</sup>Ibid., Protocol No. 4 Relating to Tropical Products.

<sup>82</sup>Yaoundé Convention, Art. 11.

<sup>83</sup>Ibid., Art. 12.

<sup>84</sup>Ibid., Art. 14.

<sup>85</sup>Ibid., Art. 16.

<sup>86</sup>Ibid., Art. 17.

<sup>87</sup>Ibid., Protocol No. 5 Concerning the Administration of the Financial Aids, Arts. 39, 40.

<sup>88</sup>Yaoundé Convention, Arts. 21, 22.

member states in the associated states, was reiterated,<sup>89</sup> and a deadline of three years was set for the associated states to enact the required legislation.<sup>90</sup> Provision was made for the association council to further the implementation of these policies as necessary.<sup>91</sup> In a related field of obstacles to development, the associated states agreed to refrain from imposing any restrictions on investment and current payments to residents of member states.<sup>92</sup> In addition, free movement of capital for certain investments was allowed.<sup>93</sup> However, with regard to these items, the association council could only recommend implementing provisions.<sup>94</sup>

The administration of the institutions of the association was based on the principle of equality.<sup>95</sup> The convention provided for an association council which could make decisions binding upon all parties to the convention by unanimous vote on certain subjects;<sup>96</sup> on other subjects the association council could only formulate resolutions, recommendations, and opinions.<sup>97</sup> An association committee was designated to ensure the "continuity of cooperation essential to the satisfactory operation of the Association."<sup>98</sup> A parliamentary conference, attended on a basis of parity between the European parliament and members of

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<sup>89</sup>Treaty of Rome, Art. 52.

<sup>90</sup>Yaoundé Convention, Art. 29, para. 1.

<sup>91</sup>Ibid., Art. 34.

<sup>92</sup>Ibid., Art. 37(1).

<sup>93</sup>Ibid., Art. 37(2). This section would affect investments made in the associated states after June 1, 1964.

<sup>94</sup>Ibid., Art. 38.

<sup>95</sup>Ibid., Preamble, para. 3.

<sup>96</sup>Ibid., Art. 44, para. 1; association council can bind parties to the convention under arts. 12(3), 27, 29, 34, 51(1) and 51(5).

<sup>97</sup>Ibid., Art. 44, para. 2; association council can not bind parties to the convention under Arts. 2(5), 3(3), 5(2), 6(4), 11, 36.

<sup>98</sup>Ibid., Art. 47(1).





territories. Even the status of a member state or community representatives working overseas, or of overseas representatives in the member states, was not mentioned. Although the treaty did not define the term "territories of the member states," the expression "overseas ... territories" is used exclusively with reference to non-European territories having special relations with member states.<sup>108</sup> Thus it can be argued that the protocol on immunities was confined to the geographic limits of the member states in Europe.

The European Development Bank (EIB) was specifically granted full privileges and immunities for all its members and staff who participated in its activities.<sup>109</sup> In addition, the EIB was given full legal personality,<sup>110</sup> with the right to acquire and transfer property and the capacity to sue and be sued.<sup>111</sup> However, since the EIB investment projects were "to be carried out within the European territories of Member States," no controversy arose with respect to its activities or the application of the term "territories overseas."<sup>112</sup> Unlike the EIB, the EDF was not granted any legal personality. Instead, the EDF, being administered by the commission was considered an integral part of the community.<sup>113</sup> Since the community itself had full legal personality and was protected by the protocol on immunities,<sup>114</sup> the EDF was full covered for its activities, but only in the territories of the member states and not overseas.

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<sup>108</sup>Treaty of Rome, Art. 131, states that the non-European territories will be "hereinafter referred to as 'overseas countries and territories'"; ibid., Annex IV; Implementing Convention, Art. 1.

<sup>109</sup>Protocol on Immunities, Art. 21.

<sup>110</sup>Treaty of Rome, Art. 129; ibid., Protocol on the Statute of the European Investment Bank (EIB), Arts. 1-29 [hereinafter cited as EIB Statute].

<sup>111</sup>EIB Statute, Art. 28(1).

<sup>112</sup>Ibid., Art. 18(1), para. 1.

<sup>113</sup>Implementing Convention, Art. 1, para. 3.

<sup>114</sup>Treaty of Rome, Arts. 210-211.

Since the Yaoundé Convention does not mention privileges and immunities, a question arises as to what is the status now of the EIB and the EDF in the associated states. The EIB and the EDF are in substantially the same position with respect to this question as they were prior to independence. Since the EIB and the EDF were not then protected by the protocol on immunities in the overseas territories, neither of them would be protected by the protocol now. Recently the status of EDF personnel in the associated states has been considered.<sup>115</sup> The commission decided to send its representatives, acting on behalf of EDF, to each of the associated states in order to coordinate further the projects being undertaken there.<sup>116</sup> The council, however, has refused to allow these officials to represent the community in those states. Consequently, these men have not been able to seek the diplomatic status equivalent to the representative of a foreign government. Privileges and immunities for them have depended upon their ability to request their own special status from each government. In the African legislation examined with respect to diplomatic representatives,<sup>117</sup> international organizations,<sup>118</sup> and customs exemptions,<sup>119</sup>

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<sup>115</sup>Interview with Gordon M. Adams, Ph.D. candidate in political science, Columbia University, dissertation on EDF and EEC policy on Africa, Research Assistant at Institute for European Studies, Free University of Brussels, Belgium, 1967-68, Dec. 4, 1968.

<sup>116</sup>EEC Commission Ruling No. 184/64/CEE of Nov. 13, 1964, Art. 33 in E.E.C.J.O., 7 (1964), 1512, 1517. Projects previously were controlled by one "delegated controller" who reported directly to the commission.

<sup>117</sup>Togo, Ambassadorial privileges, Order No. 117 of April 4, 1967 [1967], J.O.R.T. 248.

<sup>118</sup>Ivory Coast, Aid and Guarantee Fund, Decree No. 67-485 of Nov. 20, 1967 [1967], J.O.C.I. 1645.

Upper Volta, Aid and Guarantee Fund, Order No. 67-48 of Aug. 29, 1967 [1967], J.O.R.H.-V. 482; Decree No. 67-223 of Aug. 29, 1967 [1967], J.O.R.H.-V. 482.

African Development Bank, Order No. 67-37 of July 3, 1967 [1967], J.O.R.H.-V. 376, Arts. 50-53.

Immunities for O.A.M.C.E., Decree No. 67-10 of Jan. 16, 1967 [1967], J.O.R.H.-V. 36.

there was no mention of any privileges or immunities for any individuals or organizations connected with the community.

The Yaoundé Convention did not mention the subject of privileges and immunities for the association council, committee, parliament, and court. Officials of these institutions may be in a different position, however, because of the position some of them may maintain in their national governments. In the association council, members of the EEC council<sup>120</sup> and of the associated states<sup>121</sup> are members of their respective governments and would qualify for normal diplomatic immunities.<sup>122</sup> The members of the EEC commission would not so qualify, since they are not members of any government.<sup>123</sup> The association committee, being composed only of representatives of each of the aforementioned bodies, would not qualify for diplomatic immunities unless its members were otherwise so qualified.<sup>124</sup> Likewise for the parliamentary conference of the association, since it is attended by members of the European parliament and the parliaments of the associated states. Only the members of the Court of Arbitration have been granted the specific privileges, immunities, and facilities as normally recognized for international judicial and arbitral members.<sup>125</sup>

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<sup>119</sup>Dahomey, Privileged Operations in Customs Code, Order No. 54 of Nov. 21, 1966 [1967], J.O.R.D. 4, Art. 201(c).

Togo, Diplomatic Privileges in Customs Code, Decree No. 67-113 of May 18, 1967 [1967], J.O.R.T. 277.

Upper-Volta, Diplomatic Customs Privileges, Decree No. 67-246 of Sept. 15, 1967 [1967] J.O.R.H.-V., Art. 7.

<sup>120</sup>Treaty of Rome, Art. 146, para. 1.

<sup>121</sup>Yaoundé Convention, Art. 40.

<sup>122</sup>See Restatement, supra, note 68, ss. 73, 75, 76, 78, 80

<sup>123</sup>Treaty of Rome, Art. 157(1).

<sup>124</sup>Yaoundé Convention, Art. 45.

<sup>125</sup>Statute of Court of Arbitration, Arts. 8(1), 9, Association Council Decision No. 3/64 of Nov. 16, 1964 in Recueil d'Actes, Associates CEE-EAMA, Problems Institutionnels III, at 1 (1965).

Right of Establishment<sup>126</sup>

Prior to the Yaoundé Convention, the activities of the community were to include the elimination of obstacles to the free movement of persons, services, and capital<sup>127</sup> in order to promote "a harmonious development of economic activities ... and closer relations between [the] member states."<sup>128</sup> In addition, restrictions on the freedom of establishment and on the setting up of agencies, branches, or subsidiaries by nationals of any member state in the territory of another member state were to be progressively eliminated.<sup>129</sup> With respect to the overseas territories, the Treaty of Rome made the right of establishment in the association subject to the provisions of the applicable chapter in the treaty.<sup>130</sup>

A program for the elimination of restrictions on the above-mentioned activities was to be drawn up by the council.<sup>131</sup> In fact, in 1959 a council directive<sup>132</sup> was issued extending the right of establishment overseas to firms and affiliates,<sup>133</sup> hotel owners,<sup>134</sup> land surveyors,<sup>135</sup> banking operations,<sup>136</sup> architects,<sup>137</sup> travel agencies,<sup>138</sup> mining enterprises,<sup>139</sup> and insurance companies.<sup>140</sup> Council directives bound member states to whom they were addressed "as to the result to be achieved,

<sup>126</sup>For definition see supra, note 22.

<sup>127</sup>Treaty of Rome, Art. 3(c).

<sup>128</sup>Ibid., Art. 2.

<sup>129</sup>Ibid., Art. 52, para. 1.

<sup>130</sup>Ibid., Art. 132(5) refers to ibid., Title III, The Free Movement of Persons, Services and Capital, ch. 2, Arts. 52-58.

<sup>131</sup>Ibid., Arts. 54(1), 54(2), 189.

<sup>132</sup>EEC Council, Directive Fixing the Terms of Application of the Right of Establishment, of Nov. 23, 1959, in E.E.C.J.O., 3 (1960), 147.

<sup>133</sup>Ibid., Art. 1(a)(1).

<sup>134</sup>Ibid., Art. 1(a)(2).

<sup>135</sup>Ibid., Art. 1(a)(3).

<sup>136</sup>Ibid., Art. 1(b)(3).

<sup>137</sup>Ibid., Art. 1(a)(4).

<sup>138</sup>Ibid., Art. 1(b)(4).

<sup>139</sup>Ibid., Art. 1(c)(1).

<sup>140</sup>Ibid., Art. 1(d)(1).

while leaving to domestic agencies a competence as to form and means."<sup>141</sup> This particular directive indicated in which overseas territories and at what time the provisions were to be effected. The directive, however, was not self-executing but, rather, required specific legislation to be enacted. It is interesting to note that most of the provisions of the directive were specifically made inapplicable to France.<sup>142</sup>

In the negotiations leading up to the Yaoundé Convention, member states objected to the association system because of the difficulties they had experienced in breaking down the monopoly of French firms overseas.<sup>143</sup> By 1963, the French influence was still so dominant that French firms received 62% of the work contracts and 51% of the supply contracts for overseas community work.<sup>144</sup> As a result of the negotiations, the convention specified that nationals and companies of member states should be placed on an equal footing within three years.<sup>145</sup> In addition, the equal right to perform industrial, commercial, craft, and professional services was to be extended at the same time.<sup>146</sup> These rights were to be extended only on the basis of reciprocity with the member state in question.<sup>147</sup> To implement any decision to achieve these ends, the association council was granted the necessary powers.<sup>148</sup>

Legislative action was taken belatedly by several associated states along the lines of the above-mentioned 1959

<sup>141</sup>Treaty of Rome, Art. 189, para. 3.

<sup>142</sup>EEC Council Directive, supra, note 132, Arts. 1(b)(2); 1(b)(3); 1(c)(2); 1(c)(4); 1(d)(2); 1(d)(3).

<sup>143</sup>Van Benthem van den Berg, supra, note 8 at 173.

<sup>144</sup>EEC Commission, Tenth General Report (1967), 284.

<sup>145</sup>Yaoundé Convention, Art. 29, para. 1.

<sup>146</sup>Ibid., Arts. 29, para. 1, 32.

<sup>147</sup>Ibid., Art. 29, para. 3.

<sup>148</sup>Ibid., Art. 34.

EEC Council directive.<sup>149</sup> With regard to the broader provisions of total equality in establishment, the association committee,<sup>150</sup> in October, 1966, issued a reminder of the May 31, 1967, deadline.<sup>151</sup> As of that date all companies and nationals of member states were to be placed on an equal footing in the associated states.<sup>152</sup> In March, 1967, the association committee requested that

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<sup>149</sup>The following statutes on right of establishment were enacted:

Central African Republic, Nationality Law No. 63-449 of Jan. 3, 1964 [1964] J.O.R.Centrafr. 93; Decree No. 64-001 of Jan. 3, 1964 [1964] J.O.R.Centrafr. 126. Architecture, Banking, Mining Law No. 65-62 of June 3, 1965 [1965] J.O.R.Centrafr. 496.

Chad, Architecture, Banking, Mining Order No. 28 of Nov. 12, 1964 [1964] J.O.R.Tchad. 448.

Dahomey, Hotel-keeping Decree No. 233 of May 19, 1962 [1962] J.O.R.D. Travel Agencies Decree No. 202 of June 9, 1965 [1965] J.O.R.D. Banking Law No. 65-22 of July 8, 1965 [1965] J.O.R.D. General Decree No. 376 of Oct. 23, 1965 [1965] J.O.R.D. 1010.

Gabon, Architecture, Banking, Mining Law No. 5-61 of May 6, 1961 [1961] J.O.R.G. 360.

Mauritania, General Law No. 64-129 of July 14, 1964 [1964] J.O.R.Maur. 196.

Niger, General Law of Jan. 14, 1961, cited in EEC Bull., No. 3 (1961), 45.

Banking Law No. 65-019 of May 16, 1965 [1965] J.O.R.N. at 5 of June 1; Decree No. 65-91 of June 28, 1965 [1965] J.O.R.N. at 16 of July 15; Decree No. 66-010 of Jan. 13, 1966 [1966] J.O.R.N. 57.

Upper Volta, General Law No. 24-65 of Dec. 16, 1965 [1965] J.O.R.H.-V. of March 31.

<sup>150</sup>The association committee was delegated the responsibility in accordance with Yaoundé Convention, Art. 47(2) and association council Decision No. 2/64 of July 8, 1964 in Recueil d'Actes, Associates CEE-EAMA, Problems Institutionels, I (1965), 20.

<sup>151</sup>EEC Commission, Tenth General Report (1967), 266. The association committee met on Oct. 7, 1966.

<sup>152</sup>Yaoundé Convention, Art. 29, para. 1.

the EEC commission advise the Associated States with regard to the problems on enacting appropriate legislation.<sup>153</sup> The association committee also examined several laws already passed, approving those of Gabon<sup>154</sup> and Mauritania,<sup>155</sup> but determining that the law of Upper Volta<sup>156</sup> needed further inquiry.<sup>157</sup> The Central African Republic<sup>158</sup> and the Ivory Coast<sup>159</sup> passed the required legislation in time to comply with the deadline, while several other states enacted legislation shortly thereafter.<sup>160</sup> It may be noted that, since pre-independence laws in Congo-Kinshasa, Burundi, Rwanda, and Somalia made no distinction between the member state with which each had special relations and other member states, there was no need for new legislation.<sup>161</sup> No legislation has been found by the author in the remaining states.<sup>162</sup>

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<sup>153</sup>EEC Commission, Tenth General Report (1967), 266.

<sup>154</sup>Gabon, Order No. 1-66 of Jan. 19, 1966 [1966] J.O.R.G. 131.

<sup>155</sup>Mauritania, Law No. 67-002 of Jan. 4, 1967 [1967] J.O.R.Maur. 40.

<sup>156</sup>Upper-Volta Law of 1966 cited in EEC Commission, Tenth General Report (1967), 266.

<sup>157</sup>EEC Commission, supra, note 153, at 268.

<sup>158</sup>Central African Republic, Order No. 67-32 of April 21, 1967 [1967] J.O.R.Centrafr. 273; Order No. 67-48 of July 6, 1967 [1967] J.O.R.Centrafr. 404.

<sup>159</sup>Ivory Coast, Law No. 67-198 of May 23, 1967 [1967] J.O.R.C.I. 734.

<sup>160</sup>Dahomey, Order No. 22 of July 6, 1967 [1967] J.O.R.D. 490.

<sup>161</sup>Parliamentary Conference of Association, Report on the Second Annual Report of the Activities of the Council of the Association, Working Document No. 7 (1965) 29-30.

<sup>162</sup>No legislation has been located for Congo-Brazzaville, Chad, Senegal, Mali, Niger, Cameroon, Togo, and Malagasy.



The laws required by the Yaoundé Convention for the right of establishment were simple, clear, and brief. They stated that, notwithstanding provisions to the contrary, all nationals and companies of member states were to be treated equally.<sup>163</sup> These provisions could be suspended on account of imperative economic or social reasons providing the association council approved.<sup>164</sup> Finally, these provisions were to be honored only on a basis of reciprocity with the member states.<sup>165</sup> The language of these statutes was in many cases exactly the same, while in others there was only minor variation.<sup>166</sup> This similarity might indicate that an original draft was circulated to the associated states.

The emphasis upon the right of establishment for all EEC nationals and companies in the associated states has, to some extent, diminished the previous French monopoly. By the end of 1966, French firms were allocated only 50% of the work contracts and 42% of the supply contracts, as opposed to 62% and 51%, respectively, three years earlier.<sup>167</sup> Similarly, in the areas of contracts for surveys, as well as technical contracts and work supervision, German firms have achieved parity with French firms.<sup>168</sup> Nevertheless, many aspects of statutory law and daily practice will have to be modified before the aims of the Treaty of Rome and the convention are fully honored, for there is a tendency among former colonies to discriminate in favor of their former colonizer.<sup>169</sup>

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<sup>163</sup>See e.g., Dahomey Order No. 22, supra, note 160, at Art. 1.

<sup>164</sup>Ibid., Art. 2.

<sup>165</sup>Ibid., Art. 3.

<sup>166</sup>Compare Niger, Decree No. 67-079 of June 12, 1967 [1967] J.O.R.N. 517 with supra, notes 137, 138, 139, 141, 142 and 143.

<sup>167</sup>EEC Commission, supra, note 153, at 284.

<sup>168</sup>Ibid., at 285.

<sup>169</sup>J. Fage, West Africa (1962), 213.

### Freedom of Capital Movement

In keeping with Article 67 of the Treaty of Rome, restrictions on the free movement of capital between member states were to be progressively removed, and discriminatory treatment based on the nationality of the capital investor was to be prohibited.<sup>170</sup> The article on capital movement was not originally made applicable to the overseas territories. In the Yaoundé Convention, on the other hand, the associated states agreed to "endeavor not to introduce any new exchange restrictions" affecting investment or payments resulting from capital movements from member states.<sup>171</sup> In addition, the associated states agreed to treat equally all member states with respect to capital movements as of January 1, 1965.<sup>172</sup> No legislative action was taken by any of the associated states to comply with this deadline.<sup>173</sup>

The economies of the former French-African colonies have been intricately connected with the economy of France through the franc zone in the pre- and post-independence periods.<sup>174</sup> In 1962, in order to reaffirm these ties

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<sup>170</sup>Treaty of Rome, Arts. 37, 67.

<sup>171</sup>Yaoundé Convention, Art. 37(1).

<sup>172</sup>Ibid., Art. 37(2)

<sup>173</sup>No legislation found in all the countries examined.

<sup>174</sup>See Fage, supra, note 169, at 213. See e.g., financial agreements connecting the French treasury with the treasury of the following states:

Cameroon, Decree No. 60-85 of April 8, 1960 [1960] J.O.R.Cam. 721.

Togo, Decree No. 61-435 of May 2, 1961 [1961] J.O.R.F. 4185 [1961] S.L. 56.

Mali, Decree No. 62-111 of Jan. 27, 1962 [1962] J.O.R.F. 1160.

Dahomey, Decree No. 62-112 of Jan. 27, 1962 [1962] J.O.R.F. 1160.

Mauritania, Decree No. 63-234 of March 4, 1963 [1963] J.O.R.F. 2304, [1963] S.L. 43.

Senegal, Decree No. 63-235 of March 4, 1963 [1963] J.O.R.F. 2304, [1963] S.L. 43.

with France and the franc zone, the French-speaking West African states, except for Guinea, formed the West African Monetary Union.<sup>175</sup> They signed an agreement with France in which the latter agreed to back the West African Bank established by the Monetary Union.<sup>176</sup> Mali, however, sensitive to the French control of its economy, withdrew from the Monetary Union and issued its own

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Ivory Coast, Decree No. 63-572 of June 11, 1963 [1963]

J.O.R.F. 5324, [1963] S.L. 48.

Upper-Volta, Decree No. 63-573 of June 11, 1963 [1963]

J.O.R.F. 5325, [1963] S.L. 48.

Guinea, Decree No. 64-256 of March 16, 1964 [1964]

J.O.R.F. 2598, [1964] S.L. 45.

Congo-Brazzaville, Decree No. 65-307 of April 14, 1965

[1965] J.O.R.F. 3151.

and the French Community Cooperation Agreement between France, Ivory Coast, Dahomey, Upper-Volta and Niger: Law No. 62-136 of Jan. 23, 1962 [1962] J.O.R.F. 1261, [1962] S.L. 97.

<sup>175</sup>Treaty Instituting the West African Monetary Union, signed May 12, 1962, was ratified as follows:

Upper-Volta, Law No. 25-62 of June 22, 1962 [1962]

J.O.R.H.-V. 643; Decree No. 316 of July 27, 1962

[1962] J.O.R.H.-V. 732.

Mauritania, Law No. 62-136 of June 30, 1962 [1962]

J.O.R.Maur. 352.

Dahomey, Law No. 62-22 of July 9, 1962 [1962] J.O.R.D. 733.

Senegal, Law No. 62-61 of July 11, 1962 [1962] J.O.R.Sen.

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Niger, Law No. 62-22 of July 20, 1962 [1962] J.O.R.N. 348;

Decree No. 62-170 of July 20, 1962 [1962] J.O.R.N. 357.

Ivory Coast, Law No. 62-256 of July 31, 1962 [1962]

J.O.R.C.I. 918.

Mali signed the Treaty but failed to ratify it.

Togo did not attend the Treaty conference but later acceded to and ratified the Treaty. Law No. 63-15,16 of Nov. 19, 1963 [1963] J.O.R.T.

<sup>176</sup>Agreement of Cooperation between France and the West African Monetary Union, signed May 12, 1962, and ratified in the same legislation as the West African Monetary Union, supra, note 175.

currency. The results were disastrous.<sup>177</sup> Since that time the most significant legislative change in financial relations between member and associated states resulted from a new French policy in December, 1966.<sup>178</sup> The main features of this French legislation were, first, an increase in capital transfer between France and countries linked with the franc zone, and, second, a reduction of regulatory controls on all but a few financial transactions within the franc zone.<sup>179</sup> The net effect was greater freedom of capital movement within the franc zone.

A modified version of the French law regulating financial operations with other states was adopted in many French-speaking associated states between June and August, 1967.<sup>180</sup> The law of Dahomey, a typical example of the

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<sup>177</sup>W. Friedland and C. Roseberg, African Socialism (1964), p. 188.

<sup>178</sup>France, Law Liberalizing Financial Relations with Foreigners, Law No. 66-1008 of Dec. 28, 1966 [1966] J.O.R.F. 11621, [1967] D.S.L. 26; Decree No. 67-68 of Jan. 27, 1967 [1967] J.O.R.F. 1073, [1967] D.S.L. 126.

<sup>179</sup>"Le Nouveau Regime Francais des Changes et ses Repercussions sur la Zone Franc," Documentation Legislative et Administrative Africaine, No. 2 (1967), i.

<sup>180</sup> African legislation regulating financial operations abroad:  
 Mauritania, Law No. 67-128 of June 19, 1967 [1967] J.O.R. Maur. 208.  
 Congo-Brazzaville, Law No. 12-67 of June 21, 1967 [1967] J.O.R.Congo 350.  
 Togo, Order No. 27 of June 28, 1967 [1967] J.O.R.T. 5; Decree No. 67-135 of June 28, 1967 [1967] J.O.R.T. 7.  
 Malagasy, Decree No. 67-268 of June 28, 1967 [1967] J.O.R.M. 1119; Arret No. 2485 of July 1, 1967 [1967] J.O.R.M. 1154.  
 Upper-Volta, Order No. 67-36 of June 29, 1967 [1967] J.O.R.H.-V. 359; Decree No. 67-149, 150 of June 29, 1967 [1967] J.O.R.H.-V. 360; Order No. 67-40 of July 26, 1967 [1967] J.O.R.H.-V. 404.  
 Gabon, Order No. 17 of June 29, 1967 [1967] J.O.R.Gabon 513; Decree No. 323 of June 30, 1967 [1967] J.O.R. Gabon 516.

African statutes, stated that all financial relations with other states were to be without restrictions.<sup>181</sup> This freedom was qualified by permitting the government, when necessary in the defense of national interest, to control by means of specific authorization all capital movements, gold transfers, creation and liquidation of foreign investments, and acquisition of property abroad by nationals.<sup>182</sup> A second law indicated specifically when the required authorization applied to foreign transactions.<sup>183</sup> States linked with the franc zone and members of the West African Monetary Union were exempted from the required authorization.<sup>184</sup> Neither statute made mention of equal treatment for the community or member states. Therefore, it can be concluded that the community and member states, except for France, were excluded from the exemptions and would have to submit to government authorization for movement of capital.

It is ironic that these associated states, which are in need of attracting direct investment for development, have not complied with the requirements of the Yaoundé Convention. Presumably French influence throughout the

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Dahomey, Order No. 17 of June 29, 1967 [1967] J.O.R.D. 447; Decree No. 219 of June 29, 1967 [1967] J.O.R.D. 663.

Ivory Coast, Law No. 67-285 of June 30, 1967 [1967] J.O.R.C.I. 847.

Senegal, Law No. 67-33 of June 30, 1967 [1967] J.O.R.Sen. Special No. 3903, at 975; Decree No. 67-763 of June 30, 1967 [1967] J.O.R.Sen. 983.

Central African Republic, Order No. 67-54 of Aug. 1, 1967 [1967] J.O.R.Centrafr. 503; Decree No. 67-255 of Aug. 1, 1967 [1967] J.O.R.Centrafr. 509.

Niger, Law No. 67-24 of Aug. 8, 1967 [1967] J.O.R.N. 657. Of the remaining six associated states, no legislation was found for Cameroon and Chad, and Burundi, Rwanda, Congo-Kinshasa and Somalia are outside the franc zone.

<sup>181</sup>Dahomey, Order No. 17 of June 29, 1967 [1967] J.O.R.D. 447, Art. 2(1).

<sup>182</sup>Ibid., Art. 11

<sup>183</sup>Dahomey, Decree No. 219 of June 29, 1967 [1967] J.O.R.D. 663, Art. 1

<sup>184</sup>Ibid., Art. 2.

franc zone is so powerful that most associated states were restricted from allowing free movement of capital. As a result, the freedom to transfer capital from the other member states to the associated states has continued to be limited.

### The Court of Arbitration

Disputes which arise between any member or associated state and any other member or associated state or the community concerning the interpretation or application of the Yaoundé Convention will be submitted to the association council.<sup>185</sup> The council will seek an amicable settlement.<sup>186</sup> If the parties fail to agree upon an appropriate solution the dispute will be submitted to the Court of Arbitration.<sup>187</sup> The decisions of the court will be binding upon all the parties to the dispute.<sup>188</sup> These parties will be obliged to take all necessary measures to comply with the final judgment of the court.<sup>189</sup>

The Court of Arbitration was established on July 8, 1964.<sup>190</sup> The President of the Court of Justice for the European Communities presided.<sup>191</sup> He was assisted by four judges, two appointed by the EEC council and two appointed by the association council.<sup>192</sup> The African judges were from Somalia and Mauritania, and their deputy alternatives were from Rwanda and Congo-Brazzaville.<sup>193</sup> The duty of drawing up the statute of the court was delegated by the association council to the association committee.<sup>194</sup> By November, 1964, the association council had adopted the statute of the court along with some

<sup>185</sup>Yaoundé Convention, Art. 51(1).

<sup>186</sup>Ibid.

<sup>187</sup>Ibid.

<sup>188</sup>Ibid., Art. 51(4).

<sup>189</sup>Ibid.

<sup>190</sup>Parliamentary Conference of Association, supra, note 161, at 4.

<sup>191</sup>Ibid., at 4.

<sup>192</sup>Ibid., at 4; Yaoundé Convention, Art. 51(2).

<sup>193</sup>Ibid., at 4.

<sup>194</sup>Supra, note 150.

recommendations concerning bribery, non-appearance of witnesses and false-testimony.<sup>195</sup> The court was to draft and adopt its own rules of procedure.<sup>196</sup>

No dispute has yet been brought before either council or court. There has been one long-standing disagreement between Germany and the associated states over a duty-free import quota for bananas, granted to Germany in the Treaty of Rome, and which the Germans have refused to modify.<sup>197</sup> This clash of interests, however, has not yet reached the level of "dispute," though it has been discussed in the council meeting. Until such time as a dispute does come before the court, no comment can be made as to its effectiveness.

### Conclusion

From the official community point of view,<sup>198</sup> the association has been most successful:

It has made possible an overall increase in trade, a gradual elimination of discrimination ... and has above all greatly helped the economic and social development ... through technical and financial cooperation.

From the political angle, the Association has created or strengthened a climate of friendly relations both at the institutional level and between the participating states.... It has kept a reasonable balance between the interests of the various parties vis-a-vis other parts of the world.

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<sup>195</sup>Supra, note 125.

<sup>196</sup>Yaoundé Convention, Art. 51(6).

<sup>197</sup>Treaty of Rome, Protocol concerning the tariff quota for import of bananas, Art. 1; See L'écoulement des Produits Originaires, La Banane, Revue du Marche Commune, No. 857 (1966).

<sup>198</sup>EEC Bull. Supp., No. 7 (1967), p. 40.

The official view is too vague to give a realistic appraisal. The overall increase in trade has been slight, and it has certainly not been as successful as was hoped.<sup>199</sup> In fact, the Latin American countries have increased their trade with the community more rapidly than the African countries.<sup>200</sup> On the other hand, the EDF and EIB have made considerable contribution to development.<sup>201</sup> Out-right grants under the first EDF amounted to \$581,000,000 for 382 projects,<sup>202</sup> and the second EDF to date has contributed \$560,244,000 to 273 projects.<sup>203</sup> The EIB loans have realized investments six times greater than the amount actually loaned.<sup>204</sup> These industrial project loans have aided in making an economic network less vulnerable to the world pressures on tropical raw materials.<sup>205</sup> Though the trade and aid provisions achieved some success, both items are currently undergoing detailed study to reform some aspects of the community's development policy.<sup>206</sup>

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<sup>199</sup>Opera Mundi Europe, Press Release No. 476, Aug. 29, 1968.

<sup>200</sup>Opera Mundi Europe, Press Release No. 472, at 8, Aug. 1, 1968.

<sup>201</sup>Opera Mundi Europe, Press Release No. 471, at 1, July 25, 1968.

<sup>202</sup>Parliamentary Conference of Association, supra, note 161, at 8.

<sup>203</sup>EEC Commission, The Second European Development Fund Situation at January 1, 1968, Information Memo, Brussels, PP/500/68-E, Jan. 1968. For information on projects approved between Jan. 1, 1968, and July 23, 1968, Commission of the European Communities, Information Memo, 1P(68)122, July 23, 1968.

<sup>204</sup>Agence Europe, Press Release No. 93, May 13, 1968.

<sup>205</sup>Ibid.

<sup>206</sup>Opera Mundi Europe, Press Release No. 471, at 1, July 25, 1968. A series of Opera Mundi Europe press releases have been issued on these reforms as follows: No. 469, July 11, 1968; No. 470, July 18, 1968; No. 471, July 25, 1968; No. 472, Aug. 1, 1968; No. 476, Aug. 29, 1968; No. 477, Sept. 5, 1968.



With regard to the legal aspects of the association, the associated states have been tardy in meeting their legal obligations and commitments. Only Dahomey enacted legislation providing for measures in the transitional period for 1963. Though the convention had been approved in December, 1962, and signed in July, 1963, several associated states failed to ratify the convention until June and July, 1964. Right of establishment directives issued pursuant to the Treaty of Rome and the Yaoundé Convention were not fulfilled. The convention deadline for freedom of capital movement was disregarded. Indeed, most African states involved enacted legislation facilitating financial exchanges within the franc zone but excluding member states, except for France. By granting generous facilities to companies, by allowing free movement of capital, and by ending discrimination based on nationality, these states could stimulate the flow of capital and in that way encourage new initiative to expand their economies. Perhaps tardiness on this issue is due to a consideration of whether financial provisions of the convention would compensate for the economic losses sustained from the renunciation of the franc zone.

This paper has indicated the nature of some of the legal issues involved in the evolution of the association of the EEC with the African states. A reluctance to enact legislation was apparent in the transitional period, and yet legislative inaction did not prevent the association institutions from functioning. In other instances, complete failure or tardiness in passing required legislation was noted. The question of immunities and privileges for EEC, member states, and associated states personnel is not yet fully resolved. Not all the applicable provisions of right of establishment and capital movement have been applied. The long-term significance of these issues should not be underestimated. In fact, it is difficult to see how the total liberalization of trade and the realization of development can be achieved without at the same time implementing the legal provisions for right of establishment, freedom of services, and capital movements as noted in the Treaty of Rome and the Yaoundé Convention.