

CONSEIL DE L'EUROPE COUNCIL OF EUROPE

Strasbourg, le 31 mars 1977

Cour (77) 9

Bilingue

COUR EUROPÉENNE DES DROITS DE L'HOMME EUROPEAN COURT OF HUMAN RIGHTS

Travaux préparatoires de l'article 1er de la Convention européenne des Droits de l'Homme

Preparatory work on Article 1 of the European Convention on Human Rights

Document d'information rédigé par le greffe
Information document prepared by the registry

Abréviations:

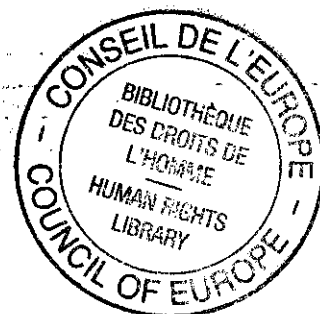
- T.P. = Recueil des travaux préparatoires (Nijhoff, La Haye, 1975 et 1976) (1)
Rec. = Recueil des travaux préparatoires (Doc. H (61) 4)
C.R. = Compte rendu des débats de l'Assemblée consultative
Doc. Ass. = Documents de séance de l'Assemblée consultative
Or. fr., Or. angl. = Texte original rédigé en français ou en anglais, selon le cas

Abbreviations:

- TP = Collected edition of the "travaux préparatoires" (Nijhoff, The Hague, 1975 and 1976) (1)
Coll. ed. = Collected edition of the "travaux préparatoires" (Doc. H (61) 4)
Rep. = Reports of the debates of the Consultative Assembly
Ass. Doc. = Working papers of the Consultative Assembly
Or. Eng., Or. Fr. = Document originally drafted in English or in French, as the case may be

- (1) Ce recueil (imprimé), dont il n'existe encore que les trois premiers volumes, couvre une période s'achevant le 10 mars 1950 (deuxième réunion du Comité d'experts).

This edition (printed), of which as yet only three volumes have been published, covers a period ending on 10 March 1950 (second meeting of the Committee of Experts).



I. PRESENT TEXT

Article 1 of the European Convention on Human Rights is worded as follows:

"The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention."

II. DRAFTS OF THE EUROPEAN MOVEMENT (1)

(a) Draft European Convention on Human Rights submitted by the European Movement to the Committee of Ministers of the Council of Europe in July 1949

"Article 1 - Every State a party to this Convention shall guarantee to all persons within its territory (2) the following rights:

...

Article 5. The rights enumerated in Articles 1 and 2 and the limitations contained in Article 3 shall be defined in a Supplementary Agreement to be concluded subsequently between the States parties to this Convention.

Article 6. (a) Until the conclusion of such Supplementary Agreement every State a party to this Convention shall be bound to guarantee the human rights enumerated in Articles 1 and 2 only to the extent that such rights were secured by the constitution, laws and administrative practice existing in its country at the date of the signing of this Convention by such State.

(b) Any additions to the above-mentioned rights which may be effected after the signing of this Convention as a result of changes in law or administrative practice shall, as from the date of such changes, be guaranteed in the same manner as the rights existing at the date of the signing of this Convention by the State concerned."

(TP, I, pp.296 and 298; or Doc. INF/5/E/R, pp. 6 and 7-8)

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- (1) Quoted here because the Consultative Assembly of the Council of Europe was considerably influenced by these drafts when drafting its Recommendation 38 of 8 September 1949. In this connection, see in particular TP I, p. 50 or Rep. 1949, II, p. 410.
- (2) Doc. INF/5/E unrevised: "within its metropolitan territory". (Translation by the Registry from the French - original English document not available).

(b) Commentary by the European Movement on the above-mentioned draft

"It is true that the Draft Convention does not attempt to define with legal precision the human rights which it seeks to guarantee. To do so would involve the negotiation of a massive and extremely complicated legal document. Apart from the time and effort that such a work would involve, which would, of course, have to be accepted if it were necessary, it is not at all certain that it would, in the end, achieve the legal clarity desired. Owing to the wide differences in constitutional law and judicial practice which exist among the participating States, the exact definition of human rights and political liberties in a form suitable for application to all countries might well prove impracticable. It should, moreover, be remembered that a substantial part of the liberties enjoyed in countries with long-established judicial systems are derived as much from the accumulated precedents of court decisions over a period of years, as from precise laws passed by parliaments.

That does not mean to say that the rights to be protected could not be defined more precisely than has been attempted in the Draft Convention. However, this would certainly require long discussions and consultations between the highest legal authorities in all the countries concerned. Such negotiations could only usefully be conducted on an official basis under the auspices of governments. The Draft Convention, in Article 5, envisages the conclusion of a Supplementary Agreement for this specific purpose. However, since it is expected that these negotiations may prove difficult and protracted, the Convention offers a provisional solution which is capable of immediate implementation.

Article 6 provides that, pending the conclusion of this Supplementary Agreement defining with legal precision the rights in question, the signatory States shall, as an interim measure, undertake to maintain intact the rights and liberties listed in the Convention, 'to the extent that such rights were secured by the constitution, laws and administrative practice existing in each country at the date of the signing of the Convention.' This would imply that immediately upon the signing of the Convention, all the peoples of all the signatory States would, by international treaty, be guaranteed against the abrogation or diminution of the fundamental rights which they at present possess.

Having regard to the fact that the countries in question are among the most progressive and democratic nations in the world, the liberties which their citizens already enjoy under their existing constitutions are very comprehensive. It will thus be seen that, whilst a precise and uniform code, capable of international application, may be theoretically desirable, it would not in practice augment the scope of the liberties which already exist, in slightly varying legal forms, in the countries concerned. In fact, in the course of negotiating the terms of such a code, it would probably be necessary in many cases to accept the lowest of the standards prevailing in the various participating States. Inevitably the common standards thus established would in a number of instances fall short of those already now enjoyed. It will be seen therefore, that, even if the Supplementary Agreement envisaged in Article 5 were never concluded, the interim regime provided for in the Convention would actually secure almost all, and in many cases even more, than could be hoped for from an Agreement based upon a precisely defined list of rights.

Moreover, when the problem of the interpretation of the Convention by the Court is considered, this interim solution offers considerable advantages. The legal interpretation of a new code, however well defined, would present many difficulties. In fact, it is more than probable that the system would not work with full efficacy until a body of European case law had been built up, and that might take a considerable time.

On the other hand, it would be an altogether simpler matter for the Court to adjudicate upon the more limited question as to whether the liberties of the citizens of the country concerned had been infringed or diminished, either by the passing of a certain new law or by some specified act of government. Upon a comparatively precise issue of that kind, a European Court should in most instances be able to reach a clear and unchallengeable judgment. Thus the interim solution provided for in Article 6 of the Draft Convention fully meets all aspects of the criticisms referred to above. It overcomes the problem of precise legal definition. At the same time, it is applicable to States which have different constitutional systems and whose existing codes of rights and liberties vary from one another. This interim solution is, moreover one which governments should have little difficulty in accepting, since it does not require them to make any changes in the laws and practices of their countries."

(Doc. INF/5/E/R, pp. 13-15).

III. FIRST SESSION OF THE COMMITTEE OF MINISTERS

(a) Preparatory meeting (Paris, 6 August 1949)

Draft agenda for the Consultative Assembly adopted at this meeting:

"...

3. Questions submitted by the Committee of Ministers, in accordance with Article 23 (a)(1) of the Statute, to the Assembly for opinion:

a) definition, maintenance and further realisation of human rights and fundamental freedoms.

..."

(TP I, p. 8; or Doc. RP/2 Appendix I)

(b) Second meeting of the Committee (Strasbourg, 9 August 1949)

Minutes

"...

After an extensive discussion the Chairman asked for a vote on the question as to whether it was necessary to keep on the Agenda item (a):

'Definition, safeguarding and development of human rights and of fundamental liberties.'

..."

(TP I, p. 10; or Papers of the First Session of the Committee of Ministers, p. 8).

Report

"...

Mr. Schuman (France) suggested that in these circumstances, the Assembly should not be invited to consider the 'definition' of these rights, as it seemed to him that this subject had been abundantly dealt with.

Mr. Rasmussen (Denmark) did not agree with this point of view. If the Assembly were not to define Human Rights, it would start tackling without more ado the serious problem of the establishment of a European Court. The result would be a rather paradoxical situation, the establishment of a Court (1) before the elaboration of rules which the Court would be required to enforce.

Mr. Undén (Sweden) stated that he shared the views of MM. Lange and Schuman. If the Assembly wished really to start on the examination of this problem, it would have to suggest to the Committee that it be included in its Agenda.

...

Mr. Bevin (United Kingdom) would see no objection to keeping this question on the Agenda, but for the reasons outlined by Mr. Rasmussen, he thought it would be inadmissible not to invite the Assembly to take a decision on the definition of Human Rights.

...

... the matter was put to the vote ...

Result: in favour of including the point in the agenda: 4; against: 7; abstention: 1."

(TP, I, pp. 10 and 12; or Papers of the First Session of the Committee of Ministers, pp. 34 and 36).

(c) Fifth meeting of the Committee (Strasbourg, 13 August 1949)

Minutes

"...

The list of questions proposed by the Assembly (2) was approved by the Committee with the following reservations:

...

./.

(1) The words underlined are omitted from TP, I.

(2) At the time the Committee of Ministers fixed the agenda of the Consultative Assembly which had proposed on 13 August the inclusion of the question of human rights (TP, I, p. 18).

... the Committee expressed the opinion that ... due consideration should also be given to the question of the 'definition' of Human Rights.

..."

(TP, I, p. 22; or Papers of the First Session of the Committee of Ministers, p. 12).

Report

"...

Mr. Bevin (United Kingdom) had no objections to make concerning the inclusion of this point. He wished, however, to repeat what he had already said to the effect that the Assembly should be invited to define Human Rights before passing to the other problems implicit in such a subject.

Mr. Rasmussen (Denmark) supported the observations made by Mr. Bevin.

Mr. Schuman (France) ... considered that it was a mistake to insist on the definition of human rights. ...

Mr. Rasmussen (Denmark) pointed out that ... it would be a very different matter if the question was reconsidered on a purely Western European basis, in which case a text might be elaborated which would be binding in the legal sense.

...

Mr. Mac Bride (Ireland) ... it might, perhaps, be possible to write to the President of the Assembly so that the definition of Human Rights might also be taken into account.

...

Mr. Bevin (United Kingdom) ... thought that ... the attention of Delegates should be called to the advantages to be derived from an examination of the problem of defining human rights.

..."

(TP, I, pp. 22, 24 and 26; or Papers of the First Session of the Committee of Ministers, pp. 52 and 54).

(d) Letter addressed by the Chairman of the Committee of Ministers to the President of the Consultative Assembly (13 August 1949)

"...

I have the honour to inform you that the Committee of Ministers ... approved this list (1) at today's meeting.

...

... the Committee expressed the hope that when the Assembly starts examining item 5, due consideration will be given to the question of the definition of Human Rights. (2)

..."

(TP, I, p. 26; or Papers of the First Session of the Committee of Ministers, Appendix No. 7, p. 72)

IV. FIRST SESSION OF THE CONSULTATIVE ASSEMBLY OF THE COUNCIL OF EUROPE (August-September 1949)

1. Plenary sitting on 17 August 1949

(a) Motion (proposed by Mr. Ruini and other representatives)

"...

4. That (in the political and legal field) the democratic basis of the European community shall be clearly defined during this Session, with a view to safeguarding and developing the fundamental rights of freedom, which must be guaranteed in accordance with the provisions of the Statute;

That, pending the drawing up of subsequent agreements of the European Charter on Rights and Freedoms, an immediate agreement for the establishment of a European Court of Justice should be approved; this Court will consider violations of the fundamental rights of freedom, which are now guaranteed by the constitutions, legislations and political customs of each of the States;

..."

(TP, I, p. 32; or Ass. Doc. 1949, T., p. 125)

./.

(1) i.e. the list of subjects which the Consultative Assembly proposed for inclusion in the Agenda of its First Session.

(2) At its fifth sitting on 16 August 1950, the Consultative Assembly took note of this observation when adopting its Agenda which included the item: "Measures for the fulfilment of the declared aim of the Council of Europe in accordance with Article 1 of the Statute in regard to the maintenance and further realisation of Human Rights and fundamental freedoms." (TP, I, pp. 28 and 30; or Rep. 1949, I, p. 126).

2. Plenary sitting on 19 August 1949

(a) Motion (proposed by Mr. Teitgen, Sir David Maxwell-Fyfe and other representatives)

"1. The Assembly recommends that the Member States of the Council of Europe should, in pursuance of the aim enunciated in Article 1 of the Statute, accept the principle of collective responsibility for the maintenance of human rights and fundamental freedoms, and for this purpose should immediately conclude a convention by which each Member State would undertake:

a) to maintain intact the human rights and fundamental freedoms assured by the constitution, laws and administrative practice actually existing in their respective countries at the date of the signature of the convention;

...

3. It is decided to refer to an appropriate Committee of the Assembly the question of the definition of human rights raised in the letter of the Committee of Ministers communicated to the Assembly on 16th August 1949, with the request that it will prepare a report for consideration by the Assembly at its next session. The preparation of this report should not delay consideration by the Committee of Ministers of the proposed convention, which, in the opinion of the Assembly, can and must be concluded immediately."

(TP, I, pp. 36 and 38; or Ass. Doc. 1949, No. 3, pp. 19 and 20)

(b) Mr. Teitgen (France)(Translation):

"...

We should need years of mutual understanding, study, and collective experiments, even to attempt after many years, with any hope of success, to formulate a complete and general definition of all the freedoms and all the rights which Europe should confer on the Europeans. Let us therefore discard for the moment this desirable maximum. Failing this, however, let us be content with the minimum which we can achieve in a very short period, and which consists in defining the seven, eight or ten fundamental freedoms that are essential for a democratic way of life and which our countries should guarantee to all their people. It should be possible to achieve a common definition of these.

If we start to work now and if for example we instruct a Committee of this Assembly, with your permission Mr. President and with that of the Assembly, to prepare this common definition of the essential democratic freedoms, we shall be in a position to propose it to the various Governments in a very short time. The latter could sanction it, and the essential freedoms would thus be guaranteed in the same form by the laws of all our countries.

...

./.

..., we shall not stop there; we shall try, even during this Session, to bring before the peoples and before public opinion an immediate proposal, which we must adopt even before we have defined the essential freedoms for our countries.

The problem can be stated in very simple terms. All the States that have taken part in drawing up, signing and promulgating our Statute have bound themselves to respect the fundamental rights of the human individual. They have accepted the principle of a collective guarantee of fundamental freedoms.

We cannot propose that they should all immediately accept a common definition of these freedoms, but we can ask them to agree forthwith to a collective guarantee, within the framework of the Council of Europe, of these fundamental freedoms, as they are at present defined in their own respective laws, until the time comes when they can guarantee them in the form of a general and collective definition.

If this principle is accepted by the Assembly, we can immediately make a practical and concrete proposal. We shall tell the Member States, who agreed to including this debate on the Agenda, that we should like them to negotiate forthwith a Convention, which they would all sign and which would be ratified by their Parliaments. It would contain, briefly, the following provisions: the principle of a collective guarantee of the fundamental rights and freedoms, within the framework of the Council of Europe, by all Member States belonging to the Council.

...

States would bind themselves by conventions to guarantee these freedoms collectively, within the framework of the Council, by a certain procedure and under the control of a European Court.

They would guarantee these fundamental freedoms in the very near future, in the form of a common definition of each of them, which we could then propose after a period of study.

They would, however, guarantee them immediately, without waiting for this common definition, to the extent that such rights are secured by the constitutions, laws or administrative practice of the respective countries.

..."

(TP, I, pp. 44-46; or Rep. 1949, II, p. 408)

(c) Mr. Lannung (Denmark):

"...

... it is not enough for us to embark upon the creation of a European Charter by simply confining ourselves to the wording of the United Nations and showing our love of liberty. It is of decisive importance that further essential steps be taken as soon as possible; steps which should in my view consist of a more detailed definition and elaboration of human rights, ...

..."

(TP, I, p. 50; or Rep. 1949, II, p. 410)

(d) Mr. Antonopoulos (Greece) (Translation):

"...

May I, however, be allowed to reply to some persons who are concerned lest our efforts may overlap the proposed universal law on human rights in preparation by the United Nations.

In the first place, in spite of the adoption by the General Assembly of the United Nations of a Universal Declaration of Human Rights, the signatories to this document have not assumed any contractual obligations to one another. It is true that the signature of a pact is envisaged, but we know how slow are these processes and what serious obstacles arise when there is a question of undertaking contractual obligations within an Assembly, whose members are radically divided on account of the very nature of the subject under consideration.

...

In the second place, our Assembly is, both by its nature and by its composition, the truly competent body for the conclusion of a pact for the protection of those values which had their birth in Europe, were developed in Europe, and created there that common cultural heritage which is threatened with greater dangers there than elsewhere.

..."

(TP, I, pp. 58 and 60; or Rep. 1949, II, p. 416)

(e) Mr. Edberg (Sweden):

"...

... When I cast my vote for concrete measures, to secure for the men and women of the European countries their human rights and fundamental freedoms, I shall do it with a fervent desire, first, that the definition of those fundamental freedoms will be so clearly formulated as to leave

no room for doubts about their meaning, and secondly, that the Charter of Human Rights, which we are going to adopt, will be regarded as supreme and binding upon all Governments who adopt it. Only if we adhere strictly to those principles will this Council achieve the position in European life for which we all hope."

(TP, I, p. 78; or Rep. 1949, II, p. 426)

(f) Mr. Ungoed-Thomas (United Kingdom):

"...

The Statute has wisely provided, by Article 8, that anyone who seriously violates the ideals and aspirations to which we all subscribe may be ejected from this comity of nations. The question we now have posed before us is how far we can supplement that very wise provision, whether we can take the preservation of liberty among ourselves out of the political field and make it the subject of law and enforceable by law. That is not an easy proposition. It is a matter which has been considered by great lawyers for many years. The difficulty with law is that there must be a definition, which must be certain, and sufficiently detailed to be the subject of application by judges who act in accordance with a certain law, and not as politicians who act in accordance with a political discretion. That is the problem which is posed before this Assembly. Let us not imagine that it is an easy problem to solve.

I welcome the reference of this problem to a Committee, as has been suggested.

..."

(TP, I, p. 80; or Rep. 1949, II, pp. 426-428)

(g) Mr. Fayat (Belgium)(Translation):

"...

Consequently, I cannot too strongly agree with Mr. Ungoed-Thomas' warning that we must establish an exact and precise definition of those fundamental freedoms, which we shall agree to acknowledge as our common heritage.

I trust that the Committee, which will be entrusted with the task of preparing this definition, will not undertake it on a theoretical basis, but on the body of freedoms enjoyed by the citizens of our respective countries. It must take into account not only the substance of these freedoms, but also the political and legal safeguards by which these freedoms must be protected, in order that they may find actual expression in everyday life.

It is the elaboration of this definition of our common heritage of freedoms which seems to me to be the primary and essential task.

..."

(TP, I, p. 88; or Rep. 1949, II, p. 432).

(h) Mr. Foster (United Kingdom):

"...

The Assembly will appreciate that the proposal suggests that the States who sign the Convention first of all declare that they guarantee certain basic human rights. Those are contained in Article 1. The proposal suggests that, as a provisional measure, each State should guarantee these rights as they exist at present under their law, constitution and administrative work. The proposal recommends that, in the meantime, a Commission be set up to define more precisely, for the purposes of a contractual agreement, the basic human rights, and suggests that until that is done the basic human rights contained in the existing laws of Member States should be guaranteed. That means that, if that proposal is accepted, Member States cannot derogate from the human rights which are accorded to their subjects at the moment. It is especially stated in the proposal that the work of the Commission should not impede the signing of the preliminary guarantee.

...

... I hope that the Assembly will point out to this proposed Commission that it is a matter of urgency to get on with a definition of human rights, but that it is even more urgent to take that preliminary step of guaranteeing existing rights.

...

Then we come to the third part of this project - the establishment of a Court of Human Rights. The object of this Court of Human Rights is to be able to judge any alleged infringement of the human rights laid down in Article 1, and later, when the Commission has done its work and a definition is accepted, any infringement of these rights as defined by the contractual convention between the Member States.

..."

(TP, I, pp. 92-94; or Rep. 1949, II, p. 434)

(i) Sir David Maxwell-Fyfe (United Kingdom):

"...

From the world point of view we cannot let the matter rest at a declaration of moral principles and pious aspirations, excellent though the latter may be. There must be a binding convention, and we have given you a practical and workable method of bringing this about.

...

I have stated that the list has been shortened, and I wish to say a word about the criticism adumbrated by Mr. Ungoed-Thomas that the rights have not been defined with sufficient precision for legal enforcement. I think that this is a highly disputable thesis. The old view that judges took no cognisance of the facts of life is, fortunately, becoming less and less tenable. With some experience in propounding judicial issues before international tribunals, and the experience which we have all had as legislators in clarifying such issues for our national courts, I take leave to doubt whether the task of enforcement would be insurmountable in respect of our draft.

I am entitled to crave in aid the Bill of Rights in the Constitution of the United States as a parallel and a very successful piece of experience. The Supreme Court of the United States of America has not found it difficult to administer and enforce the Bill of Rights in general terms.

The example which Mr. Ungoed-Thomas gave of our difficulty has to be seen in the background of so many successful applications and administration of this basic legal theme. In any case, if the Committee which considers this matter thinks that further examination and definition is necessary, we have suggested a procedure for further definition in a supplementary agreement.

...

The second aspect of our proposals, which is of vital importance, consists of the transitional provision. As I have stated, the fundamental rights with their limitations can be examined and defined in a supplementary agreement. We further suggest, however, that until that supplementary agreement is concluded, the contracting States shall only be bound to guarantee the rights set out in Articles 1 and 2 to the extent that in their particular countries they are already enforced. Thus all the peoples of the signatory States would be guaranteed against abrogation or diminution of their rights.

..."

(TP, I, pp. 114 and 118-120; or Rep. 1949, II, pp. 446 and 448-450)

3. Committee on Legal and Administrative Questions (1) - Sitting of 22 August 1949

(a) Minutes

"Motion made and question put 'That it would be useful and opportune to recommend the Member States to organise a collective guarantee within the Council of Europe for all or some of the rights and liberties of man and of citizens.' (Mr. Teitgen).

The Committee divided - Ayes 11, Noes 5."
(TP, I, p. 154; or Doc. A 9)

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(1) Hereinafter referred to as the "Legal Committee", according to its present title. At the close of the general debate on 19 August 1949, the Consultative Assembly referred the question of Human Rights to the Legal Committee.

- (b) Appendix to a letter addressed by Mr. P.-H. Teitgen to the Chairman of the Legal Committee (22 August 1949)

"List of questions proposed for examination by the Legal Committee

...

During the meeting of the 22nd August the Committee answered in the affirmative the following dilatory question:

Is it useful and timely to recommend to Member States the organisation of a collective guarantee, within the Council of Europe, of all or part of the fundamental rights and liberties?

The following questions may now be submitted to the Committee:

- 1) Will this collective guarantee which is to be organised be applied:
 - a) to a list of liberties previously defined in common, identical and obligatory terms for all Member States? If so, the Committee must first decide which of the fundamental liberties and rights it is at present possible to define in common terms for all Member States.

It must draw up the definitions in question.

These definitions must cover all finer shades of meaning, exceptions and conditions inherent in the different countries, taking into account their traditions and the general principles of their legislation, the exigencies of public order and the common good.

Definitions thus established would be embodied in an international convention and for each of the liberties concerned would be substituted for the legal rules and definitions at present in force in each of the Member States.

Besides the fact that the drawing up of these definitions would require a long period of study, the whole system in question would force Member States to undertake a general revision of their legislation in order to bring it into line with the chosen definitions.

The adoption of this system would not allow the present Assembly to achieve practical results in this Session.

- b) For this reason a second solution is proposed to the Assembly - namely to decide that the collective guarantee shall apply to a certain list of fundamental rights and liberties, all of which are at present guaranteed on the territory of Member States, according to the conditions and procedures and, if necessary, with the exceptions, at present laid down by constitutional and ordinary legislation and by the law of Custom of each State.

In this case, the Committee would not have to draw up a list of guaranteed liberties by defining them in such a way as to include in the definition the various conditions attaching to the exercise of these liberties, or, if need be, the exceptions imposed by the exigencies of public order or the common good.

The Committee should confine itself to defining in general terms each one of the liberties which it deems essential since they would be submitted to the legislature of each of the Member States for the working out of the details of application and conditions of exercise.

The Rapporteur ventures to suggest that the Committee should adopt the second method.

Undoubtedly, it does not assume progress and development of the fundamental rights and liberties in each country according to common formulae, but it has the advantage of assuring straight away, under sanction of a collective guarantee, the maintenance of rights and liberties at present existing in each country.

The adoption of the second system to obtain quicker result would in no way prevent the Committee from initiating a study of a European Charter of fundamental rights and liberties which would provide a common definition of the liberties thus guaranteed and of the conditions in which they might be exercised.

When this Charter was drawn up, after the inevitable long period of study, it would be submitted to States who would agree to substitute it for their own legislation, but who, in the meanwhile, would have accepted the immediate guarantee of rights and liberties as defined in their own internal legal system.

2) If the Committee gives a favourable reply to section (b) of the preceding question, it should draw up a list of the guaranteed liberties, it being well understood that these liberties are only guaranteed in each Member State under the conditions and according to the procedure laid down by internal legislation.

..."
(TP, I, pp. 156-160; or Doc. A 14)

4. Legal Committee - Minutes of the sitting on 25 August 1949

"...

After deliberation, the Committee resolved to discuss the following subjects:

1) Should the collective guarantee be applied to a list of freedoms defined in terms common to and binding on all member States?

2) Should the Committee confine itself to defining, in general terms, each freedom it considers fundamental, on the understanding that such freedoms are to be guaranteed in each member State only under the conditions and in the manner presented by the law of the country concerned?

3) The second method, of safeguarding existing freedoms and rights by a collective guarantee; this, however, would in no way prevent the Committee from studying a European Charter of fundamental rights and freedoms (M. Teitgen).

..."

(TP, I, p. 164; or Doc. A 45)

5. Legal Committee - Minutes of the sitting on 27 August 1949

"Motion made and question put

'to ensure by a collective guarantee, the effective enjoyment of the principal Rights of Man referred to in the Universal Declaration of the Rights of Man adopted by the United Nations, to all persons who may find themselves on the territory of a Member State.' (Mr. Teitgen) (1)

The Committee divided, Ayes 19, Noes 0."

(TP, I, p. 166; or Doc. A 102)

6. Legal Committee - Sitting of 29 August 1949 - Proposals by Mr. Teitgen (2)

"I. The Convention and the procedure to be determined by the Committee later will guarantee to all persons residing within the metropolitan territory of a member State the fundamental rights and freedoms enumerated below:

..."

(TP, I, pp. 166-8; or Doc. A 116 (3)).

./.

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- (1) Text in Doc. A 102; TP, I, p. 166 differs slightly.
 - (2) Mr. Teitgen had been appointed Rapporteur.
 - (3) French only.

7. Legal Committee - Minutes of the sitting on 29 August 1949

"Resolved that the draft proposals prepared by Mr. Teitgen of the list of freedoms and fundamental rights guaranteed to every person domiciled in the metropolitan territory of every Member State be considered (The Chairman)."

(TP, I, pp. 170-172; or Doc. A. 142)

8. Legal Committee - Minutes of the sitting of 31 August 1949

"Motion made to leave out 'Metropolitan' from paragraph 1 of Mr. Teitgen's draft proposals (Mr. Lannung). The Committee divided Ayes 13, Noes 4, Abstentions 2. Resolved to leave out 'domiciled' and insert 'resident' (Lord Layton)."

(TP, I, p. 182; or Doc. A 199)

9. Legal Committee - Sitting of 5 September 1949(a) Draft report presented by Mr. Teitgen"Preamble

1. The Committee for Legal and Administrative Affairs has examined the draft resolution which recommends to Member States of the Council of Europe the establishment of a collective guarantee of essential liberties and fundamental rights.

2. On the preliminary question of the usefulness of such a collective guarantee, the Committee replied in the affirmative, considering that this guarantee ... will allow Member States to prevent - before it is too late - any new member who might be threatened by a rebirth of totalitarianism from succumbing to the influence of evil, as has already happened in conditions of general apathy. Would Fascism have triumphed in Italy if, after the assassination of Matteotti, this crime had been subjected to an international trial?

...

6. In approaching the general problem of the definition of rights and liberties which are to be guaranteed (a question presented to the Assembly by the Committee of Ministers in their letter of 14th August 1949) the Committee considered that it was preferable (as much from a desire to co-ordinate the activity of the Council of Europe with that of the United Nations, as by reason of the moral authority and technical value of the document in question) to make use, as far as possible, of the definitions set out in the 'Universal Declaration of Human Rights' approved by the General Assembly of the United Nations. It thus based itself, as far as possible, on this document.

7. It has always been understood that in utilising one or other liberty, the resolution adopted by the Committee did not relate to all the provisions of the article in question, but only to those specifying the content of the liberty dealt with in this resolution.

...

13. After having drawn up the list of the rights and liberties which should be guaranteed, the Committee approved the principle of international law according to which each State reserves the right to organise the exercise within its territories of the guaranteed liberties (Article 4) ...

...

16. As regards the question of whether or not the rights set out in Article 2 of the draft resolution should be guaranteed by each State, not only to all persons residing within its metropolitan territory, but also to all persons residing within its overseas territories or in its colonial possessions, the majority of the Committee replied in the affirmative. Certain reservations were made on this point by some members of the Committee, who were not able to appreciate exactly the difficulties which this solution might raise. (1)

...

(Draft Recommendation)

Art. 1. The Consultative Assembly of the Council of Europe recommends to Member States that they should ensure, by means of a convention of collective guarantee, the effective enjoyment by all persons residing within their territories of the rights and fundamental liberties referred to in the Universal Declaration of the Rights of Man, adopted by the General Assembly of the United Nations, and set forth in Article 2 below.

Art. 2. All Member States, signatories to the convention, shall bind themselves to ensure to all persons residing within their territories:

...

Art. 4. Provided it respects the provisions laid down in Articles 5, 6 and 7, every Member State, signatory of the Convention, shall have full and entire freedom to establish the rules by which the guaranteed rights and liberties shall be organised and protected within its territory. (2)

..."

(TP, I, pp. 192, 194, 200, 202, 206 and 208; or Doc. A.290, pp. 1, 2, 6-7, 10 and 11)

./.

-
- (1) A different solution to this problem was subsequently adopted - see Article 63 of the Convention.
- (2) Article 5 concerned discrimination, Article 6 the limitations on freedoms guaranteed and Article 7 the conformity of regulations with the "general principles of law as recognised by civilised nations".

(b) Proposed alternative to Paragraph 2 of the Draft Report
(Mr. MacEntee)

"2. - On the preliminary question the Committee affirms emphatically its opinion that in view of the denial now and in the past of certain essential liberties and human rights by totalitarian regimes a collective guarantee is called for and could be made effective. ..."

(TP, I, p. 212; or Doc. A 299)

10. Report of the Legal Committee to the Consultative Assembly
(5 September 1949)

"Preamble

1. Identical to paragraph 1 of the draft report (para. IV-9 (a) above, p. 16), subject to the substitution of 'on Legal and Administrative Questions' for 'for Legal and Administrative Affairs' and of 'freedoms' for 'liberties'.⁷

2. On the preliminary question of the usefulness of such a collective guarantee, the Committee replied in the affirmative, considering that ... the reasons given no longer include that cited above from paragraph 2 of the draft report⁷.

...

6. Identical to paragraph 6 of the draft report cited above, subject to the substitution of 'freedoms' for 'liberties'.⁷

7. It has always been understood that in referring to one or other Article of the Declaration of the United Nations with the object of defining this or that freedom better, the Resolution adopted by the Committee did not mean to refer to all the provisions of the Articles in question, but only to those specifying the conduct of freedom (1) provided for in this Resolution.

...

14. Passage identical to that cited above from paragraph 13 of the draft report, subject to the substitution of 'freedoms' for 'liberties'.⁷

...

17. Passage identical to paragraph 16 of the draft report.⁷

...

./.

(1) Sic. This should apparently read "the content of the freedom"; cf. the French text.

(Draft Recommendation)

Art. 1. The Consultative Assembly of the Council of Europe recommends the Committee of Ministers to cause a draft Convention to be drawn up as early as possible, providing a collective guarantee, and designed to ensure the effective enjoyment by all persons residing within their territories of the rights and fundamental freedoms referred to in the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations, and set forth in Article 2 below.

Art. 2. In this Convention, the Member States shall undertake to ensure to all persons residing within their territories:

...

Art. 4. Subject to the provisions laid down in Articles 5, 6 and 7, every Member State, signatory to the Convention, shall be entitled to establish the rules by which the guaranteed rights and freedoms shall be organised and protected within its territory.

..."

(TP, I, pp. 216, 218, 222, 224, 228 and 230; or Ass. Doc. 1949, No. 77, pp. 197, 198-199, 201-202, 204 and 205)

11. Amendments to the draft Recommendation submitted by the Committee to the Assembly

(a) Amendment proposed by MM. Rolin (Belgium), Sundt (Norway) and Wolter (Luxembourg):

"Article 1. Leave out 'a draft convention providing a collective guarantee' and insert 'a collective convention.'

Reasons for this Amendment

Although the word 'guarantee' has been used by the Committee of Ministers, I think it would be better to omit it, in order not to create a false impression among the public that the object and effect of the Convention is to make Member States of the European Community collectively responsible for the respect of human rights by each one of them severally.

The proper technical term to define the object of the Convention seems to me to be the word protection, which does actually appear in the Preamble to the Universal Declaration of the United Nations and which is an apt reminder of the 'protection' which has up till now been exercised by the State alone, in its relations with foreign States, concerning the person and the property of nationals residing on its territory.

..." (1)

(TP, I, p. 240; or Ass. Doc. 1949, No. 81, p. 220)

./.

(1) This amendment was rejected after discussion; see para. IV-13 (f) below, p. 26.

(b) Amendment proposed by Mr. Benvenuti (Italy):

" Article 6, page 10:

'A special convention shall be annexed to the present Convention with a view to establishing between the member States a uniformity in the legislation concerning the organisation and the protection of fundamental liberties, which constitute the condition under which democracy operates.'(1)

(TP, I, p. 256; or Ass. Doc . 1949, No. 97, p. 242)

12. Plenary sitting of 7 September 1949
(Presentation of the Committee's Report)

Mr. Teitgen (France, Rapporteur of the Committee)(Translation):

"...

... the Committee ... unanimously affirmed the importance of setting in motion, inside Europe, the respect by States of rights and fundamental freedoms, as well as the general principles of democracy, by a system of collective guarantees.

...

... in approaching the general problem of the definition of rights and freedoms which are to be protected - a problem which the Committee of Ministers itself presented to the Assembly in their letter of 14th August 1949 - the Committee considered that it was preferable, in defining the freedoms to be protected, to make use as far as possible of the 'Declaration of Human Rights' approved by the General Assembly of the United Nations.

In this way, the Committee wished to demonstrate first of all its respect for the technical value and the moral authority of this document of world-wide importance, and also to avoid making a distinction between European and world order.

Thus, after having studied this Universal Declaration of Human Rights approved by the United Nations, the Committee selected from this Declaration those rights and fundamental freedoms which appeared to it to warrant an international guarantee at the present time. In order to define them in the Resolution which is submitted to you, the Committee has based itself on the corresponding Articles of the United Nations Declaration.

...

(1) This amendment was withdrawn after discussion; see para. IV-13 (k) below, p. 29.

It is not enough to state principles and to define freedoms; it is necessary to envisage further legislation for their execution and protection.

There were two possible systems, which the Committee studied at length. The first can be summarised as follows: it is not enough for the Council of Europe to draw up a list of the fundamental rights and freedoms to be guaranteed. It is necessary to devise general legislation for each freedom, through international codification of all the methods and conditions in which this particular freedom is exercised in each country.

...

If we adopted this policy it would mean the indefinite postponement of our aim. Because, if it were necessary, in guaranteeing protection against arbitrary arrest, to unify the codes of penal procedure; in guaranteeing the freedom of the press to unify the laws on the press; in guaranteeing freedom for trade unions, to unify the legislation on trade unions and incorporate all these laws into a European code, it would be necessary to hand the task on to the next generation. It is sometimes unwise to ask too much; that is the best means of achieving nothing.

Furthermore, such detailed codification of legislation regarding guaranteed freedoms, such a European codification is probably impossible to achieve and it is better to say so at once.

Those who were in favour of a preliminary codification based themselves on the rules of logic; this is an argument which we may yet hear in the course of our debate. They pointed out that before establishing an international organisation, a Commission, or a Court, which would protect the guaranteed freedoms, it is first necessary to make the law which will be applied by this international organisation.

Before authorising an international European Court to intervene in guaranteeing freedoms or fundamental rights, it is necessary first to make the law, the law which this Court will be responsible for applying. In consequence, it is necessary first to draw up European legislation on guaranteed freedoms, before affirming the principle of guarantee and establishing a Court.

Life does not always follow the rules of logic; that is the reply which must be made to those who are in favour of this solution. Codification can no more be improvised than can an internal code. One cannot say, one fine morning, with any chance of success: 'we will now make a code of European freedoms.' In France the Emperor Napoleon did draw up some codes, but these codes were in effect but a formulation of three hundred years of custom and jurisprudence. All that is to be found in our Napoleonic codes was already part of the written jurisprudence and customs of France before the Revolution. The Napoleonic code was simply an ordered transcription of all that had already been confirmed by courts, jurisprudence, experience, custom and popular consent.

It is the same in the international field. It is impossible to improvise international codification. One cannot first draw up the code and then establish the Court. Experience shows that the Court comes first. For the Court deals with cases: it progressively establishes a jurisprudence. Confidence is inspired according to the value of this jurisprudence. In order to develop this jurisprudence, the Court must, day after day, examine the law which it administers, following the practice and custom of the countries which it represents. And then, a long time afterwards, codification may be achieved; this will define and crystallise the results acquired by judicial experience.

It is possible to quote many examples. The problem has already arisen. When, at the beginning of this century, there was talk of the creation of an international Prize Court, there were those individuals and States which said: 'Before making an international Prize Court, we must codify the law of the seas.'

A codification was attempted, but, since they tried to draw up this codification before having established a jurisprudence by prior experience, they were not able to achieve a codification acceptable to the countries in question. Everything was abandoned, including the court.

From that arose the solution which has been adopted by our Committee. It confirms the traditional principle, which is also a fundamental international public right, according to which each country has the right to organise, within its own territory, the methods of execution and the day-to-day conditions for the operation of the guaranteed rights and freedoms.

Thus an international Convention shall establish and give a general definition of a list of guaranteed freedoms. Each country shall, through its own legislation, determine the conditions in which these guaranteed liberties shall be exercised within its territory, and, in defining the practical conditions for the operation of these guaranteed liberties, each country shall have a very wide freedom of action.

But - and this is the essential point - the international collective guarantee will have, as its purpose, to ensure that no State shall in fact aim at suppressing the guaranteed freedoms by means of minor measures which, while made with the pretext of organising the exercise of these freedoms on its territory, or of safeguarding the letter of the law, have the opposite effect. That is the reason for Articles 5, 6 and 7 of the draft Resolution submitted to you.

..."

(TP, I, pp. 266-268 and 272-276; or Rep. 1949, IV, pp. 1144 and 1148-1150)

13. Plenary sitting of 8 September 1949 (Discussion of each Article of the draft Recommendation separately)

(a) Mr. Rolin (Belgium)(Translation):

"...

The fate of the individual, especially that of stateless persons, would ... undoubtedly be considerably improved if some international supervision were organized.

...

I come now to the reasons for the amendment which I have submitted.⁽¹⁾ The purpose of this amendment is to replace in certain articles the word 'guarantee' by the word 'protection' and in Article 1 to replace the words 'a draft Convention providing a collective guarantee' by the words 'a collective Convention,' thus deleting once again the word 'guarantee.'

This is certainly not an argument of substance, which will make any great change in the precise scope of the principles which we recommend. But I think that this modification is necessary to avoid ambiguities and illusions.

We must certainly ask and ensure that the Member States of the Council of Europe shall collectively guarantee effective implementation of the principles of human rights by their respective nationals. But will these rights in fact be guaranteed?

The word 'guarantee' appears to me to have two drawbacks. First of all, it gives an impression of certainty which it is not in our power to give to individuals, even in our own countries. We are to limit ourselves to the protection of certain essential rights by means of political and legal control. Sometimes such decisions will certainly be contested, and the recommendations will not perhaps always be made effective.

What will be the extent of the guarantee? That is my second observation.

A guarantee, in law, imposes an obligation on the guarantor to take the place if need be of the principal debtor, to ensure that the beneficiary of the guarantee enjoys fully and completely all that has been promised. In civil law, the person who guarantees a debt is bound to pay it in place of the principal debtor. In the law of nations, the State which guarantees the integrity of another State is bound to bring all help within its power to the protection of the State thus guaranteed.

I do not think that we are proposing anything on these lines, and that in the case of a Member State finding itself condemned to pay compensation and omitting to do so, it is not our plan to take its place either collectively or individually.

I would add that the word 'protection' can claim not only that it appears in the preamble of the Universal Declaration, but also that it indicates quite precisely the nature of what we have in view, which is nothing more than the extension of the protection which every State exercises at the moment over the person and property of its nationals abroad.

./.

(1) For the text of the amendment referred to by Mr. Rolin, see para. IV-11 (a) above, p. 19.

Actually, the effect of our Convention would be that each Member State of the Council of Europe would have the right to concern itself with the protection, not only of its nationals, but also of the nationals of the other European Member States and of all persons within the territory of one of these European Member States.

When a State protects its nationals abroad, it does not give them any guarantee; equally we would not give any collective guarantee, in the Convention which we are recommending, to the persons and goods of foreign nationals. It is through a concern for modesty, a concern also for precision and for political reasons, that I recommend that the Assembly should not use the expression 'guarantee.'

(TP, II, pp. 16 and 18-22; or Rep. 1949, IV, pp. 1166 and 1168)

(b) Mr. Schmal (Netherlands)(Translation):

"...

... in spite of all my reservations, I am in favour of the proposed Resolution, in supporting, at the same time, the amendments which we owe to Mr. Rolin; that is, the amendments contained in documents 80, 81, 82 and 83.

..."

(TP, II, p. 26; or Rep. 1949, IV, p. 1170)

(c) Mr. Dominedo (Italy)(Translation):

"...

I should like at once to express my polite, but firm opposition to Mr. Rolin's arguments.

With his restraint and his penetrating mind, Mr. Rolin has raised the question of whether it is really necessary to make a collective organization for the protection of human rights. I think that in speaking of the collective organization of the protection of human rights, we are thinking of some form of collective guarantee. It is necessary to examine how this guarantee can be assured gradually and effectively. There is something for us to do in this matter.

Indeed, if we do not assure, even with the said progressive means, some form of collective guarantee, we shall achieve almost nothing.

I should like to say to my eminent colleague, Mr. Rolin, that it is necessary, at this moment, in accordance with the road that has been marked out for us by our own decisions, to consider the quomodo of the guarantee and not its spirit.

We must do something, even from the technical point of view.

There is no doubt that, if we establish a Court, if we study its powers - those needed to create laws and a certain power of execution - even with the intervention of the Council of Europe, we shall, from a technical and legal point of view, achieve something which will constitute a form of collective guarantee.

Subject to the respect which I owe Mr. Rolin, I must express my opposition to this amendment. This is a question of principle.

..."

(TP, II, p. 26; or Rep. 1949, IV, p. 1172)

(d) Mr. Düsünzel (Turkey)(Translation):

"...

I think that this famous jurist (1) was correct in insisting on the value of the word 'guarantee'.

...."

(TP, II, p. 28; or Rep. 1949, IV, p. 1172)

(e) Mr. Teitgen (France)(Translation):

"...

I now come to Mr. Rolin's amendment. I shall explain to you very shortly why we used the word 'guarantee.' First of all, because it appeared in the letter which was addressed to us by the Committee of Ministers, giving authority for the study of a 'collective guarantee' of fundamental rights to be included in our agenda. It was thus the Committee of Ministers which used the expression.

Moreover, I hope Mr. Rolin will allow me to say that the word 'guarantee' has not the same meaning in public and private law. In private law, the guarantee of one third given (2) to a creditor does in effect oblige the guarantor to replace the debtor if the latter defaults.

In public law, there is neither debtor nor creditor, there are legal and regulated conditions. When, in speaking of freedoms written into the constitution and of the machinery which protects them, we say that the constitutional guarantees of freedom are defined, we give the word a meaning which has nothing to do with private law.

When we say that a Member of Parliament enjoys certain immunities and guarantees by virtue of the constitution, we do not use the word with reference to his duties and obligations.

./.

(1) Mr. Rolin

(2) Sic. This should presumably read "guarantee given by a third party"-
cf. the French text.

We could, therefore, I think keep this term. But we have better things to do than to quarrel about a word. Having given these explanations, I am willing that the Assembly should adopt Mr. Rolin's amendment."

(TP, II, p. 34; or Rep. 1949, IV, p. 1176)

(f) Lord Layton (United Kingdom):

"As many of us think that the arguments used by Mr. Teitgen in favour of 'guarantee' were conclusive, I should like the issue to be decided by a Division."

On a vote, the Amendment was rejected.

(TP, II, p. 36; or Rep. 1949, IV, p. 1176)

Article 1 and the "nine first paragraphs" (1) of Article 2 of the draft Recommendation were subsequently put to the vote and adopted.

(TP, II, p. 46; or Rep. 1949, IV, p. 1184)

(g) Lord Layton (United Kingdom):

"...

... What we are proposing to do is to define and guarantee the political basis of this association of European nations. What the members of this association are saying, if this proposal materializes, is that the maintenance of certain basic democratic rights in any one of our countries is not the concern of that country alone, but is the concern of the whole group. Therefore, we propose that if a complaint is made that this minimum standard is not in fact being realised, the country concerned will, subject to proper safeguards which are set out here in this declaration, permit the complaint to be submitted to impartial enquiry and, if necessary, to the judgment of the European Tribunal.

..."

(TP, II, p. 50; or Rep. 1949, IV, p. 1186)

(h) Mr. Edberg (Sweden):

"...

... I would remind this Assembly that there is an essential difference between this charter and the Universal Declaration of Human Rights approved by the United Nations. The United Nations Declaration - in many respects an admirable document - has the character of general recommendations. It is not binding on anyone because there is no power behind its words. It could therefore be adopted by totalitarian States as well as by democratic States.

(1) There is no express reference to the opening words of Article 2.

This declaration will, on the contrary, be supported by a collective guarantee. It will be a code of law for the democracies, according to which an international Court will be able to judge. The various paragraphs must therefore be clearly formulated and the definitions generally accepted so as to give a Court the possibility of judging in accordance with them.

..."

(TP, II, p. 84; or Rep. 1949, IV, p. 1204-1206)

During the course of the Debate, Article 4 of the draft Recommendation was adopted without discussion or amendment.

(TP, II, p. 134; or Rep. 1949, IV, p. 1234)

(i) Mr. Benevenuti (Italy) (Translation):

"I must state first of all that I submitted my amendment not with the words 'a special Convention shall be annexed' but with the words 'a special Convention may be annexed'. (1)

...

The battle against totalitarianism should rather be modified and should become a battle against abuse of legislative power, rather than abuse of executive power.

We might make a comparison. In our constitutional law, every time we refer a law to Parliament, we expose ourselves to the possibility that Parliament might violate the principles laid down by the Constitution. Here, in referring the application to the respective countries of principles, such as human rights, which are no longer constitutional but supra-constitutional, we risk such violations not by a single country, but by twelve, fifteen or twenty Parliaments.

The problem which presents itself is that of a uniform legislation relating exclusively to the rights of freedom. I cannot conceive a uniform legislation for the other rights covered by our Report, ...

...

The problem is different for the rights of personal freedom: the right to freedom of conscience, the right of expression, of association, of the press and the right to vote. These rights, as our Rapporteur so aptly said in his covering statement, are the rights on which democracy is based and without which no democratic regime would be possible.

./.

(1) For the text of the amendment referred to by Mr. Benvenuti, see para. IV-11 (b) above, p. 20.

Any violation of one of these rights has a direct and immediate repercussion on our Council, because its representative character may be menaced. It is obvious that a country in which the rights of freedom are compromised cannot send freely elected representatives to our Council. You understand, in these conditions, how important it is to establish as rapidly as possible the characteristics of a possible future violation of these rights.

What on the contrary will happen with the system which we have established in Articles 4 and 6? The Court could never give judgment on a particular case without having previously decided if the law, which the State applied and has quoted in its defence, is constitutional or not; in this case the word 'constitutional' means that it is in conformity with the Convention on Human Rights.

The Court should proceed to such an examination every time a violation of human rights is covered by national law.

Naturally, the States will always invoke the provisions of Article 6. Every State which violates human rights and above all the rights of freedom, will always have an excuse: morality, order, public security and above all democratic rights, which are obviously only properly safeguarded by those totalitarian States which are not democracies, but 'true democracies.' That is a vocabulary to which we have become accustomed in the last twenty years!

In this event, a lengthy debate would take place before the Court. Time would be wasted. Months, perhaps, even years, would elapse and what would be the outcome?

It happens that totalitarianism can in fact become established in any country which is a Member today, or which may tomorrow become a Member of our Council. The State will have the right to send its representatives and there will not even be the possibility of making a moral protest. There will be nothing to say when a State, in applying Article 4, shall issue a law which has not yet been declared to be contrary to the Convention on Human Rights.

Having said this, here is how, in my opinion, we can solve the problem. It is necessary to adopt a uniform constitutional law which will respect and apply without ambiguity the rights of freedom, and nothing but the rights of freedom.

This rule could be introduced into Article 4. Its aim would be to ensure respect and the application, without ambiguity, of the rights of freedom. Consequently, any law contrary to the Convention on Human Rights as regards the rights of freedom, could be declared to be unconstitutional ipso jure; that is to say it could be declared to be unconstitutional in any Member country which, in its constitutional law, has recognized the application of the Convention on Human Rights.

..."

(TP, II, pp. 134 and 136-140; or Rep. 1949, IV, pp. 1234 and 1236-1238).

(j) Mr. Teitgen (France)(Translation):

"...

First of all, if we require States, whom we have asked to negotiate a Convention for the organization of the collective guarantee of protected freedoms, to sign at the same time a Convention of codification, that would mean adjournment sine die.

In the second place, I think that we are ourselves now equipped to prepare the proposed draft codification, either in this Assembly, or in its Committee on Legal and Administrative Questions.

Rather than refer the matter to the Governments, we could submit it to our Assembly and our Committee on Legal and Administrative Questions. This latter could, during the coming months, prepare the text of codification, and then present it for ratification by the Governments.

In the light of these observations, I hope that Mr. Benevenuti will be good enough to withdraw his amendment."

(TP, II, p. 142; or Rep. 1949, IV, p. 1238)

(k) Mr. Benvenuti (Italy)(Translation):

"I withdraw my amendment. I am sorry that Mr. Teitgen did not understand me. I did not talk of a simultaneous codification, and I have altered my amendment in accordance with his observations so as to provide only for a later presentation of the Convention."

(TP, II, p. 142; or Rep. 1949, IV, pp. 1238-1240)

Mr. Benvenuti's amendment was withdrawn.

(l) Mr. Callaghan (United Kingdom):

"...

... but other practical difficulties remain, in my opinion.

I refer only to the first sentence of Article 1 of Section 1 in which a guarantee is given. We are proposing to recommend to the Committee of Ministers that a guarantee should be given to individual citizens. What form is that guarantee to take? Supposing it is broken, what action is taken against the transgressor? Supposing the States who guarantee do not take action, what happens then?

These, Mr. President, are practical questions which have not been worked out.

..." (1)
(TP, II, p. 246; or Rep. 1949, IV, p. 1308)

./.

(1) Mr. Callaghan concluded by announcing that he would abstain when the vote on the whole of the draft was taken.

The draft Recommendation presented by the Committee was later put to the vote of the Assembly. There were 64 votes in favour and 1 against, with 21 abstentions. The text of Article 1, the opening words of Article 2 and Article 4 of the Recommendation No. 38 of 8 September 1949, thus adopted by the Assembly, was identical to that contained in the draft (para. IV-10 above, p. 19).

(TP, II, pp. 274-278; or Rep. 1949, IV, p. 1324 and Ass. Doc. 1949, No. 108, p. 261).

V. COMMITTEE OF EXPERTS ON HUMAN RIGHTS OF THE COUNCIL OF EUROPE - FIRST SESSION (Strasbourg, 2-8 February 1950)

1. Convocation of the Committee of Experts - Letter addressed by the Secretary General of the Council of Europe to the Ministers for Foreign Affairs of the Member States (18 November 1949)

"...

It appeared to the Committee (1) that one of the principal aims of the proposed Convention would be to enable action to be taken as soon as possible, with regard to the first general or particular cases of violation of human rights, of which certain countries might be guilty, in order to halt the progress of evil before it is too late. ..."

(TP, II, p. 304; or Doc. D 26/2/49)

2. Report of the United Nations Commission on Human Rights on its 5th Session (Lake Success, May-June 1949) (2)

(a) Preliminary draft of the International Covenant on Human Rights

Article 2

"1. Each State party hereto hereby undertakes to ensure to all individuals within its jurisdiction the rights defined in this Covenant. Where not already provided by legislative or other measures, each State undertakes, in accordance with its constitutional processes and in accordance with the provisions of this Covenant, to adopt within a reasonable time such legislative or other measures to give effect to the rights defined in this Covenant.

2. ..."

(Doc. E 1371, p. 17)

./.

(1) The Standing Committee of the Consultative Assembly.

(2) Quoted here because the Committee of Ministers of the Council of Europe, when setting up a committee of experts on human rights (November 1949), expressly requested it to pay "due attention ... to the progress which has been achieved in this field by the competent organs of the United Nations". (TP, II, p. 296; or Ass. Doc. 1949, No. 116, para. 6, pp. 288-289).

(b) Comments by the representatives of Australia, Denmark, France, Lebanon and the United Kingdom

"...

The covenant is intended to be an international agreement imposing legal obligations and conferring legal rights, and the first requisite of a legal instrument is that it should state precisely the rights which it confers and the limitations on those rights which it permits. ...

..."

(Doc. E 1371, p. 31)

3. Preparatory Report by the Secretariat General of the Council of Europe (undated) (1)

"...

... The reason (2) for making responsibility collective was the belief that without respect for human rights the political basis for the European association postulated by the Council of Europe might well be deprived of one of its essential elements.

...

If such a guarantee existed, the lot of stateless persons, for instance, could be improved.

... (3)

(Comparison between the draft International Covenant on Human Rights and the Consultative Assembly draft (the articles referred to below are those of the Covenant))

...

Article 2. This Article guarantees all individuals within the State's jurisdiction the rights defined. Article 2 of the Strasbourg draft provides that the Member States shall undertake to ensure to all persons residing within their territories the rights defined.

./.

-
- (1) Translation by the Registry: the report exists only in French.
- (2) Explaining the motion the text of which appears in para. IV-2 (a) above, p. 7.
- (3) The preparatory report went on to summarise, inter alia, the discussions in the Assembly on Mr. Rolin's amendment and on the method of formulating the rights and freedoms to be guaranteed (TP, III, pp. 6-8, 12-14 and 16-18).

...

(List of questions arising in connection with the preparation of a preliminary draft Convention on the basis of the Assembly resolution)

1) Definition of the word 'residing' in Article 2 of the Assembly resolution. Can petitions be made to the Commission by nationals of non-member countries residing within the territory of the Members but not falling within the category of 'stateless persons'? Is the solution offered in Article 12 of the said resolution (1) sufficiently specific in this respect?

...

31) Should the Court be empowered, at the instigation of a Member State, to declare any legislative, administrative or judicial measure incompatible with the rights guaranteed, independently of the individual petition procedure?

(French memorandum to the ILC (2) on the creation of an international criminal court, paragraph 8.)

..."

(TP, III, pp. 4, 26, 32 and 36; or Doc. B.22, pp. 4,5,18, 22 and 24)

4. Comments of the United Kingdom Government on the draft International Covenant on Human Rights (3)(4)

"...

Art. 2. a) His Majesty's Government consider that the second sentence of paragraph 1 of this article should be deleted. The normal practice with regard to the acceptance of international obligations is that accession is only effected after or simultaneously with the taking of the necessary constitutional measures for execution. In this case His Majesty's Government consider that States should take the steps necessary to give effect to the rights defined in the Covenant before they acceded to the Covenant.

...

./.

-
- (1) Article 12 provided: "After all other means of redress within a State have been tried, any person, or corporate body, which claims to have been the victim of a violation of the Convention by one of the signatory States, may petition the Commission in a request presented through legal channels."
 - (2) Presumably the International Law Commission of the United Nations.
 - (3) The draft quoted at para. V-2 (a) above, p. 30.
 - (4) These comments were received by the Secretary General of the United Nations on 4 January 1950 and were communicated to the Committee of Experts of the Council of Europe for information.

(Text of detailed proposals)

Article

a) Each State party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Covenant.

b) ...

..."

(TP, III, pp. 156 and 174; or Doc. A 770, pp. 1 and 12) (1)

5. Amendment to Recommendation No. 38 of the Consultative Assembly proposed by Sir Oscar Dowson (United Kingdom) (4 February 1950)

"The Government of the United Kingdom propose the following articles in substitution for Articles 4-7 of the Consultative Assembly's draft Convention:

Article. 1) 'Each State party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Convention. Every deposit of an instrument of accession shall be accompanied by a solemn declaration made by the Government of the State concerned with full and complete effect as given by the law of that State of the provisions of the Convention.(2)

..." (3)

(TP, III, p. 188; or Doc. A 782 - Or. Eng.)

6. Amendment proposed by Mr. Perassi (Italy)(4 February 1950)

"In the first sentence of Article 2, replace the words 'residing within' by the words 'living in'."

(TP, III, p. 194; or Doc. A 786 - Or. fr.)

(1) See also Doc. E/CN 4/353/Add. 2 of the United Nations.

(2) Sic.

(3) The amendment expressly referred to "Articles 4-7" although it seems to concern Article 2 also. For the text of Article 4, see para. IV-10 above, p. 19.

7. Report of the Sub-Committee instructed to make a preliminary study of the amendments proposed by the members of the Committee of Experts (5 February 1950) (1)

"...

The Sub-Committee ... has considered it advisable to examine firstly the amendments to Articles 5, 6 and 7 and those which, although formulated with reference to Article 2, nevertheless relate to the definition of the limits of the rights enumerated under this article. In this respect, Sir Oscar Dowson repeated his reservations concerning the method to be adopted for defining the human rights and their limitations.

Firstly, however, the Sub-Committee examined Amendment A 786 moved by Mr. Perassi, for replacing the words 'residing within' by the words 'living in,' under Articles 1 and 2.

Since the aim of this amendment is to widen as far as possible the categories of persons who are to benefit by the guarantee contained in the Convention, and since the words 'living in' might give rise to a certain ambiguity, the Sub-Committee proposes that the Committee should adopt the text contained in the draft Covenant of the United Nations Commission: that is, to replace the words 'residing within' by 'within its jurisdiction.'

It is realized that since certain of the rights enumerated under Article 2 cannot be guaranteed to aliens without any restrictions, particularly the rights contained in paragraphs 6, 7, 8 and 9, a reference to these restrictions should be inserted in the text of Articles 5 and 6. (2)

...

Sir Oscar Dowson (United Kingdom) moved an amendment for replacing Articles 4 and (3) 7 by two other Articles (Doc. A 782).

...

The first article ... is aimed at the national protection of human rights.

The Sub-Committee considered it advisable to give due consideration to these proposals as being of interest even to those who adhere to the definition of human rights as proposed by the Assembly.

This article could, in fact, be included as an addition to Article 4 of the Assembly draft.

...

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- (1) This Sub-Committee consisted of MM. Chaumont (France), Perassi (Italy), Salén (Sweden), Ustun (Turkey), de la Vallée-Poussin (Belgium) and Sir Oscar Dowson (United Kingdom).
- (2) The paragraphs cited concerned freedom of opinion, of assembly, of association and to unite in trade unions, respectively; Article 5 concerned discrimination and Article 6 limitations on the freedoms guaranteed. For the solution finally adopted, see Article 16 of the Convention.
- (3) Sic. Cf. the French text and the text of the amendment in para. V-5 above, p. 33.

On a proposal by Sir Oscar Dowson, the Sub-Committee decided to postpone the discussion of the other amendments proposed by Sir Oscar Dowson, (1) until the Committee could examine the proposals moved by the latter all together as a whole.

..."

(TP, III, pp. 200-202; or Doc. A 796, pp. 1, 2 and 3 - Or. Fr.)

8. Draft text of the first section of a draft Convention based on the work of the Consultative Assembly (7 February 1950)

"Article 1. The High Contracting Parties undertake to guarantee to all persons within their jurisdiction the rights listed in Article 3 below.

..."

(TP, III, p. 222; or Doc. A 809, p. 2 - Or. Fr.)

9. Proposal of the Drafting Committee (2) concerning Section III (New) (Continuation) (8 February 1950)

A draft text concerning the competence of the Court was supplemented by the following notes:

"... The Sub-Committee submitted a dual question for the attention of the plenary Committee:

1) Should the competence of the Court cover cases of a virtual violation of Human Rights, by the promulgation of a law contrary to these rights, or should it limit itself to cases of effective violation, resulting from the application of a legal or administrative decision?

2)7

...

7The first part of the Assembly's Article 24 (3) has lost its raison d'être, since the plenary Committee has only agreed that recourse may be had to the Court in respect of the application of legislative or executive actions, and that the rule, that all internal channels shall have been exhausted before the Commission can be seized of the affair, is already covered.7

..."

(TP, III, pp. 230 and 232; of Doc. A 813, pp. 1 and 2 - Or. Fr.)

-
- (1) These amendments were based on the system of definition.
 (2) MM. Perassi, Salén, Chaumont.
 (3) The first sentence of this Article, which foreshadowed the present Article 45 of the Convention, read: "The jurisdiction of the Court shall extend to all violations of the obligations defined by the Convention, whether they result from legislative, executive or judicial acts." (TP, II, p. 280; or Ass. Doc. 1949, No. 108, p. 264).

10. Letter from the Secretary-General of the Council of Europe to the Foreign Ministers of member States (10 February 1950)

"...

Right from the beginning of the discussion, two main schools of thought emerged regarding the method to be followed. Some experts held that the draft prepared by the Assembly (Doc. 108) did not constitute an acceptable basis for discussion, since the rights and freedoms to be safeguarded, and especially their limitations, were not defined with the requisite precision. They believed that the Committee of Experts should be guided by the method employed in the United Nations Commission on Human Rights of defining fundamental rights and their limitations in the greatest possible detail.

Another section of the experts, however, considered that the method adopted by the Assembly, namely of referring to the Universal Declaration proclaimed by the United Nations General Assembly for the definition of human rights and to certain general rules and principles for their limitation, might give results as good as, if not better than, the method followed by the UN Commission.

In these circumstances, and in order to be able to submit a report to the Committee of Ministers before their next session, the Committee of Experts began by studying the Consultative Assembly's draft and postponed discussion of all proposals based on the method adopted by the UN Commission.

After having completed their examination of the Assembly's draft, the Committee adjourned until 6th March, when they will consider the report on the first meeting prepared by their Rapporteur and begin their study of proposals based on the method adopted by the United Nations Commission on Human Rights.

..."

(TP, III, p. 234; or Doc. A 820)

11. Preliminary draft Convention (15 February 1950)

"Art.1. The High Contracting Parties undertake to accord to any person within their jurisdiction the rights set out in Article 2 of this Convention, subject to the conditions given below.

...

Art. 4. Subject to the provisions laid down in Articles 5, 6, 7, 8 and 9, each of the High Contracting Parties shall be entitled to establish the rules by which the rights and freedoms enumerated above shall be organised and protected within its territory.

..."

(TP, III, pp. 236 and 238; or Doc. A 833, pp. 2 and 4)

12. Preliminary draft report of the Committee of Experts to the Committee of Ministers (24 February 1950)

"...

Right from the beginning of the discussions, two main schools of thought were expressed in the Committee with regard to the method to be adopted for carrying out the mission with which it had been entrusted.

All the representatives were in favour of the drawing up of a Convention to safeguard human rights among the Member States of the Council of Europe.

Certain members, however - particularly the representatives of the United Kingdom and the Netherlands - considered that the fundamental rights to be safeguarded, and, even more important the limitations of these rights, should be defined in this Convention in as detailed a manner as possible. These members felt that it would be impossible for States to undertake to respect rights which had not been defined sufficiently precisely.

Now the draft adopted by the Consultative Assembly refers, for its definition of human rights, to the Universal Declaration proclaimed by the General Assembly of the United Nations on 10th December 1948, leaving it to each of the signatory States to establish the methods and conditions of exercise of the protected freedoms and rights (Article 4), and laying down certain general rules and principles for the limitation of these rights (Articles 5, 6 and 7).

In this connection, Sir Oscar Dowson stated in particular that the United Kingdom Government attached great importance to the conclusion of a Convention relating to human rights by the States represented on the Council of Europe, but that it was essential to proceed on the right lines. In the Universal Declaration of Human Rights and Fundamental Freedoms there was set out a number of ideals which had not and were not intended to have any legal effect. That had been fully recognized in the discussions which had taken place at Lake Success, and for that reason the Commission on Human Rights was drawing up a Draft Covenant intended to be legally binding on the parties thereto.

In the view of the United Kingdom Government, an essential prerequisite to any Convention on the subject of human rights was the precise definition of the rights to be safeguarded and the permitted limitations to those rights. It was necessary that these definitions should be in legislative form so as to make it quite clear what was the nature and extent of the obligations to be assumed by the States party to the proposed Convention. No doubt the task of definition would be a difficult and onerous one, but His Majesty's Government felt that among the relatively small number of nations represented on the Council of Europe, and having regard to the fact that they had a largely common way of life, agreement should be attainable.

In the view of the United Kingdom Government, until the subject matter had been properly and sufficiently formulated it was not possible to say what provisions were suitable for inclusion in the Convention for the purposes of its execution and enforcement. For example, in the absence of clear and precise definitions, States party to the Convention might be in great doubt as to whether they were in a position to accede to the Convention; how could a country feel sure that its laws were consistent with the obligations it would assume on accession if it did not know precisely what were the obligations involved?

The representative of the United Kingdom Government thought, therefore, that in their present form, the Recommendations of the Consultative Assembly could not be regarded as forming the basis of a satisfactory Convention. The absence of precise definitions of the rights and of their limitations would be likely to lead to confusion and difficulty, and in the long run it would be in the true interests of the Council of Europe to proceed by tackling first the task of the precise definition of the rights to be safeguarded, and secondly and thirdly to determine the suitable provisions for the purpose of execution and enforcement.

Other members of the Committee, in particular the French and Italian representatives, were of the opinion that to attempt to draw up a Convention on the method adopted by the United Nations Commission on Human Rights would be an extremely difficult task and one which it might even be impossible to carry out, even among the Member States of the Council of Europe. Would the States ever be able to agree on all details regarding the definition of every human right, particularly on the precise determination of their limitations? Moreover, there were innumerable cases where the exercise of these rights would have to be subject to certain restrictions, and it would be impossible to foresee all of these. In any case, in order to cover them all by the Convention it would be necessary to add to the detailed list of restrictions a certain number of general rules. As an example, it might be well to draw the attention of the Ministers to the list of restrictions which the United Nations Commission had drawn up with regard to freedom of expression (Annex I to the Report of the Fifth Session of the Commission).

...

The Belgian representative, without wishing to exclude the possibility of defining the human rights within the European framework in a precise and detailed way, was of the opinion that this work would at all events take a long time to carry out and would therefore threaten to delay the setting up of European institutions and bodies which seemed to him essential for the efficient working of the Council of Europe. Even an incomplete Convention might render useful service, pending the conclusion of a better one.

The Belgian representative, moreover, shared the views of the French and Italian representatives that the method adopted by the Assembly formed an adequate basis for a Convention of Human Rights between the European States. The rights listed in the Assembly draft, including the general rules concerning their limitation, had for Western Europe a sufficiently precise meaning to allow the signatory States, without any difficulties in respect of international control, to be left the responsibility to lay down the conditions for the exercise of these rights and their protection in their own national laws. With regard to the general principles of law recognized by the civilized nations, to which reference was made by the Assembly draft (Article 7) for determining the limits of the freedom of action to be permitted to the signatory States, these also formed part of the common heritage of European civilization. Although these principles had a specific meaning, they were sufficiently flexible to enable the States, and any organs of international control which might later be set up, to give due regard to the special circumstances of each case.

Confronted with these differences of opinion, but feeling that the method of procedure advocated by the United Kingdom representative would take a considerable time and would necessitate studies for which certain members were not prepared, whereas the examination of the Assembly's draft could be completed in a comparatively short time, the Committee decided to start its work by studying the draft and then proceeding to examine all proposals based on the alternative method, while ensuring the right for each of the Committee members to reserve his final opinion.

As the Committee of Experts did not have any political function, moreover, it was agreed that the Committee's Report should represent not merely the opinion of the majority, but also the minorities' views.

When this decision was taken, the United Kingdom representative explicitly repeated the reservations of his Government on the conclusion of a Convention of human rights which did not contain as precise a definition of these rights as possible.

Sir Oscar Dowson further announced that precise proposals had been drawn up by his Government and would be submitted to the Committee.

...

The United Kingdom representative, who had submitted a certain number of amendments within a body of proposals which were based on a conception of the problem different from that of the Consultative Assembly's draft, felt that these amendments should not be considered during the discussion on the Assembly's draft. He did not object, however, to other members taking up some of the ideas contained in these proposals, provided that they did this on their own responsibility.

...

Art. 1. 1). This article replaces Article 1 of the Assembly draft which, in reality, was not part of the Convention but expressed the tenor of the Recommendation which the Assembly submitted to the Committee of Ministers.

2) In view of the ambiguity which might arise by the word 'guarantee,' since the aim of the Convention was not to set up an international guarantee to be undertaken by the signatory States themselves, the Committee deleted this word from the Convention and replaced it by the word 'accord.' (1)

3) The Assembly draft had extended the benefits of the Convention to 'all persons residing within the territories of the signatory States.' It seemed to the Committee that the term 'residing' might be considered too restrictive. It was felt that there were good grounds for extending the benefits of the Convention to all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word. This word, moreover, has not the same meaning in all national laws. The Committee therefore replaced the term 'residing' by the words 'within their jurisdiction,' which are also contained in Article 2 of the Draft Covenant of the United Nations Commission.

...

Art. 4. The Committee retained the text of the Assembly draft.

...

According to the Committee of Experts' system, moreover, the Court should only be permitted to give a ruling on cases of violation of the individual rights protected by the Convention, and not of cases of violation of the Convention by legislative acts as such. (2)

..."

(TP, III, pp. 252-258, 260, 264 and 274-276; or Doc. CM/WP 1 (50) 1, pp. 5-8, 9, 10, 12 and 21).

./.

(1) Sic. Cf. the French text.

(2) This passage referred to Article 32 of the draft which foreshadowed the present Article 45 of the Convention and limited the competence of the Court to "cases of violation of individual rights" (TP, III, p. 244; or Doc. A 833, p. 11).

VI. COMMITTEE OF EXPERTS ON HUMAN RIGHTS OF THE COUNCIL OF EUROPE -
SECOND SESSION (Strasbourg, 6-10 March 1950)

1. Amendments to the preliminary draft Convention proposed by the
United Kingdom representative (6 March 1950)

"For Articles 1, 2, 4, 5, 6, 8 and 9 substitute the following Articles. (1)

Art. 1. 1) Each State party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Convention. Every deposit of an instrument of accession shall be accompanied by a solemn declaration made by the Government of the State concerned that full and complete effect is given by the law of that State to the provisions of the Convention.

2) ..."

(TP, III, p. 280; or Doc. CM/WP1 (50) 2, p. 1 - Or. Eng.)

2. Amendments to the Report of the Committee of Experts (9 March 1950)

"Page 6. Insert before the last paragraph:

'In this respect, the Netherlands representative stated that, if the Committee considered that it should follow the method proposed by the United Kingdom representative, which was that adopted by the United Nations Commission on Human Rights, it would be better to await the results which would be obtained from this organisation, in order to prevent the Council of Europe setting up a Convention which would, in certain points, be in contradiction to the United Nations Covenant.'

..."

(TP, III, p. 304; or Doc. CM/WP 1 (50) 6 - Or. Fr.)

3. Amendments proposed by the French representative (9 March 1950)

"...

2) As regards the Report:

a) Page 7, third paragraph, of the English text, ten lines from the end of the paragraph, for the sentence reading 'With regard to the general principles of law ... European civilization,' substitute the following:

'From the legal point of view the Strasbourg system is based on the idea that the affirmation of protected rights corresponds to the 'general principles of law recognized by civilized nations,' that is to say, to one of the sources of positive international law. The European Court, if it is created, should base its judgments on the Convention itself and on the general principles of law.'

(1) Based on the system of definition.

b) Page 7 of the Report, between the third and fourth paragraphs, insert the following:

'The Committee of Ministers has certainly recommended that the Committee should pay due attention to the progress which has been achieved by the United Nations.' For the moment, however, the United Nations has not yet adopted the text of any Convention. This would mean that there is a serious risk that any definition, which is now accepted in Europe, might be contrary to the final United Nations' text. Work in Europe would therefore have to be resumed after the adoption of this final text.

The French Representative finally pointed out that the fundamental aim of the Consultative Assembly was the creation of international institutions of control, and that European public opinion would be deeply disappointed if the Committee of Ministers only presented it with one more declaration on human rights, and did not succeed in the speedy creation of international bodies which alone would be in a position to build up an effective jurisprudence to safeguard these rights in Europe.'

..."

(TP, III, pp. 304-306; or Doc. CM/WP.1 (50) 8 - Or. Fr.)

4. Preliminary draft Convention (9 March 1950)

(a) Alternative A (1)

"Art. 1. 1) Each State party hereto undertakes to ensure to all individuals within its jurisdiction the rights defined in this Convention."

(b) Alternative B (2)

"Art. 1 The High Contracting Parties undertake to accord to every person within their jurisdiction the rights set out in Art. 2 of this Convention, subject to the conditions given below.

-
- (1) & Alternative A was based on the system of precise definition of the recognised rights and freedoms; Alternative B on that of their simple enumeration.

Art. 4. Subject to the provisions laid down in Articles 5, 6, 7, 8, 9 and 10, each of the High Contracting Parties remains entitled to establish the rules by which the rights and freedoms enumerated above shall be organised and protected within its territory. (1)

..."

(TP, III, pp. 312, 320 and 322; or Doc. CM/WP I (50) 14, pp. 1, 8 and 10)

(1) The Articles referred to concerned, respectively:

Art. 5: Discrimination (cf. the present Art. 14 of the Convention)

Art. 6: Limitations on the rights and freedoms secured.

Art. 7: Activities aimed at the destruction of the rights and freedoms set forth (cf. the present Art. 17 of the Convention), national rules regarding religious institutions, the exercise of certain rights by non-nationals (cf. the present Art. 16 of the Convention) and the application of the Convention in overseas territories (cf. the present Art. 63 § 2 of the Convention).

Art. 8: Measures in derogation (cf. the present Art. 15 of the Convention).

Art. 9: Remedy before a national authority (cf. the present Art. 13 of the Convention)

Art. 10: The conformity of rules with "the general principles of law as recognised by civilised nations".

5. Draft Convention (16 March 1950) (1)(a) Articles 1 and 4 of Alternatives A and A/2 (2)

Identical to the texts quoted at para. VI-4 (b) above, p. 42.

(b) Article 1 (1) of Alternative B and B/2 (3)

"The High Contracting Parties undertake to accord to all individuals within their jurisdiction the rights defined in Section I of this Convention." (4)

(Coll. ed., II, pp. 509, 510 and 513; or Doc. CM/WP 1 (50) 15 Appendix, pp. 1, 2 and 5)

6. Report of the Committee of Experts to the Committee of Ministers (16 March 1950) (5)

"...

Right from the beginning of the discussions, two main schools of thought were expressed in the Committee with regard to the method to be adopted for carrying out the mission with which it had been entrusted.

All the representatives were in favour of the conclusion of a Convention to safeguard Human Rights among the Member States of the Council of Europe.

Certain Members, however - particularly the United Kingdom representative (6) - considered that the fundamental rights to be safeguarded, and, even more important, the limitations of these rights, should be defined in this Convention in as detailed a manner as possible. The United Kingdom representative felt that it would be impossible for States to undertake to respect rights which had not been defined sufficiently precisely.

-
- (1) Annexed to the Report mentioned in para. VI-6 below.
 - (2) These alternatives were based on the system of simple enumeration of the rights and freedoms
 - (3) These alternatives were based on the system of precise definition of the rights and freedoms.
 - (4) Cf. text quoted at para. VI-4 (a) above, p. 42; changes underlined.
 - (5) Cf. the draft Report - para. V-12 above, p. 37. Changes of substance are underlined or indicated by footnote. Paragraphs which did not appear in the draft are indicated by a dotted line in the margin.
 - (6) Previous reference to Netherlands representative omitted.

Now the draft adopted by the Consultative Assembly refers, for its definition of Human Rights, to the Universal Declaration proclaimed by the General Assembly of the United Nations on 10th December 1948, leaving it to each of the signatory States to establish the methods and conditions of exercise of the protected freedoms and rights (Article 4), and laying down certain general rules and principles for the limitation of these rights (Articles 5, 6 and 7).

In this connection, Sir Oscar Dowson stated that the United Kingdom Government attached great importance to the conclusion of a Convention relating to Human Rights by the States represented on the Council of Europe, but that it was essential to proceed on the right lines. In the Universal Declaration of Human Rights and Fundamental Freedoms there was set out a number of ideals which had not and were not intended to have any legal effect. That had been fully recognised in the discussions which had taken place at Lake Success, and for that reason the Commission on Human Rights was drawing up a Draft Covenant intended to be legally binding on the parties thereto.

In the view of the United Kingdom Government, an essential prerequisite to any Convention on the subject of Human Rights was the precise definition of the rights to be safeguarded and the permitted limitations to those rights. It was necessary that these definitions should be in the form of legal texts, so as to make it quite clear what was the nature and extent of the obligations to be assumed by the States party to the proposed Convention. No doubt the task of definition would be a difficult one, but His Majesty's Government felt that among the relatively small number of nations represented on the Council of Europe, and having regard to the fact that they had a largely common way of life, agreement should be attainable.

In the view of the United Kingdom Government, until the subject matter had been properly and sufficiently formulated it was not possible to say what provisions were suitable for inclusion in the Convention for the purposes of its execution and enforcement. For example, in the absence of clear and precise definitions, States (1) might be in great doubt as to whether they were in a position to accede to the Convention; how could a country feel sure that its laws were consistent with the obligations it would assume on accession if it did not know precisely what were the obligations involved?

The representative of the United Kingdom Government thought, therefore, that in their present form, the Recommendations of the Consultative Assembly could not be regarded as forming the basis of a satisfactory Convention. The absence of precise definitions of the rights and of their limitations would be likely to lead to confusion and difficulty, and in the long run it would be in the true interests of the Council of Europe to proceed by tackling first the task of the precise definition of the rights to be safeguarded, and secondly and thirdly to determine the suitable provisions for the purpose of execution and enforcement.

(1) Omission of: "party to the Convention".

In this connection, the representatives of the Netherlands and France stated that in the event of the Committee considering that the method suggested by the British representatives should be followed - the one which had been adopted by the United Nations Commission on Human Rights - it would be preferable to await the results of the work in that Organisation, to obviate the Council of Europe drawing up a Convention which, as regards definitions of Human Rights, might risk being contrary to the United Nations Covenant.

Other members of the Committee, in particular the Italian representative, (1) were of the opinion that to attempt to draw up a Convention on the method adopted by the United Nations Commission on Human Rights, that is to say to make a codification of Human Rights, would be an extremely difficult task, even among the Member States of the Council of Europe. (2) Moreover, there were innumerable cases where the exercise of these rights would have to be subject to certain restrictions, and it would be impossible to foresee all of these. In any case, in order to cover them all by the Convention it would be necessary to add to the detailed list of restrictions a certain number of general rules. As an example, it might be well to draw the attention of the Ministers to the list of restrictions which the United Nations Commission had drawn up with regard to freedom of expression (Annex 1 to the Report of the Fifth Session of the Commission).

...

The Belgian representative, without wishing to exclude the possibility of defining the Human Rights within the European framework in a precise and detailed way, was of the opinion that this work would at all events take a long time to carry out and would therefore threaten to delay the setting up of European institutions and bodies which seemed to him essential for the efficient working of the Council of Europe. Even a Convention conceived in rather general terms might render useful service, pending the conclusion of a more detailed one.

The Belgian representative, moreover, shared the views of the French and Italian representatives that the method adopted by the Assembly formed an adequate basis for a Convention of Human Rights between the European States. The rights and freedoms listed in the Assembly draft, including the general rules concerning their limitation, had for Western Europe a sufficiently precise meaning to allow the signatory States (3) to be left the responsibility to lay down the conditions

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- (1) Previous reference to the French representative omitted.
- (2) Omission of passages suggesting that it might prove impossible to reach agreement.
- (3) Omission of: "without any difficulties, in respect of international control".

for the exercise of these rights and their protection in their own national laws. From the legal point of view, the Strasbourg system is based on the idea that the protected rights should be applied in the light of the general principles of law recognised by civilised nations. The European Court, if it were created, should base its findings in the Convention itself and on the general principles of law. Although these principles had a precise meaning, they were sufficiently flexible to enable the States, and any organs of international control which might later be set up, to give due regard to the special circumstances of each case.

As regards the Committee of Ministers' recommendation that the Committee of Experts should pay due attention 'to the progress which has been achieved by the United Nations', the same experts remarked that up to now the United Nations has not adopted the text of any Covenant. This would mean that it would not be practical to draw up a Convention on the basis of a text - which is, moreover, incomplete - upon which the United Nations is still far from reaching agreement.

The French representative pointed out that the fundamental aim of the Consultative Assembly was the creation of international institutions of control, and that European public opinion would be deeply disappointed if the Committee of Ministers only presented it with one more declaration on Human Rights, and did not succeed in the speedy creation of international bodies which alone would be in a position to build up an effective jurisprudence to safeguard these rights in Europe.

Finally, the Belgian, French and Italian representatives supported the arguments in favour of the Assembly's system put forward by Mr. Teitgen, Rapporteur of the Committee on Legal and Administrative Questions in the speech he made to the 17th Sitting of the Assembly, in submitting the draft drawn up by that Committee.

Confronted with these differences of opinion (1), the Committee decided to start its work by studying the Assembly's draft and then proceeding to examine all proposals based on the alternative method, while ensuring the right for each of the Committee members to reserve his final opinion.

When this decision was taken, the United Kingdom representative explicitly repeated the reservations of his Government on the conclusion of a Convention of Human Rights which did not contain as complete a definition of these rights as possible.

The text of a preliminary draft Convention was, therefore, drawn up on the basis of the Consultative Assembly's draft during the first phase of the Committee's work.

./.

(1) From this point onwards, the draft report was substantially re-formulated to reflect the Committee's final decisions.

Shortly afterwards, the Government of the United Kingdom sent to the Governments of Member States the text of 15 Articles, containing for the most part definitions of Human Rights. These Articles were intended to replace Articles 1, 2, 4, 5, 6, 8 and 9 of the preliminary draft drawn up by the Committee.

During its second session, the Committee proceeded to examine and amend the United Kingdom Proposals and also to complete the text of the draft Convention based on the Assembly's draft.

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The Committee decided that it was impossible to amalgamate the text of the Articles defining Human Rights in the United Kingdom Proposals and the text of the Articles listing these rights in the Assembly's draft, since the systems on which these two drafts were based were essentially different.

On the other hand, the Committee considered that the choice between the two systems should be decided in the light of political rather than legal considerations.

In these circumstances, the Committee decided to submit both texts to the Committee of Ministers, without indicating its preference, since it was not able to decide unanimously in favour of one or other of these systems.

...

The Committee of Experts, therefore, submits to the Committee of Ministers, as an Appendix to this Report, a draft Convention embodying alternatives from which the Committee of Ministers must choose.

...

ALTERNATIVES A AND A/2

ARTICLE 1

1. This Article replaces Article 1 of the Assembly draft which, in reality, was not part of the Convention but expressed the tenor of the Recommendation which the Assembly submitted to the Committee of Ministers.

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2. In view of the ambiguity which might arise by the word 'guarantee', since the aim of the Convention was not to set up an international guarantee to be undertaken by the signatory States themselves, but rather the safeguarding of these rights by the establishment of European bodies, independent of Governments, the Committee deleted this word from the Convention and, especially in Article 1, has replaced it by the word 'accord'. (1)

3. The Assembly draft had extended the benefits of the Convention to 'all persons residing within the territories of the signatory States'. It seemed to the Committee that the term 'residing' might be considered too restrictive. It was felt that there were good grounds for extending the benefits of the Convention to all persons in the territories of the signatory States, even those who could not be considered as residing there in the legal sense of the word. This word, moreover, has not the same meaning in all national laws. The Committee therefore replaced the term 'residing' by the words 'within their jurisdiction', which are also contained in Article 2 of the Draft Covenant of the United Nations Commission.

...

Article 4

The Committee retained the text of the Assembly draft.

....

Alternatives B and B/2

Article 1

Paragraph 1 of this Article is similar to Article 1 of Alternatives A and A/2.

...

According to the Committee of Experts' system, moreover, the Court should only be permitted to give a ruling on cases of violation of the individual (2) rights protected by the Convention, and not of cases of violation of the Convention simply by the promulgation of legislative acts. (3)

...

./.

-
- (1) The changes underlined were possibly to correct a clerical error as the French text remained unchanged.
- (2) This word is underlined in the Report.
- (3) This passage referred to Article 35/39 of the draft which foreshadowed the present Article 45 of the Convention and of which there were two alternative versions both limiting the jurisdiction of the Court to "cases of violation of individual rights" (Coll. ed. II, p. 526; or CM/WP 1 (50) 15 Appendix, p. 17).

2. In the Proposals made by the United Kingdom Government, there is an Article which reads as follows: 'Every deposit of an instrument of accession shall be accompanied by a solemn declaration made by the Government of the State concerned that full and complete effect as given by the law of that State to the provisions of the Convention.'

Several experts approved this Proposal. Other members of the Committee considered that this declaration would be superfluous, since ratification of the Convention would involve the obligation for every Contracting Party to establish concordance between the provisions of the Convention and its national laws.

Still other members expressed the view that High Contracting Parties should be given a fixed period, in which to amend their legislation to conform to the provisions of the Convention. These members proposed the following text: 'Each of the H.C.P. whose present legislation is not in complete conformity with the provisions of this Convention, undertake to introduce the necessary modifications within a period of three years from the date on which this Convention enters into force in that country'.

Finally some members were in favour of adopting a provision similar to that proposed by Denmark in the Commission on Human Rights of the United Nations ... (1)

...

The members of the Committee considered that this question was of an essentially political nature and they therefore limited themselves to submitting to the Committee of Ministers a statement of the various possible solutions.

..."

(Coll. ed. II, pp. 475-479, 484, 486, 491, 502 and 505-506; or Doc. CM/WP 1 (50) 15, pp. 5-9, 14, 16, 21, 31 and 34-35)

(1) This was a draft clause concerning reservations.

VII. CONFERENCE OF SENIOR OFFICIALS ON HUMAN RIGHTS
(Strasbourg, 8-17 June 1950)

1. Report of the meeting of 8 June

"...

The Chairman (1) drew attention to paragraph 6 on page 9 of the report, where the experts stated that they considered it impossible to combine the two alternative versions of Section I of the draft Convention. Was it essential, he asked, to make a choice; would it not be possible to reconcile the two texts after further discussion?

Mr. Boland (Ireland) expressed his unconditional support for the statement in the report referred to by the Chairman. If one were to attempt to reconcile the two alternatives there was a risk of turning the Conference into a committee of legal experts. According to the instructions given by the Ministers the Conference was to prepare the ground for the political decision to be taken by the Committee of Ministers at its next session.

Mr. Hoare (United Kingdom) agreed with Mr. Boland and said it was impossible to combine the two alternatives since they were based on entirely different systems. However, the Conference should not overlook the legal value of the rival theories when choosing between the alternatives. In any case the Conference was required to submit a single text taking account of both political and legal considerations.

The Chairman, explaining himself further, said that the text finally submitted must not be unacceptable to some governments. Some features should therefore be borrowed from each alternative so as to arrive at a compromise. But if other delegations did not agree he would not press the point.

Mr. Chaumont (France) thought it too early to decide on a method of work. Besides, there were some points common to the two alternatives: for example, in Section 2 the Conference might, after settling the two political questions (the manner of defining rights and the principle of setting up the Court), agree on a compromise, which indeed it must do if it were to comply with the wish expressed by the Committee of Ministers. The Secretary General's letter of 11 May 1950 could serve as a guide. The choice was between two political principles.

Mr. Perassi (Italy) agreed with the view put forward by the French Representative. In his opinion one should proceed by stages, starting with Section I, where there were two methods, the Strasbourg one and that followed in the UN Covenant; the difference between them should be precisely assessed and the problem considered in a conciliatory spirit to see how they could be reconciled. He appealed to the goodwill of all to reach a positive result.

./.

(1) Mr. Petrén (Sweden)

Mr. Patijn (Netherlands) said it was still too early to say whether a compromise was possible. It would be easier after a general discussion in which each Representative defined his position. He therefore suggested that each Representative should indicate the tenor of his instructions.

Mr. Palamas (Greece) stated his general agreement with the views expressed by the French and Italian Representatives. However, not being a lawyer, he could not help with the redrafting of various alternatives, which was essentially legal work.

The Chairman said that this was a question of principle. Was it or was it not necessary to define human rights in detail? He called for a general discussion of this question.

Mr. Perassi (Italy) proposed that the differences between the two versions should be brought out by a simple comparison of them.

Mr. Boland (Ireland) feared that if the Conference were to compare the two versions article by article they would be attempting the work of legal experts. This task had already been undertaken mentally by each of the delegates, who were aware of the differences between the two versions.

The Chairman said that the Conference had two proposals before it: the Irish proposal (for a general discussion) and the Italian one (for a comparison of the two versions).

Mr. Perassi (Italy) said that he was not insisting on an article by article comparison by the whole Committee. He personally was in favour of a comparative study. However, he fell in with the Chairman's suggestion of a general discussion on the political principles.

Mr. Hoare (United Kingdom) stated his delegation's position. He drew attention to the significance of the work to be done. There were two reasons for proceeding with great precision. Firstly, the treaty it was desired to draw up would create obligations which States would be bound to perform, and they therefore had to know the precise extent of their undertakings. Version B was based on the work done at Lake Success. It was now time to forge ahead and set up machinery to come into operation when a right was violated. This required precise definition of the applicable rules. Secondly, human rights were recognised and observed in all the countries of Western Europe. What was desired was to set up an effective organisation which could take action immediately if, as a result of political changes in any country, the observance of those rights was threatened. If the rights were to be defined in general terms it would be easier to avoid observing them. Conversely, if they were precisely defined they would be more difficult to violate. Besides, exact knowledge of the extent of their undertakings would make it easier for States to accept them. The contention that too high a degree of precision would require a long time could be disproved; they should not be too pessimistic. In any case, the United Kingdom version was open to improvement. The right text was the effective one.

He therefore proposed that alternative B should be accepted.

Mr. Boland (Ireland) totally rejected the British contention. They should not lose sight of their principal aim. They had long been accustomed to observing human rights, but what was now desired was to prevent any repetition of the violations which had occurred in the recent past. He recalled the story of King John and the Barons to show what was meant by the right text. History showed that the best texts were those drawn up in general terms. The instrument to be produced should not be regarded as a contract imposing duties but as a declaration of principles. That was the method followed in written constitutions. He preferred the system proposed by the Assembly. Agreement on this point would make it possible to come to terms on the enforcement machinery.

Replying to the Irish Representative, Mr. Hoare (United Kingdom) said that if it was merely a question of drawing up a declaration of political and moral import with no legal effects he would be pleased to support the Assembly's method. But that was not the case. States must know exactly what was involved and the control machinery must be able to operate efficiently.

Mr. Patijn (Netherlands) said that his government could only accept alternative B. Europe had no need of general declarations for the instruction of public opinion, which might be useful in countries such as those of the Far East whose political and social institutions were in a process of transition. Europe needed texts containing detailed definitions. Alternative A added nothing to the UN Universal Declaration and the Preamble to the Council's statute. His government was only prepared to accept precise obligations, which alone would prove effective.

Mr. Chaumont (France) said he did not wish to repeat the reasons put forward by his delegation in favour of the Assembly's system at the meetings of the Committee of Experts. He merely wanted to mention a certain misunderstanding which seemed to exist as to the intentions attributed to those who favoured alternative A. They had not adopted this position as the line of least resistance. On the one hand it was stated that the rights it was desired to safeguard were well known and on the other hand that it was necessary to define these rights precisely. This was inconsistent. The new factor was effective international protection of human rights. This was what the Assembly had in mind. Detailed definitions would add nothing. The jurisdiction which the Assembly's drafts conferred upon the bodies charged with international protection was not vague. National legal systems could be trusted to preserve the common heritage; the international organs would, in their turn, ensure that national legislation and national authorities complied with these common principles. The task of the investigating commission could only be political conciliation, and the Court was not intended to create an authoritative new body of law. A comparison of the two versions showed that alternative B was scarcely more detailed than alternative A. In the circumstances was it really worth sacrificing the important statement of the general principles of law on which alternative A was founded?

The concept underlying alternative B led to difficulties as the work of the UN Commission of Human Rights had not yet assumed final form, the provisions drafted being accompanied by many reservations.

He therefore still preferred the Assembly's system, though he proposed at a later stage to make any changes necessary in order to reach a compromise.

The Chairman asked the other delegates to state their preferences.

Mr. Perassi (Italy) contested the unqualified judgment passed on alternative A by the supporters of version B and proceeded to compare them.

...

One could not have two Conventions on the same subject, one worldwide and the other regional, drawn up on identical principles. Indeed, that was why the Assembly had deliberately rejected the method used at Lake Success.

..."

(Coll. ed. III, pp. 546-550 (1))

2. Report of the meeting of 9 June (morning)

Mr. Sund (Norway) said that he preferred alternative B on account of the nature of the obligations imposed by the proposed Convention. Precise and specific rules were necessary, for otherwise there was a risk of adopting vague declarations which were only useful for propaganda purposes.

Mr. Palamas (Greece) said that there were arguments in favour of both versions. In spite of what the Italian Representative had stated on the previous day, the differences were greater than one might think. A precise definition of the obligations was necessary as their application would be subject to judicial control; otherwise one ran the risk of supporting anti-democratic manoeuvres.

Mr. Vergin (Turkey) said the Conference's task was to find a compromise. He preferred version A, since it contained two articles, 4 and 6, of a general character which did not occur in version B.

Mr. Muuls (Belgium) agreed with what the Turkish Representative had said. They should avoid all rigid solutions which might disappoint Europe by holding up a settlement of the question.

./.

(1) Coll. ed. III includes the French text of the reports of the meetings of the Senior Officials and of their draft Report to the Committee of Ministers (para. VII-7 below): the translation given here is that prepared for the fourth (printed) edition of the "Travaux préparatoires".

Mr. Majerus (Luxembourg) preferred version A, although his government's expert would have preferred alternative B. He would however, like to add some provisions taken from version B. Nevertheless he was ready to approve any compromise and reserved his final attitude so as not to prejudice attempts at conciliation.

Mr. Dons Moeller (Denmark) was in favour of alternative B, being convinced of the need to lay down precise rules. However, some principles were better expressed in alternative A. It was, therefore better not to vote but to attempt to reconcile the divergent standpoints which, as Professor Perassi had shown on the previous day, was perhaps not impossible.

The Chairman said that five Representatives were in favour of version A and five in favour of alternative B. The Representative of Luxembourg had reserved his position and he felt that the Swedish delegation should not tip the balance with its vote.

Mr. Chaumont (France) thought there was a very real chance of conciliation. It was not the time to discuss details. All the questions were connected. The general discussion on questions of principle should be continued, passing on to Section 2 which was concerned with the establishment of a Commission and a Court.

The Chairman acknowledge the interdependence referred to by the French delegation and accordingly asked the Conference for its opinion on the French suggestion.

Mr. Hoare (United Kingdom) thought that the decision on the first question would affect that on the second, which related to the institutions to be established for the protection of human rights.

One could not usefully decide the second question without knowing what might be decided on the first. Implementation could not be discussed in the abstract.

Mr. Chaumont (France) said he was not insisting on a decision on the second question. He did not want a final decision on either the first or the second. Moreover, for some Representatives the first question was essential while for others the reverse applied. There was thus a risk of becoming involved in a vicious circle.

Mr. Muuls (Belgium) stressed the need for a general discussion as was usual in all international Conferences.

Mr. Hoare (United Kingdom) said that after hearing the French Representative he was prepared not to insist on his position as regards procedure.

...."

(Coll. ed. III, pp. 551-552)

3. Report of the meeting of 10 June (morning)

"The Chairman recapitulated the history of the Conference and defined its terms of reference. It was a meeting preparatory to the Committee of Ministers. The Conference was equally divided on the first fundamental question (the manner in which the rights should be defined). On the second question (the establishment of the Court), those in favour of the Court were clearly in the minority. There were three possible ways of breaking the deadlock: to suspend the Conference's work, taking note of the disagreement on the two fundamental questions; to continue work on the basis that only the Commission was to be established; or to attempt to submit, if possible, an alternative text providing for establishment of the Court.

..."

(Coll. ed. III, p. 564; or unreferenced document)

4. Report of the meeting of 12 June (morning)

"...

The Chairman ...

There was some doubt as to the majorities obtained by alternatives A and B. He thought that those supporting alternative B would accept alternative A if establishment of the Court were abandoned.

Mr. Muuls (Belgium) said that if the Court were not established precise provisions would be necessary to ensure that a political organ could act effectively.

Mr. Chaumont (France) said that the choice of alternative A was based upon an important principle: that of recognition of the general principles of law. How was it possible to remain faithful to the Lake Success draft Covenant by adopting alternative B, seeing that that draft was still in its initial stages and had already undergone great changes?

Mr. Perassi (Italy) said that the choice between alternatives A and B on the manner of defining rights was independent of the question of establishing the Court.

Mr. Patijn (Netherlands) said that his government opposed both the idea of establishing the Court and the system of definition in alternative A.

Mr. Sund (Norway) expressed his preference for alternative B, whether there was a Court or not.

Mr. Vergin (Turkey) thought that was a separate question, and in any case he preferred alternative A.

Mr. Palamas (Greece) expressed his preference for alternative B in any case.

Mr. Hoare (United Kingdom) preferred alternative B in any case. However, each alternative should, in his opinion, be examined on its own merits.

Mr. Moeller (Denmark) preferred alternative B, but with improvements.

Mr. Boland (Ireland) also preferred alternative B with improvements.

The Chairman noted that the Representatives maintained their former positions on the two alternative versions except for the Belgian Representative.

Mr. Hoare (United Kingdom) said he would be in favour of any compromise between the two versions. However, there were two questions of principle:

1) Article 2 of alternative A contained a mere list, whereas alternative B gave detailed definitions. A combination of the two versions was therefore impossible, as the experts had already stated.

2) In alternative A Article 6 applied to all the other articles in that version, whereas the limitations stated in each article in alternative B did not apply to other articles.

This raised a problem of incompatibility with the internal constitutions of the member States."

(Coll. ed. III, pp. 588-589; or unreferenced document)

5. Report of the meeting of 12 June (afternoon)

"Mr. Perassi (Italy) suggested a time limit of three years for the adjustment of domestic law to the provisions of the Convention, and said that in the absence of such a limit there would be great uncertainty as to the effectiveness of the Convention in domestic law.

Mr. Hoare (United Kingdom) said that he agreed with the Italian Representative as far as the substance of his proposal was concerned. Ratification should indicate that the adjustment had been made. He therefore asked for an express provision in the Convention that domestic legislation should have been brought into line with the Convention at the time of ratification. If this proposal did not receive majority support it would not be enough to stipulate that adjustment must take place within a reasonable time. The period must be specified otherwise each State would be the sole judge of when its domestic legislation was to be brought into line with the Convention. The United Kingdom would not be able to ratify until its legislation had been so adjusted.

Mr. Chaumont (France) said that in the French constitutional system the position was the reverse, since the 1947 Constitution proclaimed the primacy of international law.

Mr. Muuls (Belgium) said that where the Convention was subsequent to internal legislation, ratification automatically involved amendment of such legislation.

Mr. Vergin (Turkey) agreed with the views expressed by the Belgian Representative.

...

Mr. Hoare (United Kingdom) pointed out how illogical it would be to provide in the Convention itself for the possibility of retaining domestic legislation that was incompatible or in contradiction with the Convention. He would therefore support the system suggested by the Netherlands Representative. The relevant article of the Convention and the existing domestic legislation incompatible therewith should both be expressly mentioned and identified.

The Chairman said that the drafting Committee would find suitable wording to cover this point.

Mr. Perassi (Italy) said that the ratification act did not involve the automatic amendment of domestic legislation unless the treaty provision was sufficiently precise. This meant that it was sometimes necessary to enact an express formal amendment of domestic legislation in addition to the ratification act.

...

Mr. Vergin (Turkey) said that his government would find it easier to accept alternative B if Articles 4 and 6 of alternative A were included in it.

...

The Chairman announced the composition of the drafting committee as arrived at following consultation with members: it would comprise the French, United Kingdom, Italian, Netherlands and Swedish Representatives. Its task was to improve alternative B by including certain provisions from alternative A, to embody in the draft Convention prepared by the Committee of Experts the amendments adopted by the Conference and to undertake preliminary coordination of the various provisions.

...

The Rapporteur stated the majorities obtained in favour of the various questions of principle raised by the Convention and submitted the following table, which was approved by the Conference:

Positions adopted by delegations to the Conference on questions of policy:

a) Definition (alternative B) or enumeration (alternative A) of the rights protected by the Convention

In favour of alternative B:	United Kingdom
	Netherlands
	Greece
	Norway
	Denmark
In favour of alternative A:	France
	Italy
	Ireland
	Turkey
Uncommitted:	Sweden

Belgium and Luxembourg favour alternative A if a Court is established under the Convention. If there is no Court, they favour alternative B.

..."

(Coll. ed. III, pp. 589-590, 591 and 593; or unreferenced document)

6. New draft of Alternatives B and B/2 (14 June 1950)

Article 1 (1)

"The High Contracting Parties undertake to secure to all individuals within their jurisdiction the rights defined in Section I of this Convention."

(Coll. ed. III, p. 596 (1); or Doc. CM/WP 4 (50) 9, p. 1)

7. Draft Report to the Committee of Ministers (15 June 1950)

"..."

III. PROBLEMS EXAMINED BY THE CONFERENCE

a) Enumeration or definition of the rights to be protected by the Convention? (Section I of the Experts' draft, alternatives A, A/2 and B, B/2, pp. 5-10 of Experts' report, French version)

The representatives of the following countries expressed a preference for an enumeration of rights, as proposed by the Consultative Assembly:

- France
- Ireland
- Italy
- Turkey

./.

(1) Coll. ed. III gives only the French text although Doc. CM/WP 4 (50) 9 exists in English as well as French.

The representatives of the following countries favoured a definition of these rights /the system adopted by the United Nations' Commission of Human Rights/:

- Greece
- Norway
- the Netherlands
- United Kingdom

The reasons adduced in favour of each system were the same as those set out in the Experts' report on this matter.

The representatives of Belgium and Luxembourg stated that if a European Court of Human Rights were established, they would prefer enumeration; if the Court were not established, they would prefer definition.

The representatives of Denmark and Sweden reserved their position for the time being, pending the outcome of a move to combine the two texts of Section I, prepared by the Committee of Experts.

...

7. Solemn declaration to the effect that domestic legislation of the High Contracting Parties gives full effect to the provisions of the Convention

The Conference decided unanimously not to include such a provision in the Convention. Indeed, it considered it was necessary for the Convention to include a clause allowing the High Contracting Parties to make reservations with respect to the maintenance of certain existing laws which might not be in accordance with a particular provision of the Convention.

...

(Coll. ed. III, pp. 616-617 and 620; or Doc. CM/WP IV (50) 16, pp. 8 and 13)

8. Draft Convention (annexed to the above-mentioned draft Report)

Article 1

"The High Contracting Parties undertake to secure to all individuals within their jurisdiction the rights and freedoms defined in Section I of this Convention." (1)

(Coll. ed. III, p. 621; or Doc. CM/WP 4 (50) 16 Appendix, p. 2).

./.

(1) Cf. the text quoted at para. VII-6 above, p. 59; change underlined. Coll. ed. III gives only the French text although CM/WP 4 (50) 16 Appendix exists in English as well as French.

9. Report to the Committee of Ministers (19 June 1950)

"...

III. PROBLEMS CONSIDERED BY THE CONFERENCE1. Choice between the system of enumeration and that of definition of rights to be protected by the Convention

(Section I of the Experts' draft - Alternatives A, A/2 and B, B/2, - Report of Experts, pages 5. - 9).

In connection with this problem a marked preference for the system of enumerating the rights, which was the one proposed by the Consultative Assembly, was shown by the delegates of the following countries:

FRANCE
IRELAND
ITALY
TURKEY.

The delegates of the following countries were in favour of the system of defining the rights:

GREECE
NORWAY
NETHERLANDS
UNITED KINGDOM.

The reasons given in favour of these two points of view were the same as those set out in the Report of the Experts in connection with this problem.

The BELGIAN and LUXEMBOURG delegates stated that if a European Court of Human Rights was created, they would be in favour of the system of enumeration; a Court could develop a jurisprudence which would define the general rules formulated by the Convention. On the other hand, if the Court was not created, and there were therefore no body which was capable of developing a jurisprudence on the subject, these delegates would be in favour of a definition of the rights.

The DANISH and SWEDISH delegates reserved their position at the outset. They proposed that an attempt should be made to amalgamate the two texts of Section I as drawn up by the Committee of Experts, a proposal which was accepted by the Conference. The results of this attempt constitute the text of Section II of the draft Convention attached to the present Report.

While reserving the position of their Governments, this text is submitted to the Committee of Ministers as a compromise suggestion, supported by the majority of the Conference.

The delegates of France, Italy and the United Kingdom declared in this connection, inter alia, that they considered the texts prepared by the Conference to be a successful combination of the two systems and intended to recommend their adoption to their Governments.

The delegate of Turkey said that he also thought that this compromise text could be accepted but added that his Government attached great importance to the insertion in this section of an article on the lines of Article 4 of Alternative A.⁷ (1)

...

./.

(1) The two paragraphs in square brackets appear in the French but not the English version of Doc. CM/WP 4 (50) 19. (The translation is by the Registry).

7. Solemn declaration by which the internal laws of the High Contracting Parties shall give full effect to the provisions of the Convention.

The Conference considered unanimously that it was useless to insert into the Convention a provision of this kind. Indeed, in the absence of any provision to the contrary, every signatory State is presumed to give full effect to the provisions of the Convention from the moment the State has given its adherence.

On the other hand, the Conference considered that it was necessary for the Convention to include a clause by which the High Contracting Parties were allowed to express reservations with regard to the maintenance of certain existing national laws not in conformity with a particular provision of the Convention. (1)

...

SECTION II

General remarks

This Section is the result of an attempt made by the Conference to try to amalgamate Alternatives A and B of Section I of the Committee of Experts' draft Convention.

The Conference adopted Alternative B as the basis of its work, since it was not impossible a priori to include in it certain general principles which are contained in Alternative A; this line of action should make Alternative B more acceptable to the supporters of Alternative A. On the other hand it was agreed that it was necessary to exclude from Alternative A the detailed definitions of Human Rights, since the system of Alternative A was to reproduce the text of the United Nations Universal Declaration for the enumeration of these rights.

...

Article 1, para. 1, of Alternative B has become Article 1, placed in a Section apart - Section I.

..."

(Coll. ed. III, pp. 643-644, 649, 650 and 651; or Doc. CM/WP 4 (50) 19, pp. 6-7, 12, 13 and 14)

(1) The United Kingdom Delegation would have preferred the wording cited at para. VII-7 above, p. 60. It considered that, if the present wording were retained, it should read "The Conference considered unanimously that it was unnecessary to insert into the Convention a provision of this kind, since, in the absence of any provision to the contrary ...". (Doc. A 1690 - undated)

10. Draft Convention (annexed to the above-mentioned Report)

Article 1

Identical to the text quoted at para. VII-8 above, p. 60, subject to the replacement of "Section I" by "Section II".

(Coll. ed. III, p. 664; or Doc. CM/WP 4 (50) 19 Appendix, p. 2)

VIII. MEETING OF THE LEGAL COMMITTEE OF THE CONSULTATIVE ASSEMBLY
(Strasbourg, 23 and 24 June 1950). (1)

1. Minutes of the meeting of 23 June

"...

- (a) Choice between the system of enumeration and that of definition of the Human Rights to be safeguarded under the Convention

After an explanatory statement by the Chairman, the Committee approved the compromise solution advanced by the Conference of Senior Government Officials, on the understanding that their approval should be confined to the substance only of the compromise solution and that the choice of terms should be reviewed later.

..."

(Coll. ed. III, p. 688; or Doc. AS/JA (50) PV 1, p. 4)

2. Draft of a letter to the Chairman of the Committee of Ministers
(23 June 1950)

"...

The Committee signifies its agreement to the transactional formula invented by the Committee of Senior Officials on the subject of the problem of the Rights to be guaranteed by the Convention.

..."

(Coll. ed. III, p. 690; or Doc. AS/JA (50) 2, p. 2)

./.

-
- (1) At its fourth Session (Paris, 3 June 1950) the Committee of Ministers had agreed that this Committee should discuss the Report and draft Convention of the Conference of Senior Officials (Doc. AS (2) 6, pp. 522-523).

3. Minutes of the meeting of 24 June (morning)

"....

After an intervention by Mr. Rolin, the Committee decided to stress in its letter to the Chairman of the Committee of Ministers the satisfaction it felt in noting that the Conference of Senior Government Officials had not maintained the definition of the competence of the Court adopted by the Committee of Legal Experts, which would have excluded consideration of abuses resulting from legislative acts, which the Committee would have been unable to accept.

As a result of a discussion in which Mr. Rolin and other members took part, the Committee decided to emphasise in Section II, in order to avoid any ambiguity with respect to the legal scope of the Convention, that the High Contracting Parties, in accepting the Convention, recognised the rights and liberties listed in Section I instead of 'undertaking to recognise them': which would seem to call for action on their part separate from and additional to the acceptance of the Convention.

..."

(Coll. ed. III, p. 694; or Doc. AS/JA (50) PV 2, p. 4)

4. Additions to the letter to the Committee of Ministers proposed by Mr. Rolin (24 June 1950)"Sections I & II

After the first paragraph, insert a new paragraph to read as follows:

'The Committee, however, considers that, in order to avoid any misunderstanding as to the legal scope of the Convention, it would be desirable that the words 'for ensuring the respect of ' be replaced by 'recognise' in respect of the attitude of the High Contracting Parties towards the rights and freedoms enumerated in Section II of the Convention; for the former phrasing appears to imply for each of them a separate action apart from the simple acceptance of the Convention.'

...

Section V

Add the following paragraph:

'On the other hand, the Committee is glad to note that the Conference of Senior Officials did not retain the definition of the Court's competence, by which the Committee of Experts had tried to exclude from this competence violations resulting from legislative action - a limitation which the Committee would have considered unacceptable.'

..."

(Coll. ed. III, pp. 698 and 699; or Doc. AS/JA (50) 3, pp. 1 and 2 - Or. fr.)

5. Letter from Sir David Maxwell-Fyfe, Chairman of the Committee, to the Committee of Ministers (24 June 1950)

"...

Sections I and II

The Committee signifies its agreement to the compromise proposed by the Committee of Senior Officials on the subject of the problem of the definition of Rights to be guaranteed by the Convention. (1)

The Committee, however, considers that, in order to avoid any misunderstanding as to the legal scope of the Convention, it would be desirable that the words "undertake to secure" be replaced by the words "hereby secure" in respect of the attitude of the High Contracting Parties towards the rights and freedoms enumerated in Section II of the Convention; for the former phrasing appears to imply for each of them a separate action apart from the simple acceptance of the Convention. (2)

...

Moreover the Committee does not share the opinion of the Experts that the violation of individual rights by the promulgation of legislative acts only would not entail the application of the Convention. (3)

...

Section V

/ passage identical to the second passage cited in the preceding paragraph 47

..."

(Coll. ed. III, pp. 703 and 706; or Doc. CM (50) 29, pp. 2 and 5)

-
- ./.
- (1) Cf. the draft cited in para. VIII-2 above, p. 63; changes underlined.
 - (2) Cf. the first proposal cited in the preceding paragraph 4; changes underlined.
 - (3) Cf. the French text which does not mention "individual" rights.

IX. FIFTH SESSION OF THE COMMITTEE OF MINISTERS
(Strasbourg, 3-9 August 1950)

1. Meeting of the Sub-Committee on Human Rights (4 August 1950) (1)

(a) Amendments proposed by the United Kingdom Delegation

"Article 1

H.M. Government agree with the observations of the Legal Committee that the phrase 'undertake to secure' is unsatisfactory and they propose that the article be amended to read 'shall secure'.

..."

(Coll. ed., III, p. 724; or Doc. CM 1 (50) 6, p. 1 - Or. Eng.)

(b) Text of amended articles after deliberation at the sitting of 4 August 1950

"Article 1

The High Contracting Parties shall secure to all individuals within their jurisdiction the rights and freedoms defined in Section II of this Convention."

(Coll. ed. III, p. 730; or Doc. CM 1 (50) 9, p. 1)

(c) Draft Convention adopted by the Sub-Committee (7 August 1950)

Article 1: identical to the text cited in the preceding sub-paragraph, subject to the replacement of "Section II" by "Section I".

(Coll. ed. III, p. 733; or Doc. CM (50) 52, p. 2)

2. Draft Convention adopted by the Committee of Ministers and submitted by it to the Consultative Assembly for its opinion (7 August 1950)

"Article 1

The High Contracting Parties shall secure to each person within their jurisdiction the rights and freedoms defined in Section I of this Convention."

(Coll. ed. III, p. 774 and 790; or Doc. A 1937 and Ass. Doc. 1950, II, No. 11, p. 602)

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- (1) The Committee of Ministers had decided, on 3 August 1950, that a Committee of Government Experts should meet the following day to revise the text of the draft Convention, having regard to the proposals received and the documentation already available (Coll. ed. III, p. 718; or Documents of the Committee of Ministers, 5th Session, pp. 26 and 28).

X. FIRST PART OF THE SECOND SESSION OF THE CONSULTATIVE ASSEMBLY
(Strasbourg, August 1950)

1. Plenary sitting on 14 August 1950

(a) Sir David Maxwell-Fyfe (United Kingdom):

"...

The first is that, whereas we merely enumerated the Human Rights, the Convention of the Committee of Ministers does go into definitions. As I mentioned, our enumerations contained references to the declaration of U.N.O., and the Committee of Senior Officials altered that to short definitions. Broadly the Committee on Legal and Administrative Questions agreed with that course.

It avoids reference to a document which was not intended to list enforceable rights but only to declare desirable rights. The definitions of the Committee of Senior Officials were not in our view in excessive detail which might tie unduly either a judicial or a non-judicial agency which had to enforce the Convention. We believe that the Convention in that form is capable of enforcement by reference to general principles of law.

..."

(Coll. ed., IV, pp. 829-830; or Rep. 1950, II, p. 324-326)

(b) Lord Layton (United Kingdom):

"...

But our Declaration differs from the Declaration of the United Nations in that we want to go further and indicate that we are united in common defence of those principles - in other words, that our community makes it a condition and that, to some extent, we accept joint responsibility for the preservation of those human rights among ourselves. Thus the second point is that we have tried to make a joint guarantee of sorts; and for that reason, instead of merely re-affirming the United Nations Convention, we picked out a short list which we felt contained matters on which we could accept one another's intervention if in any country there was a breach of those rights - in other words, some form of enforcement. We carefully selected the list from that point of view and, having done so, presented it as a group of rights for which we were prepared to accept some form of joint trusteeship, and automatically that selection made it a test of new membership. It became the first rule of the club.

If we had decided upon federation, with a rigid constitution, these things would have been defined in the constitution. But we have not got to that point, and it is obvious that we may not in fact for some time to come get to that point. In the meantime, we wanted to lay down the rules of the club, so we drew up this Convention as a

symbolic, clear declaration which marks us as free Western Europe; and as a joint undertaking recognising the right of each Member to pull another up if the rules are not observed.

...

(Coll. ed. IV, p. 842; or Rep. 1950, II, p. 350)

2. Plenary sitting on 16 August 1950

Mr. Teitgen (France)(Translation):

"...

... as regards this list there is one divergence between us and the Ministers, and it is a difference of method. We had decided simply to name the rights and freedoms to be guaranteed, and on the question of their positive and practical content we had referred to the general principles of law recognised by civilized nations. We are well aware in England, in France, in Belgium, in Italy, in the Netherlands and in all the countries represented here, what is meant by freedom of the press, trade union freedom, freedom of association. The common basis of all our legislation, the general principles emerging from this legislation as a whole, allow of definition beyond any doubt of the exact practical content of each of these freedoms.

That being so, we were content to name them, referring back on the question of content to the general principles of law recognised by civilized nations. That was Article 7 of our Draft Convention.

At the request of the United Kingdom experts, the Ministers have set out to replace our list by a series of definitions. They have tried to state in positive terms what is included and what is not included in the rights and freedoms to be guaranteed.

This desire on the part of the British for strict definitions breaks with the traditional rule.

We find Britain now appearing, in this sphere, more preoccupied with legal formalism than we Continentals - that is quite unusual. If I am to credit what Mr. Macmillan was saying yesterday, I should be tempted to think that the British experts representing the United Kingdom at both Conferences must have been Scotsmen.

However that may be, we must pass to a consideration of the work done by the Committee of Ministers and the content of the definitions which it now proposes.

In actual fact, the method of insisting on strict definitions may well have been ill-advised in this particular case, and I am rather afraid of the dangers inherent in the system adopted in the end by the Ministers.

The definitions put forward by the British might well be very dangerous, indeed, if they were to be taken as restrictive, for it is extremely difficult to list all the possibilities contained in a single freedom and all those excluded therefrom. There is always a danger that the list will be incomplete. It would be easy for me, indeed to take the Committee of Ministers' text and to demonstrate to you, in respect of certain of the freedoms there defined, that the formula proposed contains either obscurities or serious gaps.

This being so, Mr. President, I think that it would be as well, in order to avoid all misunderstanding, to put the following proposal to the Ministers:

We should be prepared to accept their definitions, we should grant the concession requested by the United Kingdom, but we should add - and this seems essential to me - that these definitions propounded to us shall be interpreted in the light of the general principles of law obtaining among civilized nations.

If we act in this way, whatever obscurities and lacunae may subsist in these definitions would be removed by the simple fact of this supplementary note on this interpretation.

In other words, we might ask the Ministers to add to their text a supplementary Article, 18 B to run as follows:

'The foregoing definitions shall be interpreted, where necessary, in the light of the general principles of law recognized by civilized nations, and referred to by Article 38 of the Statute of the International Court of Justice. In the same way, the collective guarantee (as we said last year) must be designed to ensure that the Rules drawn up by each State for the exercise within its territory of the rights and freedoms guaranteed as well as the practical application thereof, shall remain in strict conformity with the general principles of law recognized by civilized nations.'

In this way we should reach a solution which would reconcile the system adopted by you last year and the system desired by the Government of the United Kingdom. By this fusion so to speak, we need not be afraid there will be any further gaps.

The definitions would then become acceptable to us and we should be able, on this first point, to bow to the decision of the Committee of Ministers. (1)

(1) For the further history of this proposal, see Doc. CDH (74) 37, p. 13 et seq.

...

What did we try to do last year? Not to institute a European guarantee which would rectify in our various countries the errors committed here and there by particular administrations. In every country in the world there are civil servants, police forces, official bodies which at times commit illegal acts. But our concern was not with these isolated illegal actions. In every country there exist tribunals which themselves correct the illegality committed in the immense majority of cases.

When for example, in France, an employee is the victim of an illegal abuse of power on the part of his department, he appeals to the Conseil d'Etat. And the latter rescinds the illegal measure.

In actual fact, what we want to prevent is the re-establishment, or the establishment in some countries, of totalitarian dictatorships such as we saw in Italy and in Germany before the war.

This is the terrible fate from which we want to protect ourselves. We are less concerned to set up a European juridical authority capable of righting isolated wrongs, isolated illegal acts committed in our countries, than to prevent, from the outset, the setting up in one or other of these countries of a regime of the Fascist or Nazi type. That is the essential element of our purpose. We are seeking an international procedure capable of active intervention right from the start.

..."

(Coll. ed. IV, pp. 852-853 and 855; or Rep. 1950, II, pp. 502-504 and 508)

3. Plenary sitting on 25 August 1950

Mr. Rolin (Belgium)(Translation):

"...

If ... our draft Convention ... becomes a reality, then throughout our countries we shall have introduced into international organisation three almost revolutionary reforms... The first is that we shall have substituted a clearly categorical text for the Declaration of Human Rights of the United Nations Organisation, of which, all too often, the Governments feel justified in emphasising the so-called purely moral scope, neither juridical nor mandatory. This is something better even than a solemn undertaking for, on this point also, I pay tribute to the Committee of Ministers for having accepted an Amendment which, at my request, we had proposed to it last June.

According to the new text of the Committee of Ministers the High Contracting Parties shall not undertake to recognise, they shall recognise - so that once this is ratified by the States, the text, as at present worded, will no longer be the subject of subsequent amendments in our constitutions, or our respective legislatures. It will be incorporated bodily, of its own right, into the legislation of our 15 countries.

The second revolutionary reform is as follows: whilst the protection of individuals was formerly entrusted exclusively to the Governments of the States of which these individuals were nationals, without it being possible for the British Government, for instance, to intervene in favour of some foreigner abandoned by his own Government, or possibly stateless, and thus a fortiori a victim of abuses of his own Government, henceforth the right of protection by our States, by virtue of a formal clause of the Convention, may be exercised with full force, and without any differentiation or distinction, in favour of individuals of whatever nationality, who on the territory of any one of our States, may have had reason to complain that his rights have been violated.

..."

(Coll. ed. IV, p. 927; or Rep. 1950, III, p. 914).

The drafting of Article 1 did not give rise to discussion. The text quoted in para. IX-2 above, p. 66, is to be found without amendment in Recommendation No. 24 which the Assembly adopted on 25 August 1950.

(Coll. ed. IV, p. 947 and 975; or Ass. Doc. 1950, III, No. 104, p.1029)

XI. SIXTH SESSION OF THE COMMITTEE OF MINISTERS (Rome, 3-4 November 1950)

Drafting changes proposed by the Secretariat General (undated)

"..."

Article 1

In the French text the words 'toutes personnes' have been put into the singular for reasons of consistency with the following articles.

In the English text, 'each person' has been changed to 'everyone' for the same reason.

..."

(Coll. ed. IV, p. 993; or Doc. A 2520)

XII. SIGNATURE OF THE CONVENTION (Rome, 4 November 1950)

On 3 November 1950, a Committee of Experts examined the text of the Convention for the last time and made a certain number of formal corrections and corrections of translation. (Coll. ed. IV, p. 1010; or Doc. CM/Adj. (50) 3 rev., para. 6)

Article 1 was not amended on that occasion, with the exception of the change quoted in para. XI above.

Handwritten marks and numbers on the right margin, including "1010" and "1011".