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Constitutional Questions

Report¹

Committee on Political Affairs and Democracy

Rapporteur: Mr Georges BOHY, Belgium, Socialist Group

1. 1951 - 3rd Session - Second part



A. Explanatory Memorandum

1. As a result of the debate in the Assembly at its Sitzings of 30th November, 1951, on the Report of the Committee on General Affairs on Constitutional Questions, it is unnecessary to go any further into general political considerations, since these were debated at length.
2. Having regard to both the general debate and the particular comments on each Article, the Committee on General Affairs has endeavoured to take account both of the comments made and the amendments proposed. It has been fortunate in being able to prepare texts which, with the few rare exceptions stated below, were approved by the Committee unanimously. The Committee therefore feels that it may expect these texts to be welcomed by the Assembly, and that they will thus be transmitted to the Committee of Ministers in the most favourable circumstances.
3. This document therefore omits any general analysis or criticism and contains only the texts proposed, together with such brief comments as may be necessary for an appreciation of the circumstances in which they were accepted.
4. The Draft Statute as a whole and the Draft Recommendation were unanimously adopted by the Committee (by 21 votes to 0 with 1 abstention). One member of the Committee, however, made reservations concerning Article 14 of the Draft Statute.

B. Draft Recommendation

The Assembly,

Recalling as a matter of fundamental importance that on the 13th August, 1949, it was at its first Session asked by the Committee of Ministers " to consider any necessary changes in the political structure of Europe to achieve closer unity between the Members of the Council of Europe and to bring about effective European co-operation in the various spheres specified in Article 1 of the Statute " ,

Considering that, in answer to this request, it unanimously resolved, on the 6th September, 1949, that the aim of the institutional reform envisaged by the Committee of Ministers was " the creation of a European political authority with limited functions but real powers " ,

Recalling that it has spent the past three Sessions studying, in co-operation with the Committee of Ministers, the practical means whereby this aim may be achieved,

Conscious that the development of the inter-, national situation makes changes in the political structure of Europe particularly urgent, in order that the competence of the Council of Europe may be defined and enlarged,

Having made every effort to propose only those changes which are compatible with the publicly expressed positions of the various Members concerning the terms of reference and the structure of the Council of Europe.

Having incorporated these changes in a Draft New Statute,

Recommends to the Committee of Ministers :

- a. that the Draft for a New Statute of the Council of Europe appended hereto be approved,
- b. that Members be requested to ratify the New Statute, in accordance with the provisions of Article 41 of the present Statute,
- c. that practical measures be taken forthwith to eliminate the confusion of functions existing between European international organisations, by merging with the Council of Europe the Organisation for European Economic Co-operation and the remainder of the Brussels Treaty Organisation.

C. Draft New Statute of the Council of Europ²

Preamble

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the German Federal Republic, the Kingdom of Greece, the Republic of Iceland, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the Saar, the Kingdom of Sweden, the Republic of Turkey, and the United Kingdom of Great Britain and Northern Ireland ;

Convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilization ;

Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy ;

Believing that, for the maintenance and further realization of these ideals and in the interests of economic and social progress, there is need of a closer unity between all likeminded countries of Europe ;

Considering that, to respond to this need and to the expressed aspirations of their peoples in this regard, it is necessary forthwith to create an organization which will bring European States into closer association ;

Recognising that an increasing number of matters of common concern have developed from the phase of consultation and agreement to the stage of control and administration through duly constituted authorities of an organised Europe ;

Have in consequence decided to set up a Council of Europe consisting of a Committee of representatives of Governments and an Assembly, and have for this purpose adopted the following Statute :

2. Resolution 11, adopted by the Assembly 28th August, 1950 and Recommendation 54 (a) (ii) adopted by the Assembly, 23rd November, 1950. Article 1 (d) of the present Statute omitted.

D. CHAPTER I - Aim of the Council of Europe

Article 1

(a) The aim of the Council of Europe is to achieve closer unity between its Members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage, facilitating their economic and social progress, strengthening their security and uniting their efforts for the consolidation of peace.

(b) This aim shall be pursued through the organs of the Council by discussion of question of common concern, and by agreements and common action and Convention-making, in accordance with the Statute³, in political⁴, economic, social, cultural, scientific, legal and administrative matters, and in the maintenance and further realization of human rights and fundamental freedoms.

(c) Participation in the Council of Europe shall not affect the collaboration of its Members in the work of the United Nations and of other international organizations or unions to which they are parties.

(d) The Council of Europe shall control and direct such organizations as shall be merged with the Council of Europe under the provisions of the First Protocol appended to this Statute⁵.

Note by Rapporteur on the Preamble :

Since the Preamble did not give rise to any criticism, the Committee maintained the original text.

Note by Rapporteur on Chapter I :

Article 1.

— Paragraph (a) :

An amendment proposed by M. Tsirimokos (Amendmerit No. 1 to [Doc. 68](#)) to add at the end of paragraph (a), the words :

"and uniting their efforts for the consolidation of peace."

was unanimously adopted by the Committee.

— Paragraphs (b) and (c).

No amendment was proposed to paragraphs (b) and (c).

— Former Paragraph (d).

Various comments were made on the former paragraph (d) at the Public Sitting. Mr. Amery considered that it was partly contrary to the interests of the Commonwealth M. Rolin thought that sub-paragraph (iii) was too restrictive, although sub-paragraph (ii) overlapped with paragraph (c). Other speakers, considering that paragraph (d) was not essential to the achievement of the aim pursued and, indeed, presented several difficulties, proposed its deletion.

It was decided to delete the paragraph by 20 votes to 2.

3. This change should be considered in relation to Chapter VIII.

4. Recommendation 54, Section 4 (a) (i), adopted by the Assembly, 23rd November, 1950 (73 votes to 7, with 16 abstentions).

5. Recommendations 18 and 19, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 12 abstentions). Renewed in Recommendation 55, adopted by the Assembly, 23rd November, 1950 (73 votes to 7, with 16 abstentions). Renewed in Reply to the Report and Message of the Committee of Ministers ([Doc. 57](#) (1951), paragraphs 2 and 3) adopted by the Assembly, 15th May, 1951 (64 votes to 2, with 5 abstentions). The First Protocol to the Draft for a New Statute should be considered at the same time as Article 1 (c).

E. CHAPTER II - Membership

Article 2

The Members of the Council of Europe are the Parties to this Statute.

Article 3

Every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I.

Article 4

Any European State, which is deemed to be able and willing to fulfil the provisions of Article 3, may, with the approval of the Assembly, such approval to be by a simple majority⁶, be invited to become a Member of the Council of Europe by the Committee of Ministers. Any State so invited shall become a Member on the deposit on its behalf with the Secretary- General of an instrument of accession to the present Statute.

Article 5

(a) In special circumstances, a European country, which is deemed to be able and willing to fulfil the provisions of Article 3, may, with the approval of the Assembly, such approval to be by a simple majority¹, be invited by the Committee of Ministers to become an Associate Member of the Council of Europe. Any country so invited shall become an Associate Member on the deposit on its behalf with the Secretary- General of an instrument accepting the present Statute. An Associate Member shall be entitled to be represented in the Assembly only.

(b) The expression " Member" in this Statute includes an Associate Member except when used in connection with representation on the Committee of Ministers.

Article 6

Before issuing invitations under Articles 4 or 5 above, the Committee of Ministers shall, with the approval of the Assembly, such approval to be by a simple majority⁷, determine the number of Representatives to the Assembly to which the proposed Member shall be entitled.

Article 7

Any Member of the Council of Europe may withdraw by formally notifying the Secretary- General of its intention to do so. Such withdrawal shall take effect at the end of the financial year in which it is notified, if the notification is given during the first nine months of that financial year. If the notification is given in the last three months of the financial year, it shall take effect at the end of the next financial year.

Article 8

Any Member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such Member does not comply with this request, the Committee may decide that it has ceased to be a Member of the Council as from such date as the Committee may determine.

Article 9

The Committee of Ministers may suspend the right of representation on the Committee and on the Assembly of a Member which has failed to fulfil its financial obligation during such period as the obligation remains unfulfilled.

Note by Rapporteur :

6. [Doc. 87](#) (1949), Part. B, adopted by the Assembly, 6th September, 1949 (88 votes to 0, with no abstentions). Renewed in Recommendation 51, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 2 abstentions). Renewed in Recommendation 54, adopted by the Assembly, 23rd November, 1950 (73 votes to 7, with 16 abstentions). Accepted in practice by the Committee of Ministers at (its Eight Session 2nd-4th May, 1951. ([Doc. 18](#) (1951), Section II, Part 3 A).

7. This change should be considered in relation to Articles 4 and 5.

Article 8 : As a result of the Amendment of Chapter "VIII, the Committeo retained Artiele 8.of tho present Statute.

F. CHAPTER III - General

Article 10

The organs of the Council of Europe are :

The Committee of Ministers ;

The Assembly ;

The Joint Committee⁸;

Executive agencies⁹.

These organs shall be served by the Secretariat- General of the Council of Europe.

Article 11

The Seat of the Council of Europe is at Strasbourg.

Article 12

The official languages of the Council of Europe are English and French. The rules of procedure of the Committee of Ministers and of the Assembly shall determine in what circumstances and under what conditions other languages may be used.

Note by Rapporteur :

Articles 10-12 : There were no amendments to these Articles with the exception of a consequential amendment to Article 10 following the delation of the former Chapters Nine and Ten.

8. This change should be considered in relation to Chapter IX.

9. This change should be considered in relation to Chapter X.

G. CHAPTER IV - Committee of Ministers

Article 13

Each Member shall be entitled to one vote in the Committee of Ministers. The representatives on the Committee shall be the Ministers for Foreign Affairs and the Ministers for European Affairs referred to in Article 14. When neither of these Ministers is able to be present, or in other circumstances where it may be desirable, an alternate may be nominated who shall, whenever possible, be a Member of his Government.

Article 14¹⁰

Every Member of the Council of Europe shall nominate a Minister, Secretary or Under-Secretary of State, who without prejudice to the responsibility of the Minister for Foreign Affairs, shall co-ordinate all matters relating to the Council of Europe.

Article 15

(a) On the recommendation of the Assembly, or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of Conventions or agreements and the adoption by Governments of a common policy with regard to particular matters. Its conclusions shall be communicated to Members by the Secretary-General.

(b) In appropriate cases, the conclusions of the Committee may take the form of recommendations to the Governments of Members, and the Committee may request the Governments of Members to inform it of the action taken by them with regard to such recommendations.

Article 16

The Committee of Ministers shall, subject to the provisions of this Statute, decide with binding effect all matters relating to the internal organization and arrangements of the Council of Europe. For this purpose the Committee of Ministers shall adopt such financial and administrative regulations as may be necessary.

Article 17

The Committee of Ministers may set up advisory and technical committees or commissions for such specific purposes as it may deem desirable.

Article 18

The Committee of Ministers shall adopt its rules of procedure, which shall determine amongst other things :

the quorum ;

the method, of appointment and term of office of its Chairman ;

the procedure for the admission of items to its Agenda, including the giving of notice of proposals for resolutions; and

the notification required for the nomination of alternates under Article 13.

Article 19

At each Session of the Assembly the Committee of Ministers shall furnish the Assembly with a statement of its activities, accompanied by appropriate documentation.

Article 20

(a) Resolutions of the Committee of Ministers relating to the following important matters, namely :

Recommendations for the amendment of Articles 7, 15, 20, 22, 42 to 46 and 57.

Questions under Articles 21 (a) (i) and (6) and

Approval of a Convention under Article 42 (b).

require the unanimous vote of the Members casting a vote, and of a majority of the Members entitled to sit on the Committee¹¹.

10. Recommendation 9, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 12 abstentions). Renewed in Recommendation 54, Section 5, adopted by the Assembly, 23rd November, 1950 (73 votes to 7, with 16 abstentions).

- (b) Questions arising under the rules of procedure or under the financial and administrative regulations may be decided by a simple majority vote of the Members entitled to sit on the Committee..
- (c) Resolutions of the Committee under Articles 4 and 5 require a two-thirds majority of all the Members entitled to sit on the Committee.
- (d) All other Resolutions of the Committee require a two-thirds majority of the representatives casting a vote and a majority of the Members entitled to sit on the Committee¹².

Article 21

- (a) Unless the Committee decides otherwise, meetings of the Committee of Ministers shall be held :

in private ;

at the Seat of the Council.

- (b) The Committee shall determine what information shall be published regarding the conclusions and the discussions of a meeting held in private. Notwithstanding the provisions of this paragraph each Member of the Committee of Ministers shall be entitled to make known publicly the attitude he has taken in the Committee concerning any draft Convention transmitted to the Committee of Ministers by the Assembly ¹³ ;
- (c) The Committee shall meet before each Session of the Assembly and at such other times as it may decide.

Note by Rapporteur on Chapter 4 :

Article 13 ; The Committee maintained the original text.

Article 14 : After considering the comments of MM. Persico, MacEntee and Williams, the Committee maintained the original text by 15 votes to 2.

Articles 15 to 19 : The Committee maintained the original text.

Article 20 : The Committee unanimously re-adopted Article 20.

Article 21 : The Committee maintained the original text.

11. This change should be considered in relation to Chapter Eight, cf. Recommendation 54, Section 4 (6), adopted by the Assembly, 23rd November 1950 (73 votes to 7, with 16 abstentions).

12. Resolution 12, adopted by the Assembly, 28th August, 1950 (87 votes to 1, with 9 abstentions). Renowned in Recommendation 54, Section 4 (6).

13. This change. should be considered in relation to Chapter Eight, cf. Recommendation 54, Section 4 (c).

H. CHAPTER V - The Assembly

Article 22¹⁴

(a) The Assembly is the deliberative organ of the Council of Europe. may deliberate upon all matters included in the aims and scope of the Council of Europe as set out in this Statute. The Assembly shall determine its own Agenda.

(b) The Assembly may pass Motions, make Recommendations, draft Conventions, and give opinions upon any matter within its aim and scope, as defined by this Statute.

(c) The President of the Assembly shall decide, in case of doubt, whether any question raised in the course of the Session is within the Agenda of the Assembly.

Article 23

The Assembly may establish Committees or Commissions to consider and report to it on any matter which falls within its competence under this Statute.

Article 24

(a) Representatives to the Assembly shall be elected by their respective Parliaments, or according to a procedure fixed by the latter. When the Parliament is not in session and has not laid down the procedure to be followed in that event, each Member Government may make such additional appointments as are necessary¹⁵.

(b) Each Representative must be a national of the Member whom he represents.

(c) No Representative shall be deprived of his position as such during a Session of the Assembly without the agreement of the Assembly.

(d) Each Representative may have a Substitute, who may, in the absence of the Representative, sit, speak and vote in his place. The provisions of this Article shall apply to the appointment of Substitutes.

Article 25¹⁶

(a) Members are entitled to the number of Representatives given below :

Belgium - 7¹⁷

Denmark - 5

France - 18

14. Doe. 87 (1949), Part B, adopted by the Assembly, 6th September, 1949 (88 votes to 0, with no abstentions). Renewed in Recommendation 51, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 12 abstentions). A different wording (Article 23) approved by the Committee of Ministers at its Eighth Session 2nd- 4th May, 1951 ([Doc. 18](#) (1951), Section II, Part 1]; approved by the Assembly, 15th May, 1951 ; came into force 22nd May, 1951 under the provisions of Article 41 (d) of the present Statute.

15. Recommendation 12, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 12 abstentions). Reviewed in Recommendation 54, Section 4 (d), adopted by the Assembly, 23rd November, 1950 (73 votes to 7 with 16 abstentions). A different wording [Article 25 (a)] approved by the Committee of Ministers at its Eighth Session 2nd-4th May, 1951 [[Doc. 18](#) (1951), Section II, Part 1] ; approved by the Assembly, 15th May, 1951; came into force 22nd May, 1951 under the provisions of Article 41 (d) of the present Statute.

16. [Doc. 87](#) (1949), Part B, adopted by the Assembly, 6th September, 1949 (88 votes to 0, with no abstentions), recommended : (i) " That the number of Representatives be doubled " ; (ii) " That the system of Substitutes be abolished. " [Omission of Article 25 (c) of the present Statute.] Since that date the system of Substitutes has proved valuable in order to maintain the quorum. The Assembly therefore adopted Resolution 6, 26th August, 1950, deciding : " To maintain the principle of the existence of Substitutes. " Apart from the considerations which led the Assembly to adopt the proposal for a 100 % increase in 1949, a substantial increase in the number of Representatives is essential if the Council of Europe is to have Conventionmaking powers under the provisions of Chapter VIII and will be necessary if the Assembly's desire that Members of the Assemblies of the Specialized Authorities should be chosen from among the Members of the Strasbourg Assembly is to be realized. (Vide : Article 1 of the Protocol to the Treaty setting up the European Coal and Steel Community, signed in Paris 18th April, 1951, and the Second Protocol to the Draft for a New Statute). The Committee approved in principle a proposal of the Rapporteur whereby the number of Representatives would be increased by 50 % and the system of Substitutes maintained (making a total of some 350 Parliamentary representatives).

17. See 3rd Session, 1951. [Doc. 74](#) and [106](#).

Germany - 18

Greece - 7

Iceland - 3

Ireland - 4

Italy - 18

Luxembourg - 3

Netherlands - 7

Norway - 5

Saar - 3

Sweden - 6

Turkey - 10

United Kingdom of Great Britain Northern Ireland - 18

(b) Any modification of the provisions of paragraph (a) above shall be made by a twothirds majority of the Committee of Ministers and a simple majority of the Assembly.

Article 26

The Assembly shall adopt its rules of procedure which shall determine inter alia :

the quorum ;

the manner of the election of the President and other officers ;

the manner in which the Agenda shall be drawn up and be communicated to Representatives; and

the time and manner in which the names of Representatives and their Substitutes shall be notified ;

the manner of election and term of office of the Members of the Standing Committee.

Article 27

(a) The Assembly shall elect a President and Vice-Presidents, who shall remain in office from the beginning of the First Session in any year until the beginning of the First Session in the succeeding year.

(b) The President of the Assembly shall at the same time be the Chairman of the Standing Committee of the Assembly.

(c) When the President is controlling the proceedings of the Assembly, he shall not take part in the Debate and vote, but the Substitute of the President may sit, speak and vote in his place.

Article 28

The Standing Committee is the organ of the Assembly entrusted with the task of ensuring between Sessions the continuity of action of the Assembly.

Article 29

(a) The Assembly shall hold two ordinary- Sessions every year¹⁸, the dates and duration of which Sessions shall be determined by the Assembly so as to avoid as far as possible overlapping with parliamentary sessions of Members and with sessions of the General Assembly of the United Nations.

(b) The Assembly may be convened in extraordinary Sessions upon the initiative either of the Committee of Ministers or of the President of the Assembly after agreement between them, such agreement also to determine the date and place of the Sessions¹⁹.

18. (i) Motion submitted by Mr. Macmillan, 17th August, 1949 [Doc. Y (1949); vide page 131, Working Papers of the First Ordinary Session] ; (ii) Motion submitted by MM. Reynaud, Bidault, Bonnefous, de Moustier, Bardoux, Gaillard, Jacini, Foster, de Menthon, Mackay, Boggiano Pico, de Félice; 10th August, 1950 [Doc. 45 (1950)].

Article 30

Subject to the provisions of Articles 42 (d), 46, 51 and 57, all Resolutions and Recommendations of the Assembly shall require a simple majority of the Representatives casting a vote.

Article 31

Unless the Assembly decides otherwise, its debates shall be conducted in public.

Article 32

Ordinary Sessions of the Assembly shall be held at the Seat of the Council unless both the Assembly and the Committee of Ministers concur that they should be held elsewhere.

Nota by Rapporteur on Chapter V :

Article 22 : The Committee maintained the original text.

Article 23 : Article 23 was brought into line with the new provisions of Chapter VI. Its wording closely resembles that of Article 24 of the present Statute. It was unanimously adopted by the Committee.

Article 25 : The Committee unanimously adopted Article 25, one Member abstaining owing to his disagreement with the participation of one of the Members in the Council of Europe.

The Committee also provisionally adopted the new distribution of seats proposed by the Committee of Ministers in its communication of 24th November, 1951 ([Doc. 74](#)). It reserves the right to make other suggestions later.

The Committee's Draft Resolution on the provisional distribution of seats is the subject of a separate report to the Assembly.

Articles 26 and 27 : The Committee maintained the original text.

Article 28 : In the original Draft (AS (3) 68) the provisions on the Standing Committee were the subject of a special chapter (formerly Chapter X) on which various comments were made in the Assembly.

The Committee considered that the comment of M. van Cauwelaert that the provisions of the former Chapter X belonged to the Rules of Procedure rather than the Statute was justified. Nevertheless it considered that the Standing Committee was of too great political importance for the Statute to ignore its existence.

The Committee accordingly decided unanimously to retain the former Article 49, which has been inserted as Article 28 in Chapter V (The Assembly). The other Articles in the former Chapter X were deleted.

Articles 29-32 : The Committee maintained the original text.

19. [Doc. 87](#) (1949), Part B, adopted by the Assembly unanimously 6th September, 1949. Renewed in Recommendation 13, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 12 abstentions). Renewed in Recommendation 54, Section 3, adopted by the Assembly, 23rd November, 1950 (73 votes to 7, with 16 abstentions). The text of this Article 29 (b) was approved by the Committee of Ministers at its Eighth Session 2nd-4th May, 1951 ([Doc. 18](#), Section II, Part. I, Article 34); approved by the Assembly, 15th May, 1951 i and came into force 22nd May, 1951, under the provisions of Article 41 (d) of the present Statute (Article 34).

I. CHAPTER VI²⁰ - Consultation

Article 33

In order to reach a common policy, Members shall consult with one another at each meeting of the Committee of Ministers on matters of common concern which fall within the competence of the Council of Europe, and which they consider to be likely to be conducive to the achievement of the aims of the Council of Europe.

(b) (i) Any initiative taken or draft Agreement made by any Member with other Members and falling within the competence of the Council of Europe shall be transmitted to the Committee of Ministers, should the Member in question consider it to be likely to be conducive to the achievement of the aims of the Council of Europe. The Assembly may be asked to give an opinion within a fixed time-limit at the request of the Member concerned. In such a case the Committee of Ministers shall transmit the text concerned to the Assembly.

(ii) The text of any Treaty between two or more Members, whose object they shall deem to fall within the competence of the Council of Europe, shall be transmitted for opinion to the Committee of Ministers and the Assembly prior to ratification. The signatory States may, by common agreement, ask that the opinion of the Committee of Ministers or of the Assembly be formulated within a stated time limit.

(iii) Where the communication referred to in sub-paragraphs (i) and (ii) shall not already have been effected, any Member not a party to such initiatives or treaties may request that it be transmitted to the Committee of Ministers, for information only.

Article 34

Every Treaty and International Agreement concluded by one or more Members on subjects within the competence of the Council of Europe shall be registered with the Secretariat-General and published under its authority.

Article 35

(a) The Council of Europe may consult any intergovernmental organisation, establish organic links with any of them, and conclude agreements defining the terms upon which such organisations shall be brought into relationship with the Council of Europe²¹.

Such agreements must be approved both by the Assembly and by the Committee of Ministers.

(b) The Committee of Ministers and the Assembly may make suitable arrangements for consultation with international non-governmental organisations which deal with matters that are within the competence of the Council of Europe.

Note by Rapporteur on Chapter VI :

Article 33 :

Paragraph (a) : Since no comment was made on this paragraph in the Assembly, the Committee maintained the original text.

Paragraph (b) : Various comments were made in the Assembly on this paragraph, in particular by MM. Amery, Chiostergi, Rolin and Williams.

The Committee proceeded to reconsider this paragraph in detail and reached the following conclusions :

Sub-paragraph (i) : The Committee decided unanimously to maintain the original text.

Sub-paragraph (ii) : The Committee decided unanimously to maintain the original text subject to the following amendment : The phrase " on subjects within the competence of the Council of Europe " was replaced by " whose object such States shall deem to fall within the competence of the Council of Europe ", in order to define the scope of the paragraph without ambiguity.

Sub-paragraph (iii) : This new sub-paragraph was inserted at the request of M. Argyropoulos.

20. Chapter VI is closely modelled upon the Proposals of M. La Malta [Doc. 152 (1950)].

21. Recommendation 16, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 12 abstentions). Renewed in Recommendation 55, adopted by the Assembly, 23rd November, 1950 (73 votes to 7, with 16 abstentions). Adopted by the Committee of Ministers, but with different wording, at its Eighth Session, 2nd-4th May 1951 [Doc. 18 (1951), Section II, part 3 D.]

Thus amended, Article 33 was adopted unanimously.

Article 34 : The Committee, having considered the observations of M. Rolin, decided unanimously to retain Article 34, maintaining the original text.

Article 35 : In order to take account of a comment by M. Serrarens, the Committee added paragraph (b) to Article 35. This paragraph (b) is in substantially the same terms as a resolution adopted by the Committee of Ministers at its 8th Session.

The Committee unanimously adopted the Article as amended.

J. CHAPTER VII²² - Specialised Authorities

Article 36

The creation within the framework of the Council of Europe of institutions upon which the participating States confer definite powers within a clearly specified field is recognised as being, in accordance with the spirit and purpose of this Statute, even if all Members are not parties thereto. Any such institution shall be called a Specialised Authority.

Article 37

The initiative for setting up any such Specialised Authority may be taken either by the Council of Europe or by one or more Members.

Article 38

(a) If, under the provisions of Article 36, one or more Members initiate negotiations for the creation of a Specialised Authority, these negotiations shall be open to all Members of the Council of Europe.

(b) The object, functions and general principles of any such Specialised Authority shall be communicated to the Committee of Ministers with the object of associating the Council of Europe as a whole in its establishment, and subsequently of integrating within the Council of Europe its organs of administration and control.

(c) No limitations shall be placed on the right of any Member not originally a member of such a Specialised Authority subsequently to accede thereto.

Article 39

Each Specialised Authority shall submit regular reports on its activities to the Council of Europe.

The Council of Europe shall transmit its comments on such reports to the Specialised Authorities.

Article 40

Each Specialised Authority shall make available facilities for the exchange of information, documents and statistical data with the Council of Europe.

Article 41²³

The Council of Europe shall co-ordinate the work of the Specialised Authorities brought into relationship with the Council of Europe, in accordance with the foregoing provisions, by holding joint discussions and by submitting recommendations to them, as well as by forwarding recommendations to Member Governments.

The Specialised Authority shall inform the Council of Europe of action taken in respect of such recommendations.

Note by Rapporteur on chapter VII :

Articles 36 to 41 ; At the general debate on the Report on Constitutional Question ([Doc. 68](#)) Chapter VII was held over until the Assembly had considered the Report on Specialised Authorities ([Doc. 13](#)). The debate on the latter Report at the 35th Sitting of the Assembly showed that Chapter VII of the Draft Statute did not call forth any comment from the Assembly.

The Committee therefore unanimously maintained the original text.

22. The Chapter reflects the wishes of the Assembly as laid down in Recommendations 1, 4, 5, 6, 7 and 8 (adopted August, 1950), and in Recommendations 52 and 53 (adopted November, 1950). The Resolution adopted by the Committee of Ministers concerning Specialised Authorities at its Eighth Session, 2nd-4th May, 1951 [[Doc. 18](#) (1951), Section 1] was considered by the Assembly to be unsatisfactory. [Reply to [Doc. 57](#) (1951) paragraph 5].

23. The Second Protocol to the Draft for a New Statute should be considered at the same time as Article 41.

K. CHAPTER VIII²⁴ - Convention-making**Article 42**

(a) A Convention of the Council of Europe shall be made when approved by the Committee of Ministers and the Assembly in accordance with the provisions of this Statute.

(b) In the case of the Committee of Ministers, a Convention shall be approved only by the unanimous vote of the Members of the Committee casting a vote and of a majority of the Members entitled to sit on the Committee.

(c) If, however, the Committee, by the unanimous vote of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee, decides that abstention from participation in any proposal before it shall be permitted, that proposal shall be put to the Committee; it shall be considered as adopted only by the Members who then vote in favour of it and its effects shall be limited accordingly.

(d) In the case of the Assembly a Convention shall not be approved except by a vote of not less than two-thirds of the Representatives casting a vote.

(e) A draft Convention of the Council of Europe may originate in either the Committee of Ministers or the Assembly.

Article 43

(a) A draft Convention originating in either the Assembly or the Committee of Ministers, and approved by either one of these two organs, shall be transmitted to the other, which may either approve it in accordance with the terms of the present Statute in its original form or with amendments, or withhold approval thereof.

(b) If such draft Convention is approved by the Committee of Ministers or the Assembly, in the form in which it was transmitted by the other organ, it shall thereupon become a Convention of the Council of Europe.

(c) Should the Committee of Ministers or the Assembly decide to approve the draft Convention in an amended form, the Convention shall be referred to the Joint Committee which shall draw up amendments. These amendments shall be transmitted to the Committee of Ministers and the Assembly for final approval.

Article 44

24. (a) Resolution of the Assembly, adopted unanimously 6th September, 1949 [Doc. 87 (1949), Part A, Section I and Section III, paragraph 8]. (b) Principle of decisions taken by the Committee of Ministers to be binding upon Member States, Recommendation 10, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 12 abstentions), cf. Resolution 21, adopted by the Assembly, 23rd November, 1950. (c) Principle of reference back to national parliaments of draft Conventions, Recommendation 14, adopted by the Assembly, 18th August, 1950, cf. : (i) Motion submitted by Mr. Macmillan, Sir David Maxwell Fyfe, Sir Ronald Ross, Mr. Boothby and Mr. Eccles [Doc. F. (1949), Section 7; vide p. 109, Working Papers of the First Ordinary Session] ; (ii) Resolution 4, adopted by the Assembly, 18th August, 1950. (d) Principle of obligation of Representatives to support Recommendations of the Assembly for which they had voted, Resolution 10, Sections (iii) and (iv) adopted by the Assembly, 28th August, 1950 (87 votes to 1, with 9 abstentions). (e) 23rd November, 1950, the Assembly adopted the following Recommendation (Recommendation 54) by 73 votes to 7, with 16 abstentions : " The Assembly, " Submits to the Committee of Ministers with a view to transmitting them to the Joint Committee mentioned above, or alternatively to the Committee of Senior Officials : (a) the Resolution in Appendix 1, cf. Doc. 155 (1950) ; (b) the Draft Protocol in Appendix II, cf. Doc. 155 (1950). for further consideration and detailed examination; "Instructs a Committee of Seven Members, nominated by the Bureau, to examine the texts contained in Appendices I and II; to decide their final form; to present them before the Joint Committee mentioned above; and authorizes the same Committee to forward immediately to the Governments concerned, for their information, the final texts decided upon, and to take all necessary steps to secure their acceptance." [Minutes of the Twenty-Eighth Sitting, Second Part [of the Second Ordinary Session, pages 58-59.] (f) The Special Committee of Seven [Members : Sir David Maxwell Fyfe (Chairman) ; MM. Azara, Bohy, Mackay (Rapporteur), Schmid and Schumann, Mlle. Klompé] met in December 1950 and approved the Protocol unanimously which was accordingly submitted to the Committee of Ministers. (g) The Committee of Ministers pointed out that the final text of the Protocol had not received the formal approval of the Assembly (February, 1951). (h) The Assembly therefore instructed the Committee on General Affairs in May 1951, to give the Protocol further consideration, so that when sent to the Committee of Ministers it might be supported by the formal vote of the Assembly. [Reply to the Report and Message of the Committee of Ministers, vide Doc. 57 (1951) paragraph 8]. (i) The Committee on General Affairs considered this matter at meetings in July, September and November, 1951. The text upon meetings that Committee agreed was then referred by the Assembly to a Joint Working Party of the Committee on General Affairs and of the Committee on Legal and Administrative Questions. The final text proposed by the Special Joint Committee received the unanimous approval of the Committee on General Affairs. (j) Resolution concerning Partial Agreements adopted by the Committee of Ministers at its Ninth Session, 2nd-3rd August, 1951 (Doc. 60 (1951), paragraph 6).

Conventions approved by the Council of Europe shall be drawn up in one original copy only, which shall be signed by the Chairman of the Committee of Ministers, by the President of the Assembly and by the Secretary-General. A duly authenticated copy shall be communicated by the Secretary-General to the Governments of the various Members.

Article 45

(a) All Conventions of the Council of Europe shall be subject to ratification. Nevertheless, such ratification may be deemed to have taken place by tacit consent after the expiry of a period of one year, provided that this procedure shall have been expressly provided for in the Convention concerned by the unanimous agreement of the Committee of Ministers.

(b) In cases where the constitutional procedure of certain States requires that the ratification of a Convention be preceded by parliamentary approval, such approval shall be sought by the Governments within a period of six months following the adoption of the Convention.

Article 46

In the absence of any provision to the contrary, a Convention of the Council of Europe may not be denounced unilaterally, and its repeal may take place only with the consent of a two-thirds majority of the Assembly and of the Committee of Ministers.

Note by Rapporteur on Chapter VIII :

The Assembly decided that Chapter VIII would be reconsidered in the light of the comments made during the general debate, by a Joint Working Party of the Committee on General Affairs and the Committee on Legal and Administrative Questions.

The Committee on General Affairs, to which the conclusions of the Working Party were referred, adopted them unanimously, subject to an amendment to Article 42, as explained below.

Article 42 : A new paragraph (c) was inserted by the Joint Working Party and the Committee. The text finally adopted by the Committee reproduces a resolution adopted by the Committee of Ministers at its 9th Session.

The Committee, in retaining this text, was anxious to facilitate to the utmost the possible agreement of the Committee of Ministers to the new Draft Statute.

Article 43 : The present Article 43 combines the former Articles 42 and 43 in a single text, which the Committee thought clearer. It fulfills the same purpose.

Article 44 : This Article, very slightly amended in comparison with the wording adopted by the Joint Working Party, meets the point raised by M. Rolin at the plenary Sitting.

Article 45 : The wording of this Article was determined by the Joint Working Party which endeavoured to meet the points raised in the Assembly by MM. Amery, Edberg, Lord Layton, MM. Rolin, Smitt, Ingebrechtsen and Williams.

The new Procedure suggested does not seem likely to give rise to any objection, while increasing the effectiveness of the Council of Europe.

Article 46 : The new wording of this Article, prepared by the Joint Working Party, seems to meet the objections raised in the Assembly by MM. Amery and Rolin.

The Committee unanimously adopted the whole of Chapter VIII in its new wording.

L. CHAPTER IX²⁵ - The Joint Committee**Article 47**

The Joint Committee is the organ of co-ordination of the Council of Europe. Without prejudice to the respective rights of the Committee of Ministers or of the Assembly, the functions of the Joint Committee shall be, in particular :

To examine the problems which are common to the Committee of Ministers and to the Assembly ;

To draw the attention of those two organs to those questions which appear to be of particular interest to the Council of Europe ;

To make proposals for the draft Agenda of the Sessions of the Committee of Ministers and of the Assembly ;

To examine and promote means of giving practical effect to the Recommendations adopted by one or other of those two organs ;

To draw up amendments to draft Conventions in accordance with the provisions of Article 43 (c) of the Statute.

Article 48

(a) The Joint Committee shall be composed of fourteen members, seven of whom shall be appointed by the Committee of Ministers, and seven of whom shall be appointed by the Standing Committee of the Assembly.

(b) The Secretary-General shall be entitled to attend the meetings of the Joint Committee in an advisory capacity.

Article 49

(a) The conclusions of the Joint Committee shall be reached without voting.

(b) The Joint Committee shall adopt its Rules of Procedure which shall, in particular, fix the quorum, the method of nominating its Chairman and the conditions in which it shall be convened.

Note by Rapporteur on Former Chapter IX (The Standing Group).

Comments on this Chapter were made in the Assembly by Mr. Williams. For very different reasons a majority of the Members of the Committee (10 to 6 with 3 abstentions) voted for the deletion of this Chapter.

In so doing, certain Members thought that the proposed Standing Group was the forerunner of a European Executive, for which they were not prepared. Other Members thought, however, that, the powers of the proposed Standing Group were much too limited; while others again thought that the number of Member States represented on the Group was insufficient.

Note by the Rapporteur on the New Chapter IX (The Joint Committee).

Article 47 : The Committee unanimously considered that the wording adopted for Article 43 (c)—prepared by the Joint Working Party of the Committee on General Affairs and the Committee on Legal and Administrative Questions — made it necessary to retain paragraph (c) which M. Rolin had suggested in the Assembly should be deleted. Minor amendments were however made to bring this paragraph into line with the amended texts of Chapter VIII.

Article 4S, paragraph (a) : Form amended in order to take account of the deletion of the former Chapter IX and part of the former Chapter X .

Article 49 : The Committee maintained the original text of this Article.

25. Apart from Articles 47 (e), 48 (a) and 49 (b), this Chapter is identical with the Resolution adopted by the Committee³ of Ministers at its Eighth Session, 2nd- 4th May, 1951 [Doc. 18 (1951), Section II, Part 3 C]. Cf. Resolution 7, adopted by the Assembly, 26th August, 1950, approving the agreement reached by the ad hoc Joint Committee 18th May, 1950 [Doc. CM/AS (50) PV2],

M. CHAPTER X²⁶ - Executive Agencies

Article 50

The Committee of Ministers shall be responsible for the executive tasks entrusted to the Council of Europe under the provisions of this Statute and more particularly under the provisions of the First Protocol thereto; and for such executive tasks as may subsequently be entrusted to it under the provisions of any Convention of the Council of Europe.

Article 51

In order to implement the provisions of Article 50, the Committee of Ministers shall, with the approval of the Assembly obtained under the conditions laid down in Article 42 (d), delegate the necessary powers to Executive Agencies under its control, which shall also report to the Assembly.

Note by Rapporteur on Chapter X.

Articles 50 and 51 : Amendment No. 3 to Doc. 68 submitted by MM. de Menthon and Teitgen was referred back to the Committee.

After a thorough exchange of views the Committee decided by 18 votes to 2 with 4 abstentions not to adopt M. de Menthon's proposal as an amendment to the Statute.

This proposal was therefore considered in conjunction with the other Motions on general policy referred to the Committee and on which a separate report is submitted.

The Committee then unanimously confirmed its previous approval of Articles 50 and 51.

26. cf. Motions submitted 17th August, 1949, by : (i) Mr. Macmillan, Sir David Maxwell Fyfe and others [Doc. F (1949), Sections 4 and 5]; (ii) Mr. Macmillan [Doc. V (1949)]; (iii) M. Ruini and Cassimatis [Doc. X (1949)]. Vide Working papers of the First Ordinary Session, pp. 109, 129 and 130 respectively.

N. CHAPTER XI - The Secretariat

Article 52

- (a) The Secretariat shall consist of a Secretary- General, and such Deputy Secretaries- General²⁷ and other staff as may be required.
- (b) The Secretary-General and Deputy Secretaries- General, shall be appointed by the Assembly on the recommendation of the Committee of Ministers.
- (c) The remaining staff of the Secretariat shall be appointed by the Secretary-General, in accordance with the administrative regulations.
- (d) No member of the Secretariat shall hold any salaried office from any Government or be a member of the Assembly or of any national legislature or engage in any occupation incompatible with his duties.
- (e) Every member of the staff of the Secretariat shall make a solemn declaration affirming his duty to the Council of Europe and that he will perform his duties conscientiously, uninfluenced by any national considerations, and that he will not seek or receive instructions in connection with the performance of his duties from any Government or any authority external to the Council and will refrain from any action which might reflect on his position as a European civil servant responsible only to the Council. In the case of the Secretary-General and the Deputy Secretaries-General this declaration shall be made before the Committee of Ministers and the Assembly, and in the case of all other members of the staff, before the Secretary-General.
- (f) Every Member shall respect the exclusively supranational character of the responsibilities of the Secretary-General and the staff of the Secretariat, and not seek to influence them in the discharge of their responsibilities.

Article 53

- (a) The Secretariat shall be located at the Seat of the Council.
- (b) The Secretary-General is responsible to the Committee of Ministers and to the Assembly for the work of the Secretariat. He shall provide both bodies with such secretariat and other assistance as they may require.

Note by Rapporteur on Chapter XI.

Articles 52 and 53 : Since no comments were made in the Assembly, the Committee confirmed its previous vote.

27. [Doc. 87](#) (1949) Part B, adopted by the Assembly unanimously 6th September, 1949. Accepted by the Committee of Ministers at its Second Session 3rd-5th November, 1949 [[Doc. 8](#) (1950), Section I, paragraph 8], but Statute not yet amended to this effect.

O. CHAPTER XII - Finance

Article 54

(a) The expenses of the Committee of Ministers, the Assembly, the Committees and Subcommittees of both bodies, the Standing Committee, the Joint Committee, such Executive Agencies as may be set up under the Statute²⁸, the Secretariat-General, and all other common expenses, shall be shared between all Members in such proportion as shall be determined by the Committee of Ministers on the basis of the population of Members.

(b) The Assembly shall have a special Budget which shall be submitted annually by the President of the Assembly to the Committee of Ministers. In case of any disagreement, the matter shall be laid before the Joint Committee. The Committee of Ministers shall be responsible for taking the final decision.

(c) The Secretary-General shall, after obtaining the opinion of the Joint Committee, submit each year the general Budget of the Council of Europe, including all other expenditure for approval by the Committee of Ministers, in accordance with the conditions laid down in the Financial Regulations.

Article 55

(a) The Secretary-General shall each year notify the Government of each Member of the amount of its contribution. Each Member shall pay to the Secretary-General the amount of its contribution, which shall be deemed to be due on the date of its notification, and must be paid not later than six months after that date.

(b) The Secretary-General shall be responsible for defraying the expenses of the Council of Europe, as enumerated in Article 54 (a) of this Statute.

Note by Rapporteur on Chapter XII.

Article 54, paragraph (a) : As a result of the decision to delete the Chapter on the Standing Group, the enumeration in paragraph (a) was amended accordingly.

Paragraph (b) : As a result of the comments made by the President of the Assembly and Mr. Williams, the Committee adopted a new wording of this paragraph.. The principle of a special budget of the Assembly prepared by its appropriate organs was adopted. Nevertheless, it would be for the Committee of Ministers to take the final decision on such a request of the Assembly in cases where no agreement had been reached.

Article 55 : Since no comments were made, the Committee maintained the original text.

28. Amendment consequential upon the adoption of the earlier Chapters.

P. CHAPTER X III - Privileges and Immunities

Article 56

The Council of Europe, members of the Committee of Ministers and Representatives to the Assembly, and members of the Secretariat- General shall enjoy in the territories of Members such privileges and immunities as are necessary for the fulfilment of their functions. These immunities shall include immunity for all Representatives to the Assembly from arrest and all legal proceedings in the territories of all Members in respect of words spoken and votes cast in the Debates of the Assembly or its Committees.

Note by Rapporteur on Chapter XIII.

Article 56 : Since no comments were made, the committee maintained the original text.

Q. CHAPTER XIV - Amendments

Article 57

- (a) Proposals for the amendment of this Statute may be made in the Committee of Ministers or in the Assembly.
- (b) Subject to the provisions of Articles 20 and 25, such amendments shall require, both in the Committee of Ministers and in the Assembly, a two-thirds majority of the representatives entitled to sit in the Committee and in the Assembly respectively.
- (c) The Committee of Ministers shall cause to be embodied in a Protocol those amendments which have fulfilled the provisions of paragraph (b) of this Article.
- (d) An amending Protocol shall come into force when it has been signed and ratified on behalf of two-thirds of the Members.
- (e) Notwithstanding the provisions of the preceding paragraph of this Article :

No amendment to Articles 7, 20, 21, 22 and 42—46 shall be considered until the expiry of the fourth Ordinary Session of the Assembly following the entry into force of this Statute;

Amendments to Articles 23-32, 47—49, 54 and 55 which have been approved by the Committee of Ministers and b y the Assembly in accordance with the provisions of paragraph (b) of this Article shall come into force on the date of the certificate of the Secretary-General, transmitted to the Governments of Members, certifying that they have been so approved.

Note by Rapporteur on Chapter XIV.

Article 57 ;. Since no comments were made, the Committee maintained the original text.

R. FIRST PROTOCOL RELATING TO THE FUSION OF CERTAIN EUROPEAN ORGANISATIONS WITH THE COUNCIL OF EUROPE

Article 1

The Members of the Council of Europe signatory to the Convention for European Economic Co-operation undertake to enter into negotiations with the other signatory States in order to draw up provisions whereby the organizations created by virtue of the said Convention shall be merged with the Council of Europe²⁹.

Article 2

The Members of the Council of Europe signatory to the Brussels Treaty undertake to take the necessary measures, in agreement with the other Members, whereby the social and cultural organizations created under the Brussels Treaty shall be merged with the Council of Europe³⁰.

Article 3

The Members of the Council of Europe who are parties to the European Customs Union Study Group undertake to take the necessary measures, in agreement with the other Members, whereby the said Study Group shall be merged with the Council of Europe.

Note by Rapporteur on the First Protocol

The Committee maintained the original text.

29. Recommendations 18 and 19, adopted by the Assembly, 18th August, 1950 (94 votes to 0, with 12 abstentions). Renewed in Recommendation 55, adopted by the Assembly, 23rd November, 1950 (73 votes to 7, with 16 abstentions). Renewed in Reply to the Report and Message of the Committee of Ministers [Doc. 57 (1951), paragraphs 2 and 3] adopted by the Assembly, 15th May, 1951 (64 votes to 2 with 5 abstentions) .

30. cf. Article 1 of the Protocol to the Treaty setting up the European Coal and Stool Community, signed in Paris, 18th April, 1951.

S. SECOND PROTOCOL RELATING TO SPECIALIZED AUTHORITIES

Article 1

In cases where the organs of a Specialized Authority include an Assembly, the Council of Europe recommends :

(a) that the members of such Assemblies be selected as far as possible among the Representatives to the Council of Europe³¹ , and

(b) that such Assemblies hold their meetings at the Seat of the Council of Europe.

Article 2

The Secretariat-General may be called upon to provide the administrative staff of the Specialized Authorities.

The Rapporteur considers that the Draft Statute in its new wording should gain wide support in the Assembly. He regards the unanimous approval already given by the Committee on General Affairs when voting on the whole Document as a fortunate omen, which, he hopes, may augur well for the reception of the new Statute by the Committee of Ministers.

The Committee on General Affairs submits also to the Assembly the following Draft Order of Reference :

Note by Rapporteur on the Second Protocol

This Protocol was considered in the Assembly during the debate on Specialized Authorities and Chapter VII of the Draft Statute; it did not give rise to any comment, and the Committee therefore maintained the original text.

31. Reply to the Report and Message of the Committee of Ministers. [[Doc. 57](#) (1951), Section. 5].

T. Draft Order of Reference

The Assembly,

Instructs the Committee on General Affairs to follow developments in connection with the revision of the Statute and, if necessary, to submit to it a report on this question at its next Session.

Note by Rapporteur on the Third Protocol.

The Third Protocol contained in the Report Doc. 68 was deleted as a result of the new wording adopted for Chapter VIII.