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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 403
26 October 1955

European Social Charter and European Economic and Social Council

Motion for a recommendation
tabled by the Social, Health and Family Affairs Committee

Draft Recommendation

The Assembly,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10th December, 1948;

Considering that the Member Governments of the Council of Europe have, by concluding the European Convention on Human Rights and its Protocol, taken steps to guarantee to everyone within their jurisdiction certain of the civil and political rights set out in the Universal Declaration;

Considering that it is also necessary to guarantee social, economic, and cultural rights in order to permit the peoples of Europe to live in conditions of human dignity and freedom from want and from fear ;

Recalling with satisfaction that the Committee of Ministers has accepted the Assembly's Recommendation " to elaborate a Social Charter which would define the social objectives aimed at by Members arid would guide the policy of the Council in the social field, in which it would be complementary to the European Convention on Human Rights and Fundamental Freedoms"[1];

Having given further consideration to the principles which should be enshrined in the Charter,

1. Recommends to the Committee of Ministers the adoption of the draft European Social Charter appended hereto;

2. Requests that a joint meeting should be arranged between members of the Social Committee and members of the Assembly Committee on Social Questions in order to examine the draft European Social Charter before the Committee of Ministers takes its final decision thereon.

1. Opinion No. 5 of September, 1953, para. 2; Special Message of the Committee of Ministers, May, 1954, Doc. 238, para. 45.

Appendix APPENDIX

DRAFT EUROPEAN SOCIAL CHARTER

PART I

Preamble

1. The object of this Charter is to promote a progressive improvement in the well-being of the nationals of the High Contracting Parties by a continuous rise in living standards and by the equitable sharing of resources and burdens and thus to ensure the dignity of man affirmed in the European Convention on Human Rights.

2. Realising that the standard of living depends on economic conditions, and particularly on the sum of resources available, the High Contracting Parties will seek to achieve adequate levels of production, investment and trade. They will pursue an economic, monetary and fiscal policy designed to ensure full employment, the fair distribution of resources and sharing of burdens and the stability of the purchasing power of money.

3. The High Contracting Parties regard economic policy not as an end in itself, but as a means of attaining social objectives, which are defined in terms of the moral and spiritual values inherent in the common heritage of the European peoples.

4. In particular, in carrying out ,their economic and social policy, the Governments will adopt no measures incompatible with human dignity and the integrity of the family. The supreme aim of their social policy will be to develop the human personality and to allow the individual the opportunity of exercising his natural gifts to the full, with due regard for his duty to other individuals and to the community in which he lives.

5. This policy can therefore bo carried into effect only with the free participation of the people concerned, and within the framework of their local communities and professional groups, whose activities the State is bound to promote, co-ordinate and supplement.

6. The first essential is to ensure the exercise of the right to work. The maintenance of full employment in all European countries must be the constant preoccupation of the High Contracting Parties.

7. Nevertheless, work is not an end in itself. The High Contracting Parties recognise it as one of the conditions for the development of the human personality that workers should have a share in the fruits of their labours, particularly by participation in the profits of the undertaking by which they are employed.

8. The High Contracting Parties regard it as a duty arising from the most elementary principles of human solidarity that they should assist the less favoured sections of their populations.

9. The High Contracting Parties are opposed to all forms of discrimination on grounds of sex, race, colour, language, religion, property, national or social origin, or political or other opinions.

10. They will not derive profit from exploitation of the living conditions of the peoples politically or economically dependent on them. They recognise that they are responsible for the economic and social development of territories under their jurisdiction, in collaboration with the native population and, where appropriate, with qualified international organisations.

11. They also consider themselves collectively responsible for the economic expansion of their under-developed areas, and pledged to develop them by all means within their power.

12. The High Contracting Parties regard it as an embodiment of the principles of democracy that appropriate institutions should be created to enable employers, workers' and consumers' organisations to participate in the formulation of economic policy at all stages and in allsectors.

13. Although the planning and implementation of social policy are essentially the concern of national or regional authorities, its successful outcome depends, and will increasingly depend, on closer international organisation, on a more extensive sharing of resources and experience leading to the progressive lowering of barriers of all kinds to the free circulation of persons and goods, particularly manpower and capital.

14. The High Contracting Parties will therefore further develop their co-operation in social and economic matters, and, in particular, will harmonise their social legislation and practice at the highest level attainable.

15. The High Contracting Parties, being resolved to give effect to the foregoing principles, recognise the rights set forth in Part II of this Charter. With a view to guaranteeing the exercise of these rights, they agree to institute a European Economic and Social Council and to introduce or authorise all measures acknowledged to be necessary either at the international level, for instance by way of international labour conventions, or at a European, national, local or professional level.

PART II

Section A - Rights pertaining to employment

Article 1

Everyone has the right to work. In the exercise of this right he should be enabled to earn his living by a freely accepted occupation.

The High Contracting Parties undertake to ensure the maintenance of the volume of investments needed for full employment in Europe and to make up any inadequacies by public investments; to assist, stimulate or create new economic activities, particularly to replace those which are obsolescent; and to provide for.the rehabilitation and re-settlement of unemployed workers.

Article 2

Everyone has the right to fair and stable conditions of work.

The High Contracting Parties undertake to encourage the adoption of measures which will ensure progressively for everyone :

a. safe and healthy working conditions;

b. a wage :

whic h is commensurate with the nature of his work and with his professional capacities;

which provides equal pay for equal work;

which ensures for himself and his family a decent existence, guaranteed more particularly by:

the introduction of a minimum wage;

the fixing of wages in relation to this minimum ;

the periodical adjustment of the wage by reference to the cost of living and the economic situation;

c. reasonable notice on termination of employment;

d. progressive reduction of work to a 40-hour week, subject to essential adjustments for certain professions, with special rates for overtime;

e. a minimum of two weeks' annual holiday with pay;

f. vocational guidance and training;

g. prospects of professional promotion;

h. the possibility of retirement at the ago of 65 at the latest, with a pension ensuring a decent living.

The High Contracting Parties undertake to ensure that the standards laid down in this Article are implemented in individual and collective employment contracts.

Article 3

In the field of employment, children and adolescents have the right to special measures of protection.

In order lo ensure this protection the High Contracting Parties undertake to take all necessary steps in order that :

a. the employment of child labour of under 14 years of age, and the employment of adolescents in work which is physically or morally injurious, shall be punishable by law;

b. persons of under 16 years of age and those who, having reached that age, are still subject to compulsory education may be employed only in such work as will not deprive them of this education;

c. persons of under 16 years of age may not be employed for more than 6 hours a day;

d. adolescents shall be entitled to not less than three weeks' annual holiday with pay.

Article 4

Everyone employed in an undertaking has the right to share in the management according to his abilities and in the profits according to the work he contributes.

The steps to be taken by the High Contracting Parties to ensure exercise of this right shall include the establishment of organs of joint management whereby the workers may have a share in the life, management and profits of the undertaking.

Article 5

The High Contracting Parties undertake to supervise closely the enforcement of the measures taken in pursuance of Articles 2, 3 and 4, in particular by the introduction of joint labour inspectorates and tribunals.

Article 6

Every worker has the right to strike.

The High Contracting Parties undertake to introduce the necessary legislative measures to regulate the conditions and exercise of that right and, in particular, to establish conciliation procedure and put at the disposal of the parties a procedure of arbitration to prevent labour disputes or find a rapid solution to them.

Article 7

Everyone has the right to form trade unions whether local, national or international and to join trade unions of their choice.

The High Contracting Parties undertake to ensure the enjoyment of this right on a basis of free choice, having regard to the provisions of Article 11, paragraph 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[2]

Article 8

In order that workers may progressively become the owners of real and personal property, particularly of their own homes, the High Contracting Parties undertake to protect savings and create favourable conditions for their encouragement, in particular by the organisation of credit.

Article 9

Everyone has the right to the protection of his moral and material interests in any scientific, literary or artistic production of which he is the author.

Section B - Right to adequate standard of living and social security

Article 10

Everyone has the right to a decent living, and, in particular, to adequate food, clothing and housing.

Besides the measures referred to in Articles 1, 2 and 11 of this Part of the Charter, the High Contracting Parties undertake to secure the fulfilment of this right by whatever measures may be required in order to :

a. keep the market adequately supplied with basic necessities at prices within the reach of all;

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2. Article 11, paragraph 2, is worded as follows : " No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article, shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State. "

b. promote a policy of town planning and rural habitation such as will provide adequate numbers of moderate priced dwellings complying with satisfactory standards of comfort and hygiene.

Article 11

Everyone has the right to social security, ensuring protection by social insurance or other means against loss or impairment of his livelihood by reason of sickness, invalidity, widowhood, unemployment, old age or other causes beyond his control.

The measures by which the High Contracting Parties undertake to ensure the enjoyment of this right, either by supplementing the action of individuals, local communities and professional groups and of qualified organisations, or by taking the necessary action themselves, shall be set forth in a European Code of Social Security, which shall be drawn up with the minimum of delay.

Such measures shall, in particular, guarantee the benefits relating to medical, surgical, obstetrical or hospital treatment, maternity allowances, family allowances, unemployment allowances, temporary or permanent disablement and retirement pensions.

Article 12

Every human being should have the benefit of facilities for ensuring a high standard of health.

The measures by which the High Contracting Parties undertake to ensure the enjoyment of this right, in cases where the private resources and initiatives, of individuals or communities are inadequate, will include :

a. the reduction of infant mortality and provision for the healthy, physical and moral development of the child; assistance to mentally defective children and those deserted or in distress; re-education of maladjusted children;

b. the improvement of nutrition, housing, education, recreation and other environmental health factors;

c. the prevention, treatment and control of epidemic, endemic and other diseases;

d. the organisation of services and facilities to ensure for all effective medical attention in the event of sickness;

e. free basic medical care and treatment.

Article 13

The High Contracting Parties undertake to protect savings and social benefits and allowances against the consequences of fluctuations in the value of money.

Section C - Rights pertaining to the family and to children

Article 14

Everyone of marriageable age has the right to found a family.

The family is entitled to the widest measure of protection.

The measures by which the High Contracting Parties undertake to protect the integrity of the family shall include :

a. the grant of allowances in proportion to the number of children;

b. a supplementary allowance to enable the mother to remain in the home ;

c. special protection accorded to mothers during reasonable periods before and after childbirth; the .mother shall have the right to leave with pay for not less than six weeks before and six weeks after childbirth, the right to keep her job and to receive both medical attention for herself and her child and financial assistance during the nursing period.

Article 15

Children and young persons have the right:

a. to the welfare services and education necessary for their well-being and their moral, intellectual and physical development, in accordance with the provisions of Articles 12 and 17 of this Part of the Charter;

b. to protection from exploitation in their employment, in accordance with Article 3 of this Part of the Charter.

Article 16

The High Contracting Parties will undertake the necessary steps to ensure that children born out of wedlock receive the necessary protection and enjoy the same rights to social assistance as those born in wedlock.

Section D - Rights relating to the cultural development of the human personality

Article 17

Everyone has the right to education.

This education should be based on respect for the values and traditions enshrined in the European spirit.

The High Contracting Parties will undertake the necessary steps in order :

a. to make primary education compulsory and free to all;

b. to make secondary education, in its different forms, including technical and professional training, available to everyone up to the age of 18 years and to make it increasingly free;

c. to do everything possible to ensure a basic education for those persons who have not received or have not completed their primary education;

d. to make university and other higher education accessible lo all who are capable of benefiting by it.

Article 15

In the exercise of any functions and duties which they assume in the field of education, the High Contracting Parties undertake to respect and facilitate the right of parents to choose how this education shall be accorded to their children in conformity with their own religious and philosophical convictions, as provided for under Article 2 of the Protocol lo the Convention for the Protection of Human Rights and Fundamental Freedoms.[3]

Article 19

Everyone has the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications.

The High Contracting Parties undertake to respect the freedom necessary for scientific research and creative activity,

The High Contracting Parties also undertake to do everything appropriate for the diffusion and development of science and culture.

PART III

European Economic and Social Council

Article 20

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3. A r t i c l e 2 of the P r o t o c o l is worded as follows : " No person shall be denied the right to education. I n the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching i n ' c o n f o r m i t y with their own religious and philosophical convictions. "

To ensure the observance and implementation of the pledges made by the High Contracting Parties in this Charter, there shall be set up within the framework of the Council of Europe a European Economic and Social Council (hereinafter referred to as " the Council ").

Article 21

In addition to the duties arising from the implementation of this Charter which devolve upon it under Part IV, the Council shall prepare, guide and facilitate such measures of integration or co-operation as have been or shall be embarked upon for the benefit of all or some of the sectors of European social and economic life :

a. by developing contacts, on a European scale, between the various professional and social organisations and between the technical and administrative services of the participating States;

b. by transmitting recommendations with the concurrence of the Consultative Assembly of the Council of Europe :

1. to the Committee of Ministers of the Council of Europe;
2. to other European governmental organisations possessing political, economic, social or cultural competence.

To enable the Council to fulfil its functions, the Governments of the participating States shall keep it periodically informed of their economic, social and cultural activities on a European and a world scale, particularly those pursued within the framework of intergovernmental organisations.

Article 22

The Council shall hold sessions when-over the need arises and not less than once a year, as provided for in its Rules of Procedure.

Article 23

The Council shall he composed of 93 members, one-third of whom shall represent the employers, one-third the workers and one-third the interests of the general public.

Article 24

The 31 seats allotted to each of the three groups mentioned in Article 23 above shall be distributed by nationality on the following basis :

Iceland - 1 seat

Luxembourg - 1 seat

Saar - 1 seat

Belgium - 2 seats

Denmark- 2 seats

Greece - 2 seats

Ireland - 2 seats

Netherlands - 2 seats

Norway - 2 seats

Sweden - 2 seats

Turkey - 2 seats

France - 3 seats

Federal Republic of Germany - 3 seats

Italy - 3 seats

United Kingdom of Great Britain and Northern Ireland - 3 seats

Article 25

The representatives of employers and workers shall bo appointed for a three-year period by their respective Governments in such a maimer as the Governments shall determine, names being selected from lists submitted by the competent employers' and workers' organisations. Those lists shall contain at least twice as many candidates as the number due to be appointed.

In accordance with the same procedure the Governments shall appoint a substitute for each member, who shall bo entitled to attend meetings, speak and vote in his place.

Article 26

Members representing the interests of the general public shall be appointed for a three-year period by their respective Governments in such a manner as the Governments shall determine. They shall be selected from among governmental experts, representatives of the consumer, of independent economic occupations and of social and cultural activities.

At each sossion of the Council, and for the duration of that session, the Governments shall appoint one or more substitutes for every such representative, selecting them from the groups mentioned in paragraph 1 above by reason of their qualifications in the subjects to be discussed when they shall replace the member in question.

Article 27

Members of the Council and their substitutes shall not be bound by any mandate or instructions.

Article 28

The decisions of the Council shall be reached by a simple majority of the votes cast. No recommendations may be adopted unless two-thirds of its members are present.

Article 29

The Council shall each year elect its President and Bureau. The Bureau shall consist of six members, one-third representing the employers, one-third the workers and one-third the interests of the general public.

The Secretariat of the Council shall be provided by the Secretary-General of the Council of Europe. The Council shall appoint its own Clerk on the proposal of the Secretary-General of the Council of Europe. He shall have the rank of Deputy Secretary-General of the Council of Europe.

Article 30

The Council shall adopt its own Rules of Procedure.

Article 31

The Council shall have its seat at the seat of the Council of Europe.

Article 32

For each of its fields of competence economic, social and cultural the Council shall set up a permanent section, which may be subdivided, if necessary, into sub-sections.

Within the framework of these sections and sub-sections, the Council may convene special meetings of representatives of the organisations concerned.

Article 33

The expenses of the Council shall be borne by the Council of Europe.

PART IV

Implementation of the Charter

Article 34

The High Contracting Parties undertake :

a. to confer on the European Economic and Social Council and the European Commission of Human Rights such powers as may be necessary to enable them to perform the tasks defined in this Part of the Charter;

b. to present annual reports to the Council on the progress made towards securing observance of the rights and fulfdment of the obligations recognised in this Charter;

c. to provide the Council with any additional information on this subject that may be requested by its Clerk.

The reports referred to in the sub-paragraph (b) above shall be submitted from time to time in accordance with to a programme drawn up by the Council after consultation with the Governments of the High Contracting Parties and with the approval of the Committee of Ministers. They should indicate any difficulties or other factors which may have prevented the States concerned from carrying out their full obligations under this Charter.

The Clerk of the Council shall forward copies of these documents to the Governments of the High Contracting Parties.

Article 35

Arrangements shall be made with any international or European organisations competent in economic, social and cultural matters, to enable the Council and the European Commission of Human Rights to perform the tasks entrusted to them by this Charter.

Article 36

The Council may refer to the European Commission of Human Rights any question connected with observance of the rights and fulfilment of the obligations recognised in the Charter, unless such question has already been the subject of a complaint registered with the International Labour Office in accordance with Article 26 of the Constitution of the International Labour Organisation.

Article 37

In the case provided for in the preceding Article, the European Commission of Human Rights shall invite the Government directly concerned to submit any necessary observations.

The Commission shall open an enquiry into the matter in accordance with the rules of procedure which it shall lay down for the performance of its task under this Charter.

The Commission may ask any European or international organisation referred to in Article 35 above to give an opinion on the matter.

After completing its enquiry, the Commission shall draw up a report, for transmission to the Council, which shall then determine, on the basis of this report, what measures should be adopted in order to ensure the implementation of the Charter and the fulfilment of its obligations by the Government directly concerned,

Article 38

The Council may, with the concurrence of the Consultative Assembly :

a. make recommendations to the Committee of Ministers, of the Council of Europe, which may be intended for the Government directly concerned;

b. in agreement with the Committee of Ministers, convene European conferences of Governments party to this Charter, in which intergovernmental organisations competent in social, economic or cultural matters shall participate.

Article 39

The Council shall submit an annual report to the Consultative Assembly of the Council of Europe on the progress made towards the implementation of this Charter.

PART V

Final provisions

Article 40

The measures which the High Contracting Parties have undertaken to adopt under Part II of this Charter may be introduced by stages in accordance with the programme drawn up by the European Economic and Social Council and provided for in the second paragraph of Article 34.

Article 41

The High Contracting Parties recognise that the exercise of the rights set out in this Charter maybe subjected only to such limitations established by law as are compatible with the nature of these rights or are designed to promote the general well-, being in a democratic society.

Article 42

The rights set out in this Charter shall be enjoyed by all without distinction of any kind as to sex, race, colour, language, religion, property, national or social origin or political or other opinion,

Article 43

Nothing in this Charter may be interpreted as giving a State, a body or an individual the right to carry on any activity or to perform any action the object of which is either to abolish the rights recognised by the Charter or to limit them to an extent not provided for therein.

Article 44

No restriction upon or derogation from the social, economic and cultural rights of man recognised or existing in any of the States signatory to this Charter in virtue of laws, international conventions, regulations or customs shall be admitted on the pretext that the Charter does not recognise such rights or that it recognises them to a lesser extent.

Article 45

In the event of war or of public danger threatening the life of the nation, each of the High Contracting Parties may take measures involving derogation from the obligations that it has assumed under this Charter, but only to the extent required by the situation and on condition that the measures taken are compatible with its other obligations arising under international law.

Any High Contracting Party exercising the above, right of derogation shall keep the Secretary- General of the Council of Europe informed of the measures taken and the reasons therefor, and shall likewise inform him as soon as such measures cease to have effect.

Article 46

A High Contracting Party may denounce the present Charter only after the expiry of five years from the date on which it became a Party to it and after six months' notice contained in a notification addressed to the Secretary-General of the Council of Europe, who shall inform the other High Contracting Parties.

A High Contracting Party which shall have ratified the present Charter, and shall not have availed itself of the above right of denunciation within the period laid down in the paragraph above, shall be bound thereby for a further period of five years, whereupon it may denounce the Charter on the expiry of each successive five year period.

Any High Contracting Party which shall cease to be a Member of the Council of Europe shall cease to be a Party to this Charter.

Article 47

This Charter shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary-General of the Council of Europe.

The present Charter shall come into force after the deposit of ten instruments of ratification.

As regards any signatory ratifying subsequently, the Charter shall come into force at the date of the deposit of its instrument of ratification.

The Secretary-General of the Council of Europe shall notify all the Members of the Council of Europe of the entry into force of the Charter, the names of the High Contracting Parties which have ratified it, and the deposit of all instruments of ratification which may be effected subsequently.

Article 48

The French and English texts of this Charter shall be equally authoritative.

Explanatory Memorandum[4]

I - Preparatory work

1. In an Order adopted on behalf of the Assembly on 9th July, 1954, the Standing Committee instructed the Committee on Social Questions to undertake the preparation of a draft European Social Charter, for submission to the Committee of Ministers. On 23rd September, 1954, at the end of the debate on the preliminary report of the Committee on Social Questions (Doc. 312), the Assembly instructed the Committee to submit a draft European Social Charter during its Seventh Session (Reference 63).

2. On 1st April, 1955, the Committee decided to set up an eight-member working-party to examine a preliminary draft Social Charter which had been prepared for the Committee by its Secretariat. At its meetings of 29th and 30th April, 1955 the Working Party, after a first reading of the text of this preliminary draft, came to the conclusion that the preparation of a European Social Charter necessarily implied the establishment of a social and economic body entrusted with the implementation of the Charter a body roughly similar to the European Economie and Social Council, whose establishment had already been recommended by the Assembly in Resolution 26 (1953).

3. The Working Party, accordingly, decided to hold its next meeting at the same time as that of the Joint Sub-Committee on the establishment of a European Economic and Social Council. On 3rd June, 1954 the Joint Sub-Committee met in the presence of members of the Working Party, invited to attend as observers, and agreed to the Working Party's proposal that a draft Act setting up a European Economic and Social Council (referred to at this stage as a Social and Economic Conference), should be submitted to the Assembly as an integral part of the European Social Charter.

4. The Working Party met once more on 4th June, 1954 to give a second reading to the preliminary draft Charter and adopted a reArised text taking into account the observations of the Joint Sub-committee. The wording of Part III of the draft, dealing with the Economic and Social Council, was entrusted to M. Dehousse, who was appointed Rapporteur for this Part of the Charter. At its meeting on 3rd September, 1955 the Committee on Social Questions examined and adopted the draft presented on behalf of the Working Party. Finally, the draft was submitted for opinion to the Committee on Economie Questions.

4. Sections M V presented by I- IV Heymain

II - Composition and Structure

1. The present draft Charter was drawn up in the light of :

a. the indications given in the preliminary report on the preparation of a Social Charter submitted to the Assembly on 23rd September, 1954 (Doc. 312);

b. the draft Covenant on Economic, Social and Cultural Rights, drawn up by the United Nations Human Rights Commission;

c. various international texts, charters, declarations and constitutions, reproduced ! in Doc. AS/Soc (6) 23, Documentary Note on the economic and social rights set forth in a j number of international instruments, such as :

1. the United Nations Universal Declaration on Human Rights;
2. the European Convention for the Protection of Human Rights and Fundamental Freedoms
3. the Philadelphia Declaration concerning the aims and and purposes of the International Labour Organisation, as well as the latter's Constitution ;
4. the American Declaration of the Rights and Duties of Man, Bogota;
5. the Inter-American Charter of Social Guarantees, Bogota;
6. the Geneva Declaration of the Rights of the Child;

d. certain national constitutions.

2. The structure of the draft Charter is as follows :

Part I, which serves as a preamble, defines the general principles of the common social policy of the Member Governments.

Part II defines the social, economic and cultural rights of individuals and, in respect of each of these rights, the measures which the signatory Governments agree to promote or introduce to ensure their effective exercise, albeit on a differential and progressive scale.

Part III deals with the Economic and Social Council, the organ for the implementation of the Charter. The provisions appearing in this Part may be regarded as the .first draft of an Act setting up the Council.

Part IV embodies the provisions necessary for the implementation of the Charter, namely, those which define the pledges made by the participating States and the methods whereby these pledges will be fulfilled" and supervised.

Lastly, Part V includes a number of general provisions relating to the application of the rights set forth in Part II and to the procedure governing the conclusion, entry into force and denunciation of the Convention, which is the institutional form of the Charter.

III - Legal definition and scope

1. Part I of the draft Charter, headed Preamble, takes the form of a series of introductory clauses which impose no legal obliga-Lions upon I.he parl.ir.ipal.ing Sialics, lu I.he. drafting, every care lias been taken to avoid an interpretation to the contrary. As is often the case with preambles prefacing declarations, constitutions or charters, the introductory clauses in question have no more than a moral force. In fact, they merely give expression to the general principles of social and economic policy by which the Member States will be guided when working out the concrete measures which they are to promote or introduce in pursuance of the pledges defined in Part II. - An exception should, however, be made in the case of the last paragraph of the Preamble (paragraph 15) which forms the link between Parts I and II of the draft. This paragraph defines the dual commitment entered into by the High Contracting Parties when acceding to the Charter, namely :

a. to recognise the social, economic and cultural rights set forth in Part II of the Charter; and

b. to introduce or authorise all measures required to ensure the effective exercise of these rights, one of these measures being the establishment of the European Social and Economic Conference.

2. The measures in question are outlined in Part II of the draft in respect of every social, economic and cultural rights recognised, and may be of a legislative or administrative nature. They may be taken at the local, national or international level, for instance by means of labour conventions, which the Charter encourages the

Governments to conclude or ratify. Finally, these measures may be taken by the milieux concerned, even in the absence of any direct action on the part of the public authorities (see, among others, Article 2 of Part II of the Charter).

3. The preparation of Part II of the draft raised the problem of the nature and legal scope of the pledges made and the rights recognised in the Charter. Specifically, these rights should be distinguished from the civil and political rights recognised in the European Convention for the Protection of Human Rights and Fundamental Freedoms. - It is known that, as a general rule, civil and political rights apply to man as an individual, regardless of the special social and economic circumstances under which they are exercised .[5]. As the social discipline, involved in the observance of: these rights consists merely in refraining from violating them, the legal criteria applicable to the guarantee of these rights are purely negative in character. - On the other hand, the exercise of social, economic and cultural rights implies the creation of conditions which will enable man to ensure the development of his personality through the natural and social links which go to make up society. Hence these rights cannot be guaranteed without concerted and constructive action on the part of the public authorities and private communities. In short, the social discipline imposed by this guarantee is a decidedly positive one.

4. It follows that, in defining social, economic and cultural rights, one should not consider merely their individual and subjective aspect, as is usually the case with civil and political rights. Not only would such a definition be a mere meaningless gesture, and the exercise of the social, economic and cultural rights remain inoperative, but such a definition would also involve an element of risk, since most social, economic and cultural rights are essentially relative and variable, being governed by the economic and social conditions prevailing in each individual State. If these rights were proclaimed without being defined more precisely in terms of these particular conditions, there would be a great risk of creating illusions and making promises which none of the Parties to the Social Charter could fulfil (compare, for instance, the rights recognised in the opening paragraphs of Articles 1, 4, 6, 10 and 12 of the draft Charter).

5. This explains the dual character of the provisions appearing under various headings in Part II of the draft Charter. Each of these begins with a declaration of principle relating to the individual and subjective aspect of a right which is recognised but has " doubtful " legal implications, and each continues with a number of measures and general conditions governing the exercise of individual rights, which the signatory States undertake to introduce progressively, when ratifying the Charter.

6. This dual composition of the provisions of Pai't II follows not only from the nature of the rights in question, but also from the instructions and Orders previously adopted by the Assembly and the Committee on Social Questions. In the first place, it was necessary to meet the wish expressed in Opinion No. 5 of the Assembly, that the Social Charter should form in the social sphere " a pendant to the Convention on Human Rights " and it is for this reason that, as far as possible, each of the provisions of Part II begins with a declaration of principle recognising an individual right. Secondly, it has been necessary to take into account the instructions appearing in paragraph 7 of Doc. 312, according to which the Charter should include minimum standards, and regulations and other measures to be introduced b y the signatory States.

7. The authors oi the draft thought that the way to solve the above-mentioned problem was to ensure, in each of the provisions of Part II, a certain equilibrium between the " declaration " factor and the " regulation " factor. Although, for reasons of homogeneity etc., it was necessary to depart from the composition of the Charter envisaged in Doc. 312 which recommended that one part should be reserved for compulsory provisions it would seem that the present draft is a considerable improvement upon others of the same kind, j more especially the draft Covenant on Economic, Social and Cultural Rights drawn up by ! the United Nations Human Rights Commis- ! sion (henceforth referred to as the United Nations draft Covenant), whose weakness lies j precisely in the fact that a number of recognis- i ed rights have not been defined accurately ; enough by means of social policy criteria and directives, which are their essential complement.

8. With regard to the legal scope of the rights recognised in Part II of the Charter, it seems reasonable to conclude that the subjec- I tive right recognised at the beginning of each ; of these provisions, is in substance only a relative ; and variable right, determined, from a normative point of view, by provisions relating to its exercise which, for this reason, form an integral part of the. definition of the right in question. Moreover, in the light of the fact, already noted in Doc. 312, that the aims of ; some of these provisions are too high to be j achieved immediately, it follows that, b y and large, the provisions of Part II of the Chapter merely represent a target which should be reached by dint of gradual progress. This will be discussed in the succeeding chapters of this report.

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5. This in no way precludes a certain interdependence and reciprocal influence between civil and political rights, o n t h e one hand, and social, e c o n o m i c and cultural rights, on the other.

9. This idea of progressive implementation finds explicit expression in Article 40 of the draft—a general clause which should be regarded as applying to every Article of Part II. The same idea is implicit in the second paragraph of Article 34, whereby, after the entry into force of the Charter, a programme is to be drawn up providing for the gradual fulfilment of the pledges made by the signatory States. This provision, which is both the pivot for the application of the Charter and a saving clause for the signatory States[6], is modelled on Article 18 of the United Nations draft Covenant. As will be explained in the next chapters of this report, the method adopted for implementing the Charter is closely related to that of the United Nations Covenant.

10. To sum up, the Social Charter is by way of being an outline convention, or even a " convention-programme "[7]which requires to be developed and completed by a series of subsequent measures at the international, national, local and professional levels. As may be seen from the preparatory work on the United Nations draft Covenant[8], the general view is that the pledges made by the Signatory States in a document of this type commit them to the extent of doing everything necessary by their own particular constitutional, legislative, administrative or other methods to ensure that steps are taken which will finally result in the full exercise of social, economic and cultural rights.

IV - Implementation

1. The particular nature of social, economic and cultural rights had another important consequence, this time connected with their implementation, which is the subject of Part IV of the draft. Here again, it was necessary to depart from the system laid down in the European Convention on Human Rights and break new ground. It will be recalled that the system for implementing this Convention largely consists in a set of judicial regulations. Since recognition of most civil and political rights ipso facto implies that their infringement is prohibited, all that was required to enforce them was the introduction of a procedure designed to give legal sanction to this prohibition, in this case through the agency of the European Commission and European Court of Human Rights.

2. It follows, however, from the points raised in the previous chapter, that the procedure for implementing social, economic and cultural rights must meet quite different requirements. Indeed, before there is any question of legal action, such a procedure calls for progressive, positive and constructive action in the form of a series of legislative, administrative and other measures, which must be promoted or introduced by the Signatory States. Quite apart from the principle of the separation of powers, it is obvious that this task could not be vested in a judicial body. Not only would judicial action lead to direct interference with the legislation and administration of the Signatory States, but, in order to be effective, it would have to cover technical objectives on which existing judicial bodies are not usually equipped to pronounce judgment.

3. These are probably the reasons why the United Nations draft Covenant[9] makes no provision for legal action, while, on the other hand, Articles 17 to 24 thereof provide for an essentially administrative system of implementation, which would operate under the aegis of ECOSOC, through the machinery of its Human Rights Commission and the Specialised Agencies of the United Nations.

4. It is clear that, on a European, even more than on a world, scale, the gradual process of development and extension inherent in the implementation of social, economic and cultural rights could only be entrusted to a specialised body with deliberative functions and in close and continuous touch not only with the Governments of the signatory States, but also with the social, economic and cultural interests concerned, particularly employers' and workers' unions. This necessitates the creation of a body which could perform the same functions within the area covered by the fifteen member countries of the Council of Europe as ECOSOC has assumed at the world level for the protection of social, economic and cultural rights. In view of these considerations, the Committee on Social Questions, in agreement with the Joint Sub-Committee, decided to base itself on the system of the United Nations draft Covenant and propose the creation of a European Economic and Social Council within the framework of the Council of Europe. As a body for co-ordination and technical assistance in the social field—standing in similar relation to the Council of Europe as ECOSOC and

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6. The question arose in committee as to whether a clause covering reservations should also he inserted. The Committee considered that there was nothing to prevent the preparation of such a clause at a later stage i n the examination of the draft.

7. cf. R e p o r t of the Tenth Session of the United Nations Human Rights Commission, in which the quest i o n of a " covenant-programme " is discussed (Doc. E / C N . 4 / S R 4 3 2of ECOSOC).

8. This accords with statements b y Professor René Cassin, French delegate, and Mr. Hoare, United K i n g d om delegate, at the tenth Session of the United Nations Human Rights Commission on 24th March, 1954 (D o c . E / C N . 4 / S R 427of ECOSOC).

9. Not to be confused w i t h the other draft Covenant prepared by the United Nations, which deals with civil and political rights and adopts a similar method of implementation to that of the European Convention on Human Rights.

the I. L. 0. in relation to the United Nations—this Council would provide the machinery whereby the Consultative Assembly and the Committee of Ministers could remain effectively associated in the implementation of the European Social Charter which they themselves would have created. The provisions relating to the powers and composition of the Council, which appear in Part III of the draft Charter, were drawn up in accordance with the instructions of the Joint Sub-Committee and are discussed in Chapter V of this report. In fact, the European Economic and Social Council would be the framework within which the delicate but steady process of implementation of the Social Charter would take place. It is clearly understood that this process would be followed and approved, at every stage, by the Committee of Ministers, since Recommendations would be transmitted to it by the Council in accordance with Article 21 [b) (i) and Article 38 of the draft, after approval by the Assembly.

5. The procedure proposed is as follows[10]:

a. The Economie and Social Counci l will draw up a programme for the gradual implementation of the Charter. This is to be prepared after consultation with the signatory Governments and to be approved by the Committee of Ministers (Article 34, second paragraph)

b. The signatory Governments will thereafter present to the Council reports on the progress made in implementing this programme (Article 34, paragraphs 1 (b) and (c) and 2).

c. In accordance with its general powers under Article 21, para (b) (i), the Economic and Social Council may, with the concurrence of the Assembly, address recommendations to the Committee of Ministers arising out of its examination of these reports (Article 38 paragraph (a)). It may also, in agreement with the Committee of Ministers, convene conferences of the Parties to the Charter (Article 38, paragraph (&)).

d. If the Economic and Social Council considers that any signatory Government is not complying with the provisions of the Charter, it may, unless the matter has already formed the subject of a complaint to the I. L. 0., refer the matter to the European Commission of Human Rights (Article 36), which shall undertake an inquiry and make a report (Article 37). Alternatively, the Economic and Social Council may investigate the matter itself.

e. The Economic and Social Council will then determine what action should be taken to ensure the implementation of the Charter (Article 37, last paragraph) and, subject to the approval of the Assembly, submit its conclusions in the form of a Recommendation to the Committee of Ministers, which may be intended for the Government directly concerned (Article 38, paragraph (a)) or, by agreement with the Committee of Ministers, convene a governmental conference to consider the matter (Article 38, paragraph (b)).[11]

f. The Economic and Social Council will, in any event, submit an annual report to the Assembly on thé progress made in thé implementation of the Charter.

6. This procedure is similar to that of the United Nations Covenant, which in its turn was based on the current practice of the I. L. 0. in regard to international labour conventions, and seems essential to the pursuit of aims as vast as those of the Charter.[12]It will be considerably facilitated by the fact that a number of members of the Economic and Social Council may be governmental experts appointed by the participating Governments. By no means the least of the Council's tasks will be to guide and co-ordinate the work hitherto carried out by committees of experts under the Committee of Ministers, to which the latter has not given continuous guidance or the necessary scope, for reasons which need not be discussed here.[13]

7. Here again, the example of the United Nations Covenant has been followed, for the implementation of the Charter will involve appropriate technical co-operation on the part of the I. L. 0. Special provision has been made for such co-operation in Article 35 of the draft, which deals with arrangements to be concluded with international bodies qualified in the economic, social and cultural fields. Other organisations which could be consulted are UNESCO (in regard to Section D of the Charter) and the World Health Organisation (in regard to Article 12 of Section B of Part II). These and the I. L. 0. should straightaway be invited to participate in the further elaboration of the Charter once this draft has been adopted by the Assembly.

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10. See also paragraph 45 below,
11. See paragraph 45 (2) below.
12. Se e paragraph 45 (2) b e l o w.
13. I t is interesting t o note that the present committee of governmental experts has already anticipated the steps proposed for implementing the Charter, for, at its recent meeting, the Social Committee of t h e Committee of Ministers invited Member Governments to send it reports on their laws and regulations relating t o labour rights.

8. It cannot be emphasised too strongly that the measures designed to implement the Charter have been conceived as an approach to international co-operation whereby the signatory States may be helped to overcome any difficulties arising from their obligations under the Charter, rather than as a means of denunciation or legal action in the event of failure to fulfil these obligations.[14]

9. However, the powers conferred upon the European Economic and Social Council by the High Contracting Parties by virtue of Article 34, paragraph 1 (a) of the Charter guarantee that the rights embodied in the Charter will not remain a dead letter. In full agreement with the Joint Sub-Committee, the Committee on Social Questions considered it reasonable to confer upon the Council the same powers as those possessed by other specialised organisations of the same type (I. L. 0., ECOSOC etc.) which have a world responsibility for supervising intergovernmental social co-operation, often in very difficult circumstances. Lastly, the powers of the Council are hedged about with a number of political safeguards such as compulsory approval by the Assembly and the Committee of Ministers, so that there can be no possible doubt about the fundamentally consultative nature of the Council so far as the implementation of the Charter is concerned.

10. It should also be noted that, in accordance with the provisions of Article 36 of the draft, the procedure for holding enquiries mentioned in paragraph 21 (cl) of this report cannot be instituted if the question at issue has already been the subject of a complaint to the I. L. 0. in accordance with Article 26 of the Constitution of this Organisation. However, the priority thus granted to action by the I. L. 0. is strictly limited to cases where there is another action pending between the same parties for the same cause.[15]This priority in no way affects the general competence of the Council of Europe or the particular competence of its Economic and Social Council. Although certain problems of competence are bound to arise[16]when fixing the border-line between the application of the Charter, on the one hand, and the application of international labour and other specialised multilateral conventions, on the other, it remains true that their solution cannot disregard the fact that the responsibility for promoting and supervising the common social policy of the Member States rests with the Council of Europe and its organs.

V - European Economic and Social Council[17]

A. HISTORY

1. It was at the Economic Conference which met at Westminster in April, 1949 under the auspices of the European Movement that the creation of a European Economic and Social Council was first advocated as constituting a means of hastening the economic and social unification of the Old Continent. Below is the motion submitted by the Rt. Hon Leslie Hore-Belisha, P. C. " Thi s Conference proposes that the European Consultative Assembly set up a European Economic Council whose task would be to draw up recommendations for the gradual unification of Europe. This Council would be composed of an equal number of representatives of employers and workers drawn from the main industries of Europe and from agriculture. This Council should maintain constant supervision of the effects of monopolies, cartels, tariffs, currency regulations, restrictions in the free movement of persons, and on the. economy of Europe in general; it should draw up suggestions for improving the production and distribution of goods, to maintain full employment, to facilitate the movements of labour and, finally, to create more and more uniformity between the various economic practices of the different countries, e. g., the transferability of rights to social services. The recommendations of the European Economic Council should be submitted to the European Consultative Assembly. " The Westminster Conference retained this proposal and adopted almost unanimously a resolution desiring the creation of a European Economic and Social Council.

2. In July, 1950 the Social Conference of the European Movement, held at Rome, again insisted on the need to set up an Economic and Social Council and made the following detailed proposals : " Al l the various social categories : producers, consumers, family groups, and, in fact, all the groups and factors -which have a part in economic life, would be closely associated with this institution . It will crystallise, in the eyes of the workers, the will to achieve a genuine democracy and will provide an important element of confidence in the European unity which is in the process of creation. The rôle of this Economic and Social Council will be consultative : it will make use, on the one hand, of data which will be supplied by the " European Institute of Economic and Labour Statistics " and also that of all other existing research bodies, or of new bodies the

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14. Cf. th e statement of the Australian delegate at the T e n t h Session of the United Nations Human Rights Commission (D o c . E / C N . / 4 / S R 420of ECOSOC, 1954)
15. See paragraph 45 (2) below.
16. See the article on this subject b y Professor R e né Cassin in Recueil des Cours de l'Académie de Droit International (1952-11, p. 313), which shows that the United Nations Covenant raises similar problems.
17. Presented by M Dehoussei

creation of which may appear necessary; and, on the other hand, of the information collected from those concerned in the industries themselves, both employers and workers; it will assemble, sift and present to the European political authorities all the technical factors involved in each problem. It will then be for the political authorities to make the decisions required. One of the first questions with which the Economic and Social Council will have to deal is that of bringing into line the social and fiscal legislation in the different countries and, also, in a general way, the charges of production. "

3. It is perhaps worth recording that the draft treaty embodying the statute of the European (Political) Community provided for the creation of an Economic and Social Council. Articles 50 and 51 of the draft treaty read as follows : " Article 50 : The Economic and Social Council shall assist the European Executive Council and Parliament in an advisory capa-'city. It shall deliver opinions to each of the Chambers of Parliament and to the European Executive Council, if they so request. It may also transmit resolutions to them. Article 51 : The Community shall enact legislation establishing the membership, competence, and modus operandi of the Economic and Social Council. If an Economic and Social Council is set up by the Council of Europe, agreements shall be concluded to enable the Economic and Social Council of the Community to constitute a section of the Council thus created, and to take part in its deliberations. Where necessary, however, the Economic and Social Council of the Community shall be separately consulted. "

4. In the Council of Europe, the Consultative/ Assembly had, as far back as September, 1949, recommended the Committee of Ministers, on the proposal of its Committee of Economic Questions, " t o call, as soon as possible, industrial conferences representing employers', workers', and consumers' organisations, as well as Government services interested in the main manufacturing and agricultural industries, in order to make concrete proposals to the Assembly on the organisation of these industries and the increase in their productivity in the common interests of Europe ".[18]. Thus, the Assembly, by adopting the views of the Committee on Economic Questions, had already recognised the necessity of organising the representation of the various professional and social organisations.

5. On 17th January, 1953 the Consultative Assembly confirmed its attitude by adopting Resolution 26, which contains the proposal that : " An Economic and Social Council shall be set up with consultative functions representing the fifteen Member States of the Council of Europe " and instructed the Committee on Social Questions to draw up, in co-operation with the Committee on Economic Questions, a draft Recommendation " for the creation of an Economic and Social Council ". A joint Sub-Committee was set up composed of representatives of the two Committees concerned. It began its work on 23rd September, 1953, and it had not yet completed it when the Working Party of the Committee on Social Questions, appointed to prepare a draft Social Charter, decided in April, 1955 to assign to a European Economic and Social Council the task of putting the Charter into effect. From then on the Working Party and the Joint Sub-Committee worked together and in June, 1955 reached joint conclusions which are recorded in Parts III and IV of the draft European Social Charter.

B. NEED FOR AN ECONOMIC AND SOCIAL COUNCIL

6. There is a general tendency these days for democratic institutions to show ever-in-creasing concern for the opinion of the various sectors of economic and social life or, more specifically, of the professional and trade union organisations which represent them. The effect of this tendency is to create, side by side with the political institutions, more or less developed and co-ordinated bodies whose function is to ensure that these various sectors can officially bring their influence to bear. It has become normal, under the democratic system, for professional, technical or social organisations to be able to express their views; they have acquired the status of a Fourth Estate. This tendency has also been followed by the international institutions. - The replies to a questionnaire prepared by the Secretariat-General of the Council of Europe and sent by the Sub-committee to the appropriate authorities of member countries showed how far and in what ways representative organisations in the economic and social field were consulted in certain European countries.

7. The French " Economic Council " consists of 169 members appointed by organisations representing the entire economic activity of the country. The following organisations are represented : Trade unions (45 seats), nationalised business concerns (6 seats), private industrial enterprises in France and Algeria (14 seats), private commercial enterprises in France and Algeria (10 seats), the craftsmen of France and Algeria (10 seats), the agricultural organisations of France and Algeria (35 seats), the co-operative societies (9 seats), Overseas Departments and Territories (15 seats), The Pensée Française (8 scats), the consumers' associations (9 seats), the homeless owing to war damage (2 seats), various other branches activities (4 seats), the middle classes (2 seats). The various organisations and groups appoint their representatives for a

18. R e c o m m e n d a t i o n 19 (1949).

period of three years. The members of the Council act in their personal capacity and are thus not bound to follow any instructions from their organisations. Thereare ten standing research committees, and ad hoc committees may be appointed. Within the limits of its technical competence in economic and social questions, the Council discusses bills and draft laws and international agreements of an economic or financial character which are submitted for the approval of the National Assembly. Other matters may also be referred to the Council by •the National Assembly or by the Government, •but they are not legally bound to submit any matters, except in certain specific cases. Thus, •the Council presents an annual report regarding •national economic schemes aimed at ensuring full employment and. the rational exploitation of material resources. Twice a year it presents a report on developments in the economic situation. In actual fact, the Government and the National Assembly very seldom make use •of the possibility of asking the Council for its opinion. For instance, of the 47 surveys carried out between November, 1951 and the end of December, 1952, only three were effected at the request of the National Assembly. The Economic Council took up the remaining 44 on its own account. The Council thus has, and makes frequent use of, a right of initiative.

8. The Dutch Social and Economic Council is composed of not less than 30 and not more than 45 members, who are paid by the Crown. At least two-thirds of the total number of members are appointed by employers' and employees' organisations which, again, are selected by the Crown. The number of representatives of employers and of representatives of employees must always be equal. The other members of the Council are directly appointed by the Crown. They are appointed in their personal capacity as experts on social and economic questions. The selected employers' and employees' organisations appoint, themselves, the number of members and substitutes allocated to them. All members of the Council vote without instructions and without consulting the organisations which nominated them. In certain restricted fields, defined by law, the Social and Economic Council has legislative power. The Council gives its opinion at the request of the Ministers. Unless they take the view that such a step would be contrary to the national interest, the Ministers selected for this purpose are obliged to ask the opinion of the Council or of certain of its committees regarding any important measures they may contemplate in the social or economic field. The Council may also give its opinion on its own initiative. Apart from these two Councils of general competence, namely the French and the Dutch, there are in some countries a number of specialised councils or other bodies which, in limited fields, play more or less the same rôle.

9. In Belgium a law was passed on 20th September, 1948 setting up a Central Economic Council. This Council has 50 members, each with a substitute, 22 representing employers and 22 representing workers, the latter co-opting six others from university staffs. The 44 original members are appointed by the King from dual lists submitted by representative organisations. The opinions given by this Council, either on its own initiative, or at the request of the Ministers or the legislative Chambers, are presented in the form of a report giving the points of view of the members. Consultation of the Council is compulsory for any bill concerning the organisation of the country's economy, such as the institution of a Trade Council. Under a recent law (29th May, 1952) a National Council of Labour was created to deal with social problems. In it are represented the most representative organisations of industry, agriculture, commerce, the handicrafts and of course the workers. The members of this Council are selected, as in the case of the Central Economic Council, from dual lists presented by the organisations mentioned above. The rules governing consultation are very similar to those applicable to the Central Economic Council. It should be noted that many social laws provide for compulsory consultation of the Council. It may be said in general that the National Council of Labour is consulted before the adoption of any important social measure.

10. In the Federal Republic of Germany there is an Advisory Council for the Re-organisation of Social Insurance, and an Advisory Council for Pensions Legislation. The Advisory Council for the Re-organisation of Social Insurance consists of individuals with special experience in various branches of social insurance. They are appointed on the recommendation of the parliamentary groups of the Bundestag, the employers' and the employees' associations, the medical faculty and the working group of scientific institutes of the universities. They act as experts in a private capacity and are not bound by the instructions of any organisations. There is no legal obligation to consult the Council. Nor does it have any right of initiative. The Advisory Council on Pensions Legislation includes representatives of the Laender, representatives of war victims and independent experts, as well as guest representatives of various Federal Ministries. The members act in their personal capacity and receive no instructions. There is no legal obligation for the Government to consult the Council. Nor has the Council any constitutional right of initiative. It deals with the readjustment and improvement of war victims' pensions. The result of its work is used in the drafting of laws.

11. In Ireland there is a National Health Council, representative of the medical and ancillary professions, local authorities and trade unions. Persons are appointed to the Council by the Minister for Health on the nomination of the professional bodies. The views put forward by the members normally represent those of

their nominating bodies. There are no rules of procedure. The Council shall, at the request of the Minister for Health, give him advice on matters affecting, or incidental to, the health of the people. It has no right of initiative.

12. In Sweden there is a special advisory body dealing with the control of investment in housing and factory buildings. Organisations of employers, workers, farmers, consumers, craftsmen and industrial undertakings are represented. All questions in the field concerned are taken up by this body before the Government takes its decision. The trade unions, industry and agriculture are represented together with the administration on the Committee on the National Budget.

13. In the United Kingdom there are a number of national and regional advisory councils. There is thus the National Joint Advisory Council, which advises the Government on matters of common interest to employers and workers. The Chairman is the Minister of Labour, and there are 17 employers' representatives, 17 trade union representatives, and 5 representatives of Nationalised Industries. There is then the National Production Advisory Council for Industry, which advises Ministers on industrial conditions and general production questions. It is presided over by the Chancellor of the Exchequer and has 12 representatives of employers, 12 representatives of workers, 2 representatives of the nationalised industries and the chairman of regional hoards for industry. There is the British Productivity Council, which comprises representatives of : the Federation of British Industries, the British Employees' Confederation, the National Union of Manufacturers, the Association of British Chambers of Commerce, the Trade Union Congress, and the nationalised industries. There is the Economic Planning Board, which advises the Government on the best use of the country's economic resources. There are representatives of workers and employers, and also selected public officials. All serve in a personal capacity. In addition, there are advisory committees for individual industries, such as the Engineering Advisory Council, the Shipbuilding Advisory Committee, and the Cotton Board. They all include representatives of workers and employers. Finally, there should be mentioned a number of other consultative committees, like the Women's Consultative Committee, the National Youth Employment Council, the Factory and Welfare Advisory Board, etc. With some exceptions, the Government is not legally bound to consult any of these advisory committees, although, in fact, it does so in all appropriate cases. The committees do not have the right of initiative.

14. In general, it should be noted that even when there are no organisations of the " Economic Council " or " Consultative Committee " type in a country, and sometimes to supplement their work when they do exist, Governments to a large extent invite the professional and social organisations, and more particularly trade unions and employers' organisations, to give their opinion on important measures which they propose taking in the economic and social field.

15. At the international level we know of the existence and role of the Consultative Committee in the European Coal and Steel Community. This Organ[19]comprises 51 members, equally divided among producers, workers and consumers and dealers, all appointed by the Council of Ministers. The High Authority may consult it in any case it deems proper and is required to do so in certain cases prescribed by the Treaty, notably with regard to the preparation programme forecasts dealing with production, consumption, exports and imports and the formulation of general programmes with respect to " modernization, the long-term orientation of manufacturing and the expansion of productive capacity. " The competence of this Consultative Committee is, obviously, limited to the coal and steel industries. On the other'hand the Economic and Social Council provided for in the Treaty setting up a Political Community was given a general competence to deal with all economic and social problems that arose in the six member countries. As this body was never set up, there is in Europe no official institution which can ensure a sufficiently close association of professional and social organisations with the formulation of European social policy.

16. The Council of Europe, O. E. E. C, the Economic Commission for Europe and the numerous organs, parliamentary committees, committees of experts and technical committees which come within their orbit have made possible the consultation of representative non-gover-vernmental international organisations. The consultative status granted by the Council of Europe to certain trade unions or professional organisations is sufficient illustration of the shortcomings of this system. Although the form of consultative status varies from one institution to another, it is always left to the official body concerned to decide whether a consultation is desirable. The system therefore only allows for fragmentary opinions to be obtained and there is never any opportunity for the different points of view to be compared before they are submitted. The same criticism applies to the system of consultation of non-governmental organisations in use in the Economic and Social Council of the United Nations.[20]The nongovernmental employers', workers' and consumers' organisations no doubt have " the opportunity of informing Governments of their views "[21]but rarely of informing public opinion;

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19. See Articles 18 and 1!) of the Treaty establishing the li. C. S. C.

in any case consultation of these bodies cannot be compared to the functions and rôle ; of an Economic and Social Council. Within the field of its competence, the International Labour Organisation is so organised as to give certain social organisations, mainly the workers' and employers' organisations, an opportunity of having their views heard. The fact that the I. L. O's competence is limited to social problems and more particularly to the progressive elaboration of standards for world social legislation reduces the value of their participation. The same is clearly the case with the European Regional Conferences convened by the I. L. 0. These conferences have no power to adopt or even to propose regional conventions.

17. As a general rule, the results of these consultations within the framework of the many international institutions would carry far more weight if they were co-ordinated by an organisation which had an overall view of European economic and social problems. These problems are too closely interwoven for it to be possible to study their various aspects or various branches separately. The professional and social organisations can achieve no more than a fragmentary insight into these problems. In the report which he presented to the second European Economic Conference, held at Westminster, M. Jacques Tessier made the following very apt remarks on this subject : " I n fact, these organisations comprise a single category of producers (employers or wage-earners) and they tend to consider too exclusively the special interests of this category. On the other hand, if the international organisations of wage-earners comprise members of different sectors of economic activity, the same is not true of the employers' organisations. The Council of European Industrial Federations only comprises the heads of industrial or commercial undertakings and ignores agriculture, while, for its part, the European Confederation of Agriculture rightly admits its incompetence to deal with industrial and commercial problems. In addition, it must be stressed that the international federations corresponding to industrial or agricultural branches are often more active and enterprising than the international confederations. Each organisation is thus led, with the best will in the world, to conceive and construct " its " Europe in a vacuum, and it is not surprising that the views taken and the suggestions made by one or other of them when they have never bean set alongside those of the other categories of legitimate interests, arouse strong opposition which, in fact, prevents any real progress towards economic unification. A " meeting-place " is necessary to make this confrontation of views of the various professional and social circles and to make patient research for the indispensable compromises possible. This " meeting-place " might be found in the Economic and Social Council provided for in the draft European Social Charter. In addition to co-ordinating consultation of the professional world and collating its views, the Economic and Social Council would make a substantial contribution to the work of European unification, both at the economic and social levels and in the intellectual and political sphere. Is it impossible to hope that a regular exchange of views will not gradually imbue the minds of the members of this Council, influential members of powerful national organisations, and through them the minds of the public at large, with the consciousness of a true community of interests in Europe? Would not the Economic and Social Council succeed in modifying and perhaps conquering the autarkic spirit of the professional organisations and direct to European ends the pressure they exert on national Governments? It is difficult to conceive how, after repeatedly and carefully studying their problems from a European angle, they can fail to see how many more advantages than disadvantages there are in economic unification from the point of view of their own interests. In any case the Economic and Social Council would deal a severe blow to corporative selfishness, which is particularly dangerous at a moment when the major sectors of activity are tending to organise at the European level. Finally—and this seems to be a decisive factor—it would enable the European political organisations not only to get to know and to take into account to the greatest possible extent the opinion of the various professional and social circles in regard to all new measures that are envisaged, but also to associate these circles with the elaboration and application of such measures. In this way the somewhat State controlled and technocratic trend which has so far shown itself in the upbuilding of the European economy would be avoided. New impulse would be given to the work of the Consultative Assembly and no doubt—an appreciable advantage— a wider hearing and greater weight to its Recommendations.

C. FUNCTIONS AND POWERS OF THE ECONOMIC AND SOCIAL COUNCIL

18. The functions deA'olving on the European Economic and Social Council in accordance with the draft Social Charter prepared by the Committee on Social Questions derive from Articles 20 and 21 (Part III). Article 20 stipulates that an Economic and Social Council shall be set up within the framework of the Council of Europe " to ensure the observance and implementation of the pledges made by the High Contracting Party in

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20. It should be recalled here that the Economic and Social Council of the U . N. is essentially a Government b o d y , whose members are Government experts.

21. E x t r a c t from a letter, dated 11th January, 1954, f r om the Secretary-General of t h e U. N. t o the Secretary-General of the Council of Europe, c o n v e y i n g his observations on the a d v i s a b i l i t y of creating a European Economic and Social Council (Doc; A S / S o c - E C (5) 3).

this Charter ".[22] The decision to entrust to an Economic and Social Council, representing the majority of the sectors of economic and social life, the rôle of implementing the Charter was one of the most remarkable decisions taken by the Working Party Avhich the Committee on Social Questions appointed to draw up a preliminary draft. The work of progressive development and control involved in the implementation of the social, economic and cultural rights recognised in the Charter could only be entrusted to a permanent deliberative organ in close contact with the social circles concerned, in particular with workers' and employers' unions. Thus, it was specified during the preparatory stage of the work, that the Economic and Social Council would have the task, on the one hand, of defining the measures which the States would have to take in order to attain the aims of the Charter and on the 'other hand to supervise their application. In this way the most representative professional and social organisations must be closely associated with the whole of the social and economic policy of Member States. Article 21 adds : " in addition to the duties arising from the implementation of this Charter which devolve upon it under Part IV, the Economic and Social Council shall prepare, guide and facilitate such measures of integration or co-operation as have been or shall be embarked upon for the benefit of all or some of the sectors of European social and economic life... " Therein lies the general competence of the Economic and Social Council, which should be distinguished from its special competence as a body for implementing the Charter.[23]

The Economic and Social Council will work out the measures required for the application of the Charter.

19. In correlation with this article 21 there is an Article 38 in Part IV (implementation of the Charter) of the draft Charter which runs as follows : : " Wit h the concurrence of the Consultative Assembly, the Economic and Social Council may :

a. make recommendations to the Committee of Ministers of the Council of Europe which may be intended for the Government directly concerned;

b. in agreement with the Committee of Ministers, convene European conferences of Governments party to this Charter, in which intergovernmental organisations competent in social, economic or cultural matters shall participate."

The Social Charter was conceived as an international convention with certain definite aims that the Signatories would pledge themselves to achieve. Underlying the whole Charter is the idea that these aims should be realised by gradual process. This principle is explicitly set forth in Article 40 of Part V— Final Provisions : " Th e measures which the High Contracting Parties have undertaken to adopt under Part II of this Charter may be introduced by stages in accordance with the programme drawn up by the Economic and Social Council provided for in Article 34." Article 34 stipulates in para. 2 that : " The reports referre d to in the subparagraph (b) above shall be submitted from time to time according to a programme drawn up by the Economic and Social Council after consultation with the Governments of the High Contracting Parties and with the approval of the Committee of Ministers..." These reports, submitted by the Governments of the Parties to the Charter will show the progress made towards its implementation. This procedure is not entirely new. It is based in particular on the draft Covenant of the United Nations relating to the economic and social rights and on the system in force in. 1. L. 0. for Labour Conventions. Article 22 of the I L 0 constitution stipulates that " each of the members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party." The United Nations draft Covenant goes further and lays down that the reports supplied by the States party to the Covenant on the progress realised in the recognition of the rights set out in the Covenant shall be submitted in accordance with the programme drawn up by the Economic and Social Council after consultation with the States party to the Covenant (Articles 17 and 18). The European Economic and Social Council therefore, in agreement with the Governments concerned, would draw up a programme of economic and social measures which Member Governments would be recommended to put into effect in prescribed stages. Would this programme be one drawn up once and for all at the initial meetings of the Council or would it be drawn up periodically? The Council itself could be left to decide this point.

The Economic and Social Council will supervise the application of the Charter.

The Economic and Social Council may refer to the European Commission of Human Rights any question connected with observance of the rights and obligations recognised in the Charter (Part IV, Article 30).

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22. See also paragraph 15 of the Proamble (Part I of the draft Charter).
23. See summary in paragraph 21 a b o v e.

An exception is made however for , the case in which a complaint has already been j lodged before the International Labour Office on this question. Article 20 of the Constitution of the International: Labour Organisation provides that a complaint can be filed with the International Labour Office by a Member State against another Member State which, in its opinion, has not satisfactorily ensured the execution of a, Labour Convention. There was therefore a risk of a conflicting competence.[24]

The European Commission of Human Rights may, if a question is submitted to it by the Council, proceed to make an enquiry, inviting the Governments concerned to submit the necessary observations ; the results of the enquiry would be recorded in a report to be submitted to the Council (Part IV, Article 37).

Finally, the Council, on the basis of the conclusions reached in this enquiry, may recommend to the Governments concerned the measures required to ensure fulfilment of the obligations arising out of the Charter (Part IV, Articles 37 and 38).

Such recommendations would necessarily be submitted to the Committee of Ministers but would, of course, be addressed to the Government directly concerned, to which the Committee of Ministers would be obliged to forward them. This is an indispensable condition for the functioning of the whole system. What would be the use of the system if a Government which was at fault could use its veto in the Committee of Ministers to suppress the warning and the criticism addressed to it by the Council?

The Economic and Social Council will prepare measures by which economic and social integration or co-operation can be achieved.

20. In addition to its functions as an organ for implementing the Social Charter, the Council is given, under Article 21 of Part III, which is its constituent act, a most important role in the economic and social co-operation or integration of European States : " th e Economic and Social Council shall prepare, guide and facilitate such measures of integration or co-operation as have been or shall be embarked upon for the benefit of all or some of the sectors of European social and economic life :

a. by developing contacts, on a European scale, between the various professional and social organisations and between the technical and administrative services of the participating States;

b. b y transmitting recommendations with the concurrence of the Consultative Assembly of the Council of Europe :

1. to the Committee of Ministers;

2. to other European governmental organisations possessing political, economic, social or cultural competence."

•And Article 21 adds : " T o enable the Economic and Social Council to fulfil its functions, the Governments of the participating States shall keep it periodically informed of their economic, social and cultural activities at the a European and the world level, particularly those pursued within the framework of intergovernmental organisations."

21. Is consultation with the Economic and Social Council compulsory? The authors of the draft, who preferred to leave the Council free to act on its own initiative, in particular with respect to its recommendations, and have taken the necessary precautions to ensure that it should be in possession of all relevant information (see last paragraph of Article 21), have not thought it necessary to provide for compulsory consultation. They deemed it preferable to leave it to the Council, which would be fully informed of Government plans under the last sub-paragraph of Article 21, to decide itself whether or not it has an opinion to give on any of these plans.[25]It should be recalled that, in accordance with the terms of the draft (Article 21), the Council can address recommendations :

t o the Committee of Ministers of the Council of Europe;

t o European governmental organisations with political, economic, social or cultural competence, in particular lo O. E. E. C.

22. Finally, it is no doubt necessary to call attention to a particular provision to be found in two Articles of the draft, Article 21 (para, (b)) and Article 38. These two texts provide that the recommendations of the Council addressed to the Committee of Ministers of the Council of Europe shall be subject to a favourable

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24. See paragraph 26 a b o v e.

25. I t goes without saying, however, that one or more Governments can always, if they think fit, ask the Council lo give t h em an opinion.

opinion by the Consultative Assembly. This condition refers to the recommendations relaling to the application of the Charter (Article 38) and those concerning the policy of economic and social integration or co-operation. This formula appears to have reconciled the apparently conflicting theses of those who wanted an Economic and Social Council which would only give its opinions to the Assembly and the champions of a sovereign Council addressing its recommendations directly to the authorities concerned. We may add, in connection with the control by the Assembly over the activities of the Council, that under the terms of Article 39 of Part IV (" Implementation of the Charter ") the Economic and Social Council submits an annual report to the Consultative Assembly on the progress accomplished in ensuring the implementation of the Charter.

D. STRUCTURE AND WORKING SYSTEM OF THE ECONOMIC AND SOCIAL COUNCIL

1. Problems connected with the distribution of seats

23. The composition of the Economic and Social Council, as finally settled by the Committee on Social Questions at the proposal of the Joint Sub-Committee, was determined by various considerations :

(a) Distribution by countries

The Sub-Committee's first concern was to limit the number of seats. Strictly proportional representation, based on the system of one unit for the smallest representative organisation (those of Iceland or Luxembourg), would have resulted in an inordinate number of seats, allowing for the population of the member countries and the numerical strength of the sectors represented. It was necessary, therefore, to accept a somewhat arbitrary, or at any rate empirical, system. The drafting committee therefore divided the fifteen member , countries into three groups : small, medium and large. By allotting three seats to the smallest countries (Iceland, Luxembourg and the Saar), each of the three broad categories referred to below could be represented.The medium-sized countries (Belgium, Denmark, Greece, Ireland, Netherlands, Norway, Sweden and Turkey) then received twice as many seats (i.e. six) and the largest (France, Federal Republic of Germany, Italy and the United Kingdom) three times as- many (i.e. nine). This resulted in the manageable figure of 93 members.

(b) Distribution by social groups or interest,!

The Sub-Committee adhered lo the most generally held conception of Western Society as divided into three broad sectional interests : the employers, the workers and what might be called the " third group ", comprising all other interests whose voice would be heard in an Economic and Social Council, namely : independent economic occupations (agricultural small-holders, craftsmen and trades people), consumers (consumer co-operatives and family associations), social and cultural activities (for it must not be forgotten that the Charter recognises cultural rights so that the Council will be concerned with the observance and extension of those rights) and, last but not least, the State itself. The draft therefore divides the seats of the Economic and Social Council into three equal categories : 31 seats for workers' representatives., 31 for employers' representatives and 31 for members representing the interests of the general public. Moreover, in order to ensure that certain important sectors of economic and social life are properly represented it lays down (Article 26 of Part III) that members representing the interests of the general public may be selected " from among governmental experts, representatives of the consumer, of independent economic occupations and of social and cultural activities ". To strengthen this representation further and adapt it more closely to the questions under discussion, Article 26 also lays down that at each session of the Economic and Social Council and for the duration of that session, the Governments shall appoint " one or more substitutes for every member representing the interest of the general public, selecting them from the groups mentioned in paragraph 1 above on account of their qualifications in the subjects to be discussed when they replace the member in question ". Such a system ensures that the representation can be varied ad infinitum.

2. Appointment of representatives

24. With regard to the manner of appointment, the Sub-Committee has adopted the normal methods of most representative economic and social organisations : appointment of memhers by their respective Governments from lists submitted by the competent employers' and workers' organisations, which lists must contain at least twice as many candidates as the number due to be appointed.

3. Internal organisation

25. With regard to the internal organisation of the Council, it should be noted that the division of activities into three fairly distinctive fields—social, economic and cultural— has led the Sub-Committee to divide the membership of the Council into three sections, each covering one of these fields, and to provide for the creation of sub-sections. It need hardly be mentioned that these sections and sub-sections would be no more than study groups for drawing up plans, and that decisions, recommendations and opinions could only be adopted in the plenary Council. Furthermore, Article 32 of Part III lays down that " in connection with the work of its sections or sub-sections, the Economic and Social Council may convene special departmental meetings of representatives of the organisations concerned." Thus, every aspect of the economic, social and cultural life of Europe can be covered and all the organisations interested in them can be consulted.

4. Proceedings

26. This brings us to the last important problem, the implementation of the proceedings. Article 28 states : " The decisions of the Economic and Social Council shall be reached by a simple majority of the votes cast." By confining itself to a simple majority, rather than the two-thirds majority originally proposed by the Sub-committee—the quorum being two-thirds of the members—the Committee on Social Questions wished to avoid any risk of the Council being paralysed by the systematic opposition of .one or other of the three groups, for such action could prevent the adoption of any recommendation. It may be argued, however, that Part III should include a provision whereby any document put to the vote at the close of the proceedings of the Council shall mention any differences of opinion between the various professional and social groups represented, setting forth, side by side with the majority view, the opinion of the minority or minorities together with their reasons for holding it.

VI

1. The draft European Social Charter was unanimously adopted by the Committee on Social Questions, although various members of the Committee reserved their personal attitude to certain Articles, and twoof the mab stained. [26]Previous to this, the Joint Sub-Committee on the Economic and Social Council had unanimously adopted, with one abstention, the broad lines of Parts III and ÎV of the Charter, concerning the Economic and Social Council and its role in the implementation of the Charter.[27]

26. Sen Minutes of the meeting of the Committee on Social Questions held on 10th September, 1055. (D o c . A S / S o c (7) P V 3).
27. Sec Minutes of the meeting of the Joint Subc o m m i t t e e held on 3rd June, 1955 (D o c . A S / S o c - EC (6) P V 2).