Parliamentary Assembly
Assemblée parlementaire
https://pace.coe.int

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 536
27 September 1956

Establishment of a European convention on social and economic rights

Report
Committee on Economic Affairs and Development
Rapporteur: Mr Lujo TONCIC-SORINJ, Austria

A. 1. Draft Recommendation

The Assembly,

Considering that the European Convention on Human Rights has established an international guarantee for the protection in t he Member States of the Council of Europe of t he principal civil and political rights proclaimed in the Universal Declaration of Human Rights of 10th December 1948;

Considering that it is desirable to conclude a further instrument designed to promote or ensure the exercise of the economic and social rights set out in the said declaration and in the draft Covenant on economic, social and cultural rights prepared by the Commission on Human Rights of the United Nations;

Recalling its Opinion No. 5 (1953), in which it expressed its support for the proposal to conclude a European Social Charter which would define the social aims of the Member States and serve as a guide for the future activities of the Council of Europe in the social field;

Noting that the Committee of Ministers has approved the proposal to conclude such a Social Charter and has entrusted the task of preparing it to the governmental Social Committee ;

After study by its competent committees,

Keeps under consideration as a matter of importance the draft European Convention on Social and Economic Rights prepared by those committees; and

Recommends that the Committee of Ministers :

1. Establish a convention on social and economic rights on the basis of this draft;
2. And for this purpose
   - *a.* work in close co-operation with competent intergovernmental organisations, trade unions and employers' organisations, and all other competent organisations enjoying consultative status;
   - *b.* appoint without delay a Special Representative of the Council of Europe who shall press for the establishment of the Convention. To this end, the Representative would, in particular, be responsible for continuous coordination between Member Governments, on the one hand, and international organisations, on the other.

APPENDIX

Draft European Convention on Social and Economic Rights

The Governments signatory hereto, being members of the Council of Europe,

Considering that...,

Have agreed as follows :

PREAMBLE

PRINCIPLES AND OBJECTIVES OF SOCIAL POLICY

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

To this end the High Contracting Parties hereby proclaim their determination to pursue the following objectives of social policy.

1. Realising that the standard of living depends primarily on economic conditions, the High Contracting Parties will endeavour to promote the steady expansion of production and trade among themselves, full employment, the fair distribution of resources and sharing of burdens, and the stability of their economies.

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

3. 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.

4. The High Contracting Parties recognise that the family is of basic social and moral importance to society. They consider one of their aims and responsibilities to be to create or maintain such conditions as will protect the family and facilitate the discharge of family responsibilities. They will endeavour to take all appropriate measures to assist the individual and the family to adjust themselves to modern social and economic conditions.

5. The High Contracting Parties, whilst encouraging the fullest discharge of individual and family obligations towards children, accept the responsibility of taking measures to protect the health and welfare and ensure the education of all children and young persons regardless of family circumstances. They recognise that motherhood should be protected, whether the mother is legally married or not.

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 management and the profits of the undertaking by which they are employed.

8. The High Contracting Parties regard it as a duty deriving from the most elementary principles of human solidarity that they should organise assistance for 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, nationality, national or social origin, or political or other opinions.

10. The High Contracting Parties will endeavour to ensure that the full benefits of the measures set out in this Convention are extended to all groups and sectors of the population.

11. The High Contracting Parties consider themselves collectively responsible for the economic expansion of their metropolitan under-developed areas—and bound to develop them by all means within their power.

12. 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 local populations and, where appropriate, with qualified international organisations.

13. 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 all sectors.

14. The High Contracting Parties recognise that the effective enjoyment by all of the benefits set out in this Convention depends not only on the action of the public authorities in ensuring the rights of individuals, but also on the action of individuals in discharging their duties towards other individuals and to the community in which they live.

15. The High Contracting Parties recognise that the welfare and prosperity of each of them depend on the welfare and prosperity of them all. Although the planning and implementation of social policy are essentially the concern of national, regional or local authorities, they consider that its full achievement depends, and will increasingly depend, on closer co-operation between them, so that social and economic rights may be ensured at a European as well as at the national level. For this purpose, they will endeavour, by means of joint consultation, to harmonise by stages their economic policies and their social legislation and practice, and to make the social and economic rights set forth in this Convention applicable in the territory of each for the nationals of all.

It shall be the aim of the High Contracting Parties to establish European standards of social welfare superior to those applied on a wider international basis.

PART I - SOCIAL AND ECONOMIC RIGHTS

ARTICLE 1

The High Contracting Parties recognise the following rights and undertake to take action, both jointly and severally, to ensure progressively the exercise of these rights, in particular by adopting or promoting the measures defined in connection with each of these rights :

A. The right to work

1. With a view to ensuring the exercise of this right, the High Contracting Parties :

a. The Committee on General Affairs has examined this part from the political standpoint and has accordingly made the structural amendments explained below.

b. accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of productive employment through the pursuance of policies which will ensure adequate opportunities for work, such as, for example, the fixing of national employment targets, the preparation of national manpower budgets, and the establishment of long-term development programmes, including the planning of public works, which may be adapted to the changing employment situation;

c. undertake to :

establish or maintain the freedom from any restrictions on the right to work, with the exception of those imposed by the need to secure the technical qualifications required in certain professions and those aiming solely at the protection of children, adolescents and women against the risks inherent in certain prescribed occupations;

protect effectively the right of the wage-earner freely to choose any available occupation;

establish or maintain both general and specialised free employment services;

promote vocational guidance, training, and rehabilitation.

B. The right to fair and stable conditions of work

1. With a view to ensuring the exercise of this right, the High Contracting Parties undertake to secure for every worker, insofar as these measures are not put into effect by means of collective agreements or in any other way :

a. safe and healthy working conditions, defined by laws or regulations and guaranteed by effective labour inspection;

b. protection against arbitrary dismissal, as also prohibition of dismissal on account of maternity, military service, and similar circumstances;

c. reasonable notice of dismissal;

d. the establishment of a minimum wagefixing machinery in all fields not covered by regulations or collective agreements;

e. equal pay for equal work;

f. a reasonable working week, to be limited to a 40-hour week, subject to essential adjustments for certain professions, with special rates for over-time;

g. a minimum of two weeks' annual holiday with pay and guaranteed weekly rest periods;

h. the possibility of retirement at the age of 65, at the latest, with a pension ensuring a reasonable standard of living.

2. The High Contracting Parties undertake to ensure the strict implementation of measures taken in pursuance of paragraph 1 above, in particular by the introduction of joint labour inspectorates and tribunals.

C. The right of children, adolescents and women to special measures of protection in their employment

1. With a view to ensuring the exercise of this right, the High Contracting Parties undertake to take all necessary steps, insofar as these measures are not put into effect by means of collective agreements or in any other way, so that :

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

b. persons of under 16 years of age who are still subject to compulsory education may be employed only in such work as will not deprive them of their education;

c. the working day of persons under 16 years of age shall be in accordance with the needs of their development, and particularly with their need for vocational training;

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

e. expectant mothers shall be granted leave with pay before and after childbirth up to a total of at least 12 weeks.

2. The High Contracting undertake to ensure the strict implementation of measures taken in pursuance of paragraph 1 above, in particular by the introduction of joint labour inspectorates.

D. The right of workers to be consulted on the management of the enterprise by which they are employed

With a view to ensuring the exercise of this right, the High Contracting Parties undertake to establish or maintain organs of joint management and or to take other measures enabling workers to share in the life and general management of the enterprise by which they are employed, insofar as these measures are not put into effect by means of collective agreements or in any other way.

E. The right to strike

The High Contracting Parties recognise the right to strike.

They undertake to encourage the use of agreed machinery for the settlement of labour disputes.

F. The right to form and join trade unions

With a view to ensuring the exercise of this right, the High Contracting Parties undertake to grant workers every opportunity to form local, national or international trade unions and to join trade unions of their choice, for the protection of their economic and social interests, subject only to the limitations set out in paragraph 2 of Article 11 of the European Convention on Human Rights and Fundamental Freedoms [1].

G. The right to a proper standard of living

With a view to ensuring or promoting the exercise of this right, the High Contracting Parties undertake to :

a. promote the conditions in which adequate supplies of basic necessities will be made available at prices within the reach of all;

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

c. protect small savings.

H. The right to social security

With a view to ensuring the exercise of this right, the High Contracting Parties :

1. 1. undertake to raise their social security systems to a satisfactory level, basing themselves on the standards laid down in the European Code of Social Security for the following types of services : medical care, benefits relating to sickness, unemployment, old age, employment injury and diseases resulting from employment, family benefits, maternity benefits, invalidity benefits and survivors' benefits;
2. 2. recognise the principle whereby social security and social and medical assistance shall be made available on the territory of each Party to the nationals of the other Parties, as provided in the European fnterim Agreements on Social Security and the European Convention on Social and Medical Assistance;

---

1. 1. Paragraph 2 of Article 11 is worded as follows : " No restrictions shall be placed on the exercise of these rights other than such as are prescribed b y law and are necessary in a democratic society in the interests of national security or publie 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. "

3. 3. will take steps for the adjustment of social security benefits to meet any currency depreciation.

I. The right to a high standard of health

With a view to ensuring the exercise of this right, the High Contracting Parties will take all appropriate measures, directly or in co-operation with local authorities and competent private organisations :

a. to ensure the reduction of infant mortality and provision for the healthy physical, mental and moral development of the child;

b. to improve nutrition, housing, sanitation, health education, recreation and other environmental health factors;

c. to prevent epidemic, endemic and other diseases;

d. to organise services and facilities so that all may be assured of effective medical attention in the event of sickness.

J. The right of the family to social and economic protection

With a view to ensuring the exercise of this (these) right(s) the High Contracting Parties undertake, directly or in co-operation with local authorities and competent private organisations, to :

a. foster and protect the family as a fundamental unit of society;

b. make available or encourage the provision of the following facilities and advantages :

the grant of allowances based on the number of children;

cheap loans for the founding of homes;

preferential allocation of housing to families and persons wishing to marry, and rent reductions for low income families with many children ;

allowances to families whose breadwinners are called up for military service ;

tax reductions related to the size of the family;

organisation of home help services.

K. The right of mothers and children to social and economic protection

With a view to ensuring the exercise of this right, the High Contracting Parties undertake, directly or in co-operation with local authorities and competent private organisations :

a. for the protection of mothers :

to provide the necessary economic and other assistance during a reasonable period before and after childbirth, in all cases not covered by social security or otherwise;

to provide directly or in collaboration with appropriate voluntary organisations, a sufficient number of maternal and infant welfare centres;

to extend particular protection to widows supporting children;

b. for the protection of children :

to establish or maintain specialised organs with powers to prevent the neglect of children;

to ensure that every minor is provided with a guardian and that guardianship is regulated by law ;

to provide special services for homeless children, for children and young persons who are physically or mentally handicapped, and for juvenile delinquents.

L. The right to social and cultural aid and guidance

With a view to ensuring the exercise of this right, the High Contracting Parties undertake to :

a. promote or maintain, directly or in collaboration with local authorities and appropriate voluntary organisations, social welfare services for aid and guidance to the individual in industrialised society;

b. ensure free legal advice and assistance for those who need it.

M. The right to education

With a view to ensuring the exercise of this right, the High Contracting Parties :

1. Undertake to make primary education compulsory and free;

2. Will introduce measures :

   a. to make facilities for secondary education! in its different forms, including technical and professional training, available to everyone at least up to the age of 18 years and to make it increasingly free;

   b. to ensure a basic education for those persons who have not received or have not completed their primary education;

   c. to make university and other higher education accessible to all;

3. Will respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

PART II - A EUROPEAN COMMISSIONER AND CHAMBER

ARTICLE 2

A European Commissioner for Social Affairs shall be appointed and a European Social Chamber set up within the framework of the Council of Europe.

ARTICLE 2

A European Commissioner for Social Affairs shall be appointed and a European Social Chamber set up within the framework of the Council of Europe.

ARTICLE 3

(a) The Commissioner shall be responsible for promoting the fulfilment of the social policy of the Council of Europe and, in particular, the implementation of the European Convention on Social and Economic Rights.

(b) The Commissioner shall be proposed by the Consultative Assembly and appointed by the Committee of Ministers.

(c) The Commissioner shall be appointed for a period of three years.

ARTICLE 4

(a) The Commissioner may deal with any question falling within his competence.

(b) The Commissioner shall receive from the High Contracting Parties any necessary assistance relating to questions falling within his competence.

ARTICLE 5

(a) The Commissioner may submit to the Consultative Assembly draft recommendations.

(b) He shall be entitled to address the Consultative Assembly at his own request.

(c) He shall give the Consultative Assembly an account of his activities whenever the Assembly so desires.

ARTICLE 6

(a) The Chamber shall be responsible, acting in a consultative capacity, for promoting the fulfilment of the social policy of the Council of Europe and, in particular, the implementation of the present Convention on Social and Economic Rights.

(b) It shall consists of 60 members, onethird representing the employers, one-third the workers and one-third the other sectors of the community.

(c) It shall be convened by the Consultative Assembly at least once a year and may also meet whenever convened by its President.

ARTICLE 7

The Chamber shall be a deliberative body at the disposal of the Consultative Assembly.

ARTICLE 8

(a) The Consultative Assembly may request the opinion of the Chamber on any question within the competence of the Chamber, in particular concerning draft recommendations submitted to the Assembly by the Commissioner.

(b) The Chamber shall reply to these requests by opinions adopted by simple majority.

ARTICLE 9

(a) The Chamber may on its own initiative adopt resolutions to the Consultative Assembly drawing attention to the political, social, economic and cultural implications of questions within its competence.

(b) Acting by absolute majority, it may also submit for adoption by the Consultative Assembly draft recommendations to the Committee of Ministers.

ARTICLE 10

The 20 seats allotted to each category shall be allocated according to nationality as follows :

Iceland, Luxembourg, the Saar[2] , Austria, Belgium, Denmark, Greece, Ireland, Norway, the Netherlands, Sweden, Turkey : 1 seat.

France, the Federal Republic of Germany, ftaly, the United Kingdom : 2 seats.

ARTICLE 11

(a) The representatives of the employers and workers respectively shall be appointed by their respective Governments, in accordance with the procedure laid down by the latter, from lists submitted to them by the appropriate national employers' and workers' organisations. The number of candidates shown on these lists shall be twice that of the number of representatives to be appointed.

(b) The representatives of the other sectors of the community shall be appointed by their respective Governments in accordance with procedure laid down by the latter. They shall be chosen from among governmental experts, representatives of consumers, independent economic activities and social and cultural activities.

(c) The members of the Chamber shall be appointed every three years.

(d) The members of the Chamber shall not be bound by any mandate or instruction.

ARTICLE 12

(a) The Commissioner shall be assisted by the Secretariat-General of the Council of Europe.

(b) The Chamber shall be assisted by the Office of the Clerk of the Consultative Assembly.

(c) Expenditure relating to the Commissioner and to the Chamber shall be borne by the Council of Europe.

PART III - IMPLEMENTATION OF THE CONVENTION

ARTICLE 13

(a) The High Contracting Parties agree to the establishment of a programme designed to ensure the implementation of the Convention by stages.

---

2. This provision is based on the present Saar Statute within the Council of Europe.

(b) This programme shall be drawn up by the European Commissioner for Social Affairs and decided on by the Committee of Ministers of the Council of Europe after the opinion of the Consultative Assembly has been obtained.

ARTICLE 14

The High Contracting Parties undertake to submit to the Commissioner and the Consultative Assembly annual reports concerning the progress made in the execution of the programme referred to in the preceding Article.

These reports shall also indicate any difficulties or other factors which may have prevented the States concerned from carrying out their obligations.

They may, where appropriate, reproduce in full or in part the reports which the High Contracting Parties have previously submitted to the International Labour Organisation on the same points.

ARTICLE 15

Bearing in mind the reports referred to in Article 14, the Commissioner may make recommendations to the Committee of Ministers and, if necessary, intended for a Government directly concerned, in order to secure from that Government the fulfilment of its obligations under the Convention.

ARTICLE 16

The Commissioner shall periodically submit to the Consultative Assembly a full report on the progress made in implementing this Convention.

ARTICLE 17

(a) The Commissioner may deal with any question connected with the observance of the rights and the fulfilment of the obligations recognised in the Convention, except : (i) where this question is the subject of a complaint before the International Labour Office, in which case the procedure provided for in Articles 24 and 26 of the Constitution of the International Labour Organisation is applicable; (ii) in cases governed by the provisions put into force by the I. L. 0. concerning the freedom of trade unions.

(b) The Commissioner may invite the Government or Governments directly concerned to submit such comments as may be thought necessary.

ARTICLE 18

Agreements shall be concluded by the Council of Europe with European and international organisations competent in economic, social and cultural matters, in particular I. L. 0. and 0. E. E. C, to ensure close co-operation with these organisations in the implementation of the present Convention.

PART IV - FINAL PROVISIONS

ARTICLE 19

Nothing in this Convention shall limit or derogate from any of the economic, social or other human rights which may be ensured under the laws of any High Contracting Party or under any international agreement to which it is a party.

ARTICLE 20

(a) fn 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 Convention, 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.

(b) 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. The Secretary-General shall in turn inform the High Contracting Parties.

ARTICLE 21

Any High Contracting Party may propose amendments to this Convention in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the High Contracting Parties any amendments so proposed, which shall then be considered by the representatives of the High Contracting Parties on the Committee of Ministers and submitted to the Consultative Assembly. Any amendments thus approved shall be transmitted to all signatory Governments and shall enter into force as soon as all the High Contracting Parties have informed the Secretary-General of their acceptance.

ARTICLE 22

(a) A High Contracting Party may denounce the present Convention as far as it is concerned only after the expiry of five years from the date on which it became a Party to it and after giving 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.

(b) A High Contracting Party which shall have ratified the present Convention and shall not have availed itself of the right of denunciation within the period laid down in paragraph 1 above, shall be bound thereby for a further period of five years, whereupon it may denounce the Convention as far as it is concerned on the expiry of each successive five years period.

ARTICLE 23

(a) This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

(b) The present Convention shall enter into force after the deposit of eight instruments of ratification.

(c) As regards any signatory ratifying subsequently, the Convention shall come into force on the date of the deposit of its instrument of ratification.

(d) Any country not a member of the Council of Europe may accede to this Convention under conditions laid down by the Committee of Ministers and approved by the Consultative Assembly.

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

ARTICLE 24

(a) Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.

(b) The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe.

(c) The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

ARTICLE 25

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

B. 2. Explanatory Memorandum

1. A. INTRODUCTION

1. On 12th, 13th, 14th and 15th September 1956, the Committee on General Affairs drew up the preceding text based on M. Toncic's report. The question had been referred to the Committee by Order 89 of 20th April 1956 :

" The Assembly refers the draft Social Charter (Doc. 488), together with the amendment proposed by M. Bichet, to the Committee on General Affairs, in consultation with the Committee on Social Questions and the Committee on Economic Questions, for re-examination, with particular reference to the implementation of the Charter and proposed creation of a European Economic and Social Council. "

2. The question of debating the principle of the European Social Charter no longer arises.

(a) On 23rd September 1953, the Assembly adopted Opinion No. 5, in the second paragraph of which it approves the principle of drawing up a European Social Charter, which " should define the social aims of the Member States of the Council of Europe and serve as a guide for all future activities of the Council in the social field ".

In May 1954 the Committee of Ministers stated that it would t r y to elaborate such a Charter (Doc. 238, para. 45).

(b) The creation of an Economic and Social Council had been proposed by the Assembly in its Resolution 26 of 17th January 1953, concerning the projected Political Community : " An Economic and Social Council shall be set up with consultative functions representing the fifteen Member States of the Council of Europe." This institution was to constitute a link between the Europe of Fifteen and the proposed Political Community of Six. Apart from this link, the Committee on Social Questions expressed the opinion, in April 1955 (Doc. 403, para. 2, p. 16), t h a t " the preparation of a European Social Charter necessarily implied the establishment of a social and economic body ".

From the political standpoint, the Committee on General Affairs, in July 1955 (see Doc. 362, para. 23), also declared itself in favour of the establishment of an Economic and Social Council, on the view that this " would be of great value in promoting economic and social unification ".

3. The principal developments in this question since that time have been as follows :

a. In October 1955, the Committee on Social Questions submitted to the Assembly a draft European Social Charter, including proposals for a European Economic and Social Council (Doc. 403). The s t a t u t e of this body is embodied in the text of the Charter.

b. The question having been referred to committee, the Committee on Social Questions, in consultation with the Committee on Economic Questions, submitted to the Assembly in April 1956 a new draft European Social Charter and proposed that a European Social and Economic Conference be convened in place of a European Economic and Social Council (Doc. 488). The convening of this Conference was not proposed in the text of the Charter but in a recommendation from the Consultative Assembly to the Committee of Ministers. The object of the Conference was to bring employers' and trade union and other non-governmental organisations into closer association with the work of the Council of Europe, but it was not suggested that they should play a part in the implementation of the Social Charter.

c. The Assembly withheld its approval of this proposal after the tabling by M. Bichet and colleagues of an amendment (see Doc. 488, Amendment No. 1) calling for a fresh consideration of the question of establishing an Economic and Social Council. It referred the whole question to the Committee on General Affairs (see Order 89 above).

4. In view of the differing conceptions put forward in Docs. 403 and 488, the Committee on General Affairs, on the proposal of its Rapporteur, has felt the need for a compromise solution which could command the support of a substantial majority in the Assembly.

5. Its attitude is based on the following general considerations :

a. The enclosed draft presents the | question in a new way and takes account of the j experience acquired in the course of the work | undertaken by the competent committees. This makes it unnecessary for the Committee i to reopen discussion on innumerable points | already dealt with and permits it to confine | itself to the main question.

b. It has become both urgent and necessary to reach agreement on the problem of the Social Charter, since the procrastination displayed by the Assembly is harmful to it.

c. The Assembly must first of all complete its work in this connection in order to allow the governmental experts to reach their own conclusions. The experts will subsequently submit to the Assembly for its opinion the results of their negotiations.

6. In accordance with Order 89, the Committee on General Affairs has consulted the Committees on Social Questions and on Economic Questions.

(a) The Committee on Social Questions, in the opinion which it formulated, made a number of amendments in the original text of the Committee on General Affairs, which have fully been taken into account.

(b) The Committee on Economic Questions has not thought it necessary to reconsider its previous decision to approve Doc. 488 and has therefore expressed the opinion that this document should be presented once more. It considers, in particular, that the organisational aspects of this draft Convention are not consistent with the views it has already expressed concerning Docs. 403 and 488.

(c) The Committee on General Affairs has also consulted at some length intergovernmental international organisations, trade unions and other competent organisations enjoying consultative status with the Council of Europe.

7. In the light of its own discussions and its consultations, the Committee on General Affairs has decided to lay before the Consultative Assembly the present draft Convention and to submit to the Assembly for its approval the draft Recommendation preceding this draft Convention.

In presenting the following study the Rapporteur wishes, on behalf of the Committee, to pay a tribute to the initiative and unremitting efforts of M. Heyman, Chairman of the Committee on Social Questions.

2. B. DRAFT RECOMMENDATION

The draft calls for the following remarks :

a. It reproduces the first four paragraphs of the draft Recommendation contained in Doc. 488.

b. The Committee deliberately proposes that the Assembly should " keep under consideration as a matter of importance ", rather than approve, the text to be transmitted to the Committee of Ministers. The Assembly is required to take a decision on the principle and application of a Social Charter; it cannot from the outset tie the hands of the experts appointed to prepare the final draft, but will confine itself to giving a very clear and detailed indication of its wishes.

c. Hence the draft Recommendation alone is to be voted upon by the Assembly. The draft Convention appended to it does not call for a separate vote, since it has not yet been given its final form. In the light of its own work and its consultations, the Committee on General Affairs, considering that this draft Convention represents an acceptable compromise between the arguments put forward in Doc. 403, on the one hand, and those in Doc. 488, on the other, has decided to keep it under serious consideration as an expression of the wishes of the Consultative Assembly and as such to attach it to the draft Recommendation which i t has adopted by 13 votes to none, with 5 abstentions.

d. The experience gained in the field of European integration has shown that it is essential that the draft Recommendation should provide for a special procedure to expedite and promote the drawing up of this Convention.

(i) This procedure implies in the first place the immediate appointment by the Committee of Ministers of an authority who might be known as a Special Representative and whose main duty would be to make special and unremitting efforts to bring about the early conclusion of the European Convention on Social and Economic Rights.

One of the most important tasks of this Representative will be to establish contact with I. L. O. and to secure every possible and desirable form of co-operation with that Organisation in order to promote the early entry into force of the Convention. In this connection the appointment of the Special Representative will constitute implementation of paragraph 3 of Article 1 of the Agreement concluded between the Council of Europe and I. L. O . according to which the two Organisations may each appoint one Special Representative to discuss matters of common interest. When the Convention has come into force the duties of the Special Representative will be performed by the European Commissioner mentioned in Part II of the draft.

(ii) The Convention shall be drawn up by the governmental experts in close co-operation, with those competent bodies enjoying consultative status with the Council of Europe which are most interested in the conclusion of such an international instrument.

3. C. DRAFT CONVENTION

This calls for the following general comments :

a. It was considered necessary to submit this text to the Committee of Ministers in the form of a draft Convention. In the first place it was necessary to bear in mind the wish of the Committee of Ministers that the European Social Charter should be " complementary in the social field to the European Convention on Human Rights ". Moreover, such a Convention would by its very nature be the appropriate framework for the multilateral undertakings to be entered into by Member States to pursue a joint social policy—and which, indeed, are fundamental to the Social Charter. Lastly, a draft Convention constitutes the most effective means of illustrating and explaining to the governmental experts the solution applied by the Committee to a number of legal and political problems.

b. Like the United Nations' draft Covenant on Economic and Social Rights, the draft Convention provides a framework which should be developed and gradually amplified in the light of practical experience.

c. However, the Committee on General Affairs has fully endorsed the opinion of the other committees that this draft Convention should provide for specific and detailed undertakings binding upon the signatory States. The idea is to forestall any criticism of the Council of Europe on the grounds that all it is presenting is yet another of those declaratory instruments which are, not seldom, tantamount to mere window-dressing.

d. The Committee considers that even if a signatory country has a high standard of living and an advanced social organisation this multilateral Convention will be of real political importance for the social organisation of a united Europe.

e. The title preferred is " Convention on Social and Economie Rights ", for the following reasons :

It is a normal term for a text which is subject to ratification by several countries.

It indicates clearly the connection between this draft and the Convention for the Protection of Human Rights and Fundamental Freedoms.

In order not to lose the appeal which the term " Social Charter " has made to public opinion, the Committee suggests that the words " or Social Charter " be inserted after the word " Convention " where first used in the text. This would also satisfy organised labour, which keenly desires to have its " Charter ".

PREAMBLE

Principles and objectives of social policy

(a) In the light of its own discussions and its consultations, the Committee on General Affairs has thought it preferable that this body of principles and objectives of social policy should form the preamble and not Part I of a draft Convention, mainly because i t is an affirmation of principles and does not embody any undertakings. The form of a preamble is eminently suitable in such a case.

(b) The text of this preamble is identical with that of Part I of Doc. 488. The Committee on General Affairs has therefore adopted the explanatory section on this text as set forth in Doc. 403, and amended and supplemented by Doc. 488.

(c) The last sentence of paragraph 5 has undergone a change in form : the words " whether the mother is lawfully married or n o t" are thought preferable, on the ground of greater precision, to the words " regardless of the marital status of the mother " which do not bring out clearly enough the aim to protect motherhood.

3.1. PART I - Social and Economic Rights

(a) The Committee on General Affairs has examined this part from the political standpoint and has accordingly made the structural amendments explained below.

The title is identical with that of Document 488. The Committee interchanged, however, the terms " economic " and " social ", the expression " social and economic rights " being more consistent with the scope of a " social charter".

This part is virtually a repetition of the corresponding part of Doc. 488.

The detailed changes in respect of each of the rights under review were made at the request of the Committee on Social Questions.

(b) (i) The Committee has adopted a new lay-out. This Part now forms a single Article (Article 1), the description of each right (A, B, C, D, etc.) having a reference to the introductory paragraph. In this the Committee took as a pattern paragraph 15 of the Preamble (as in Doc. 403), which concerns the legal aspect of the commitments undertaken by the Contracting Parties, and also Article 2, paragraph 1, of the Draft Treaty concerning Social, Economic and Cultural Rights adopted by the Human Rights Commission of the United Nations.

With this re-arrangement the text automatically implies recognition of the rights set forth below, in each case followed by a statement of the measures by which the Contracting Parties undertake to ensure the exercise of these rights.

(ii) The Committee agrees that it is unnecessary to define each of the rights set forth. They are recognised because they exist. Furthermore, they are defined in various connections in national legislation and even in national constitutions. In any case, the measures to be taken by the State serve in themselves to constitute the rights in question, the exercise of which is governed by them.

(iii) In addition, the use of the word " progressively " clearly shows that this Convention lays down the framework of a social policy which is to be applied stage by stage, as specifically stated in Article 13 (a) of the draft. It is therefore unnecessary to repeat the word " progressively " in connection with measures relating to certain rights dealt with below.

(iv) Lastly, it should be noted that the provisions of Article 5 of Doc. 488 have been placed under the headings with which they were concerned so as not to disturb the order in which these rights are listed in Article 1, A, B, C, D, etc.

(c) Concerning each of these rights the Committee has adopted the explanatory sections of Doc. 403 as amended and supplemented by those in Doc. 488.

(d) Furthermore, in the light of its own discussions and its consultations, the Committee on General Affairs has made the following amendments :

Heading A

(i) Sub-paragraphs 2 (a) and (b) of paragraph 2 of the corresponding Article 1 of Doc. 488 have been combined to form a single paragraph. (ii) The word " rehabilitation " has been added to paragraph (iv) (cf. Doc. 488, Article 1, 3 [d]), as it is necessary to provide for the vocational rehabilitation of the disabled and persons who have to change their occupation as a result of developments in the industrial and economic spheres.

Headings B, C, D

Bearing in mind that in a number of Member States the measures referred to in the general provision of Article 1, particularly with regard to employment and conditions of work, are put into effect by means of collective agreements, and that the representatives of the States in question have already shown some misgiving with regard to a provision which appears only to relate to measures taken or promoted by public authority, it appears necessary, in connection with the entry into force of the Convention, for the texts in question to be amended by adding the words :

" in so far as these measures have not been put into effect by means of collective agreements or in any other way ".

Heading B

(i) Paragraph 1 of the corresponding Article 2 (cf. Doc. 488) has been dropped, since the provisions in question are covered both by the paragraph heading Article 1 and the Preamble to the present draft.

(ii) Sub-paragraph" (e) (cf. Doc. 488, Article 2, 2 (e)) has been cut down to the words " equal pay for equal work ". (iii) In sub-paragraph (li) the words " a proper standard of living " have been deemed preferable to " decent living " (cf. Doc. 488, Article 2, 2 (h)).

Heading D

The Rapporteur had offered the Committee an alternative : either provisions based on those of Article 4 in Doc. 403 or the provisions of Article 4 in Doc. 488. In the light of its own discussions and its consultations the Committee preferred to revert to the proposals of Doc. 403 while suggesting a more flexible wording. The Committee's preference was prompted by its concern to take the highest existing standards as an example.

Heading E

The wording proposed by the Committee is that of Doc. 488 (Article 6), amended in such a way as to enable the forms of procedure required for the settlement of labour disputes to be accepted by both parties to the dispute.

Heading G

(i) The words " proper standard of living " have been thought preferable to " decent living " (cf. Doc. 488, Article 8).

(ii) A new sub-paragraph (c) has been added concerning the protection of " small savings ". Extensive provision for the protection of savings was made in Doc. 403 (Article 8) but was later dropped in Doc. 488.

Headings I, J and K

All three texts are concerned with application of the principle of collective responsibility for health and welfare.

In order to provide for the operation of private organisations in addition to State activities in these matters, the text has been amended as follows :

(i) Heading I :

" With a view to... will take all appropriate measures directly or in co-operation with local authorities and competent private organisations. "

(ii) Headings J and K :

" With a view to... undertake directly or in co-operation with local authorities and competent private organisations. "

It should be noted that the amendments made under these two Headings are provided for in Article 12 of Doc. 403 and in Article 13 (1) of Doc. 488.

Heading I

Sub-paragraph (b) : the words " other health factors " have been preferred to " other environmental health factors " (cf. Doc. 488, Article 10 [b]).

Heading J

The provision contained in Article 11, 2 (b) (of. Doc. 488) has been dropped.

Heading K

A new provision for the special protection of widows with dependent children has been introduced under (iii) (cf. Doc. 488, Article 12, 2).

3.2. PARTS II AND III - The European Commissioner, the Chamber and the implementation of the Convention

3.2.1. Preliminary remarks

(a) Parts II and III of the draft Convention concern implementation. Part III relates to procedure, whereas Part II deals with the organs through which the Council of Europe would ensure the smooth working of that procedure. The procedure in question would be quite special and without precedent among t he activities of the Council of Europe. The organisation of this procedure has to a large extent been responsible for the controversy which has arisen in connection with the system laid down in Document 403 and that set forth in Document 488. The first was based on the need to organise procedure in accordance with a new structure, whereas the second avails itself of the Council's existing institutions.

(b) It might be useful here to outline once more the method used for implementing such a Convention :

> *In accordance with the system implementing the Conventions of the International Labour Organisation (Article 22 of the ILO Constitution), and the system of application of the United Nations draft Treaty (Articles 17 and 18 of that draft), implementation of the Social Charter follows from a periodical submission of reports by the participating Governments. The reports referred to in Article 14 of the draft will be required to state the progress accomplished at the time when the Charter is put into effect. They will enable it to be determined whether and to what extent the laws and social practices (collective agreements) of the participating countries comply with the letter and spirit of the Convention. The examination of these reports is one of the main features of the implementation of a convention on social policy at international level.*
>
> *The example of I. L. 0 . shows that the implementation of such conventions is far from being a concern solely of the Governments responsible for putting them into effect. Indeed, the examination of the reports in question has two aspects : first, that of technical and legal supervision and enquiry by a Committee of independent experts; and, secondly, conciliation, promotion and mutual assistance procedure, based on the Committee's conclusions and carried out on a tripartite basis, that is to say, with the direct participation of the representatives of the Governments and of the workers' and employers' trade unions. It goes without saying that the technical nature of such procedure calls for organisational machinery, of which I. L. O., as represented by its various institutions (International Labour Office, Governing Body and the Committee and Commission for the implementation of Conventions), is the classic example.*

(c) It is obvious that the Council of Europe does not as yet possess such machinery. Bearing in mind the technical nature and considerable volume of reports which participating Governments would be submitting to the Council of Europe, examination of those reports without the assistance of a technical body would exceed the means and facilities available to Representatives to the Assembly. The need for impartiality which, as in the case of I. L. 0., must be a feature of the checking of these reports, precludes their examination from being entrusted solely to the governmental Social Committee, as was suggested in Document 488, since the members of that Committee would in t h a t event become judges of their own action as senior Government officials responsible for taking an active part in putting the Charter into effect in their respective countries. For these reasons the Committee on General Affairs has departed from the method of implementation provided for in Document 488.

(d) It might conceivably have been asked whether this task could not have been entrusted to I. L. O. The Committee on General Affairs considered that in view of its own specific political role as the promoter of European unity the Council of Europe could not shed any of its responsibilities in connection with implementing a Convention which it held to be necessary. Furthermore the universal character of I. L. O . precludes it from assuming such responsibility; indeed, there can be no question of entrusting an organisation, some of whose Members have an undemocratic political system, with the task of " supervising " the implementation of a Convention on the social and economic rights of citizens of democratic countries.

(e) These political considerations do not in any way lessen the need for the Council to avail itself as far as possible of the highlydeveloped technical resources of the departments and organs of an organisation such as I. L. O. The Committee therefore preferred a solution based on a joint system under which the Council of Europe would be responsible for implementing the Charter while ensuring close co-operation in this connection with I. L. O. The appointment of a European Commissioner and the setting up of a Social Chamber of the Consultative Assembly should be viewed in the light of these considerations.

The appointment of an eminent authori ty endowed with political powers by the Council of Europe is essential in order that the Council may be guaranteed full freedom of action in its co-operation with I. L. O. (see paragraph 3 below for details of this co-operation).

Broadly speaking, this dual solution also corresponds to the two features characterising the classic system of implementation of social conventions, namely, first, supervision by an independent authority and, secondly, consultation of the vocational milieux concerned, with a view to smoothing out any difficulties by means of conciliation and mutual assistance. On the one hand, there would be the Commissioner who would be responsible on behalf of the Council of Europe for organising procedure for implementing the Charter; he would possess the necessary authority to ensure that such supervision was surrounded by adequate guarantees of impartiality. On the other hand, the European Social Chamber could be the means of associating the representatives of relevant sectors of the community with this procedure, as in the case of I. L. O.

3.2.1.1. 1. The European Commissioner

(a) The appointment of a Commissioner is in response to (see Article 2 :

the desire expressed by the Consultative Assembly in Resolution 88, proposing the appointment of " European Commissioners " who should " give a continuous stimulus of a political nature to European unification ";

the suggestion of the Committee of Social Questions in Doc. AS/Soc (8) 1 that a European Commissioner could help usefully to overcome difficulties encountered by Governments in the implementation of the Social Charter;

to the argument that Governments who will have to implement the Charter, will be unwilling to grant power of supervision to someone who is not responsible to themselves.

(b) From the political point of view, the Commissioner must, in the interests of efficiency, have all possible freedom of action in order to carry out his task vis-a-vis the Committee of Ministers representing the Governments. These provisions are fully in accord with those set forth in Resolution 88 and take account of the experience gained by M. Pierre Schneiter, Council of Europe Special Representative for National Refugees and Over-population (cf. Articles 3 and 4).

(c) As well as entering into relations with the Committee of Ministers, the Commissioner may seek the support of the Assembly. To this end he may for example submit to the Assembly draft recommendations, in the same way as the committees, and when adopted these will become Recommendations of the Assembly to the Committee of Ministers. This will place him in a stronger position i n putting his views before the Ministers (see Article 5).

3.2.1.2. 2. The European Social Chamber

(a) A Chamber constituted on the lines proposed :

meets the need, recognised by the Committee on Social Questions and the Committee on Economic Questions, of an organ through which employers and trade union associations and non-governmental organisations can be associated with the work of the Council of Europe;

accords with the desire of the Committee on Social Questions for an organ to help " prepare, guide and facilitate... measures of integration or co-operation " in the European social and economic field (Doc. 403, Art. 21);

conforms with the general wish that an organ of this kind shall not encroach upon the prerogatives of the Assembly;

The Committee has chosen the name " Chamber " :

because it is a new name in the Council and does not invite comparison with other organs existing or contemplated;

because it is an apt description for a specialised consultative organ;

because it is eminently suitable for a body whose function is to study, observe and promote European social policy.

(b) The membership of the Chamber is smaller than that proposed for the European Economic and Social Council and the European Economic and Social Conference. It is thought unwise to place side by side with the Consultative Assembly a deliberative body with as many as 99 members.

The Chamber is tobe convened by the Assembly at least once a year for its statutory session; it may also meet at other times if it so desires (see Article 6).

(c) The Chamber will be in a position to afford the Assembly its special assistance in regard to the fulfilment of the social policy of the Council of Europe. The Consultative Assembly will preserve intact its prerogatives as a parliamentary organ without derogation in favour of the Chamber (see Article 7).

(d) The Assembly will in its own interests apply to the Chamber for its special assistance and advice. Among other matters, the Assembly will refer to it the Commissioner's draft recommendations as well as reports received from Member States, which it has examined, and which are mentioned in Article 14 (see Article 8).

(e) The Chamber must be able on its own initiative at any time to refer questions within its competence to the Assembly. Similarly, it may present to the Assembly draft recommendations in the same way as Assembly committees (see Article 9).

(f) The Chamber will thus be at the disposal of the Assembly and have special competence in matters dealt with by the Commissioner. The two organs will of necessi ty work in close conjunction with each other, as for example by the Chamber inviting the Commissioner to appear before it.

Although the Committee on General Affairs agrees oh the usefulness of co-operation between the Chamber and the Commissioner, it is against providing for direct relations between' these two organs for the treatment of specific questions. It prefers not to make statutory provisions in these matters but to leave the two parties free to make arrangements ad hoc.

(g) Apart from modification of membership and the matter of Austrian representation the provisions are those of Articles 23 to 27 of Doc. 403 (see Articles 10 and 11).

3.2.1.3. 3. Implementation of the Convention

(a) The preliminary remarks on Parts II and III drew attention to the importance of devising some machinery for implementing the Convention. Incidentally, the draft European Social Security Code and the United Nations draft Covenant concerning economic and social rights both provide for a method of implementation similar to that proposed in this draft.

(b) Thus the machinery consists of a Commissioner for Social Affairs and a Social Chamber at the disposal of the Consultative Assembly.

(c) It is unnecessary as yet to go into the methods enabling the Commissioner to fulfil his responsibility of ensuring that the Charter is implemented, especially in his relations with I. L. O.

Yet the need for close co-operation with I. L. O . justifies the provisions of Article 18 of the present draft—and for the following two reasons. On the one hand, it is to be expected t h a t the periodical reports submitted by the participating Governments will in many cases deal with the same points as those submitted by them each year to I. L. O. This possibility has been borne in mind in the third paragraph of Article 14 of the present draft Convention. On the other hand, the Committee of Independent Experts of I. L. O., which has for many years been responsible for the study and examination of the reports submitted to that organisation and has, as a result, acquired considerable knowledge and experience of the social legislation and practices of European Member States of I. L. 0., would be able to give substantial assistance to the Council of Europe in connection with the examination of the periodical reports submitted to it.

3.3. PART IV - Final Provisions

The text follows that of Doc. 488 (Part IV) subject to the following modifications :

a. Article 20 (b) (cf. Doc. 488, Article 21, 2) the following clause is to be added : " The Secretary-General shall then inform the High Contracting Parties ".

b. Article 21 (cf. Doc. 488, Article 22) : t h e second sentence has been amended so that the Assembly may be in a position to take decisions regarding amendments to the Convention.

c. Article 22, paragraph 3 of the corresponding Article in Doc. 488 (Article 23) has been dropped in view of the new provision made under para, (d) of Article 22.

d. Article 23 : in accordance with the precedent established by certain Council of Europe Conventions, the Committee has introduced a new clause (d) enabling European non- Member States to accede to the Convention (cf. Doc. 488, Article 24).

> *The Committee feels that the Convention should not appear to be restricted to certain States as it is under the terms of Article 23, para. 3 in Doc. 488.*
>
> *In such a case the Committee feels that new accessions should be approved not only by the Assembly but also by the Chamber, since it is a question of the latter opening its doors to representatives of other countries.*

e. Article 24 is identical with Article 63 of the Convention for the Protection of Human Rights and Fundamental Freedoms.