



**Doc. 6**

07 August 1950

## Draft Convention for the protection of Human Rights and Fundamental Freedoms

### Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Pierre-Henri TEITGEN, France

### 1. PART I - Work of the Committee

#### 1.1. August/September 1949

During the first Ordinary Session of the Consultative Assembly the Committee was called upon to examine and report on the following questions :

1. The progressive unification of the law of Member States with respect to the legal status of foreigners, with the ultimate object of creating a common European nationality and a European passport; and
2. Measures for the fulfilment of the declared aim of the Council of Europe in accordance with Article 1 of the Statute with regard to the safeguard and further realisation of Human Rights and Fundamental Freedoms—both, in general terms, and with particular reference to the problems raised by a consideration of the status of European refugees.

In addition, the Committee was invited to express its opinion on the proposals submitted by the Committee on Economic Questions with regard to the creation of a European Patents Office.

As far as the questions of a European passport and of the problems involved in a consideration of the status of European refugees are concerned, the results of the studies undertaken by the Committee were embodied respectively in the Recommendation adopted by the Assembly on September 8th (Appendix 1 to this Report) and in the Resolution of the same date (Appendix 2 to this Report).

In reply to the request for an opinion on the proposals for the creation of a European Patents Office, the Committee informed the Committee on Economic Questions that it could see no legal objection to the course of action which the latter had proposed. (See Doc. 110, ordinary session 1949.)

Finally, the Committee presented its conclusions on the general measures to be taken for the safeguard and further realisation of Human Rights and Fundamental Freedoms, which were adopted by the Assembly on September 8th (by 64 votes to 1, with 21 abstentions) in the form of a Recommendation to the Committee of Ministers. (Appendix 3 to this Report.) Two sub-paragraphs of the Article of the draft Convention proposed by the Committee, which is contained in the Recommendation and deals with the rights and freedoms whose enjoyment would be collectively guaranteed, were, however, referred back to the Committee for further study, namely;

ARTICLE 2 (11). — The prior right of parents to choose the kind of education to be given to their children'; and

ARTICLE 2 (12). — The right to own property.

(See Doc. 77, ordinary session 1949.)



## **1.2. September, 1949 - July, 1950**

Thus, apart from the subjects referred back for further study as mentioned in the last paragraph, the Committee's work was completed during the course of the First Ordinary Session, and it was felt that no useful purpose would be served in its meeting again until the Committee of Ministers had reached a decision on the steps which might be taken to give effect to the Recommendations adopted by the Assembly.

In fact, no decisions which call for further action by the Committee on Legal and Administrative Questions have so far been taken by the Committee of Ministers in respect of the questions of a European passport, of the status of European refugees and of the creation of a European Patents Office.

The Recommendation of the Assembly with regard to a draft Convention for the collective guarantee of Human Rights and Fundamental Freedoms has, however, been closely studied by the Committee of Ministers and at two conferences which have been held under its auspices, one composed of legal experts and the other of Government officials. The Reports which were adopted at those conferences will be considered by the Ministers at their next meeting on August 3rd, and they have in the meantime been communicated to the members of the Committee on Legal and Administrative Questions, which met in Strasbourg on June 23rd and 24th to examine them.

A more detailed account of the developments in this connection appears in Part II of this Report.

It is expected that the Statutory Report to be rendered to the Assembly by the Committee of Ministers will indicate the action which the latter proposes to take in order to give effect to the Assembly's Recommendation.

The Committee on Legal and Administrative Questions will hold a special meeting at the beginning of the forthcoming Session of the Assembly in order to consider a Report from a Sub-Committee on Article 2 (11) and (12) referred to above. This will provide an opportunity to consider at the same time any relevant matters contained in the Ministers' Statutory Report.

## **2. PART II - Measures for the fulfilment of the declared aim of the Council of Europe in regard to the maintenance and further realisation of Human Rights and Fundamental Freedoms**

### **2.1. First Ordinary Session of the Consultative Assembly**

On the proposal of the Bureau, and with the approval of the Committee of Ministers, the following subject was placed on the Agenda of the First Ordinary Session of the Consultative Assembly :

" Measures for the fulfilment of the declared aim of the Council of Europe in accordance with Article 1 of the Statute in regard to the maintenance and further realisation of Human Rights and Fundamental Freedoms. "

When indicating its approval, the Committee of Ministers expressed the hope that the Assembly would at the same time give due consideration to the problem of a definition of Human Rights.

A General Debate on the subject was held on August 19th, when a Motion recommending the establishment of an organisation within the Council of Europe to ensure the Collective Guarantee of Human Rights was proposed by M. P.-H. TEITGEN, Sir David MAXWELL FYFE and other Representatives (see Doc. 3, ordinary session 1949), and was referred to the Committee on Legal and Administrative Questions for examination.

The Report of the Committee on the Motion was presented by its Rapporteur, M. P.-H. TEITGEN, to the Assembly and was debated on September 7th-8th, being finally adopted by 64 votes to 1, with 21 abstentions, in the form of a Recommendation to the Committee of Ministers. (Appendix 3 to this Report).

### **2.2. Committee of Ministers - Meeting of November 3rd-5th 1949**

The Recommendation adopted by the Assembly was communicated by the President to the Committee of Ministers in a letter dated September 9th (Appendix 4 to this Report), which was considered by that Committee at a meeting held from November 3rd to 5th. The following decision was taken :

" After examining the Recommendation of the Consultative Assembly concerning the drawing up of a draft Convention for a collective guarantee of Human Rights and Fundamental Freedoms, the Committee of Ministers decided to instruct the Secretary-General to invite each of the Governments of the Member States to

appoint a qualified personage to be a member of a Committee responsible for drawing up a draft Convention, which might serve as a basis for future discussions in the Committee. Due attention should be paid to the progress which has been achieved in this matter by the competent organs of the United Nations. "

### **2.3. Standing Committee - Meeting of November 7th-9th, 1949**

Having taken note of the above decision of the Committee of Ministers at a meeting held from November 7th to 9th, the Standing Committee adopted the following Resolution, which was communicated to the Committee of Ministers in a letter from the President of the Assembly dated November 10th, 1949 :

" The Standing Committee regrets that the Committee of Ministers did not think it desirable to give its approval in principle to the draft Convention for a collective guarantee of Human Rights which the Assembly has adopted. It sees no objection to this question being remitted to a Committee of lawyers for study, but it would like to point out that it would be regrettable if this Committee was to be given a mandate to undertake the study of the question ab initio; the more so since the Assembly's draft was in fact based on work done by the United Nations. The Committee fears that to defer the matter until a decision is taken by the United Nations would mean that the Proposal would merely be pigeon-holed. If the committee of lawyers meet (as is desirable if the preceding remarks are taken into account) it would seem essential that it should maintain close contact with the Chairman of the Assembly's Committee on Legal Questions. One of the main purposes of the proposed Convention is to strengthen the mutual confidence of all Members of the Council that the basic principles of democracy will be maintained by both existing and future Members alike. Its consideration should therefore be treated as a matter of urgency. "

### **2.4. Committee of Legal Experts - Meeting of February 2nd-8th, 1950**

In accordance with the decision taken by the Committee of Ministers on November 5 th, the meeting of a Committee of Legal Experts was held in Strasbourg from February 2nd-8th, presided over by M. DE LA VALLEE-POUSSIN. The Report which was adopted and submitted to the Committee of Ministers on March 16th, was accompanied by a draft Convention for the Guarantee of Human Rights which contained various alternative proposals with regard to the form which such a Convention should take and the means by which respect for it should be enforced. The Legal Experts considered that the choice between, these various alternatives was primarily a political one which they were not competent to take. The Chairman would like to express his gratitude for the way in which he was kept in contact with the work of this Committee.

### **2.5. Committee of Ministers - Meeting of March 30th April 1st, 1950**

The Committee of Ministers considered the report of the Committee of Legal Experts at a meeting held from March 31st - April 1st and adopted the following decision which took account not only of the Resolution passed by the Standing Committee on November 9th, but also of the need to carry out further examination from the political point of view of the alternative proposals for the draft Convention which had been submitted by the Legal Experts :

" It was decided that a conference of high officials, specially instructed by their governments, should meet at Strasbourg in early June for the purpose of preparing a decision from the political aspect for the Committee of Ministers. It would be useful if their instructions could be drafted in such a way as to enable the Committee of Ministers to reach a decision in the best possible circumstances at its next session. It would be helpful, if the Committee had only one text to consider.

" Finally, in response to the wish expressed by the Standing Committee, it was agreed that the Committee of Ministers should consult the Chairman of the Committee on Legal and Administrative Questions, before reaching a decision ".

### **2.6. Committee of Ministers - Meeting of June 3rd, 1950**

The Committee of Ministers having been informed by the Secretary-General that the Chairman of the Committee of Legal and Administrative Questions had expressed the wish to be allowed to consult the other members of his Committee before commenting on the reports submitted by both the Legal Experts and the Conference of Government Officials, decided to accede to his request and passed a Resolution in the following terms :

"During its last Session, the Committee of Ministers had agreed to take no decision on the question of the Convention for the Guarantee of Human Rights before consulting Sir David MAXWELL FYFE, Chairman of the Committee on Legal and Administrative Questions.

" Sir David had expressed the wish to see the whole Committee authorised to study the findings of the meeting of Senior Officials convened for 8th June at Strasbourg.

" The Committee decided to agree to Sir David's request, it being understood, however, that any exchange of views on the Senior Officials' Report between the members of the Committee on Legal Questions would in no way be binding on the Governments.

" The Committee would decide during its fifth session on its final attitude towards the basic principles involved. The Committee's Report would then be submitted to the Assembly ".

### ***2.7. Committee of Senior Government Officials - Meeting of June 8th-17th, 1950***

In accordance with the decision of the Committee of Ministers of April 1st, a meeting of a Committee of Senior Government Officials was held in Strasbourg from June 8th - 17th under the Chairmanship of M. PETREN. The Committee was unable to reach unanimous agreement and consequently adopted a report which, while proposing a compromise solution of the main questions involved, namely of the definition of the rights to be guaranteed; of the form of the convention to be drawn up, and of the constitution and functions of the court through which the convention would be enforced, included also the alternative proposals made in each case by the various members of the Committee.

### ***2.8. Committee on Legal and Administrative Questions - June 23rd-24th, 1950***

The reports adopted both by the Committee of Legal Experts and the Committee of Senior Government Officials were considered by the Committee on Legal and Administrative Questions during a meeting held from June 23rd- 24th. A letter was drafted by the Chairman containing the observations on these two reports, which after consultation with the other members of his Committee, he wished to submit to the Committee of Ministers (Appendix 5 to this Report). This letter was forwarded to the Ministers on June 24th. It will be included in the Agenda for their next meeting and will be taken into consideration at the same time as the Report of the Senior Government Officials.

In view of the fact that the Committee of Ministers approved the communication to members of the Committee on Legal and Administrative Questions of the reports of Legal Experts and Senior Government Officials only in order that the Chairman might have the benefit of their advice before submitting his observations on these reports, it is not possible to annex the latter to this Interim Report and to make them known to the Representatives as a whole.

It is hoped however that the receipt of the Minister's Statutory Report will provide an opportunity for the views of the Legal and Administrative Committee on the various questions raised in the discussions summarised above, to be transmitted to the Assembly.

At their meeting on June 24th, the Committee also discussed Article 2 (11) and (12), and appointed a sub-committee to report thereon to the meeting of the full Committee which will be held at the beginning of the forthcoming Session.

After this meeting the Committee will submit a final Report to the Assembly.

## **Appendix 1 APPENDIX 1**

### **Recommendation to the Committee of Ministers - agreed to 8th September 1949**

" The Assembly,

" Recognising the importance of the question of a European passport, both in itself and by reason of its importance as a gesture,

" Recommends to the Committee of Ministers that each Member State ensure that the question of a European passport should be studied by its appropriate government department. "

## **Appendix 2 APPENDIX 2**

### **Resolution - On the measures to be taken to enable the Questions of European refugees to be included on the Agenda of the next Session**

On the Proposal of the Committee on Legal and Administrative Questions, the Assembly directs that the following preparatory measures be taken to enable the question of European refugees to be included on the Agenda of the next Session.

1. The Secretariat of the Council of Europe is instructed to collect all necessary data in order to give the Assembly and the Committee full information on the problem of refugees and to establish, in this connection, the necessary contacts with the U. N. O., and particularly with the I. R. O., with the Governments of the various European States, competent administrative services and private institutions concerned.
2. The Assembly requests the Secretariat to carry out investigations on the following questions : legal status of the various groups of displaced persons; the eventual possibility for such displaced persons either to find employment in Europe or to emigrate; material and moral needs to be met, particularly as far as the " hard core " is concerned, as well as eventual overlapping of the activities of already existing organizations, and determining of such fields as are not yet covered by any administrative organization.

## Appendix 3 APPENDIX 3

### Recommendation to the Committee of Ministers - agree to 8th September 1949

#### SECTION 1

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

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

1. Security of person, in accordance with Articles 3, 5 and 8 of the United Nations Declaration ;
2. Exemption from slavery and servitude; in accordance with Article 4 of the United Nations Declaration;
3. Freedom from arbitrary arrest, detention, exile, and other measures, in accordance with Articles 9, 10 and 11 of the United Nations Declaration;
4. Freedom from arbitrary interference in private and family life, home and correspondence, in accordance with Article 12 of the United Nations Declaration;
5. Freedom of thought, conscience and religion, in accordance with Article 18 of the United Nations Declaration;
6. Freedom of opinion and expression, in accordance with Article 19 of the United Nations Declaration;
7. Freedom of assembly, in accordance with Article 20 of the United Nations Declaration;
8. Freedom of association, in accordance with Article 20 (paragraphs 1 and 2) of the United Nations Declaration;
9. Freedom to unite in trade unions, in accordance with paragraph 4 of Article 23 of the United Nations Declaration;
10. The right to marry and found a family; in accordance with Article 16 of the United Nations Declaration;

ART. 3. — The Convention shall include the undertaking by Member States to respect the fundamental principles of democracy in all good faith, and in particular, as

1. To hold free elections at reasonable intervals, with universal suffrage and secret ballot, so as to ensure that Government action and legislation is, in fact, an expression of the will of the people;
2. To take no action which shall interfere with the right of criticism and the right to organize a political opposition.

regards their metropolitan territory;

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

ART. 5. — The fundamental rights and freedoms enumerated above shall be guaranteed without any distinction based on race, colour, sex, language, religion, political or other opinion, national or social origin, affiliation to a national minority, fortune or birth.

ART. 6. — In the exercise of these rights, and in the enjoyment of the freedoms guaranteed by the Convention, no limitations shall be imposed except those established by the law, with the sole object of ensuring the recognition and respect for the rights and freedoms of others, or with the purpose of satisfying the just requirements of public morality, order and security in a democratic society.

ART. 7. — The object of this collective guarantee shall be to ensure that the laws of each State in which are embodied the guaranteed rights and freedoms as well as the application of these laws are in accordance with " the general principles of law as recognised by civilised nations " and referred to in Article 38 (c) of the Statute of the International Court of Justice.

## SECTION II

ART. 8. — To ensure the observance, in accordance with Articles 4, 5, 6 and 7, of the engagements subscribed to by the Member States in application of Articles 2 and 3, the Convention shall establish :

1. A European Court of Justice (hereafter referred to as the Court) ;
2. A European Commission for Human Rights (hereafter referred to as the Commission).

## SECTION III

ART. 9. — There shall be as many members of the Commission as Member States, signatories to the Convention. Not more than one national of each State may be a member of the Commission.

ART. 10. — Members of the Commission shall be elected by the Committee of Ministers and by the Consultative Assembly of the Council of Europe, by a simple majority of the Votes cast in each one of these bodies.

ART. 11. — Any signatory State may appeal to the Commission on any supposed breach of the provisions of the Convention by another Member State.

ART. 12. — After all other means of redress within a State have been tried, any person, or corporate body, which claims to have been the victim of a violation of the Convention by one of the signatory States, may petition the Commission in a request presented through legal channels.

ART. 13. — The Commission shall then undertake :

1. An investigation of the application with the assistance of the representatives of either party;
2. If necessary, an inquiry.

ART. 14. — The Commission shall reject petitions which are irregular or manifestly illfounded.

ART. 15. — If it does not reject the application the Commission shall try to effect a conciliation of the opposing parties.

ART. 16. — If conciliation fails, the Commission shall set forth the facts in a Report which shall be published.

ART. 17. — The Commission may be consulted by the Committee of Ministers in regard to the application, in certain cases, of Articles 4, 5 and 8 of the Statute.

## SECTION IV

ART. 18. — If conciliation fails, the Commission may decide to refer the documents in the case to the Court to obtain a legal ruling.

ART. 19. — If conciliation fails, any Member State, signatory of the Convention, may submit the matter to the Court for judicial decision. In that case, the Commission shall immediately pass the case over to the Court.

ART. 20. — The States concerned may also, if they prefer, petition the International Court of Justice, in accordance with their reciprocal agreements.

ART. 21. — The European Court shall consist of 9 members.

ART. 22. — It shall not include more than one national of each State.

ART. 23. — Members of the Court shall be elected by the Committee of Ministers and by the Consultative Assembly of the Council of Europe by an absolute majority of votes cast in each of these bodies.

ART. 24. — The jurisdiction of the Court shall extend to all violations of the obligations defined by the Convention, whether they result from legislative, executive or judicial acts.

Nevertheless, where objection is taken to a judicial decision, that decision cannot be impugned unless it was finally given in disregard of the fundamental rights defined in Article 2 by reference to Articles 9, 10 and 11 of the United Nations Declaration.

ART. 25. — The deliberations of the Court, like those of the Commission, shall be secret.

ART. 26. — The findings of the Court shall be pronounced in open session.

ART. 27. — The findings of the Court shall be transmitted to the Committee of Ministers.

ART. 28. — The Commission shall function under the general supervision of the court. This supervision shall be of a purely administrative nature, with the Commission remaining completely independent in so far as concerns the exercise of the rights laid down under Articles 13 and 16 of the present Recommendation.

ART. 29. — During the next Session, the Assembly shall have a Report from the Committee of Ministers on the steps taken to follow up this Recommendation.

#### **Appendix 4 APPENDIX 4**

**Extract from a Letter - Sent by M. Paul-Henri SPAAK, President of the Consultative Assembly, to M. Paul Van ZEELAND, Chairman of the Committee of Ministers of the Council of Europe 9th September 1949**

" Mr. Chairman,

" (f) The safeguarding and development of Human Rights and fundamental freedoms.

The steps to be taken for the achievement of the declared object of the Council of Europe, in Article 1 of the Statute, are dealt with in Document 108.

In this connection the Assembly recommends to the Committee of Ministers that it should prepare as soon as possible a draft Convention of collective guarantees which would assure to all persons residing in the territories of Member States the effective enjoyment of the fundamental rights and freedoms, which are set out in Article 2 of Part I of the Universal Declaration on Human Rights adopted by the General Assembly of the United Nations. The Assembly has submitted to the Committee of Ministers a draft of suggested Articles for the proposed Convention.

The Assembly wishes to recommend to the Committee of Ministers that the Committee does everything possible to ensure that each Member State takes the necessary action to see that the question of a European passport be studied by the appropriate Ministerial authorities.

Finally, the Standing Committee of the Assembly, which met this morning, has expressed the desire that the replies from the Committee of Ministers to the Recommendations submitted to it should be communicated to the Assembly as and when decisions are taken on them.

## Appendix 5 APPENDIX 5

### **Letter - Dated June 24th 1950 - From Sir David MAXWELL FYFE, Chairman of the Committee on Legal and Administrative Questions, to the Chairman of the Committee of Ministers**

Monsieur le President,

During its sitting of the 3rd June 1950 the Committee of Ministers authorised the despatch to the Committee on Legal and Administrative Questions of the reports from the Committee of Experts and the Committee of Senior Officials which the Committee of Ministers had instructed to draw up a draft Convention for guaranteeing Human Rights, so that the Legal Committee may give its opinion on the preparatory work of the Experts and Senior Officials.

During its sittings of the 23rd and 24th June 1950 the Committee on Legal Questions examined these two reports, and especially the proposals of the Committee of Senior Officials.

Without prejudice to any amendments which the Consultative Assembly might wish to make to particular articles of the draft Convention drawn up by the Committee of Senior Officials, and the remarks on basic principles which follow, the Committee on Legal and Administrative Questions wishes to express its appreciation of the efforts made towards reconciling the various points of view. On its side it hopes that a reasonable compromise allows the Council of Europe to make a first step this year, towards the fulfilment of the task assigned to it in the first Article of the Statute, namely : The maintenance and further realisation of human rights and fundamental freedoms.

It is with this in mind, that the Committee on Legal and Administrative Questions has requested me to submit to the Committee of Ministers the following observations which it has thought useful to make on the subject of the draft Convention drawn up by the Committee of Senior Officials.

#### **(a) Sections I and II**

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

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

On the other hand, the Committee considers that it would gravely weaken the Convention if no reference were made in the Convention to democratic institutions. It does not find itself able to share the point of view of the Senior Officials who are opposed to the insertion of an Article ensuring the protection of these institutions in the Convention, for the reason that such an Article would go outside the framework of the Convention. And, indeed, it is a question of the Protection of the Political Rights and Liberties of the individual, which the Consultative Assembly has unanimously considered essential.

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

Further, several Articles contained in Section II of the Draft Convention, when mentioning public order, national security and morals " in a democratic society ", stressed the vital importance of democratic principles in this matter.

In addition, the Declaration of Human Rights, adopted by the General Assembly of the United Nations in 1948, already contained an Article (21) under which the will of the people, on which the authority of the public power is based, should find expression by means of fair elections to take place periodically, based on universal and equal suffrage, and where voting is secret or follows an equivalent procedure ensuring that the vote is free.

The Committee therefore requests urgently that clauses dealing with these rights be reinserted into the Draft Convention. Possibly it could be provided that States which accepted the compulsory jurisdiction of the Court, may be authorised to make an exception in the case of claims based on the application of these provisions.

The Committee on Legal and Administrative Questions regrets that it has not had the advantage of the comments of the Committee of Senior Officials on the securing of the right to own property and the right of parents to choose the kind of education to be given to their children.

The Committee on Legal and Administrative Questions, in view of the vote it took last year has decided to continue the detailed examination of these questions at its next session and hopes that they may receive consideration from the Committee of Ministers.

#### **(b) Sections III and IV**

The Committee accepts as a whole the proposals of the Conference of Senior Officials. It wishes to stress, however, that it considers essential, for the ends at which the Convention aims, the maintenance of what the Report of the Conference of Senior Officials calls, incorrectly, the right of petition and which is, in reality, the right of individuals to seek a remedy directly, in certain cases.

The rule that all domestic remedies must first have been exhausted, and the power which the Commission of Human Rights is recognised to possess to reject *de plano* applications which it considers inadmissible, are sufficient to protect States against any risks of abuse.

The Committee has, however, insisted on the maintenance of the proposal contained in Article 12 of the Recommendation of the Assembly, namely that applications must be made through legal channels, in its opinion, a necessary precaution to prevent the Committee of Human Rights from being inundated by a flood of irregular requests.

Moreover it considers that this is within the spirit of the proposals of the Conference of Senior Officials, but that it would be important to lay this down in the Convention, that only the Reports of the Commission of Human Rights concerning claims recognised to be regular should be the subject of publication.

It also expressed the wish that the Committee of Ministers should support the suggestion of the Conference of Senior Officials that decisions adopted by a two-thirds majority of that Committee should be binding on the Parties by the means and according to the methods which are most appropriate.

Finally it considers that it should point out the need for a more precise co-ordination of the respective duties assigned under the Convention to the Committee of Ministers and the European Court.

#### **(c) Section V**

The Committee is inclined to recommend, in a general way, that the Consultative Assembly adopt the practical compromise of the creation of a European Court with optional jurisdiction.

However, it would like to see a considerable reduction in the number proposed (9) of States accepting the compulsory jurisdiction of the Court, on which provisions depends the election of the Court's judges. It considers indeed that this condition would be such as to delay overmuch the institution of the Court.

In this connection it wishes to stress that, independently of the States accepting this compulsory jurisdiction, the European Court may also according to the draft, have a case brought before it following an agreed submission by the States concerned : such an agreement would be reached for this case alone. This should be sufficient to justify the creation of the Court as a new organ of the Council of Europe.

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

#### **(d) Section VI - (Articles 59 A - 59 B)**

The Committee was also concerned about the option proposed by the Conference of Senior Officials between the two drafts of the so-called colonial clause (Articles 59 A - 59 B). Subject to form, the Committee expresses its preference for the more liberal solution which is contained in the second Alternative (B), and hopes that the Committee of Ministers will find a way of overcoming the constitutional objections raised by certain Members.

## Section VI - (Article 60)

The Committee would object if, according to the provisions proposed by the Conference in Article 60, States were allowed unlimited power to reserve the least " *ne varietur* " in their legislation on each of the matters dealt with in the Convention. Such a power would threaten to deprive the latter of its practical effect and in any case of its moral authority. At least it should be necessary to make the validity of ratifications or adhesions which, as an exceptional measure, might have been accompanied by reservations as provided under Article 60 of the Convention, subject to the acceptance of a qualified majority of the other Parties to the Convention. It would be advisable in this respect that the motives for these reservations should be stated.

On the other hand, the Committee considers that it would be useful to include in Article 60 a provision under which a State, which might have formulated a reservation in accordance with paragraphs 1 and 2 of this Article, would undertake to submit to the Secretary-General of the Council of Europe periodical Reports indicating the reasons why the Law in question has been maintained as long as has been the case.

The Committee on Legal and Administrative Questions has not examined the draft Convention drawn up by the Conference of Senior Officials Article by Article, since it did not consider that it was its duty to do so at this stage of the proceedings. This does not, however, mean that it should be assumed that it has approved this draft in all its details.

Finally the Committee takes this opportunity of reminding the Committee of Ministers that in its Report submitted to the Consultative Assembly ([doc. 77](#), para. 11) the Committee on Legal and Administrative Questions drew the attention of the Committee of Ministers to the need for an examination of the problem of the wider protection of the rights of national minorities, with a view to a more precise definition of the rights of these minorities.

I have the honour to be, Monsieur le President, Your obedient Servant,

Signed : David MAXWELL FYFE,

The Chairman of the Committee on Legal and Administrative Questions.