

CONSEIL DE L'EUROPE COUNCIL OF EUROPE

Strasbourg, le 13 août 1976

Confidentiel
CDH (76) 36
Bilingue

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

Travaux préparatoires de l'article 1er
du premier Protocole additionnel à la Convention européenne
des Droits de l'Homme

Preparatory work on Article 1
of the First Protocol to the European Convention
on Human Rights

Document d'information
rédigé par le Greffe

Information document
prepared by the Registry

Abréviations:

- TP = Recueil des "Travaux Préparatoires" (Nijhoff, La Haye, 1975) (1)
Rec. = Recueil des travaux préparatoires (Doc. H(61)4)
C.R. = Compte rendu des débats de l'Assemblée consultative
Doc.Ass. = Documents de séance de l'Assemblée consultative
Or.fr., or.angl. = Texte original rédigé en français ou en anglais, selon le cas

Abbreviations:

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

- (1) Ce recueil (imprimé), dont il n'existe encore que les deux premiers volumes, couvre une période s'achevant le 8 septembre 1949 (recommandation no. 38 de l'Assemblée Consultative).

This edition (printed), of which as yet only two volumes have been published, covers a period ending on 8 September 1949 (Recommendation No. 38 of the Consultative Assembly).

I. PRESENT TEXT

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

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

II. UNIVERSAL DECLARATION OF HUMAN RIGHTS (1)

Article 17 of the Universal Declaration of Human Rights, adopted on 10 December 1948 by the United Nations General Assembly, reads:

- "1. Everyone has the right to own property, alone as well as in association with others.
2. No-one shall be arbitrarily deprived of his property." (2)

-
- ./.
- (1) Quoted here because the Consultative Assembly of the Council of Europe was considerably influenced by its provisions when drafting its Recommendation No. 38 of 8 September 1949 (see below, para.IV-4(b)p.4)
 - (2) During the vote on each article separately, this provision was unanimously adopted (cf. United Nations Yearbook on Human Rights, 1948, p. 465).

III. DRAFTS OF THE EUROPEAN MOVEMENT (1)

1. Recommendations adopted at the meeting of the International Council of the European Movement held at Brussels in February 1949.

"... List of Human Rights to be assured by the European Court (submitted as a basis for consideration):

.....

.....

11. Freedom from arbitrary deprivation of property.

....."

(Doc. INF/2/E)(2)

2. Draft European Convention on Human Rights submitted by the European Movement to the Committee of Ministers of the Council of Europe in July 1949

"Article 1 - Every State a party to this Convention shall guarantee to all persons within its territory (3) the following rights:

.....

.....

(k) Freedom from arbitrary deprivation of property." (Doc. INF/5/E/R, pp. 7-8).

- (1) Quoted here because the Consultative Assembly of the Council of Europe was considerably influenced by these drafts when drafting its Recommendation 38 of 8 September 1949. In this connection, see in particular TP I, p.50 or Rep. 1949, II, p. 410.
- (2) Unofficial translation by the Registry: the English text of these recommendations is no longer available.
- (3) Doc. INF/5/E unrevised: "within its metropolitan territory". (Translation by the Registry from the French - original English document not available).

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

1. Plenary sitting on 19 August 1949

(a) M. Teitgen (France) (Translation) (giving a list of the rights and freedoms which might be guaranteed by the Convention): "... freedom from arbitrary deprivation of property". (TP, I, p.46; or Rep., 1949, II, p. 408)

(b) Mr. MacEntee (Ireland): "This Universal Declaration of Human Rights contains 30 articles... Articles 1 and 2 and Articles 3 to 12 we must all accept without reservation. In the same category are Articles 16 and 17." (TP, I, p.142; or Rep., 1949, II, p. 462)

2. Committee on Legal and Administrative Questions(1) - List of questions proposed in a letter by Mr. Teitgen on 22 August 1949, for examination by the Committee(2)

"..... Should the list of liberties collectively guaranteed, subject to the internal law of each country, include:-

.....

k) protection against arbitrary confiscation of property?" (TP, I, p. 160; or Doc. A. 14 - or. Fr.).

3. Legal Committee - Minutes of the sitting on 31 August 1949.

"..... M. Bastid (3) proposed a motion: 'the right of property in accordance with Article 17 of the Declaration of the United Nations'.(4) The Committee divided Ayes 10, Noes 8, Abstention 1". (TP, I, p.182 or Doc. A.199, p.2)

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

(a) Rights and freedoms to be guaranteed

"10. The extension of the guarantee to cover the right to own property was also criticised.

./.

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

(2) Mr. Teitgen had been appointed rapporteur.

(3) France

(4) Article 17 of the Universal Declaration is reproduced above at para. II on P.1.

Certain members of the Committee thought that there was no reason to differentiate between the right to own property and the other social and economic rights, and that it would be preferable, therefore, to exclude it from the guarantee, since in principle the latter did not cover rights of this nature.

In the opinion of other members of the Committee, it would not be possible at present to confer on any international organisation the protection of the right to own property, because it would not be possible to make such an organisation responsible for evaluating the legitimacy of the charges and the restrictions of various kinds which, according to the economic or social conditions of a country, might be imposed on private property, on account of its social function or general utility.

The majority of the Committee, however, considered that having regard to the importance of the part played by the right to own property for the independence of the individual and of the family, it was desirable to include it in the list of guaranteed rights.

(b) Draft Recommendation

Article 2

"In this Convention, the Member States shall undertake to ensure to all persons residing within their territories: (1)

.....
.....

(12) The right to own property, in accordance with Article 17 of the United Nations Declaration" (2)
(TP, I, pp. 220, 228 & 229 or
Ass. Doc. 1949, No. 77, pp. 204-205)

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

(a) Amendment proposed by M.A. Philip (France)

"Article 2, delete paragraph 12 and insert:
'The right to own property for the owner's personal use'." (TP, I, p. 246; or Doc. 86, p. 226)

- (1) Draft Report: "All Member States, signatories to the Convention, shall bind themselves... (TP, I, p. 206 or Doc. A.290, p. 10)
(2) Draft Report: "... of the Declaration of the United Nations" (TP, I, p. 206; or Doc. A.290, p. 10). Article 17 is reproduced above at para. II on p. 1.

(b) Amendment proposed by M. Sundt (Norway)

"Article 2, paragraph (12). Delete and insert:

'Freedom from arbitrary deprivation of property in accordance with Article 17 (2) of the United Nations Declaration'." (TP, I, p. 254; or Doc. 92, p. 237)

(c) Amendment proposed by Lord Layton (United Kingdom)

"Article 2. Delete paragraphs 10⁽¹⁾, 11⁽²⁾ and 12".
(TP, I, p. 254; or Doc. 93, p. 238)

(d) Amendment proposed by M. Rolin (Belgium), Lord Layton (United Kingdom), Mr. Ungeed-Thomas (United Kingdom), M. Elmgeren (Sweden) and M. Edberg (Sweden):

"Article 2. In the first place leave out paragraph 12, and if this Amendment is not agreed to, insert at the end of the Article the following new paragraphs (3):

'The right to work, as laid down in Article 23 of the Declaration of the United Nations, paragraphs 1, 2 and 3.

'The right to rest and to leisure as laid down in Article 24 of the Declaration of the United Nations.

'The right to an adequate standard of living as laid down in Article 25 of the Declaration of the United Nations.'

Reasons for the amendment

1. The signatories consider that international supervision should be restricted at the start to what is necessary for attaining the essential aims of the Council of Europe.

-
- (1) This paragraph corresponded to Article 12 of the present Convention.
 - (2) This paragraph corresponded to Article 2 of the present First Protocol.
 - (3) Unofficial translation from the French: the English text in TP, I, p. 256 reads: "leave out paragraph (12). At end of Article, add:...."

2. Moreover, any supervision over a State's respect for its nationals' right to own property would inevitably bring before the Council of Europe domestic political questions of a particularly burning nature, which would appear to be premature, to say the least.

3. Finally, the public would be puzzled by anxiety being shown for the respect of private property when social rights are not mentioned". (TP, I, p. 256 or Doc. 95, p. 24)

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

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

"... The right to own property, which is also included in our proposal, likewise gave rise to some discussion. Some members considered that this right is of an economic nature and that, since our list does not include other rights of this type, as for instance can be seen with regard to problems of work, it was preferable that the right to own property should not be included in the list. Other members of the Committee held a different view, considering that it would be difficult to organise some form of international protection of the right to own property. Such a measure would require the examination, by the international organisation responsible for this protection, of the validity of charges and restrictions which each State has the right to impose on private property within its own territory, having regard to its social function or its general utility. It appeared to certain members of the Committee that it was difficult to confer on an international Court or an international Commission the task of deciding whether, in the exercise of its rights regarding private property, a State had exceeded the limit of the charges which it could fairly and reasonably expect it to sustain. The majority of the Committee, however, considering that the right to own property is a pre-condition of personal and family independence, finally voted for the inclusion of this right in the list which is submitted to you....." (TP, I, pp. 270 and 272; or Rep., 1949, IV, p. 1146).

7. Plenary sitting of 8 September 1949 (Discussion of each article of the draft Recommendation separately)

(a) Lord Layton (United Kingdom):

"I move this Amendment (1) because I, am one of the members
./.

(1) Cf. para. 5(c) above)

of the Committee, referred to in paragraphs 9 and 10⁽¹⁾ of the Report of the Rapporteur, who objected...

... In moving this Amendment I want to emphasise that the list included in Article 2 is not intended to be anything like a complete or inclusive list of Human Rights. It is a selected list of rights which should be the subject of collective guarantee, and guaranteed now.

This full list which I hold in my hand - the list in the United Nations' Declaration - is a long list. The countries represented here are, I believe, all parties to this Declaration. Personally, I should like to see some indication emerge from this Assembly, before it disperses, of a reiteration of our belief in these Human Rights as being a general description of the scope of Human Rights and of the rights of individuals in general.

Perhaps in the course of time a Convention will be worked out and Europe may perhaps be the first to enforce such a Convention, but when you come to consider how to enforce any of these rights many difficulties arise. Some of them, it seems to me, cannot be put in the form of laws at all. Some must wait until there is a uniform code of laws, and especially positive rights.

.....

What we are proposing to do by this first specific act of the Council of Europe - and I believe that it will be the first specific concrete act - is something entirely different. What we are proposing to do is to define and guarantee the political basis of this association of European nations. What the members of this association are saying, if this Proposal materialises, is that the maintenance of certain basic democratic rights in any one of our countries is not the concern of that country alone, but is the concern of the whole group. Therefore, we propose that if a complaint is made that this minimum standard is not in fact being realised, the country concerned will, subject to proper safeguards which are set out here in this declaration, permit the complaint to be submitted to impartial enquiry and, if necessary, to the judgment of the European Tribunal.

(1) Cf. para. 4(a) above

This right of intervention - because that is what it amounts to - is a very important and significant step to take, and we must not underrate the difficulties. Therefore, I submit that in selecting - and it is a process of selection - the Human Rights to be included in this first list, we should be governed by two considerations. First of all, the conclusion of the Convention is urgent, and anything which might delay it over a considerable period - and all previous discussions of this subject have been prolonged - should be avoided so as not to delay its realisation. Secondly, it should be limited to the minimum items needed for our immediate purpose.

.....

.....

.....

...I urge that the list of rights should be limited to the absolute minimum necessary to constitute the cardinal principles for the functioning of political democracy.

For my own part, I consider that I have been modest in asking for the deletion of only the last three paragraphs. I suggest that, in fact, for this major purpose of a political bond there are only three, or at most four, vital considerations (1) ...

.....

...I therefore urge that we would exclude, or perhaps I should say postpone, all those rights which are complex, and which may involve prolonged discussion, or even stimulate opposition in our Parliaments.....

.....

(1) Here Lord Layton mentioned the rights corresponding to the present Articles 5 and 10 of the Convention and Article 3 of the First Protocol.

Finally, property. Several Amendments have been put down in regard to this and I will say all I want to say about them now. Of course we believe that men should not be arbitrarily deprived of their property, especially if we were limited in the way suggested by the Amendment put down by M. André Philip.⁽¹⁾ But again, is it suitable for our present limited purpose? The arguments that I have already given apply here, but in this case there is an added argument, and it is this. If we are to speak about the right to own property we are getting very close to such rights included in this declaration as, not merely the right to an adequate standard of living, but the right to work and so on -- the whole series of what have been described as the social rights.

I think that if we include the right to own property, without including those social rights, the whole of our declaration would be liable to be grossly distorted and misrepresented in a way which I believe would be extremely damaging to the work we have done. If, as I suggest, the vital issue at the moment is not those social rights -- which, after all, depend upon years of careful legislation and administration -- then the right thing to do is to leave them out.

I do not suggest that these matters can never be dealt with by Western Europe as a whole. Indeed, we may develop common standards by positive action as the unity proceeds and as its organs develop. But I do suggest that their inclusion at this stage will not help and may hinder our main purpose. I therefore move that they be deleted". (TP, II, pp. 48, 50, 52, 54 & 56 or Rep., 1949, IV, pp. 1184, 1186 & 1188)

(b) Mr. Ungoed-Thomas (United Kingdom)

".....

.....

... In considering the provisions of this Report it is vital to bear in mind throughout the object that

(1) Cf. para. 5(a) above.

we have in view. We must keep that, constantly in mind, and not get diverted, as it is so easy to get diverted in a document of this kind, with different considerations which influence our mind on this detail or that detail. As I see it, the purpose we have in mind is to ensure that the States of the Members of the Council of Europe are democratic, and remain democratic. It is no part of our purpose to interfere with the different ideas of different countries, or even the different internal arrangements of those countries, not even with the cases of injustice that may occur within those countries.

It is our purpose to ensure that the countries remain democratic. For that purpose the freedoms that Lord Layton has mentioned as those which he himself would support, and which are to be included in Article 3 (1), are the key-governing freedoms.

Have those freedoms, give effect to those freedoms and you will ensure that each State remains democratic! Those other freedoms mentioned in paragraphs 10, 11 and 12, to which Lord Layton referred, are matters which involve, first of all difficulties of interpretation, and secondly differences of policies of different parties inside the separate countries. Nothing could be more disastrous to the success of the Council of Europe than to include in a document of this kind an ambiguously phrased declaration which invites different political views and different party alliances inside each separate country, and for that reason I support Lord Layton's Amendment.

The Amendment of M. Rolin and his friends (2) is limited to the omission of paragraph 12, the right to own property, and I should like to make just one or two observations on that. I fully appreciate the attitude of some of my friends on the Committee towards this paragraph. We went to the vote and we had a close vote on it. It was carried by 10 votes to 8 with one abstention.

(1) This Article broadly corresponded to the present Article 3 of the First Protocol.

(2) Cf. para. 5(d) above.

Some of my friends on the Committee thought that you could not really have a complete life unless you had property and were able to use it in your own way. I am not disputing that at all. I do not want in the least to dispute that. But there is not only that aspect to a right of property. There is also an economic aspect. You cannot divorce the personal aspect of the right to own property from the economic aspect. If you include the right to own property, taking that out of the United Nations' Declaration as something you will guarantee, and exclude from the last the other rights to which Lord Layton referred, you are giving this document a completely lop-sided appearance.

Is the right to own property any more important than the right to work? Is the right to own property any more important than the right to leisure, the right to an adequate standard of living, or the right to free education? None of those is included in this Article. There is danger of inviting the comment that the inclusion of this paragraph is reactionary, and nothing would be more fatal to the success of this Council than to expose itself to a charge such as that.....

It is of the utmost importance that we should confine ourselves to the essential rights to secure that the Member States of the Council of Europe remain democratic States. None of these rights is necessary for that purpose. The inclusion of these rights will be open to a most unfortunate interpretation, which will lead to internal party differences in the various countries. I beg this Assembly, for the success of this document and this Council, to omit these rights from the list we now have before us". (EP, II, pp. 60 & 62; or Rep., 1949, IV, pp. 1190 and 1192)

(c) Mr. de la Vallée-Foussin (Belgium) (Translation):

"With regard to Article 12⁽¹⁾, I am in agreement with what Lord Layton and Mr. Ungoed-Thomas have said.

I am also of the opinion that it is difficult to introduce the right to own property which is undeniably - at least from certain points of view - an economic right, if we do not also introduce other economic and social rights.

(1) He meant Article 2 (12).

That does not mean that I entirely support M. Philip's Amendment (1), but I think that we have to choose. Either we introduce all economic and social rights, or we exclude the right to own property.

I would add a second argument. The right to own property as it is applied nowadays by the different European nations is an undeniable right, considered by everyone as a relative right. No longer does any party defend the absolute right to own property, as it was understood by Roman law, and I do not think there is anyone either who is in favour of the completeness of the Communist theory.

Consequently, this right being a relative right, we can guarantee it in an effective manner, but we must examine the extent to which we consider it to be essential.

This work has not been done; ideologically even, it has not been done. In these circumstances it would be useless to try to protect the right to own property in so vague a manner.

....." (TP, II, p.62; or Rep., 1949, IV, p.1192)

(d) M. Sundt (Norway):

".....I should like to give my reasons for my Amendment (2) to leave out paragraph 12 and to insert:

'Freedom from arbitrary deprivation of property in accordance with Article 17 (2) of the United Nations' Declaration.'

Paragraph 2 of Article 17 of the Annex lays it down that:

'No-one shall be arbitrarily deprived of his property.'

Paragraph 1 of that Article declares that:

'Everyone has the right to own property, alone as well as in association with others.'

-
- (1) Cf. para. 5(a) above
 (2) Cf. para. 5(b) above.

There is no doubt that the right to own property is so general that it is very hard to give a precise definition. The definition varies from time to time, from country to country, and from party to party. The discussion in the Assembly on M. Philip's Amendment has shown that it would be very difficult to include the right to own property in a guarantee. This matter can be solved by reference to paragraph 2 of Article 17 of the Annex. (1)

I consider that the fact that no one should be arbitrarily deprived of his property is a fundamental minimum of individual privilege which is accepted by all civilised nations, and which therefore ought to have its place in the collective guarantee. We all know that the State, within its own territory, may take over private property by granting due compensation, or in some other legal manner. Protection should be given to the individual to ensure that deprivation shall not take place in an arbitrary manner. One of the first actions of totalitarian States was to deprive their political opponents of their property".

(TP, II, p.70; or Rep., 1949, IV, pp. 1196 and 1198)

(e) M. Philip (France) (Translation):

"In my opinion, the voice of wisdom at the beginning of our Debate was spoken through the mouth of Lord Layton.

I would like simply to indicate, in moving my two Amendments (2), the reasons for which it seems to me to be impossible to accept either paragraphs 11 or 12 in their present form.

We are trying to create a Court and we wish that it should be endowed with a true authority, particularly since its decision will guide public opinion and Governments.

It will not, however, have this authority, unless from the beginning, we give it competence in questions on which we are all truly agreed and on freedoms which appear to us fundamental.

(1) Cf. Para. 5(a) above

(2) Cf. Para. 5(a) above. Mr. Philip's second Amendment related to Article 2 (11), which corresponded to the present Article 2 of the First Protocol.

From paragraph 11 there seems to be a confusion between freedoms and fundamental rights on the one hand and on the other what I would call derived rights, which are the means of achieving freedoms and fundamental rights. It seems to me that we cannot include these derived rights in the competence of the Court. I am speaking of the right to own property and the right to educate children.

As regards the rights to own property, I have submitted an Amendment affirming what I think to be the true right to own individual property, conceived as a fundamental Human Right. It is the right for each one of us to own as property for the owner's personal use - truly the projection of his person - those belongings which are tied to his being.

I am speaking of his furniture and of the house in which he lives which cannot be attacked except by expropriation procedure for purposes of public use.

Once you leave possession of the goods of personal use, and that you deal with the goods of production, it is only possible to affirm one fundamental right: that of every man and especially of every worker to be placed by his standard of living and by his working conditions, in a milieu which will assure him the free development of his individual personality.

From this point of view, all economic and social régimes should not be considered as ends in themselves, but as a means of creating the most favourable circumstances for the development of human personality.

When, as Socialists and Liberals, we discuss the matter of ownership of the means of production, our Liberal friends never say that there is a sacred right to own property to which you must defer, but they claim that the system of private enterprise and the free fixing of prices in a free market create the most favourable conditions for the development of productivity, and consequently the raising of the standard of living for the whole population.

When we discuss, it is in order to discover what we think to be the technical means of ensuring the best development of all freedoms and of all personalities.

./.

When the ownership of the means of industrial production is defended, it is as a social function, as an instrument. No-one claims it to be a sacred fundamental right.

This being the case, the only declaration that we could make on this point, if we want to guarantee the right to own property, would concern the ownership of personal effects. We must not go further and endow our Court with competence to protect a right to own property, even in the terms adopted by the United Nations Organisation. That is to say, competence to cover not only individual but also collective ownership; where the Court be left to decide if, in certain cases, property should be individual or collective; and where protests could be sent to the Court against such and such a change in legislation in the field of property, affecting this or that type of enterprise; all this without making provision elsewhere for the social rights of the workers.

This would be a very grave error on our part, which would certainly alienate the mass of the workers. I think that this must be avoided....."

(TP, II, pp. 72 and 74; or Rep., 1949, IV, pp. 1198 & 1200)

(f) Mr. Nally (United Kingdom)

".....

I want to confine my remarks to the point about property. It all depends what sort of property is meant and what is done about it. For instance, it may be argued that a man has a right to a flat. I agree within limits, but there is no country in Europe which, over the past half century, has not had to pay its toll, undeserved and unearned, to landowners in order to develop at all. Is that the sort of property ownership whose rights we want to guarantee?

We heard a speech today from my friend Mr. Seymour Cocks. As a boy, I had the honour of living in the area which he represents in the British Parliament, and my father and a large number of others, who were comrades with him in this struggle, worked in the pits. Because they fought for the things in which they believed, it became necessary for the coal owners to deal with them.

./.

The result was that throughout the coal fields of the Midlands a "black list" was circulated of the miners who were not to be employed, because they had the courage to stand against the coal owners. The owners said: 'Have we not the right to do what we like with our own property? Cannot we have the people we like and dispense with the people we dislike?' Is that the sort of property ownership we want to guarantee? In the division I represent in Parliament, because of the operation of certain unemployment codes, before people could get sufficient to live on they were forced, by the existing bureaucracy, to sell the property they had before they could claim on the State.

We do not like political disagreements here, and as a consequence we are becoming rather mealy-mouthed. I believe it is a good thing that we should have honest political convictions, and that they should be clearly and specifically expressed. The basis of Europe's fight for survival is a struggle for the subordination of private property to the needs of the community. In Germany today, where a large part of Europe has proclaimed that a sensible Government, which will respect private property, has been elected, we are playing with dynamite. We are now seeing in Germany the development of private property on the one hand and degradation, misery and unemployment on the other. Europe will pay in tears for the fact that in Germany there is being restored a system in which private property and private profit are triumphant and Human Rights are not restored.

There is an old Socialist phrase which my father taught me: 'He who owns the means by which I live owns my life'. That is very true, and when we in a document such as this are talking of defending the rights of property we should be far better advised to pay more respect to the liberties of the little people who do not own property. The majority of the Committee have, unfortunately, decided to accept this. In my opinion they made a bad mistake.

Part of this document is good, but I say this to the Assembly that it would be a bad thing if at this stage, and at this time, it appeared that we in Europe, and we in this Consultative Assembly, had referred to property and had used the right of average man to have little possessions of his own in order to defend a property structure in which a tiny handful of people own the means by which millions of others live.

./.

My final sentence is this. Colleagues of the Assembly, Europe's survival depends upon the existence of our creed - the creed of libertarian and democratic Socialism. If you refuse to accept that creed then European civilisation is doomed. This pitiful little point about the protection of property is a sign to some of us, at any rate, that there are far too many people in this Assembly who are living in the 19th century, and who have not faced up to the real battle which Europe now wages against its totalitarian enemies".
(TP,II,pp.76,78 and 80; or Rep.,1949,IV,pp.1200 & 1202)

(g) M. Elmgren (Sweden):

"Mr. President, I have asked for permission to speak in order to make a few observations on this special point, which seems to be one of the most important and most serious questions on this really very excellent Report of M. Teitgen.

What you are going to do when you retain this right to own property as the only economic right, solemnly described in our list of Human Rights, is to create difficulties and to cause trouble in several countries for our work in the future, and for the development of the Council of Europe. Ordinary men and women in our countries will refuse to look at this problem from any philosophical point of view. They will only say: 'for me the right to work and the right to a standard of living adequate for the health and well-being of myself and my family, are quite as fundamental and essential as the right to own property.' They will further say: 'you have taken the United Nations' list of Human Rights, but you have displaced the balance between the economic and social rights in that list'. This will raise an opposition against the Council of Europe in a very unhappy and in a very unnecessary way.

I therefore submit that the suggestion made by Lord Layton to leave out paragraphs 10, 11 and 12 should be supported."

(TP,II,p.80; or Rep.,1949,IV,pp.1202 and 1204)

(h) M. Pernot (France) (Translation):

"....."

There now remains the question of property.

I fully understand the different points made by the speakers whom we have heard. But it seems to me that there is quite a simple method of combining all these points; and that is to adopt M. Sundt's Amendment(1).

For M. Sundt bases himself on the second part of Article 17 of the Universal Declaration, which forbids any arbitrary sequestration of property.

I should imagine that on this point we are all agreed, and I think that just now M. Philip really limited the right to own property in a peculiar way, in seeming to say that it could only (2) extend to clothing and lodging. In this case, will the peasant, who cultivates his own land for himself and his family, be able to protect his right to own property?

But let us leave all that aside.

What is certain is that the Committee has never for a single instant thought of trying to prohibit perfectly legitimate limitations of the right to own property. What it has wished - and M. Sundt has expressed it very well - is to prevent expropriation.

In conclusion, I should like to ask what will be the impression in Europe if tonight, on the radio, and tomorrow in the press, it is learnt that the Strasbourg Assembly, receiving from its Committee a Proposal to protect the right to own property, had replied in the negative.

Before voting on the matter, I do beg of you to consider its possible repercussions. The eyes of the whole of Europe are fixed on us. Do not let us delude them by an imprudent vote."

(TP, II, pp. 82 and 84; or Rep., 1949, IV, p. 1204)

(i) M. Edberg (Sweden)

"I wish to support everything that Lord Layton has said. I have maintained, and still maintain, that this Charter of Human Rights should include only a few,

./.

(1) Cf. para. 5(b) above

(2) The word "only" does not appear in the French text.

but really fundamental points, so clearly defined that there can be no doubt as to their meaning ...

Nevertheless, some of the points still remain to be formulated in general terms, with a special reference to paragraph 12. This paragraph is one which needs the greatest attention, because it does not correspond with any stipulation guaranteeing social security. Thus, as I have said before, the whole Charter will be deprived of its balance.

I should like to add at once that I, myself, am not very anxious to vote into the Charter a paragraph on social security. It is for a social committee, not a court, to work for social justice and social security. Up to now it has been, in most cases, impossible to define the meaning of social security. It is difficult to give a generally accepted definition of social security, and this applies to an even greater degree to the right to own property. After all, I suppose that it is not against pickpockets that we want to protect private citizens. The intention is to protect them against what Mr. Eccles in an earlier Debate called 'the long fingers of the State meddling in the economic life'.

So we have to face the fact that there are very different opinions regarding the limits to the right to own property. Those opinions vary to the extent that the right to retain property is regarded by many people as the right to administer common property. When, and under what conditions, should people have the right to appeal to an international Court? In Sweden, the main part of the railways has for a long time been owned by the State, and the State is now nationalising the remainder of the private railways. The British mining companies have been nationalised, and the same thing is to happen to the steel industry. In such cases, when there is a question of expropriation by legal force, should the parties concerned be able to go to the international Court for it to decide what is reasonable compensation and what is not?

In several countries the question has been discussed as to how far the taxation of property should go. I suppose Mr. Dalton for instance, has engaged in many discussions of that kind. What is regarded by some groups as legal taxation is regarded in other groups as confiscation. Who can say what is legal taxation and what is confiscation?

./.

My intention is to indicate that if it is not possible for men to secure a generally accepted definition of the right of property; if such a definition cannot be made, then this point is nothing but pure nonsense; and if that is so it cannot be regarded as anything but a formula for political action. I think it would be in the highest degree unfortunate if the majority of this Assembly were to insist on a formula which did not mean anything real, which cannot mean anything real, but which must be regarded as a political attitude. It would badly serve the task which has brought us together, and it would not strengthen the position of this Council but would weaken it.

It has been said in earlier Debates that we ought to have the Labour Movements in the various countries with us. I hope that those declarations have been sincerely meant. They are in any case true. We in this room cannot do much by our own power. If we are to be successful in our task to unite Europe we must have public opinion behind us. We must have the labour masses with us.

But here is the question which is embarrassing me: which motive is the strongest for the majority, the wish to anchor the Council of Europe in the broadest possible public opinion or the desire to make a political demonstration? Personally, I believe that the work for a united Europe must be made a matter of urgency for all ordinary men and women in all our countries. I therefore fervently say to my colleagues: please don't repulse them."

(TP, II, pp. 84, '86 and 88; or Rep., 1949, IV, pp. 1204 & 1206)

(j) Mr. MacEntee (Ireland)

"It appears to me that the basis of Lord Layton's argument is completely fallacious. He has assumed that the task given to us was to make a list of the political rights, and only of the political rights, which a human being should enjoy. On the contrary, we were asked to make a much more extensive list. The task given to us by the Committee of Ministers was to make a list of the rights which a man as a human being ought naturally to enjoy.

Lord Layton has asked for the deletion of paragraphs 10, 11 and 12 on the ground that the laws relating to them are not the same everywhere. We admit that, and for that reason the Committee included in its Report Article 4, which provides that those rights are to be subject to this reservation: that the States

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'.

"If we were to apply the principle upon which Lord Layton proceeds I suggest that we should have a very short list, because we could, on the ground that these rights are not enjoyed in the same way and to the same extent everywhere, proceed by deleting paragraph 1, and then proceed to delete every other paragraph down to paragraph 9, and then delete paragraphs 10, 11 and 12. We need no list at all if the principle of Lord Layton is to be applied...."

(TP, II, p.88; or Rep., 1949, IV, pp.1206 and 1208)

(k) Mr. Sweetman (Ireland):

"Even though I disagree violently with my neighbour, Mr. Nally, about the deletion of paragraph 12, I should not take up the time of the Assembly, when we are so busy, by speaking about the paragraph were it not for the fact that there is involved in these three Amendments a much bigger principle...." (1)

(TP, II, p.90; or Rep., 1949, IV, p.1208)

(l) M. Reynaud (France) (Translation):

"I shall vote in favour of paragraphs 10, 11 and 12 of the Report, which deal with the defence of the home, with the right of parents over the souls of their children and the right to own property, as it has been defined by the Charter of Human Rights of the United Nations Organisation.

The Assembly has before it three Amendments, of which one, that of Lord Layton and some of our Socialist colleagues, asks us purely and simply to delete these three paragraphs. If these three paragraphs had not been inserted by the Committee, this would in itself have been a regrettable decision, which would have had far-reaching results. But that is not the case. We have a text before us. We must decide whether we are going deliberately to delete the very modest provision, which deals with the right to own property, from the Declaration dealing with Human Rights and the rights of the citizen.

(1) The rest of Mr. Sweetman's speech dealt with the so-called "family" rights referred to in Article 2 (10) and (11) of the draft Recommendation (cf. the present Articles 12 of the Convention and 2 of the First Protocol).

What about it? For years we have watched the dramatic spectacle of millions and millions of refugees being chased from their homes and being told: 'you will have two hours in which to collect your belongings and go'. In this matter of arbitrary sequestration - for it is nothing else: these are the terms which the United Nations has used in its Declaration of Human Rights - we would not be able even in the future, as in the recent past or at the present time, to make a single word of protest.

Indeed, we are told that we shall make a bad impression on the world if we issue a condemnation of the arbitrary spoliation of citizens. I confess that I do not understand why.

There is also the Amendment of my friend and colleague, M. André Philip (1). It is the Amendment which I favour the most, because it is the most frank. Mr. Philip has said to us: 'for myself, I am a Socialist, and as a Socialist I am in favour of Karl Marx; and some time ago Karl Marx declared that private property counted for nothing and that the means of producing goods must be socialised'.

Thus, as M. Georges Pernot said earlier, we are only left with clothing - 'linen and bodily effects', as lawyers would say - and then furniture. As regards the home, you have been very imprudent too, because immediately Mr. Nally said to you: 'will you perhaps become a protector of the property owners?'

What then is left? Neither the field of the peasant, nor the workshop of the craftsman, nor the shop of the most humble shop holder. Allow me to say that most of your electors do not understand Socialism as you do, but you are a doctrinaire and in doctrine you are invincible.

We have been told that we are going to place this Assembly in a terrible position as regards public opinion. May I be allowed to recall that the other day M. Guy Mollet warned us that in this Assembly there are twenty-five Socialists. That is very creditable, but

(1) Cf. para. 5(a) above.

it is not even a simple majority. He might have added, moreover, that since we have been elected by the Assemblies from which we have come - directly in the case of us French, or indirectly in the case of our English friends - there has been a certain development in public opinion, and this development, in spite of the sometimes catastrophic decline caused by Communist votes, has not had the effect of increasing Socialist votes. It is statistics which talk and I should not like to add the slightest interpretation to them.

Let it not be said that the European Assembly has the duty to delete these three paragraphs of the Declaration of Human Rights. That, I can assure you, would appear, not only in America but throughout the whole world, as a scandalous act.

Let it not be said that we shall dishonour ourselves if we do not carry out this operation, which I think is more appropriate to internal politics than to the overriding interests of Europe, which it is our duty to defend."

(TP, II, pp. 92 and 94; or Rep., 1949, IV, pp. 1208 and 1210)

(m) M. Serrarens (Netherlands) (Translation):

"....."

I do not understand why M. Philip has presented his Amendment to Article 12 (1).

I do not think that he wishes to appeal to the Socialists of the Assembly, since in reality his aim, like ours, is to establish a Convention which will be adopted by a two-thirds majority. If, by chance, the Amendment should be adopted by a simple majority, I am fully aware that the Convention would not obtain the votes of two-thirds of the members present. Let us not introduce, by the side door, principles which cannot enter by the front door of the Declaration, lest there should be a misunderstanding, because this so often happens in discussions on property. In my opinion, there is no absolute right to property; this right is always burdened by a social mortgage.

./.

(1) Cf. para. 5(a) above.

Let us not enter into a long discussion on this point, since our time is limited, but if we speak of property, we must ratify the principles accepted some months ago by our States at the United Nations Assembly in Paris.

This raises the question of how we are going to make a statement, if we have to do so.

I should like to hear the opinion of the Rapporteur of the Committee on M. Sundt's Amendment (1), which is certainly an interesting one.

On the other hand, I think that the Committee was wise not to include in the Declaration the right to work, the right to rest and the right to a reasonable standard of living.

I naturally support these principles wholeheartedly, but we must decide whether they can be introduced into a Convention, and whether we can really supervise their application by an international declaration. I have my doubts on this subject and I think it would be simpler and wiser to limit the list to points which could be dealt with by a European Court. We must not deviate from the list submitted by the Committee, but I look forward to hearing the opinion of the Rapporteur on the question, as it appears in the light of M. Sundt's Amendment".

(TP, II, p.96; or Rep., 1949, IV, p.1212)

(n) M. Callias (Greece) (Translation):

"I am certainly not a supporter of confiscation or of arbitrary deprivation of property, but I would remind you that the list in Article 2 does not constitute a maximum, but only a minimum. Every country may guarantee other rights. I continue to think, for psychological and social reasons, that we must not, among all the economic rights, protect only and especially the right to own property, that is to say the right of the well-to-do, before establishing a complete list with a view to guaranteeing at the same time the rights of those who possess only their capacity and their will to work".

(TP, II, p.98; or Rep., 1949, IV, p.1212)

(1) Cf. para. 5(b) above.

(o) M. Dominédo (Italy) (Translation):

"I could accept Lord Layton's Proposal with regard to Article 12 (1), but in my opinion a considerable difficulty arises from the fact that Lord Layton explained his Proposal by saying that in his view Article 2 should include only the rights of political democracy and not the rights relating to economic democracy. Even though our century will, I think, be distinguished by the passage of democracy from the political to the economic field, it must be added that, according to Lord Layton's Amendment itself, there are, in Article 2, rights dealing specifically with economic democracy; namely those which in Point 9 deal with freedom to unite in trade unions and freedom to work.

If we want to be logical with ourselves, it is necessary to adopt one or other of these two solutions. If we wish to include only those rights relating to political democracy, I do not understand how we can talk of those relating to freedom to unite in trade unions and freedom to work (2).

If we adopt a text covering economic democracy, I do not understand either how we can talk of freedom to work and freedom to unite in trade unions and not talk of the right to own property. I speak naturally of the right which results in an extension of human personality, due to every man and every worker, that is, of property which shall at the same time be at the service of the community.

On this point, I should like to propose a different wording of Article 12 (1), such as: 'the right to own property recognised in its social function etc.', with a mention of the Article from the United Nations Statute. That is what we want to consider.

Thanks to these considerations, I think that we can reach a solution which, far from dividing us, will mark our agreement on this very delicate point, and will enable us to reach the aim desired by the majority, in concord and solidarity".

(TP, II, p.98; or Rep., 1949, IV, pp.1212 and 1214).

./.

- (1) He really meant Article 2 (12)
- (2) Article 2 (9) of the Draft Recommendation was worded as follows: "Freedom to unite in trade unions, in accordance with paragraph 4 of Article 23 of the United Nations Declaration".

(p) M. Cingolani (Italy) (Translation):

".....
 With regard to the right to own property, my friends and I think that any limitations in the interest of the community can be approved and even permitted, but only if they are in line with these principles and in conformity with the constitution voted in our country. We think that the right to own property, including not only goods for personal use, but the products of thrift, and the right to own a hereditary family property, are an integral part of the rights of human personality and must be confirmed in our Declaration.

In this spirit, I shall vote in favour of paragraphs 10 and 11 (1) of Article 2 of Section 1, and as regards paragraph 12, I shall vote for M. Sundt's Amendment"(2).
 (TP, II, pp.100 and 102; or Rep., 1949, IV, p.1214)

(q) Mr. De Valera (Ireland):

"The Proposal to delete these paragraphs, coming from Lord Layton, has surprised me very much. The Assembly would not be in the same position, if it rejected these three Recommendations, as it would have been if those Recommendations had not been presented to us at all. The first case would be a sin of omission, but in this case, if we, having these paragraphs in front of us, deliberately decide to exclude them, then what we should be doing would be very much more serious, and it would be so regarded by our respective peoples in every country.

..... (3)

As human beings, there is the individual aspect and the social aspect of our existence. We do not exist simply as isolated beings: we exist in society, and any rational approach to our relations one with another must certainly bear that in mind. Nobody will say that we have an absolute right to use our rights in any manner we will, irrespective of other members of the community. There is such a thing as the demands of social justice, and there is such a thing as the common good.

./.

-
- (1) These paragraphs corresponded to the present Articles 12 of the Convention and 2 of the First Protocol.
 - (2) Cf. para. 5(b) above.
 - (3) Here, Mr. De Valera spoke of the rights set forth in Article 2 (10) and (11) of the draft Recommendation (cf. the present Articles 12 of the Convention and 2 of the First Protocol).

Those of us who hold that we have individual rights with which the State may not interfere, and with which public authority may not interfere, would be the first to admit that we have duties one to another, and that we have duties to the community as a whole. The manner in which we use and exercise our rights is something upon which we can settle some of the differences which exist between those who approach this matter from different points of view.

I listened to Mr. Nally today, speaking of the conditions of half a century or a third of a century ago."

Mr. Nally (United Kingdom):

"Not so many years ago".

Mr. De Valera (Ireland):

"If the owners of property misused their rights, it was within the power of the State to see that they did not abuse those rights. I would say to Mr. Nally and his friends that the progress that has been made in ending tyrannies of that sort has been made along the lines of insistence on social justice.

Coming to the question of the right to own property, I believe that it is a fundamental right necessary for the full development of the human being that he should have the right to own property.

At the same time, I say - and I think that it is a view well based upon the best thinking of the best minds this world has known - that while you may own something, that does not give you the right to use it as you please, to the detriment of other people. I may be given the legal right, for instance, to carry a pistol, but that does not give me the right to use it to shoot down some neighbours with whom I may not agree.

./.

The difference between the ownership of something and the use that is made of it is vital if we are to have any agreement on matters of this kind. Those of us who claim that the right to own property is fundamental, admit, and readily admit, that there are the demands of social justice which must be met, and that it is the right of the State to see that justice is done, and to regulate, in the interests of the common good, the way in which individuals who own property use that property.

It is rather unfortunate that our debates here on matters of this sort have to be conducted under the pressure of time. I believe that frank talk and frank debates on some of these questions would enable us to see much more clearly how much we have in common.

I would say, myself, that if we delete these paragraphs we are turning our backs on the philosophy which has given us the heritage of which we are so proud, and which has given us this European civilisation which we have come here together to defend."

(TP, II, pp. 102 and 104; or Rep., 1949, IV, pp. 1214 and 1216)

(r) Mr. Crosbie (Ireland):

"I hope to be brief, but in the tradition of Parliaments, I am afraid that I shall be rude - or, shall I say, I shall be frank.

I regard M. Philip's proposed Amendment⁽¹⁾ to the paragraph dealing with the ownership of property as, quite frankly, the thin end of the Moscow wedge. That is really all that I wish to say. I think that it would be definitely contrary to the interests of this Assembly, and of the Council of Europe, if such an Amendment were to be carried.

Although I wish to be brief, I should like to add this. A few days ago, Mr. President, you ruled me out of Order on a discussion of the empty seats of this Assembly. I would point out to my colleagues M. Philip and Mr. Nally that there is this great danger. If they push this Amendment to a vote in

./.

(1) Cf. para 5(a) above.

this Assembly, and if they were to carry that vote and push this Amendment to its logical conclusion, the next time this Assembly meets there would be many empty seats. I want to point that out, particularly to my colleague, M. Philip.

I therefore ask M. Philip to take a little more of a conservative attitude on this question of private property. His Amendment, if carried to its logical conclusion, means that a man who works all his life, who makes a certain amount of money and buys a house, is entitled to enjoy the privileges of that house but is not entitled to dispose of it. In other words, he becomes a lease of the State - the first principle of Moscow. I therefore seriously appeal to this Assembly completely to reject that policy. I think it would be a great tragedy indeed if this Assembly at its first meeting were to fall for what we call in English this kind of fellow-traveller policy".
(TF, II, pp. 104 and 106; or Rep., 1949, IV, pp. 1216 & 1218).

(s) M. Lapie (France) (Translation):

"Mr. President, when I asked you earlier for permission to speak, I simply wished to express my opinion. But I think, since I believe I am one of the last speakers on the list, that my task will be more complicated. I will therefore ask you for permission to review the subject a little.

Where are we now? We are here face to face with one of the greatest and most important of the creations which this Council is in process of fashioning. For the first time in the history of the world we are establishing an International Court of Justice - a protector of rights - which may be approached by individuals.

Consequently, it is necessary to determine the jurisdiction of this Court and to define its rights.

Twelve of these have been suggested to us. The length and the importance of this debate show that, on these twelve points, all the delegates of different nations of different parties are not in entire agreement.

I am well aware that on the nine first of these there was no discussion. Consequently, these rights might be considered to be established in the opinion of all the members of the Assembly; but there is some hesitation on the last three.

./.

If we were purely logical and consistent with ourselves, we would say: let us leave these three aside; let us, as Lord Layton asks us, not talk about them and not discuss them, not show the whole of Europe and the other countries who are watching us that we have debates on what M. Paul Reynaud so aptly summarised as: the right to a home, the right to education, and the right to own property.

In other words, we should accept the nine first points and leave the three final ones to be examined by another Session.

But it happens that these last three are among the essential rights.....(1)

.....

The right to own property?

In accordance with Article 17 of the United Nations Declaration, what do we want?

It is the guarantee against arbitrary action".

M. Reynaud (France) (Translation):

"very good".

M. Lapie (France) (Translation):

"And what is arbitrary action? I am sorry to say that we have sometimes, in our French National Assembly, heard M. Paul Reynaud declare that certain decisions or certain majorities were arbitrary, although they were derived from a law.

It is inadmissible, that in a democratic State with free elections, the law should be said to be arbitrary. It is exactly the opposite.

Consequently, when speaking of the right to own property, it must be clearly indicated that it is arbitrary action against property which is forbidden by the International Court....(2)

-
- (1) Here, M. Lapie spoke of the right set forth in Article 2 (10) of the draft Recommendation (cf. the present Article 12 of the Convention).
- (2) Here, Mr. Lapie spoke of the right set forth in Article 2 (11) of the draft Recommendation (cf. the present Article 2 of the First Protocol).

.....

Have all possible efforts of conciliation been made on these three points, and especially on the last two?

I am well aware that much work has already been done within the Committee. But is it not necessary to go back on it? To ask the Committee to meet once again? Is not a new effort necessary to overcome this hesitation between members of the Assembly on these three points, and to avoid the reproach being made against some of us that we remained silent for fear of being misunderstood?

This silence could, at one fell swoop, cause divisions in our Assembly, such divisions that, I say it sadly but firmly, some of us would be obliged not to vote for the Report, rather than accept it under those conditions."

(TP, II, pp. 106, 108 and 110; or Rep. 1949, IV, pp. 1218 and 1220)

(t) Mr. Crawley (United Kingdom):

".....

... I submit that those three last paragraphs are so loosely defined as to be quite incapable of administration or enforcement by a European Court of Human Rights. I beg the Assembly not to pass measures of this kind which might lead to all sorts of complications, of which I have given only one example."

(TP, II, p. 112; or Rep., 1949, IV, p. 1222)

(u) M. Akan (Turkey) (Translation):

"I cannot support Lord Layton's Amendment as regards paragraph 12 (1). Its deletion would appear to general opinion to be inconceivable and shocking because this right is included in nearly all Declarations of Rights.

It is more a social than an economic right. We have taken it from the United Nations Declaration.

(1) Cf. para. 5(c) above.

Neither can I support M. Philip's Amendment (1). In the Report we ourselves have not defined this right; we have taken it from the United Nations Declaration, and it cannot be limited. I must say that in national legislation, limitations and conditions for the exercise of this right are well defined; but it seems to me that we cannot here reach a uniform definition, by basing ourselves on one single doctrine valid for all countries." (TP, II, p. 112; or Rep., 1949, IV, p. 1222)

(v) M. Smitt-Ingebretsen (Norway):

"I suggest the deletion of paragraphs 11 and 12 at this stage, and that they be referred back to the Committee for further consideration between now and the next Session. I think that course would solve the difficulty which we are now facing."

(TP, II, p. 112; or Rep., 1949, IV, p. 1222)

(w) Sir David Maxwell-Fyfe⁽²⁾ (United Kingdom):

"I am very glad that M. Smitt-Ingebretsen has made that suggestion, because I hope that the Assembly might consider it to be a way out of a difficulty which should not, I hope, be sufficient to destroy the work that we have done.

May I just state the position at which we have arrived?

M. Lapie will forgive me, I trust, if I repeat one or two of the words which he so convincingly used. In the Committee we made a list of twelve rights, of which nine have passed the Assembly without any difficulty, and with practically no discussion. I would remind the Assembly of the position in which we now are.

All our countries, by subscribing to the Universal Declaration of Human Rights of the United Nations, have accepted the principle of all these rights, including the three which have caused us so much trouble today.

(1) Cf. para. 5(a) above.

(2) Chairman of the Legal Committee.

We are dealing with another point, however. We are dealing with the question as to which of these rights should be selected to be made enforceable. The difficulty which has arisen, as I see it, is that various Representatives have read into the rights, which have been selected for enforceability, difficulties which were not apparent to their Governments when they supported those rights as an expression of principle. That is a serious matter and is well worthy of our consideration.

On the one side, those who wish those rights to remain have in mind, in relation to paragraph 10, the iniquitous Nuremberg decrees on marriage in Germany; in relation to paragraph 11, they have in mind the taking of children away from their parents in order to be trained in, and bound down to, a dreadful creed; and in relation to paragraph 12 they see the withdrawal from large sections of humanity of surroundings which gave them the right to comfort and enjoyment.

I do not think there is anyone in this Assembly whose mind is not filled with and influenced by dreadful occurrences such as these. But we have to face the difficulties of all our colleagues, and as I understand the matter, there are, with regard to paragraph 11, certain political questions in certain countries which our colleagues are afraid might appear to be prejudged, if the right were expressed in this form. I repeat 'might appear to be prejudged', for that is important. We are all politicians. We know that a wrong form, a wrong appearance, might do great harm when the reality has no wrong whatever in it.

That also applies to the question of the right of property. Believe me, in putting it in the list, there is no arrière pensée with regard to special legislation. It was put in because it was adhered to by the countries in the United Nations Declaration. But again, the same difficulty presents itself to some people.

I suggest that what is important is that neither side should be prejudged, or should appear to give away their position. Both sides should preserve the point of view which they wish to be made clear or, to put that observation the other way round, on which they do not wish to be misrepresented.

In that situation, it seems to me that the first point which is clear is that these rights require further

./.

definition in order to prevent the misrepresentation which is feared. The way to do this is, as M. Smitt-Ingrebretsen has just suggested, that we might send back to the Committee those rights about which there has been doubt as to whether they are sufficiently clear for enforceability. The fact that there is doubt is shown by difference of opinion between us.

We have had five weeks in which we have got on extraordinarily well. In my Committee, it was astounding how single-minded everyone was in promoting the work of the Committee; no-one considered a party or individual position. I hope that the fruits of that will not be thrown away. I suggest, therefore, that we might send these rights, about which doubt has arisen, back to the Committee for re-study and, if those doubts can be resolved, eventual restatement by the Committee on Legal and Administrative Questions in our next Session; but that in the meantime, on that basis, and having by that means preserved our personal positions; we accept and proceed, in connection with the nine rights on which there is no doubt, to get this document formulated. In that way we are not prejudicing but preserving the position in regard to which there has been difficulty.

If my friends who approach these matters from either of two ways would go so far as to make unanimous the sending back of these rights for re-study, then I think it would be clear to the world that neither my friend M. Paul Reynaud on the one side, nor my friend, M. André Philip on the other, have prejudiced their respective positions in any way.

It seems to me that the real trouble has arisen on the rights contained in paragraphs 11 and 12. Lord Layton mentioned paragraph 10, and perhaps he could tell us whether he feels so strongly about that one, because there has been practically no discussion on it. (1) If he considers it necessary, that would also be included in my Proposal.

(1) Article 2 (10) (Cf. the present Article 12 of the Convention) was, in fact, adopted by the Assembly a few moments later.

(TP, II, P. 132, or Rep., 1949, IV, p. 1232).

I wish to say a few words about paragraph 9⁽¹⁾. I recognise the argument and the logical force - which is what we would expect - of M. Dominedo with regard to trade unions. I would ask him not to disturb that Proposal, because every totalitarian attack has begun in its earliest stage by attacking the right of combination in the special form of trade unions. I would therefore ask my friend, M. Dominedo, not to disturb paragraph 9, of which M. Lapie spoke. I would specially ask M. Dominedo to agree to that paragraph remaining, although I appreciate his motive.

I hope that we can find this via media. I have no desire to prejudice the positions or attitudes of one side or the other. The only desire that animates me is that a great task to which concrete fulfilment can be given, in a few hours I believe, should not be lost on a difficulty which Representatives never explored in Committee to the extent to which it has been explored here. It is a difficulty which is really outside the main current of our task.

I hope, Mr. President, that neither you nor the Assembly will take it amiss that I have trespassed on your time. I only hope that you will look favourably on a proposition which comes straight from our heart."
(TP, II, pp. 114, 116 and 118; or Rep., 1949, IV, pp. 1222 and 1224)

The President (Translation):

"I understand that the Chairman of the Committee proposes to refer paragraphs 10, 11 and 12 to the Committee for examination, but this does not prevent us from continuing the study of the other points of the Report and finally voting on the whole Report.

I call upon Mr. MacEntee."
(TP, II, p. 118; or Rep., 1949, IV, p. 1224)

(x) Mr. MacEntee (Ireland):

"As a result of the admiration which I have for Sir David Maxwell-Fyfe, I could be persuaded to do almost anything. I am fully aware of the great tact and careful courtesy with which he has discharged a most difficult task. I ask the Assembly to remember

(1) Cf. p.25, footnote 2, above.

that what we are now being asked to do is to accept Lord Layton's Amendment (1). I, for one, cannot accept it.....(2)"

(TP,II,p.118; or Rep.,1949,IV,p.1224)

(y) Mr. Foster (United Kingdom):

"Surely, the difficulty here is one of enforcement. In the United Nations Declaration, all the Governments subscribed to the enunciation of these rights. The Socialist Government of England, the present Government of Ireland, and Governments who have perhaps different views about those points which have arisen today, subscribed to this principle. I ask the Assembly to bear in mind that the Government to which Mr. Ungoed-Thomas, Mr. Nally and Mr. Crawley belong subscribed to this principle. That is a very important fact.

However, it has appeared in the Assembly today that different views are held as to the enforcement of these rights. Surely, it is a reasonable Proposal that paragraphs 11 and 12 - and, if Lord Layton wishes it, paragraph 10 - should be sent back to the Committee for study and for the formulation of those rights in the light of their enforcement. If that is decided, nobody will have prejudiced his point of view, because already these rights have been subscribed to by the nations which subscribed to the Declaration of the United Nations.

I assure Mr. MacEntee that it does not involve accepting Lord Layton's Amendment (1) in toto. His Amendment, as I understood it, was to delete these paragraphs. It is now proposed, as a compromise, that they should be restated in the light of their enforcement."

(TP,II,p.120; or Rep.,1949,IV,p.1226)

(1) Cf. para. 5(c) above.

(2) Here, Mr. MacEntee spoke of the rights set forth in Article 2 (10) and (11) of the draft Recommendation (cf. the present Articles 12 of the Convention and 2 of the First Protocol).

(z) Lord Layton (United Kingdom)

"....."

This is purely a question of enforcement. It is purely a question of what rights the nations here are prepared forthwith to submit to the judgment of a Court. If the movers of the Amendments relating to these three paragraphs will accept the suggestion, I am prepared to accept it, but I think that it should apply to paragraphs 10, 11 and 12."

(TP, II, p. 120; or Rep., 1949, IV, p. 1226)

(aa) M. Reynaud (France) (Translation):

"M. Lapie earlier pointed out to the Assembly that the difficulty of sending these three last paragraphs of Article 2 to the Committee is that these paragraphs are the most important, which is obvious.

If it is a question of referring these paragraphs to the Committee in order that, this evening during the night Sitting, a new text should be submitted to us, that is excellent. But if it is a question of reference to the next Session of the Assembly, I think that no-one here will have any illusions about it. For public opinion, this would mean their final disappearance and a breach, on some major points, with the United Nations in respect of the Charter of Human Rights.

I point out to the Assembly the extreme difficulty of this position.

If in fact we refer the matter to the Committee because there is difficulty between us, if we have not the courage to meet and overcome our difficulties, where is our Assembly going to end?

Courage is the first quality of a politician. I think that we must have courage to take a decision.

If it is necessary, let us have new Proposals tonight, and we will vote on them, but it would be impossible for my friends and I to take the responsibility of accepting a pure and simple suppression of three questions as important as these."

(TP, II, pp. 120 and 122; or Rep., 1949, IV, p. 1226)

./.

(bb) M. Lapie (France) (Translation):

"Since M. Paul Reynaud has honoured me by quoting me, I should like to remind him that I did not use the expression 'important' for these three rights, but rather the phrase 'essential'".

M. Reynaud (France) (Translation):

"That is better still".

M. Lapie (France) (Translation):

"It is better still because it touches the essential fibres of humanity. But that does not mean that they are the most important from the point of view of the reform of humanity itself.

Having settled this point between ourselves, I would add that I wondered earlier whether this Assembly could not, either itself or through the intermediary of its Committee, make one more effort at conciliation...(1):

I would add that, in my opinion, I did not think that /the Committee/ could meet as late as next year. I thought that it could meet, if the Assembly so decided, today, or tonight.

Moreover, I had indicated, as regards paragraph 12, the need to stress the arbitrary aspects of a measure taken against property, and that the passing of a law by the majority of a freely elected Parliament, is not an arbitrary measure and that this should be stated.

.....(2)"

(TP, II, pp. 122 and 124; or Rep., 1949, IV, p. 1228)

The President (Translation):

"It is a pity that the President may not take part in debates, and that he is reduced to presenting matters from their purely technical point of view. I am the victim of your Rules of Procedure. The only thing

./.

(1) and (2) Here, M. Lapie spoke of the rights set forth respectively in paragraphs 11 and 10 of Article 2 of the draft Recommendation (Cf. the present Articles 2 of the First Protocol and 12 of the Convention).

that I may do is to suggest that the Assembly accepts or rejects the Proposal of the Rapporteur, although I think that it should be somewhat more closely defined.

I had understood that the Committee intended to submit to the next Session an additional Report on paragraphs 10, 11 and 12."

(Interruption)

I state what I had understood. If I have misunderstood, the Rapporteur must tell me so. Is the Committee in a position to submit this evening - I do not know when it would meet - an additional Report on paragraphs 10, 11 and 12?

If I may not take part in the discussion, I can at least ask for an explanation.

I call upon the Rapporteur."
(TP, II, p. 124; or Rep., 1949, IV, p. 1228)

(cc) M. Teitgen (France) (Translation):

"Mr. President, I should like to tell the Assembly how the matter stands.

It seems to me that there are no difficulties with regard to paragraph 10. I think that the Assembly could vote immediately on paragraph 10⁽¹⁾.

With regard to paragraphs 11 and 12, in my capacity as Rapporteur, I am obliged to recognise that there are important difficulties, but they are not those which have been indicated.

I will take one very obvious example.

With regard to the right to own property, it might be thought that there is disagreement between those who wish to see the right to own property confirmed and those who wish that it should not be confirmed. In reality it is much more complex than that.

If there was only this summary choice to be made, a little courage, as M. Reynaud suggested earlier, would be sufficient. All that would be necessary would be to take a show of hands and the question would be decided. In reality it is much more complicated.

(i) Cf. p. 34, footnote 1, above.

That is why some of my colleagues came to speak to me during the suspension of the Sitting. Some of them suggested that we should submit national laws to the International Court, such as those governing the lease of houses or rent, because these national laws cause an excessive burden to private property.

Others raised the question of whether fiscal charges on the right of succession could be brought before the Court.

Others also asked me if laws or decisions relating to the nationalisation of certain sectors of industry could also be placed under the supervision of the Court.

If the problem is stated in this manner, the Committee is faced with difficulties which it never envisaged. It has considered a general formula forbidding arbitrary, scandalous and illegal confiscation of property. Now it is being faced with a problem of a very detailed nature. It is being asked to answer the questions which I have just stated.

If the Committee must do this; if it must give a reply to such questions, it is impossible to give them this evening."

The President: (Translation)

"May I ask you a question? Can there be arbitrary sequestration of property by a law voted by a regularly elected Parliament?"

M. Teitgen (France) (Translation):

"That is where the difficulty lies. I think that M. Rolin will support my reply. We have said that the Commission or the Court should have the power to ensure that national laws are in conformity with the general principles of law recognised by civilised nations.

When it is a question of freedom of assembly, of association, of the press, of thought, of individual security, these are easy to control, because in the laws of all civilised countries there are common principles which the judge could easily discern, formulate and expound.

When, on the contrary, it is a question of nationalisation, of the financial system, of the right of succession, it is much more difficult at the present time to discover the general principles of law recognised by civilised nations and who, in the different national laws, are the persons to resolve this question.

When the problem is put forward, as it was put to me just now, and if a reply to these questions is required, it is obvious that the Committee must meet again."

The President (Translation):

"I apologise for taking part in the Debate. I am a member of a Government, which accepted Article 17 of the Convention of Human Rights, as it was agreed by the United Nations. Do you not think that everything in this article is dominated by the word 'arbitrary'?"

(Many indications of agreement).

M. Teitgen (France) (Translation):

"I am convinced of it".

The President (Translation):

"Can it be 'arbitrary' when a Parliament, duly elected under democratic rules, passes a law? Is there anything arbitrary in that?"

I know that the Government, of which I was a member, examined the word 'arbitrary' thinking that the laws which it normally made were not arbitrary laws."

M. Dominedo (Italy)(Translation):

"An arbitrary action is administrative and not legislative."

M. Teitgen (France) (Translation):

"In its reasoning the Committee based itself on the grounds which you have just described. If the problem is put in a different way, it is obvious that the Committee must deliberate on it."

(TP, II, pp. 124, 126 & 128; or Rep., 1949, IV, pp. 1228 & 1230)

(dd) Mr. Mackay (United Kingdom):

"I want the Assembly to come back to the suggestions which have been made, and to see if we cannot arrive

./.

at a solution now. I suggest that we accept paragraph 10 (1) and refer paragraphs 11 and 12 to the Standing Committee. The Rapporteur has said that if we refer this paragraph back to the Committee it cannot be dealt with tonight or tomorrow. That, of course, is quite true. On the other hand, M. Reynaud has said that if we refer back paragraphs 11 and 12 until next year we are accepting Lord Layton's Amendment. That is equally true.

There are points of great substance in paragraphs 11 and 12. Mr. Crawley raised some of them on paragraph 11 as they affect Great Britain. I know it is said that the United Nations Declaration has been accepted, but it has not been discussed or ratified in our parliaments. There are many things in it which, when it does come to be discussed, we shall want to raise. I think it is right that we should refer back paragraphs 11 and 12, so that they can be worked out for us again. Why do we have a Standing Committee if not to deal with matters of this kind?

An argument has been put forward today, quite properly, that we want to get a document of this kind settled today; but we have two hurdles in the way - paragraphs 11 and 12.

"Although I should prefer to see paragraph 10 go too, in view of the efforts which have been made, and in order to get agreement - which is important - and in order that the Assembly can show to the world that we are reasonable and sensible people who compromise and meet one another, I suggest that we should accept paragraph 10 now, and that paragraphs 11 and 12 should go to the Standing Committee to be considered and reported on before the end of the year."

(TP, II, pp. 128 & 130; or Rep., 1949, IV, pp. 1230 & 1232)

(ee) M. Rolin (Belgium) (Translation):

"I should like to reply to the question that has been raised. In the draft which has been submitted to you, there is an Article which states: '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'.

(1) Cf. p. 34, footnote 1, above.

It is not therefore a reply to think that it will be sufficient for a measure to take the form of a law for it to be protected from all discussion. On the contrary, it was a principle of established law, which has already been applied several times by the courts, and which was the subject of discussions at The Hague Conference of 1930. No State can shelter behind a national law to evade an international Convention.

The problem therefore still remains. A pure and simple law of confiscation would certainly be subject to the European Court, as violating the principles which we have enunciated.

I should like to say something about the Proposals that have been made. I very much regret that the compromise Proposal for the adjournment, put forward and supported by the Chairman of the Committee, should be understood by Mr. MacEntee as an acceptance of Lord Layton's point of view.

I would give it, at least to a certain extent, a different meaning. In reality it might be said that this is a misunderstanding resulting from this debate. We are all agreed in condemning those violations of rights which were committed during recent years, but some of us fear that the expression which has been proposed might have other consequences, which would encroach directly on the political life of our different countries and on the political rights of our Parliaments. None of the courts of our countries would have the power to judge our laws in this field, and we deplore having to give to external organs a jurisdiction which we do not allow our national organs.

Indeed, I interpret the Proposal for the adjournment as an agreement to place under international control, contrary to Lord Layton's Proposal, that which is essential in the right of the family, in the right to own property and in the right to education, but to reserve for later the question of the formula. This question, like that which was put forward by M. Teitgen, must be the subject of very careful study; because it is one thing to agree to a declaration of principle which is not the subject of a Convention, which involves no right of debate or the intervention of any other State, but it is quite another thing to include this principle in an international Convention and to agree that, in the future, our action in this field may be the subject of criticism, of discussion and finally of a trial, resulting from the initiative of some other State." (TP, II, pp. 130 & 132; or Rep., 1949, IV, p. 1232) ./.

The President, having put the question to the vote, the Consultative Assembly decided to refer paragraphs 11 and 12 of Article 2 of the draft Recommendation to the Legal Committee. It instructed the Committee to present to it, at the next Session, a Report on the rights set forth in these two paragraphs.

(TP, II, p.132; or Rep., 1949, IV, pp.1232 and 1234)

8. Plenary Sitting of 8 September 1949 - closing speech of the Rapporteur and explanations of vote

(a) M. Teitgen (France, Rapporteur) (Translation):

".....

All through the Debate we have been putting forward opposing systems, opposing theses. In fact, this opposition was to a certain extent systematic. If it is examined closely, it may be seen that the text which we have just concluded is, in fact, a synthesis, probably satisfactory from the point of view of the opposing doctrines and systems, co-ordinated to meet the needs of the case and for clarity of expression.

..... (1)

If we look at the second aspect of our work - the list of guaranteed freedoms - I know that many of you are not too happy.

We had proposed to guarantee twelve fundamental rights.

We have guaranteed ten, more or less without debate. We were not able to submit to the Assembly a correct formula which was satisfactory to everyone with regard to the right of parents and the right to own property.

My dear colleagues, you must be aware, if you consider the Debate impartially, that among those who expressed themselves against one or other of these rights, there were many who wished for their guarantee and protection, but with regard to each of them, there were problems. These people did not wish to entrust to an international Court a task which, owing to a draft which had been insufficiently considered and studied, the magistrates would not be able to administer, according to the dictates of their conscience, without more precise directives.

(1) Here, M. Teitgen discussed the machinery of collective guarantee, the establishment of which the Assembly was invited to recommend.

Like many others, I should very much have wished that we could, in the first instance, have succeeded in finding formulas and definitions which would have allowed us to guarantee twelve fundamental rights.

Since our task, as regards these two rights, has been adjourned, must we refuse to guarantee the ten others which are also fundamental rights, namely: security; freedom from arbitrary interference; freedom from all slavery and servitude; freedom from arbitrary arrest, exile and other measures; freedom of conscience, religion and culture; freedom of assembly and association and freedom to unite in trade unions?

In two Sittings we have reached a general agreement on these ten fundamental freedoms, and we have referred to our Committee the task of submitting to us at our next Session a formula in respect of these two rights held in suspense. This we have done under the high authority of the Chairman of the Committee, whose complete and scrupulous loyalty, no-one, I am sure, will contest.

It is already a great deal to have reached this point; we, who have known one another for scarcely a month, to have established a machinery of guarantees, which is basically a synthesis between often opposing and divergent theses, and to accept ten fundamental freedoms, which shall immediately enjoy this guarantee. This is important work.

Is there really anyone here who, in his own conscience, could refuse to guarantee ten individual freedoms because two of them which we hope will be defined and protected, have not been so defined at the first attempt and in the first instance?

I do not think so. Let us survey the ground which we have covered and the results obtained, and let us, my dear colleagues, congratulate ourselves on having arrived in fact so quickly at such splendid unity.

I, for my part, am truly proud of having been able to take part in this debate which, I am sure, will have its place in the annals of the Council of Europe."

(TF, II, pp. 230, 234 & 236; or Rep., 1949, IV, pp. 1290 & 1292)

(b) Mr. Callaghan (United Kingdom):

"We have a most difficult vote to make tonight. I think that those of us who, like myself, have sat here for one and a half days listening without interruption

./.

to this debate must have come to the conclusion that, whilst it is an easy matter to formulate the principles upon which we desire to move forward, it is far less easy to translate those principles into action.

..... (1)

.... Similarly, other Proposals which found their way into this original document, such as Articles 11 and 12 (2), about which we had such a long discussion this morning, have had to be referred back. To my mind, they were both objectionable, and because they have been referred back, my objection to these documents is therefore lessened; but other practical difficulties remain, in my opinion.

..... (3) "

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

(c) Mr. Ungeod-Thomas (United Kingdom):

"I wish to explain my position and that of some of us who took the same view as the Committee on the main issues which have been discussed here today. We consider there are two provisions in this Report which are of fundamental importance. The first is the inclusion in the list of Human Rights of the right to own property....(4)

We consider both these provisions to be anti-democratic and reactionary, for the reasons which have already been explained in the Debate. Holding those views as we do, we believe that it is of importance for us not to vote for this Report so long as either of those measures is contained in it.

./.

-
- (1) Mr. Callaghan gave as an example the difficulties that had arisen during the discussion on Mr. Cocks' proposal for a solemn declaration condemning torture (cf. Doc. DH (56) 5, pp. 2-15).
 - (2) He actually meant paragraphs 11 and 12 of Article 2.
 - (3) Mr. Callaghan accordingly said that he would abstain from voting for the draft Recommendation as a whole.
 - (4) The second was recognition of the right of individual recourse to the European Commission of Human Rights (Article 12 of the draft Recommendation)

The first difficulty, concerning the right to own property has been disposed of. There remains the second.....(1)"

(TF, II, pp. 250 & 252; or Rep., 1949, IV, p. 1312)

(d) M. Schumann. (France) (Translation):

"....."

I might also say that, if Lord Layton's Amendment (2) had been adopted this morning, in other words, if the Assembly had decided to delete from the list of rights that which was stipulated and which remains in Article 11 (3), I should certainly not have abstained. In all probability, I should, with some of my friends, have been forced to vote against the Resolution in its entirety.

But, as Mr. Rolin so rightly said this morning, before the vote concerning reference to the Committee, the meaning of this vote was quite different from that which would have been entailed in approving the Amendment.

From the simple fact that we have referred Articles 11 and 12 (4) to the Committee, far from rejecting the essential principles which they embody, I dare to say, in using a current parliamentary expression, that we have taken them into consideration.

I should like to draw the kindly attention of my eminent friend, M. Van Cauwelaert (5), to an analogy which comes naturally to mind. Earlier we referred to the Committee the Motion submitted to us by our

./.

-
- (1) Mr. Ungoed-Thomas accordingly said that he would abstain.
- (2) Cf. para. 5(c) above.
- (3) He actually meant paragraph 11 of Article 2 (the paragraph corresponding to the present Article 2 of the First Protocol).
- (4) Read: "paragraphs 11 and 12 of Article 2".
- (5) M. Van Cauwelaert had just said that he would abstain because paragraph 11 of Article 2 had been referred to committee.

friend and colleague, Mr. Seymour Cocks⁽¹⁾. Is it possible that this means to anyone among us, that we are in favour of public authorities using torture? Does this mean that there is, in the European Assembly, a single person in favour of the methods by which mutilation, sterilisation and corporal punishment are allowed to extract information, to save life or to protect the interests of the State?

The mere statement of the question is enough to show its absurdity. In fact, we have decided that, although we are agreed on a principle and have unanimously acclaimed the moving words of Mr. Seymour Cocks, we have not been able, in the brief time available to us, to reach agreement on a specific formula.

M. Van Cauwelaert will not be astonished that, with regard to the freedom defined in Article 11 (2), which in his eyes as well as mine is essential, we have not been able either to reach agreement in the time available; moreover, in our respective Parliaments, between men also of good faith and goodwill; the same debate has not been concluded, in spite of years and years of discussion.

(3),

(TP, II, pp. 252 & 254; or Rep., 1949, IV, p. 1312)

(e) M. Jacini (Italy) (Translation):

"Mr. President, my friends and I are very uncertain as to the vote we are going to give. It is obvious that our hopes have been to a large extent disappointed by this morning's vote. Our position had been very clearly defined in the statement of my friend Cingolani, which has perhaps passed rather unnoticed by the Assembly, but I might be allowed to remind you of it.

From the point of view of family rights, he stated very clearly the rights of marriage and the rights of parents in the upbringing of their children.

./.

-
- (1) Cf. p. 46, footnote 1, above.
 - (2) He actually meant paragraph 11 of Article 2 (the paragraph corresponding to the present Article 2 of the First Protocol).
 - (3) M. Schumann accordingly said that he would vote for the draft Recommendation.

From the point of view of property, while admitting the necessary, possible and desirable limitations from the social point of view, he stated that property, not so much as an object of use, but rather as a family and inheritable possession, was part of Human Rights and should consequently be confirmed in this Assembly's Declaration.

It has not been possible, in a generally accepted official declaration, to incorporate these principles which are dear to us.

It would therefore be logical and very natural if we were to follow the example of our eminent friend, M. van Cauwelaert (1), and at least abstain from voting.

It seems to me, however, that in all these questions we should not look only at the intrinsic value of the vote we are going to take, but rather at its repercussions on the public opinion of Europe and the world.

The conclusion of M. Teitgen's statement - if I may say so - sounded a bit too euphonic for my taste. In this conclusion, however, he said something very true, which is that of 12 freedoms there were 10 which have been officially confirmed and 2 which had not been rejected, but simply referred for further study, so that they may in the next Session be the subject of a wider and fuller Debate than that of today.

In these conditions, I wonder what would be the impression in the world if the result of the vote, which we are going to take, was negative. Gentlemen, the impression would be that the Consultative Assembly, faced with its first big and important question, withdrew into its tents and left things to continue their normal course beyond its influence.

It seems to me that that would be an extremely grave error and for my part I do not wish to assume responsibility for it.

Consequently, for myself and for some of the friends whom I have been able to consult, I state that I shall vote for the Report, once again expressing my clear impression that the decision to refer to another Session

(1) Cf. p.47, footnote 5, above.

the two principal arguments on which we should be voting, was an error of policy for which we shall pay dearly and which will be very much exploited by the opponents of this Assembly.

Having made this protest, which arises from my profound conviction, I do not wish to assume responsibility for jeopardising a vote of the importance of that which we are going to take and I state that I shall vote in favour of the Committee's Report."

(TP, II, pp. 256 & 258; or Rep., 1949, IV, pp. 1314 & 1316)

(f) M. Gülek (Turkey) (Translation):

".....

The right to own property is one of these rights (we are going to guarantee). It has, moreover, been taken from the United Nations Declaration. To omit the right to own property from this European Declaration is a very important omission which would have considerable repercussions on public opinion in all countries; all the more so since the right to own property is included in the Committee's Report.

The adjournment of a decision in this matter, after this long debate in the Assembly, will increase its gravity.

(1)

.....
(TP, II, p. 260; or Rep., 1949, IV, p. 1316)

(g) M. de Moustier (France) (Translation):

"I shall not vote for M. Teitgen's Report, for the reasons so excellently expounded by M. Van Cauwelaert. How is it possible that we should be presented with a Report on Human Rights in which provision is made for secrecy of correspondence, but no provision is made for the natural and invulnerable rights of the father of a family to control the education of his children? In which also a very important right is omitted, namely, the right to own property; this, as we all know, is extremely dear to the heart of every inhabitant of our Western countries.

For three weeks we have heard eloquent speeches; great orators have come to tell us that Europe is in

./.

(1) M. Gülek went on to criticise certain features of the machinery of collective guarantee. He concluded by saying that he would abstain.

danger of death, that Western civilisation is in great danger; yet this is the time when the Council of Europe, and the learned men of the Council of Europe who have met here, choose to discuss questions of procedure ... questions of formula, some say; questions of drafting, say the others.

I am very much afraid lest this Assembly should resemble the Senate of Ancient Rome, where learned Senators discussed questions of procedure when the barbarian invasion was at the gates of the city. We all know that a new barbarian invasion is at the gates of Europe and that, if there did not exist at the other side of the Atlantic a sufficient force to hold it back, while we here discussed questions of procedure with earphones on our heads, European and Western civilisation would cease to exist within a few minutes.

Mr. President, when we are presented with a complete Report on invulnerable Human Rights and we show a little courage, which I consider as the best and the only means of constructing Europe, we shall vote with the rest of our colleagues."

(TP, II, pp. 264 & 266; or Rep., 1949, IV, p. 1320)

(h) M. Bidault (France) (Translation):

"In view of the present hour, Mr. President, I think I shall have to give up trying to convince those of our colleagues who have already given their views in categorical terms. But I, still believing in miracles, shall not abstain from voting.

How far, to put it briefly, have we gone and what is at stake? It is very difficult to turn texts into action and to establish institutions. We have already created some - at least we hope so with the agreement of the Committee of Ministers - and now we can hope that we shall succeed in creating others. What is the problem before us at the present moment?

Quite frankly, it is a question of paragraphs 11 and 12 of Article 2. These two paragraphs disturb the consciences of a certain number of our colleagues, but I should like to tell them that it is precisely those who cannot agree, or at least so it seems to me, to accept paragraph 11 who are ready to accept paragraph 12 and vice versa.

For myself, I regret the absence of the two paragraphs. I think that it should have been possible and that it will in the future be possible to avoid the exclusion of one or other of these paragraphs from the list of Human Rights which we have ourselves established.

We should at once state, and this, I think is the feeling of all those who have spoken hitherto, that our list is neither restricted nor satisfactory in itself; but an old proverb of my country - and I have no doubt of other countries too - says that it is best to leave well alone. From the moment when it is a question of defining, and not only of defining but also of defending rights, it is necessary to begin with those which are accepted by everyone. That does not mean that any of us need renounce those rights which, it seems to me, they have renounced, perhaps in a slightly futile or even frivolous manner, during the course of the debate, as often happens in Assemblies.

It does not mean that we shall abandon the ten other essential rights, on the grounds that these two rights, which are indeed essential, were not accepted in the draft which the Committee through its Chairman and its Rapporteur submitted to us, or at least, that they have been provisionally put aside. I hope that everyone will remember that at this moment there are men whose essential freedoms, including physical freedom, are daily menaced. I would therefore ask that consideration be given to the fact that, in spite of the regrets we might have - which I entirely share - concerning the amputations which have been made to the Committee's Proposals, we must accept something or nothing at all.

If now, after having defined - and it seems to me by common agreement - ten fundamental rights, without excluding those which will follow and which I am sure will one day be added to the number; if, after having accepted by an unquestionable majority, the constitution of a European Court, this Assembly on its last day, in concluding its work, gives the countries represented here this exhibition, of finally rejecting en bloc all the measures which it accepted in detail, I think that this would create a scandal which must not happen. It would be better that we tied a stone round our necks and cast ourselves into the river, rather than that this scandal should happen.

./.

I think, and this is the view of some of my friends, that in a world where injustice is always alive -- this is a fact of which we must not lose sight -- an injustice which we have not been able to settle and whose germs we know remain, it is not possible for us to disperse without having done all that it is possible to do, and having adopted what the Committee submits to us after very long work. That is to say, we must create the necessary means of protecting this man, this European man, this man the son of man, and I might add the son of God, who is not protected or who is, in so many countries and, as you know, in so many territories, so badly protected that he is the object of mass attack.

We cannot disperse without having approved this text in spite of its gaps and its inadequacies; in spite of the condemnations which we may, for different reasons, make against it.

Some say: 'Article (1) 11 is not in the text and therefore I cannot vote for the whole'. Others say: 'Article (1) 12 is not in the text and therefore I cannot vote for the whole'. I deplore the absence of these two articles, but I beg my colleagues to remember that the moment will come to conclude and we must conclude by a gesture other than in the negative."

(TP, II, pp. 266, 268 & 270; or Rep., 1949, IV, pp. 1320 & 1322)

(i) Mr. MacEntee (Ireland):

"After listening to what M. Bidault has said, I can only say that I doubt the political wisdom of many things in this Report, but, at the same time, I think that it is an historic document. It represents, to my mind, the partial emergency of Europe from the dark ages of the 20th Century. It embodies fundamental rights which have been continuously assailed in certain parts of the Continent for half a generation. It does not embody everything I should like to see, but it embodies most of it.

If I did not vote for it, in spite of certain things in the Report which I dislike intensely, I should, in fact, be dooming the Report to death. I should be refusing to agree to rights which have met with almost unanimous acceptance by this Assembly, and I do not think that

./.

(1) Read. "paragraph"

the omission of one or two other rights which I would cherish very dearly would justify me in refusing now to reaffirm the ten rights which are included in the Declaration.

For that reason, I shall vote for the Report."
(TF,II,p.270; or Rep.,1949,IV,p.1322)

(j) Lord Layton (United Kingdom):

"It will be evident from the things I said this morning that I feel that this Report has lost something of the sharp edge and quality which I should like to have seen in it. But those who would deduce from that that they should abstain or vote against this Report would, to my way of thinking, be failing to see the wood for the trees.

I shall vote for this Report with very deep emotion indeed, because I believe that a great principle is posed tonight. This is the last night of the first Session of the Council of Europe. That principle is posed, whether we include in the list one item or twenty items.

If it were only a question of free speech, or, indeed, any of those rights which we have agreed, we are asking - and I most sincerely hope that there will be a very large majority in this Assembly who will back it - the nations we represent to assume joint responsibility for maintaining Human Rights in our countries.

....."
(TF,II,p.270; or Rep.,1949,IV,pp.1322 & 1324)

(k) M. Serrarens (Netherlands) (Translation):

"Like my friend and colleague Mr. Bidault, I very much regret the Assembly's decision to refer points 11 and 12 of Article 2 to the Committee. I think that this is more than an error, it is a blunder.

Meanwhile, the creation of a European Court is such an important act that, in spite of the objections to which the reference of the two paragraphs 11 and 12 have given rise, I think that Europe is being constructed; that is why I shall vote for the Report."

(TF,II,p.272; or Rep.,1949,IV,p.1324)

A few minutes later, the draft Recommendation presented by the Committee was put to the vote of the Assembly. There were 64 votes in favour and 1 against, with 21 abstentions. Since paragraph 12 of Article 2 had been referred to Committee, Recommendation No. 38 of 8 September 1949, as adopted by the Assembly, contained no provision corresponding to the present Article 1 of the First Protocol.

(TF,II,p.274; or Rep.,1949,IV,p.1324 and Ass.Doc. 1949, no.108,p.261)

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

1. Preparatory Report of the Secretariat-General of the Council of Europe (1)

Pages 8 and 9 of the Report contained a brief description of the differences of opinion in the Assembly over the inclusion of the right of property (2).

The "list of questions involved in preparing a preliminary draft Convention based on the Assembly Resolution" - a list which made up Part III of the Report - included a last item 34 worded as follows:

"Questions reserved by the Assembly (the right of property and parental rights): their entry into force through ratification of a Protocol or by means of a provision in the Convention authorising their entry into force on the adoption of the reserved clauses by the Assembly and the Committee of Ministers - such adoption to be attested by a certificate of the Secretary-General transmitted to the Governments (the latter procedure being that laid down in Article 41 (d) of the Statute of the Council of Europe." (Coll. ed., I, pp. 245-6 and 261; or Doc. B.22, pp. 8-9 and 24)

2. Amendment to Recommendation no. 38 of the Consultative Assembly,
proposed by MM. Lavery (Ireland), Ustun (Turkey) and Lutem (Turkey)
(4 February 1950).

"Article 2: Restore items 11 (3) and 12 as set forth in the Report submitted by the Committee on Legal and Administrative Questions to the Consultative Assembly". (Coll.ed. II, p. 350; or Doc. A.776 - or.Engl.)

3. Amendment proposed by Mr.Lavery (Ireland) (4 February 1950)

Idem. (Coll.ed. II, p. 351; or Doc. A.778 - or. eng.)

-
- (1) Translation by the Registry: the report exists only in French.
(2) Cf. above.
(3) Cf. the present Article 2 of the First Protocol.

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

" ...

The Sub-committee then proceeded to examine the proposal drawn up by MM. Lavery (Ireland) and Ustun (Turkey) (Doc. A.776) for restoring under Article 2 the right to own property and the freedom for parents to choose their children's education.

The Sub-Committee felt that it should first consider the question as to whether it was within the terms of reference of the Committee of Experts to make proposals on this subject to the Committee of Ministers, since the Consultative Assembly had explicitly reserved its decisions to refer this question to the Committee on Legal and Administrative Questions. The decision to be taken will be largely of a political nature, and the drafting of a text will involve very delicate problems, particularly that of avoiding a contradiction between the text of the Convention and that of the Universal Declaration.

The Sub-Committee felt, however, that the Committee of Experts should be permitted to inform the Ministers that the Committee, or certain of its members, was of the opinion that a Convention of guarantee of Human Rights should include the two fundamental rights referred to above."
(Coll.ed., II, p.364; or Doc. A.796, p.3 - or.fr.)

5. Amendment proposed by Mr. Lavery (Ireland) (6 February 1950)

"M. le President,

I appreciate that the proposal to restore to the list of guaranteed freedoms the right to own property and the right of parents to direct the education of their children involves political considerations and therefore might be thought more proper for consideration by the Committee of Ministers than by this Committee. It seems to me, however, that most of the proposals we have been considering are open to the same objection - if objection it be - particularly the proposal which Sir Oscar Dowson intends to make that the Convention should elaborately define and limit the rights to be guaranteed. His proposal to abandon the central idea that there should be a European Commission and a European Court surely involves a political decision of some magnitude.

./.

(1) This Sub-Committee consisted of MM. Chaumont (France), Ferassi (Italy), Salén (Sweden), Ustun (Turkey), de la Vallée-Poussin (Belgium) and Sir Oscar Dowson (United Kingdom).

... (1).

The right to own property is surely also a fundamental right universally accepted in democratic countries, and in my opinion, one proper to be declared with suitable qualifications. I recognise that limitations, perhaps not easy to prescribe, would be required." (Coll.ed., II, p. 375-6; or Doc. A.823 - or.engl.).

6. Preliminary draft Report of the Committee of Experts to the Committee of Ministers

"... The members of the Comité were of the opinion that a European Convention on Human Rights should include the safeguarding of the right to own property and that of parents to choose the kind of education that shall be given to their children.

Since, however, the Consultative Assembly had expressly reserved its decision on this question and had referred it for further examination by its Committee on Legal Questions; and since, moreover, this was more in the nature of a political question not falling within the Committee's competence, the Committee thought it should not make precise proposals on this subject. It did, however, call the attention of the Committee of Ministers to the very real importance of the two rights in question. It was felt that the totalitarian régimes had a tendency to interfere with the right to own property as a means of legitimate pressure, and to have a detrimental effect on the education of children by depriving them of the direct influence of their parents..." (Coll.ed.II, p. 409; or Doc. CM/WP 1 (50) 1, p. 11).

(1) Here, Mr.Lavery's Amendment dealt with the right of parents with regard to the upbringing and education of their children (cf. the present Article 2 of the First Protocol)..

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

Report of the Committee of Experts to the Committee of Ministers (1)

"... The Committee of experts has only considered the fundamental rights which appeared in the Assembly's draft.

Most of the Members of the Committee, however, were of the opinion that a European Convention on Human Rights should include the safeguarding of the right to own property and that of parents to choose the kind of education that shall be given to their children.

Since, however, the Consultative Assembly had expressly reserved its decision on this question and had referred it for further examination to its Committee on Legal and Administrative Questions, the Committee considered that this was more in the nature of a political question not falling within its competence. It therefore did not make any precise proposals on this subject. It did, however, call the attention of the Committee of Ministers to the importance of the two rights in question. It was felt that the totalitarian régimes had a tendency to interfere with the right to own property as a means of exercising illegitimate pressure on its nationals and they also sought systematically to expose the children to their ideological propaganda, by depriving them of the rightful influence of their parents ... (Coll.ed., II, p. 482; or Doc. CM/WP 1 (50) 15, p.12).

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

The question of the right of property does not seem to have been discussed at this Conference.

(1) Compare with the draft Report quoted in V.6 above, p.57. Alterations of substance are underlined.

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

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

"... Lord Layton first reminded the meeting that the debates during the First Session of the Assembly had not resulted in a satisfactory solution being found with regard to property rights and the right of parents to choose the education of their children, and he pointed out that the conference of Senior Government Officials had made no mention of these two rights in its draft Convention. There could be no doubt, however, that these two rights were indispensable conditions for a free society. Would not the solution be, therefore, - in view of the difficulties encountered, which made insertion of these rights in the body of the Convention almost impossible - to preface the Convention with a Preamble, in which it would be pointed out that all the Member States accepted the universal declaration of Human Rights? In this Preamble the distinction, important in the eyes of many members, could be drawn between Human Rights in general and those particular Rights which should be safeguarded internationally.

The Preamble could also specify that the aim of the Convention was to ensure a common responsibility which covered Human Rights as far as possible, and would point out clearly that what had been done was only a beginning and that later on this Convention should be extended to cover a wider field ..." (Coll. ed., III, p. 693; or Doc. AS/JA (50) PV 2, p.2).

2. Motion for a Resolution by M. N. Antonopoulos (Greece)
 (24 June 1950):

"The Committee on Legal and Administrative Questions, in confirming the vote it took last year relating to the guarantee of the right to own property and the right of parents to choose the kind of education to be given to their children, decides to postpone the detailed examination of this matter until its next session". (Coll. ed., III, p. 702; or Doc. AS/JA (50) 8 - or. fr.).

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

3. Minutes of the meeting of 24 June (afternoon and evening):

"... Continuing the general discussion interrupted by the closing of the morning meeting, Mr. MacEntee, Lord Layton, and MM. Rolin, Lanrung, Schmal, Persico, Bruins, Slot and Pernot spoke mainly on the question raised earlier by Lord Layton concerning the possibility of drafting a Preamble (1) ...

...

The Committee decided to examine together Articles 2 (11) and 2 (12) of the Report submitted by the Committee to the Consultative Assembly during its first Ordinary Session and referred back to the Committee for further study. These two Articles relate to property-rights and to the right of parents to choose the kind of education they wish to give their children.

In the general discussion which followed on this item of the Agenda, MM. Bastid, Schmal, Persico, Pernot, Rolin, Antonopoulos and Azara, Mr. MacEntee and Lord Layton took part.

Various arguments were advanced. M. Bastid wished to see included in the Convention the right of property and the right to choose the education of one's children. Lord Layton argued that formulation of these rights should be inserted in a Preamble and not in the main body of the text.

In view of the decision taken by the Committee of Ministers to adopt a system of definition of rights - and not merely one of listing them, as the Committee had done during its first meeting - it was decided, on a suggestion by M. Rolin, that the Committee should express its regret to the Committee of Ministers that the Senior Officials had made no comment on the two rights mentioned in the first paragraph above. By 7 votes with 2 abstentions the Committee adopted an Amendment proposed by M. Bastid and amended by M. Antonopoulos, in the following terms:

'The Committee confirms its vote of last year in respect of the guarantee of the right to property and of the right of parents to choose the education of their children, and decides to postpone until its next meeting a detailed study of this question.'

(1) Cf. para. VIII.1 above, page 59.

...

In accordance with the decision previously taken, the draft letter addressed to the Chairman of the Committee of Ministers was examined.

...

The Committee adopted unanimously the draft letter ... in which were embodied the various Amendments drawn up by M. Rolin which take into account the comments made by various members of the Committee during the discussions.

...

In pursuance of a suggestion made by M. Rolin a Drafting Sub-Committee was established, with the task of preparing a definition of property rights and of the right of parents to choose the education of their children, and the following were elected to be its members - MM. Bastid, Rolin, Pernot and Schmal". (Coll. ed., III, pp. 696-8; or Doc. AS/JA (50) PV 3, pp. 2-4).

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

"... 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 ..." (Coll.ed., III, p. 704; or Doc. CM (50) 29, p. 3 and Doc. AS (2) 6, p. 532).

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

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

Amendments proposed by the Irish delegation

"I. The text of the draft Convention of Protection of Human Rights and Fundamental Freedoms submitted by the Conference of Senior Officials to the Committee of Ministers falls short in many respects of the views of the Irish Government and was only accepted in a final attempt to secure agreement.

II. While the Irish Government is quite prepared to agree to verbal changes of a minor character, in order to clarify where necessary the draft, or to remove internal inconsistencies in the draft, if such exist, the Irish Government is not prepared to agree to any further whittling down of the substantive provisions of the draft. Further emendation of the draft in its substantive provisions at this stage would destroy the basis upon which the Irish Government were able to accept the present draft. It would also render the proposed Convention of little or no value and cause grave disappointment.

III. Moreover, any proposals at this stage to amend the substantive provisions of the draft must re-open the lengthy discussions which have already taken place in the Committee of Experts and at the Conference of Senior Officials. In these circumstances if proposals are now made to further amend the draft in its substantive provisions the Irish Representative must press for the amendment of the draft Convention in the following respects:

....

- (d) A clause should be included providing the right to own property.

...

IV. The Irish Government also considers that full consideration should be given to the views and suggestions contained in the letter from Sir David Maxwell-Fyfe which was addressed to the Committee of Ministers on behalf of the Legal and Administrative Committee of the Assembly (1). For its part, the Irish Government in the main endorses these views and suggestions."(2) (Coll. ed., III, pp. 720-1; or Doc. CM 1 (50) 2, pp. 1-2, - or. engl.)

(1) Cf. para.VIII.4 above, page 61.

(2) The Sub-Committee on Human Rights did not accept any of the amendments proposed by the Irish delegation (cf. Doc. CM 1 (50) 9).

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

1. Interim Report of the Legal Committee to the Consultative Assembly
(presented by M. Teitgen) (1)

The Report, which opened with a historical survey, included the following passages:

"... 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.

...

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 ..." (Coll. ed., IV, pp. 807 and 802; or Doc. AS (2) 6, pp. 524 and 519).

2. Text proposed by M. Rolin (Belgium) to the ad hoc Sub-committee (2)
of the Legal Committee (7 August 1950)

"The property of individual persons or collective bodies shall not be liable to arbitrary measures of confiscation, subject to the legal provisions adopted by each State to ensure that the holding of such property is not in conflict with its function in society."
(Coll. ed., IV, p. 820; or Doc. AS/JA/WP 1 (2) 1.)

3. Text proposed by the Sub-committee (2) (8 August 1950)

"All individuals and corporate bodies are entitled to respect for their property.

Such property shall not be liable to arbitrary confiscation, without prejudice to the laws enacted in the different States with the object of ensuring its use for the public good."
(Coll. ed., IV, p. 820, or Doc. AS/JA/WP 1 (2) 2).

(1) The above-quoted letter of Sir David Maxwell-Fyfe (para. VIII-4 above, p. 61) was contained in Appendix 5 to this Report.

(2) Cf. para. VIII.3 above, pp. 60-61.

4. Minutes of the meeting held by the Legal Committee at Strasbourg on 8 August 1950 (morning)

"... Report of the sub-committee (1) on the right to own property and the right of parents to choose their children's education"

M. Bastid, as Rapporteur, stated that the sub-committee had found itself in entire agreement with the principles of the draft of M. Rolin (Appendix I - AS/JA/WP.1 (2) 1). (2). The amendments they had made were purely of form.

The Chairman then called each Member of the Committee in turn to give his views on the proposed text.

(a) Section (11), Article 2. The right to own property

The Committee unanimously accepted the draft text proposed by the Sub-committee, subject to an amendment proposed by M. Lannung ..."
(Coll. ed., IV, p. 819; or Doc. AS/JA (2) PV 1, pp.2-3 - or. Engl.).

5. Progress report of the Legal Committee

"Having received the authorisation of the Standing Committee (3), the Committee on Legal and Administrative Questions met on 8 August at 11.a.m. to complete the outstanding points on its agenda and to agree on a revised text for Article 2, Sections 11 and 12, of the draft Convention on Human Rights which the Committee had presented to the Assembly during the First Ordinary Session and which had been referred back to it for further study. (Assembly Documents, Reports, pages 1232/1233).

The following text was approved.

Article 2, Section 11 (Approved unanimously).

'All individuals and corporate bodies are entitled to respect for their property.

(1) Cf. para. VIII 3 above, pp. 60-61.
(2) Cf. para. X 2 above, p. 63.
(3) Cf. Doc. AS/CP (2) PV 1, p. 4.

Such property shall not be liable to arbitrary confiscation. This shall not, however, in any way prejudice the right of the different States to enact such laws as may be necessary to ensure the use of this property for the public good.

... "

(Coll. ed., IV, p. 821; or Doc. AS/JA (2) 1 - or. Engl.)

6. Supplementary Report of the Committee to the Consultative Assembly
(8 August 1950)

"Revised text (1) adopted for Sections 11 and 12 of Article 2 of the Convention on Human Rights presented to the Consultative Assembly by the Committee during the First Ordinary Session and referred back to the Committee for further study.

(11) All individuals and corporate bodies are entitled to respect for their property.

Such property shall not be liable to arbitrary confiscation. This shall not, however, in any way prejudice the right of the different States to enact such laws as may be necessary to ensure the use of this property for the public good.

... "

(Coll. ed., IV, p. 822; or Doc. AS (2) 30, p. 744).

(1) Identical with the original English text quoted above in X 5, pp. 64-65. There are certain differences between the corresponding French texts.

7. Consultative Assembly Sitting of 14 August 1950 (morning)(a) Sir David Maxwell-Fyfe (United Kingdom) (1):

"...."

The second point (2) concerns the question of the rights which are omitted. The first ones to which I wish to refer are the right of property and the right of parents with regard to the education of their children which, as the Assembly will remember, were referred back to the Committee on Legal and Administrative Questions at the close of our last Session.

Again, I should like to express my own gratitude and the gratitude of the old Committee on Legal and Administrative Questions for the work that was done in this field by a Sub-committee that we appointed. The protagonists on the Sub-committee were on the one side M. Rolin and on the other MM. Bastid and Pernot. It is in my view a great triumph that, starting from such very different angles, they were able to produce the definition of those rights which appears in Document AS (2) 30 (3), which Representatives will no doubt have seen.

I wish to state objectively, which I understand is my duty, the arguments for and against the insertion of those rights. I think that the arguments against their insertion may be summarised as three.

The first is the difficulty, in spite of the work of such experienced legal Representatives as those I have mentioned, of judicial interpretation and enforcement of those rights.

The second is the fact that in general, even inside the State, social and economic rights are not usually expressed in a Constitution in such a way as to give judicial remedies.

The third is the broader point that once one enters the third category of rights - that is social and economic rights - it is very difficult to know where to halt, and it is therefore safer to keep out of that territory altogether.

-
- (1) Chairman of the Legal Committee, presenting the Report of the Committee orally.
 - (2) I.e., the second difference between Recommendation 38 of 8 September 1949 and the draft Convention of the Committee of Ministers;
 - (3) Cf. para. X-6 above, p. 65.

But, on the other hand, it is urged that these rights are the very basis of freedom, and there is a widely held view that personal and political freedom is impaired, if not rendered merely nominal, unless its enjoyment is made practical by a reasonable guarantee of these rights.

I have tried to put the arguments objectively, but I would remind the Assembly of a point to which I must return, that we in this Assembly have to remember that only a Convention to which the Committee of Ministers will agree will be recommended to our Governments, and as experienced politicians we must bear that point in mind.

..."

(Coll. ed. IV, p. 830; or Rep., 1950, II, p. 326)

(b) M. Azara (Italy) (Translation):

"...

The first point on which I should like to speak concerns the right to own property and the right of parents with regard to the education of their children. Last year, neither the Committee nor the Assembly were able to find a basis for understanding and conciliation between the two opposing view points.

Now, thanks to the efforts of our colleagues and eminent jurists, MM. Rolin, Pernot and Bastia, members of a special Committee, we are faced with a text which the Committee has discussed, re-phrased and finally presented in the formulae which have been submitted to you in Document AS (2) 30 (1).

In the first of these texts, Section 11, the right to own property is expressly not mentioned, in order to avoid elaborate questions, especially theoretical disquisitions on the nature and extent of this right, but there is clearly established, in conformity with the Universal Declaration of Human Rights, drawn up by U.N. (Article 17), the fundamental principle that any person, natural or corporate, has the right to respect for his goods and chattels which may not be the object of arbitrary confiscation.

(1) Cf. para. X-6 above, p. 65.

But, on the other hand, the use which an owner makes of his goods and chattels may not be arbitrary. It is not admissible that the said usage should be so contrary to the general interest that such property would end up by being considered, not as a projection of the individual's personality on to his effects according to the elementary rules of law and morality, but as a means of distorting these rules, as a process of emulation, as it were (if we give the word a very wide sense), and there would result from it a species of aberration in the exercise of the right.

No one today contests the social function of property. This function provides that the utilisation of property, in accordance with the general interest, can be sanctioned by the law, only in order to avoid that cives ad arma veniant, and each State may decide, through its legislative power, in what form and to what extent the right of the individual should be conformable to the general interest.

This principle, firm as a pillar and which has been introduced already into several codes and modern processes, is clearly affirmed in this second paragraph of Section 11 of the text of the Committee, which you have before you and in favour of which I declare my approval and support ..."
(Coll. ed., IV, pp. 836-7; or Rep., 1950, II, pp. 338 and 340)

(c) M. Schmal (Netherlands) (Translation):

"Mr. President, last year, on returning to Holland after the first Session of this Assembly, I was questioned a number of times on the great things we have done and the disappointments we had sustained.

...

With regard to our discomfitures, these, in my humble opinion, have not been lacking; the very fact that the Assembly has considered it necessary to refer back the two paragraphs contained in Sections 11 and 12 of Article 2 of the draft Convention to the Committee on Legal and Administrative Questions, for re-examination, seems to me to furnish the best proof of this.

We have seen that the right to own property, expressly recognised in the UN Universal Declaration, has once again been the subject of lengthy discussions here in Strasbourg. In the end there was a disposition to shrink from taking a decision which, at least for all those of us who support the Declaration, elaborated in Paris, was not really open to any serious doubt.

..."

(Coll. ed., IV, p. 838; or Rep. 1950, II, p. 342).

(d) Lord Layton (United Kingdom):

"Finally, there is the issue relating to rights 11 and 12, as we speak of them - the rights which were held over at the end of our last Assembly. As I happened to be the mover of an Amendment to delete them, I think I ought to express my opinion on them very briefly. My objection last year was definitely and clearly - and I hope I made it plain at the time - a tactical objection based, in the first place, on the belief that it would be extremely difficult to define these rights; and in the second place on the thought that, even if they were defined, there would be a great difference of opinion which might be a stumbling block to certain Members of the Council of Europe accepting the Convention. It seemed to me - and it seems to me today - that what we need is to get this Convention, this flag setting out our aims and purposes, as quickly as possible and then to get joint responsibility established. As I argued last year - and I am more than ever convinced of it - this issue of Human Rights is one on which the nations should be prepared to accept the intervention of their associates. If we cannot agree to some measure of pooling of our sovereignty for the maintenance in our respective countries of the most easily defined and most essential of the Human Rights, is there any hope of our achieving the pooling of sovereignty where interests differ widely and where there are great difficulties of definition?

It seemed to me that this was the first plunge into the water, and that if we find we can swim at all, we can gradually go for longer and longer distances and achieve much more complete results. I still hold that opinion.

The Committee on Legal and Administrative Questions have submitted compromise formulae on these two points. My attitude towards them is exactly the same as it was last year. If, in this Assembly, it appears that there is no serious controversy on those issues, and if the lawyers say (throughout this discussion I have been the one amateur among many lawyers) that they are adequate and suitable justiciable definitions, I have nothing further to say, and I should certainly agree to their being included.

...."
(Coll. ed., IV, pp. 843-4; or Rep., 1950, II, pp. 352 and 354).

8. Consultative Assembly sitting of 16 August 1950 (morning)(a) Mr. Norton (Ireland):

"Last year, the Assembly adopted, I think by 64 votes to one, a Recommendation which it submitted to the Committee of Ministers on fundamental personal and political rights. After consideration of the Recommendation by a Committee of Experts, by a Committee of Senior Officials and by the Committee of Ministers, we are now offered something which is substantially less than the Recommendation which was made by the Committee and which has certain vital omissions which seriously weaken the draft Convention as a fundamental charter of Human Rights. In my view, these omissions are of considerable importance.

They relate, in the sphere of personal rights, to the absence of a safeguard which would enable parents to choose the kind of education to be given to their children. There is also an absence of a recognition of the inherent natural right of human beings to own property and to use it with such limitations in the interests of the common good and social justice as may be prescribed by the law of our respective countries.

In my opinion, these are vital safeguards which have a deep significance far outside the secular realm and no reasons whatever have been given to the Assembly by the Committee of Ministers for the exclusion of these essential safeguards. The silence of the Committee of Ministers is not an answer to the Assembly nor is there an explanation for the exclusion of these essential provisions. It is not right that the power of veto by a single member of the Committee of Ministers should be used as a justification for weakening the safeguards to which the Assembly rightly attaches considerable importance.

...

I think that the draft Convention is in urgent need of improvement in order to strengthen it, and ... that it should include a provision for safeguarding the inherent natural right of citizens to own property and to use it subject to such limitations in the public interest and in the interests of social justice as may be prescribed by law..." (Coll. ed., IV, pp. 845-850; or Rep., 1950, II, pp. 494, 496 and 498).

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

"...

The first question that we had to solve last year was that of deciding what precisely are the rights and freedoms in respect of which a European guarantee ought to be given. The Ministers have accepted the list we drew up. We shall very shortly be adding to it a guarantee of the right to own property and a guarantee of prior right of parents in the matter of education of their children.

In this connection our Committee reached agreement on a text which may be capable of further improvement. There is every chance that the Ministers in their turn will accept these proposals. We shall therefore have reached mutual agreement, when our work is completed, on the list of rights and freedoms to be guaranteed.

..."

(Coll. ed., IV, p. 852; or Rep., 1950, II, p. 502)

(c) Mr. MacEntee (Ireland):

"...

I propose to move, if necessary, at the end of the debate, the following Motion:

'The Consultative Assembly, in referring to the Committee on Legal and Administrative Questions the draft Convention of Human Rights and Fundamental Freedoms, which the Committee of Ministers has submitted, expresses its regret that the draft Convention in question does not include any declaration of the inherent natural right of man to own property and to use it with such limitations in the interests of the common good and of social justice as may be prescribed by law (1).

...

(1) See Doc. AS 5(2) 59, p. 797. Mr. MacEntee's Motion for a Resolution, which was also signed by Messrs. De Valera, Norton and Everett, was referred to the Legal Committee. (Coll. ed., IV, p. 845; or Rep. 1950, II p. 542).

I cannot see the Parliament of my country ratifying the Convention in its present form ... (1).

...

All this would merit detailed reference, but in the limited time at my disposal I can refer only very briefly to two matters which I regard as of capital importance. I refer to the rights of parents in regard to the education of their children and to the right of private ownership of property.

In order to bring these matters before the attention of the Assembly in a formal way and to ensure that when the Assembly's Committee considers the draft Convention they will not be estopped from adverting to those rights and restoring them to their rightful place among Human Rights and Fundamental Freedoms, my colleagues and I have, as I have already informed the Assembly, put down two Motions which we feel express generally the views of the Assembly in regard to these important matters.

In order to justify the exclusion of those rights from the list of those which it will be within the competence of the Commission to safeguard, to investigate alleged abuses of, and to report upon such abuses, and which will be justiciable by the European Court, it has been suggested, first, that those rights are more difficult to define, to interpret judicially and to enforce.

Second, it has been suggested that, even within the State, social and economic rights are not so expressed as to give rise to judicial remedies.

Third, it has been suggested that it will be difficult to know where to stop when one starts to express such rights.

Those arguments might equally well be used to justify the exclusion from the list of Human Rights many of those which have been included in the draft Convention. For example, I cannot conceive that it is more easy to interpret judicially, to enforce and preserve by judicial remedies, the Human Rights set out in Article 9, which relate to freedom of thought, conscience and religion; or in Article 10, relating to the right of freedom of expression; or in

./.

(1) On the other hand, all previous speakers except M. Schmal (Netherlands) thought the Committee of Ministers' draft could, in the last resort, be accepted as it stood (although they criticised individual features, including the omission of the right of property).

Article 11, which declares that everyone has the right to freedom of peaceful assembly and to freedom of association; or in Article 12, which relates to the right to marry and found a family; or in Article 14, which provides that the rights secured in the Convention shall be enjoyed without discrimination on the grounds of religion, sex, colour, language, national or social origin.

I repeat that I cannot conceive that it would be more easy to make those rights effective than it would be to safeguard the fundamental natural right of a parent to see that his child should be educated and brought up in the way which his conscience dictates to him that it should be.

Therefore, I suggest that there is no reason on practical grounds why these rights should be excluded from the Convention and I would ask the Assembly to indicate if necessary to its Committee on Legal and Administrative Questions that it desires that that Committee should address themselves to the consideration of these rights in order to ensure that they will be included among the list of Human Rights and fundamental freedoms to which the draft Convention will apply.

It should be easy for us to do so. The Committee have already arrived at a compromise; it did not represent my point of view, or that of certain other Representatives, but it did recognise at least that parents had sacred rights in regard to the education of their children, and that man, as a human person, had the right to own and enjoy property. Of course, the right to own and enjoy property is limited; it is a right which can be exercised only with due regard to the rights of others. It is a right which is a social function, and that social function must be fulfilled.

We do not desire that it should be stated in an absolute form, but we do feel that, in the words of one who may be regarded as our teacher and leader in the battle for freedom of thought and conscience, nature has intimately connected private ownership with the existence of human society and its true culture, and especially with the existence and development of the family. It is the function of private property to secure for the father of a family the true independence which he needs to discharge the duties assigned to him by the Creator. It is in that spirit that we wish to see a reference to the right of private ownership included in the draft Convention.

As I have said already, the ownership of property is a right to which duties and obligations are inseparably attached. Those who have property are bound, according to their means to assist those who have not; property may not be used oppressively nor may it be monopolised by those who own it. I feel it essential that I should state the limitations which I think attach to this right.

...

To conclude, I should like to say that I hope that when we come to take a decision on the draft Convention we shall ensure that that decision will be one which will permit the Committee to reconsider these questions afresh and to include, if necessary, in the draft Convention, as representing the general viewpoint of the Assembly, provisions which will ensure that the two rights I have mentioned - the right of the parent to safeguard his child during the process of education and the right of man, as a human person, to enjoy the private ownership of property - will be included as articles which we regard as fundamental". (Coll. ed., IV, p. 858, 859, 860 and 861; or Rep., 1950, II, pp. 514, 516, 518 and 520).

(d) Mr. O'Higgins (Ireland):

"...

I know that to continue talking along those lines (1) should logically lead one to reject this Convention entirely. I would not, however, do that. I would not share in that respect the views even of my colleague, Mr. MacEntee, because while the Convention does not contain either the right to free elections or the right to ownership of private property, to which Mr. MacEntee has referred, and, indeed, while in those respects the Soviet system could quite easily comply with the provisions which this Convention contains, nevertheless, in so far as it provides for the extra-national machinery for the investigation of grievances and the remedying of problems particular to different States and different individuals, I think it is something worth accepting, and I think that we should accept it in that spirit: but accept it merely as an instalment of what is due to the peoples whom we are representing ...

"..."

(Coll. ed., IV, p. 864; or Rep., 1950, II, p. 526)

(1) i.e., criticising the omissions from the draft Convention submitted to the Assembly.

(e) M. Beaufort (Netherlands) (Translation):

"...

Several Representatives have expressed their disappointment - and I agree with them in this - that several of the rights appearing in the list submitted by the Assembly had been left out in the Ministers' draft.

..."

(Coll. ed., IV, p. 865; or Rep., 1950, II, p. 528)

(f) M. Baban (Turkey) (Translation):

"...

I consider that it is my duty to draw the Assembly's attention to the right to own property which has not been assigned a fitting place in the Convention.

..."

(Coll. ed., IV, p. 870; or Rep., 1950, II, p. 538)

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

"... I should like to suggest that the Convention sent to us by the Committee of Ministers be now referred to the Committee on Legal and Administrative Questions for consideration. When it is so referred, all the points which have been raised in this debate, including the points contained in the Motions of my friend, Mr. MacIntee (1), will be considered by the Committee on Legal and Administrative Questions, with the hope that that Committee will be able to report back to the Assembly next week and that a decision will then be taken on the final form of the Convention which we, in turn, will send back to the Committee of Ministers ..."

This was agreed.

(Coll. ed., IV, p. 871, bis; or Rep., 1950, II, p. 542)

9. Draft Motion submitted by M. Teitgen (France) to the Legal Committee (16 August 1950)

"Article 1:

The Consultative Assembly of the Council of Europe having been acquainted by the Committee of Ministers with a draft Proposal for the Safeguarding of Human Rights and Fundamental Freedoms which has been drawn up with due regard to the draft submitted by the Consultative Assembly to the Committee of Ministers, expresses a favourable opinion of the proposed draft.

./.

(1) Cf. p. 71 above.

Article 2 :

The Consultative Assembly however strongly urges the Committee of Ministers to complete or modify the text as drawn up in the following manner:

Paragraph I - Insert in the draft an Article numbered 10A worded as follows (1) :

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way, the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest.

..."

(Coll. ed., IV, pp. 874 and 876-7; or Docs. AS/JA (2) 6 and 6 revised, p. 1, or -Fr.).

10. Minutes of the meeting held by the Legal Committee on 17 August 1950 (morning):

"The Chairman called upon the Rapporteur, M. Teitgen, to outline the manner in which he considered the work of the Committee should proceed.

The Committee deliberated.

Resolved: That, subject to later amendments, the Committee should express a favourable opinion of the draft Convention for the Protection of Human Rights and Fundamental Freedoms, as accepted by the Committee of Ministers.

Resolved: That the Committee should at its next Meeting consider the inclusion of Articles relating to education, property and political rights in the draft Convention.

The Chairman invited M. Mercouris to submit a Memorandum to the Committee developing the point of view he had expressed in Committee.

..."

(Coll. ed., IV, p. 872; or Doc. AS/JA (2) PV 3 revised, p. 3 - or. Engl.).

(1) Compare with text quoted in X-6 above, p. 65. Alterations are underlined.

11. Comments by MM. C. Rendis and S. Mercouris (Greece) on M. Teitgen's draft motion (1) (17 August 1950)

"We agree to the draft proposed by the Committee of Ministers. With regard to the Amendments proposed to paragraph 1 (1), paragraph 3 clause 2 (2), paragraph 4 (3) paragraph 5 (4) and paragraph 6 (5), we wish to draw the attention of our colleagues on the Committee to the danger of proposing such amendments during the period of 'cold' and sometimes 'hot' war which we are experiencing at the moment. Under International Law there are exceptional rules in force in war-time for nationals of enemy countries, providing for such measures as arrest, internment in concentration camps, confiscation of property, special penalties for espionage, sabotage etc. Now the present wars have taken a different form; at the enemy's headquarters somewhere behind the 'Iron Curtain', preparations are being made for aggression within the attacked country itself and, with the help of the border countries, the war is being waged with the aid of nationals of the victim country. Most of the enemy's rearguard services are concealed in the towns and villages of this same country (for example food, transport, intelligence, espionage, sabotage and so forth). This actually occurred in Greece in 1946 - 1949 and is also happening to some extent in Korea at the present time

In Greece, the defeated enemy has withdrawn into the territories of the bordering countries, stating that it has provisionally suspended military operations.

In the Greek interior, the enemy is beginning to reorganise his system of partisan activities. Consequently, to apply the rules of Human Rights and individual freedoms without any restrictions in exceptional cases would mean encouraging the preparations taking place within Greece for a renewal of the armed attack with the help of forces which had fled beyond the frontiers.

(1) Cf. para. X 9 above, pp. 75 and 76.

(2), (3), (4) and (5) - These amendments were respectively for the inclusion of the right of criticism and political opposition, the insertion of a general clause referring to the "general principles of law recognised by civilised nations", wider recognition of the right of individual application to the European Commission of Human Rights and increased powers for the European Court.

In the present circumstances it would be wise to add a paragraph enabling any State threatened by a transformation of the 'cold' war into a 'hot' war to suspend the individual liberties of those of its nationals who belong to enemy organisations and are under enemy orders to carry out an armed attack against their own country."

(Coll. ed., IV, p. 879; or Doc. AS/JA (2) 10 - or. Fr.).

12. Minutes of the meeting held by the Legal Committee on 18 August 1950 :

"... The Committee considered paragraphs I and II of Article 2 of the draft Motion submitted by the Rapporteur. (Reference: AS/JA (2) 6 revised).

...
Paragraph I (the right to own property)

of Article 2 of the Draft Motion of the Rapporteur was adopted by 15 votes to 4, with 1 abstention.

..."

(Coll. ed., IV, p. 881; or Doc. AS/JA (2) FV 4, pp. 2-3, or. Engl.).

13. Draft Report of the Legal Committee to the Consultative Assembly

"... The Committee felt that it was important that they, and the Assembly in due course, should express their general approval of the Convention submitted by the Committee of Ministers.

The Committee felt, however, that there were certain points to which they should direct the attention of the Committee of Ministers and urge the Ministers to include them in the Convention. They have included these points in the draft Resolution appended, which they invite the Assembly to pass. All these points have been fully discussed and it should not present any difficulty to the Committee of Ministers to make a decision upon them.

Your Committee feels it to be a matter of the gravest urgency that there should be no further delay in bringing the Convention into operation.

...

(1) Right or Property

The text agreed to by the Committee and appended is that arrived at after examination by a Sub-committee of the Legal Committee of last year. It represents an attempt to define

the right as requested by the Assembly in September 1949, and endeavours to make the distinction between arbitrary confiscation and the social conception of property which allows it to be used by regular legislation for the public good.

In the discussions of the Committee it was felt, on the one hand, that the text now submitted represented a fair definition of an essential right, arrived at after much discussion and the careful study mentioned above. On the other hand, certain members of the Committee felt that it was wrong to include this social right and exclude others such as the right to work and the right to rest and leisure. The Committee, however, decided by a majority of 15 votes to 4 that the right should be included.

...

(Appendix: modifications of the text of the draft Convention proposed by the Committee)

- (i) Insert in the draft Convention an Article numbered 10 A, worded as follows (1):

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way, the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest (2).'

...."

(Coll. ed., IV, pp. 896-7, 898-9 and 900; or Doc. AS/JA (2) 15, pp. 1, 2 and 5, and Doc. AS/JA (2) 15 revised, pp. 1-3, - or. Engl.).

14. Preliminary draft Recommendation of the Consultative Assembly to the Committee of Ministers (23 August 1950) (3)

"Article 1

The Consultative Assembly of the Council of Europe having been acquainted by the Committee of Ministers with a draft Proposal for the safeguarding of Human Rights and Fundamental Freedoms, which has been drawn up with due regard to the draft submitted by the Consultative Assembly to the Committee of Ministers, expresses a favourable opinion of the proposed draft.

- (1) Identical with English text quoted in X 9 above, p. 76. The corresponding French texts differ slightly.
 (2) This text occurred in Doc. AS/JA (2) 15 but not in Doc. AS/JA (2) 15 revised, which had no Appendix.
 (3) Apparently drafted for the Committee by M. Teitgen.

Article 2:

The Consultative Assembly, however, strongly urges the Committee of Ministers to complete or modify the text as drawn up in the following manner:

...

Paragraph I

Insert in the draft an Article numbered 10 A worded as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way, the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest (1).

..."

(Coll. ed., IV, pp. 893 and 894; or Doc. AS/JA (2) 20, pp. 1 and 3, - or. Fr.).

15. Minutes of the meeting held by the Legal Committee on 23 August 1950

"...

Paragraph I of the draft Motion submitted by the Rapporteur (2)

The Committee deliberated.

M. Bastid stated that his approval of the draft Convention was dependent on the adoption of the amendments the Committee had proposed to the Committee of Ministers.

M. Persico proposed a textual amendment to the draft Recommendation, which was approved unanimously by the Committee.

..."

(Coll. ed., IV, p. 892; or Doc. AS/JA (2) PV 7, p. 3, - or. Engl.).

(1) Text identical with those quoted in X 9 and 13 above, pp. 76 and 79.

(2) Cf. para. X 14 above, pages 79-80

16. Report of the Legal Committee to the Consultative Assembly
(24 August 1950)

(Explanatory Memorandum) (1).

"... The Committee felt that it was important that they, and the Assembly in due course, should express their general approval of the Convention submitted by the Committee of Ministers.

The Committee has, however, considered it to be its duty to urge the Committee of Ministers to make certain additions or essential alterations which the former would like to see included. In drawing up these proposals, the Committee has taken into consideration those divergent opinions that had been brought to light within the Committee itself, as had no doubt been the case within the Committee of Ministers. The agreement reached by it on most points encourages the hope that the Committee of Ministers will rally to its suggestions and that the draft Convention may be modified without any substantial delay being incurred.

2. Right of Property

The text agreed to by the Committee is that arrived at after examination by a Sub-committee of the Legal Committee of last year. It represents an attempt to define the right as requested by the Assembly in September, 1949, and endeavours to make the distinction between arbitrary confiscation and the social conception of property which allows it to be used by regular legislation for the public good.

In the discussions of the Committee it was felt, on the one hand, that the text now submitted represented a fair definition of an essential right, arrived at after much discussion and the careful study mentioned above. On the other hand, certain members of the Committee felt that it was wrong to include this social right and exclude others such as the right to work and the right to rest and leisure, and had doubts as to the form in which the right was stated. The Committee, however, decided by a majority of 15 votes to 4 that the right should be included.

(1) Compare with the text quoted in X 13 above, pp. 78-79.
The more important changes are underlined.

(Proposed Recommendation) (1):

The Consultative Assembly of the Council of Europe having been acquainted by the Committee of Ministers with a draft Proposal for the safeguarding of Human Rights and Fundamental Freedoms, which has been drawn up with due regard to the draft submitted by the Consultative Assembly to the Committee of Ministers, expresses a favourable opinion of the proposed draft; but strongly urges the Committee of Ministers to complete or modify the text as drawn up in the following manner:

Paragraph I

Insert in the draft an Article numbered 10 A worded as follows:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way, the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest.'

..."

(Coll. ed., IV, pp. 903, 906 and 908; or Doc. AS (2) 93, pp. 981, 984 and 985).

17. Amendment No. 2 to the Report of the Legal Committee proposed by Mr. Mitchison (United Kingdom) and Edberg (Sweden) (24 August 1950)

"Leave out paragraph I.

...(2)"

(Coll. ed., IV, p. 910; or Amendment No. 2 to Doc. AS (2) 93, p. 989 - or. Engl.)

18. Consultative Assembly Sitting of 25 August 1950 (morning)

(1) Virtually identical with the text quoted in X 14 above, pp. 79 - 80.

(2) Mr. Mitchison, in his Amendment, also proposed leaving out any reference to the rights of parents in regard to their children's education (cf. the present Article 2 of the First Protocol) and to dispense individuals from the obligation to use the services of a lawyer in order to make an application to the European Commission of Human Rights.

(a) Sir David Maxwell-Fyfe (United Kingdom)⁽¹⁾:

"...

Now, I come to specific points. The definition of the right of property represents the effort of the Committee last year, with the help, as I have said, of a Sub-committee holding divergent political views, to reconcile the social conception of property with the prohibition of arbitrary confiscation. It was felt by a majority of the Committee that this represented fairly the distinction between these two conceptions. It is true that, on the other hand, a minority objected to the inclusion of this right for the reasons which I have tried to state in the Report; but I ask the Assembly to consider that the insertion was arrived at after a really great effort to find a true and effective definition acceptable to the different points of view, and to bear that in mind before we have any serious conflict today on this point which we have discussed so often and at such length.

That is the spirit in which I ask the Assembly to approach this difficult problem, and in doing so, there is a further remark I wish to add. I have referred to our Sub-committee. It is one of the glories of the Council of Europe that in no other body that I know could we have had gentlemen of such distinction and legal experience to make such a broadminded and conciliatory approach to so difficult a problem.

..."

(Coll. ed., IV, p. 913; or Rep., 1950, III, p. 886)

(b) Mr. Roberts (United Kingdom)

"...

I refer first to the right of property. I must say frankly that for my own part - and I speak also for Lord Layton - I should for tactical reasons have preferred that right not to have been included in the draft Convention. I certainly think it desirable for everyone to have some property and to be protected in respect of his personal belongings, but it is almost impossible to define briefly in general terms a right to property.

./.

(1) Chairman of the Legal Committee, presenting the Committee's Report orally in the absence of M. Teitgen, Rapporteur.

The word 'possessions', used in the English text, is not a really satisfactory word. It calls to my mind memories of the young man with great possessions who put them before his ideals and visions. It is a word that would not be found in a British Act of Parliament or any other legal document.

Furthermore, by bringing in property we open up the field for specifying other social benefits and advantages - the right to work, the right to leisure, the right to an adequate standard of living and the right to social security. Would anyone argue that the right of property is more important than any one of these? There is a legal maxim 'Expressio unius, exclusio alterius', and by the express mention of property alone we do not wish to lay the draft Convention open to the charge that the Assembly considers property the most important of the social rights.

... (1).

We have to remember always that the draft Convention is not a list of all fundamental rights. It is not like the Universal Declaration of Human Rights of the United Nations. It is a collective guarantee by the Council of Europe of the essential conditions of democracy in each State. It should, therefore, be confined to the minimum essential rights, the acceptance of which by a State will ensure that it remains democratic. They must be such rights as are capable of precise definition and of enforcement by a court of law, and by an authority outside the State.

....."

(Coll. ed., IV, pp. 915-6; or Rep., 1950, III, pp. 890 and 892).

(c) Mr Mitchison (United Kingdom)

"....."

You will see from the Report, Mr. President, that there was opposition and I have put down some Amendments (2) upon which, with your leave, I propose to say a word or two because I think I shall be able to shorten the proceedings.

./.

(1) Here Mr. Roberts spoke of the rights of parents in regard to their children's education (cf. the present Article 2 of the First Protocol).

(2) Cf. Para. X 17 above, p. 82.

My own difficulties about this draft Convention were very similar to those which have been expressed by Mr. Roberts. We proposed to make a statement about the rights of property which seemed to me, and still seems to me to some extent, to present two difficulties.

First, I felt some doubt whether any draft Convention which entailed a procedure going first as far as a European Commission and then, if the case so arose, to a European Court, should have inserted in it a clause about the essentially social right to property. I felt the same doubt as Mr. Roberts as to whether if this particular social right were inserted, there should not accompany it other rights common to man, and which to many men are far more important than the right to property.

In this industrial world of ours it is often the case that a man is far more concerned with his right to work or his right to leisure than with his right to property, with which he may be very scantily endowed. It was for that reason that I felt some doubt about such an insertion.

Again, I did not wholly like, nor do I still wholly like, leaving to a European Commission or, in certain circumstances, to a European Court, the question of what amounts to arbitrary deprivation of property. I hope I may be allowed to say that in our country we have carried through measures of nationalisation, and in our Parliament, in debates which were often heated, and in which the choice of language was not always as precise as one expects to find in a draft Convention, we have been accused of the arbitrary confiscation of railway shares and things of that sort. I felt the difficulty that there might easily be introduced a political question under cover of what might appear to be an obvious right.

... (1).

But on the right of property, as I believe it to have been intended by those who, with such care, drafted this clause in the Sub-committee last year, there can be very little difference. Accordingly, I have come to the conclusion, on these two clauses, that my objections were fundamentally those of a lawyer. Lawyers have their place. This was indicated just now by a

(1) Here Mr. Mitchison spoke of the rights of parents in regard to their children's education (cf. the present Article 2 of the First Protocol).

most distinguished member of the profession, who also indicated, in such a way that the whole of the Assembly responded to his words, that lawyers also have hearts and a sense of their responsibilities as citizens of the world.

I feel that if this legal objection were to be pressed now and I were to put myself in the position of raising again the kind of question that was raised here last year, and did so on juristic grounds, we might expose what is really a remarkable achievement to quite unnecessary criticism. After all, we are only making proposals to the Committee of Ministers, and accordingly, I propose to smother any juristic difficulties I may feel and equally to smother any minor questions of the wording of the clause; and, instead, to welcome and accept the two clauses in the spirit in which I believe they were drafted by those who were responsible for their drafting, having regard to the fundamental rights which, undoubtedly, they recognise. After all, the question here is that the High Contracting Parties should not merely agree but should also declare certain fundamental rights.

...(1)".

(Coll. ed., IV, pp. 917-918; or Rep., 1950, III, pp. 894 and 896).

(d) M. Pernot (France) (Translation):

"Ladies and Gentlemen, I have asked to speak in order to reply to Mr. Mitchison, having noted that he has tabled Amendments with a view to the suppression of a part of the provision concerning the right to own property and also of the right of parents in connection with the education of their children (2).

I had hoped that, following this conciliatory effort (3), we should find no difficulties within the Assembly, and I cannot help regretting that Amendments should have been tabled particularly with regard to the questions of property and education in respect of which, I can assure you, we have made the greatest possible efforts at reconciliation.

(1) Here Mr. Mitchison spoke on the 3rd part of his Amendment (deletion of the obligation on individuals to use the services of a lawyer in order to make an application to the European Commission of Human Rights.

(2) Cf. para. X 17 above, p. 82.

(3) By the Legal Committee.

We examined these two questions from every point of view. We sought a compromise solution. I believe we have achieved it and I venture to hope that later on the Assembly will recognise this by ratifying the two sets of provisions submitted by the Committee.

What are the principal arguments put forward by Mr. Mitchison?

If I am not mistaken, our colleague appears first of all to be preoccupied by the fact that we have made some alterations in the text proposed by the Committee of Ministers.

One really does come across some unexpected surprises in political life.

In the last few days we have listened to criticisms of the Committee of Ministers. Yet today it would seem that the text drawn up by the Committee of Ministers has a kind of intangible quality which we must scrupulously respect.

How happy would the Ministers be today to hear such laudatory remarks to which they are not at all accustomed.

I should like the Assembly to realise from the very start that when the proposals of the Committee come before the Committee of Ministers, they can reckon on favourable consideration, and I particularly want to draw attention to this fact because it has not, so far as I know, yet been brought out.

You are aware that, following our debates in September 1949, the Committee of Ministers referred the draft Convention to a Committee of Experts for examination. The latter, in its Report which I have before me, on page 12 of the French text uses the following terms which I think it would be useful for me to read. 'Most of the members of the Committee' - I emphasise the word 'most' - 'were of the opinion that the European Convention on Human Rights should include the safeguarding of the right to own property and that of parents to choose the kind of education that should be given to their children.' That is to say the two provisions concerning which I am offering an explanation at the present moment.

And after pointing out that this question was outside the province of the Committee of Experts so long as the Assembly, to which the question had been referred back, had not given its opinion, the Committee of Experts adds this phrase which is worthy of thought: 'The Committee calls the attention of the Committee of Ministers to the importance of the two rights in question.'

It was felt that the totalitarian régimes had a tendency to interfere with the right to own property as a means of exercising illegitimate pressure on its nationals and they also sought systematically to expose the children to their ideological propaganda by depriving them of the rightful influence of their parents' (1).

I believe that one of the essential tasks of the Council of Europe is to fight against the growing influence of totalitarian ideas, and I thought accordingly that it would not be without interest to recall the opinion of the Committee of Experts on these two points.

And now, what are the arguments that Mr. Mitchison has adduced with no little vigour against the proposals of the Committee?

Mr. Mitchison has in the first place maintained that the definition of the right to own property, in the form we propose it, is not sufficiently clear.

I think, actually, one may always say of any definition that it lacks clarity. But Mr. Mitchison is a man of the law, and knows quite well that side by side with texts there is a thing called jurisprudence, and we may rely on the European Court of Justice to discriminate, when the time comes, between what would be an arbitrary act and what would be a legitimate act.

If you will just glance back at the definition which appears in the Report before you, you will find that the domestic interests, if I may so call them, of each of our States are indeed scrupulously respected.

When we debated this subject last year, what was the essential reason for our not being able to reach agreement? Was it not that a certain number of our colleagues, and indeed, not without reason, said: 'But you are talking simply about the right to own property, without any other indication; what will the Court do if it has no definition?'

And so a Sub-committee, of which I had the honour to be a member, gave close examination to the problem. It drafted the text you have before you: 'Every person, whether physical or moral, has the right to the respect of his property. His property may not be subjected to arbitrary confiscation. The present provisions cannot however be considered as infringing, in whatever way, the rights of states to pass the necessary laws with a view to the use of such property in conformity with the general interest.' (2).

./.

(1) Cf. text quoted in VI above, p. 58.

(2) This is the wording that appears in Rep., 1950, III; the text actually suggested is set out at X 16 above, p. 82.

As the Chairman of the Committee very well emphasised a short while ago, we have tried to reconcile the right to own property itself with the social functions of this right to which our Italian colleagues had particularly drawn the attention of the Committee.

I therefore think that this first complaint can be set aside.

Mr. Mitchison has remarked, incidentally, that other rights besides the right to own property should also have appeared in the Convention, - such as the right to work, the right to leisure. After all, he seemed to say, the ownership of property is an economic right, and today we are not discussing economic rights. May I be allowed to answer this argument in the simplest possible fashion, for it really does not seem to me that it deserves the notice of this Assembly.

To start with, there is a tremendous difference between the rights referred to and the right to own property even if only from the point of view of the conditions in which the question appears today.

No proposal has been submitted either to the Committee by one of its members, or to the Assembly today, to include in our Convention the right to leisure or the right to work while, on the contrary - and I should like you to pay particular attention to this argument, which appears to me a decisive one - what is likely to be the state of public opinion tomorrow in European countries if it suddenly learned that the Assembly had set aside the right to own property, after the Committee had adopted a Motion by a large majority with a view to its being included among the recognised rights?

There was already considerable stir; I assure you, last year following our debates on the question, when it was referred back to the Committee. And yet at the time it was only a question of referring it back for further study. If, tomorrow, public opinion, - let us say French public opinion, that of French peasants and workers, who have day by day gathered together what they could in order to have a family home, - suddenly learned that family property was not guaranteed and that the men meeting at Strasbourg in this eminent gathering, created with a view to safeguarding civilization, were hesitating on this point, I can assure you that they would be bitterly disappointed.

A number of eminent speakers have referred in this place during the last few days to the importance of public opinion with regard to the work we are doing in Strasbourg. I also take up this argument and I tell you: Take care! Should you today set aside the right to own property and the accepted right of parents to supervise the education of their children you would estrange a great number of people who are at present favourably disposed to Strasbourg and the Council of Europe.

We must make a great effort to deserve a favourable public opinion and to provide it with some enthusiasm for those ideas we are defending. I beg the Assembly, then, to think very seriously before voting.

... (1)"

(Coll. ed., IV, pp. 919-921; or. Rep., 1950, III, pp. 898, 900 and 902)

(e) M. Bastid (France) (Translation):

"Mr. President, I did not intend to take part in this debate. I had put down my name at the last minute to speak against Mr. Mitchison's Amendment (2), but the very fine persuasive speech which has just been made by my friend M. Pernot, has made my task singularly easy; perhaps, indeed in some respects, more difficult, because I cannot claim to reproduce his magnificent exposition.

I did not propose to speak because I thought we were all agreed. I thought, as Sir David Maxwell-Fyfe pointed out just now in his remarkable speech, that the discussions of the Legal Committee formed a whole, and that they could not be subdivided so as to enable a separate vote to be taken on each point.

What did we do in the Committee? First, we gave our approval to the principle underlying the draft submitted by the Committee of Ministers; secondly, we suggested certain additions which might profitably be made to it.

I do not know if some of the members of the Committee accepted the additions in order to obtain a vote in favour of the principle; but what I do know - for I am, in this matter in the same situation as several of my colleagues - is that we only voted in favour of the principle of the text of the Committee of Ministers subject to certain additions.

At the moment, I have especially in mind the right to own property. The arguments which I put forward are also, to a certain extent, applicable to the right of education to which M. Pernot drew special attention.

(1) Here M. Pernot spoke of the rights of parents in regard to their children's education (cf. the present Article 2 of the First Protocol).

(2) Cf. Para. X 17 above, p. 82.

What I wish, once more, to impress upon the Assembly, is that we offer texts which have been elaborated with great care and which are the outcome of a loyal effort of conciliation between opposing points of view.

In the month of September last year the question of property was referred back to the Committee because we had formulated it under a very comprehensive heading borrowed from the Declaration of the United Nations, and certain of our colleagues might have thought that, sheltering behind this formula, we intended, in the name of property, to affirm an absolute right to own property rather in the nature of the rule of part-ownership in Roman law.

In truth, not one of us had ever had this intention. As far as I, personally, am concerned, I am perhaps the most individualistic member of this Assembly - and I am proud of it - but I never, for a moment, dreamt of ignoring an evolution which has taken place in all countries, and which I do, in fact, consider perfectly legitimate.

Neither am I unaware that property is a social function. I recognise that the proprietor is put in charge of his property with the sole object of ensuring the maximum return in the general interest.

A Sub-committee had been appointed by the Legal Committee to find an agreed formula. This Sub-committee took as its basis the text which had been submitted to us by Mr. Rolin, who was, at the beginning, opposed to the inclusion of the right to own property. We have only modified Mr. Rolin's formula as regards its literal wording; we have preserved both the spirit and the intention. This is evidence of the spirit of mutual concession and reciprocal understanding in which we worked.

We reaffirmed that property is an extension of the personality; that it should be protected from arbitrary confiscation, that is to say, from those high-handed administrative or private measures of which all the totalitarian régimes have furnished such sinister examples. On the other hand we expressly reserved to each State the right to safeguard the social purpose of the property by appropriate legislative enactments. For this reason, nationalisation laws which, - may I remind Mr. Mitchison? - exist in France as well as in England, could never be brought before the court or the Commission and impugned before them under the text which we are proposing. This point seems to me to be perfectly clear.

The content of the right to own property, as we have formulated it, has thus been rendered quite palatable. We are, in fact, merely making our bow to a traditional right.

Then, after the content, there comes the guarantee. What guarantee does the draft Convention propose? Is it strict? In point of fact it has been very much weakened. There is no longer an obligatory Court. The Court will function on request, and it will not even function immediately, because it must await the approval of the majority of states which constitute the Council of Europe.

There is a Committee, but the new Article 25 proposed by the Committee enables States to make reservations as to the Articles of the Convention which may be invoked before this body (1), so that the adversaries of the right to own property will find loopholes which afford them entire satisfaction.

Truth to tell, we spend much of our time here purging texts of their substance, and if we continue in this way we shall end up by hesitating to state that two and two make four under the pretext of reserving the right of dissent on one side or the other.

It has been objected that property is essentially an economic right, and that as such it has no place in this Convention which is meant to deal with personal rights. I protest against such a view. Property has more than an economic significance: it is bound up with the development of the human being. Property is an extension of the man, and man cannot feel safe if he is exposed to arbitrary dispossession.

Besides, the text of the draft Convention guarantees freedom of association. This, as opposed to the law regarding ownership of property, is an exclusively economic right. This objection does not therefore seem to me to be valid.

Neither do I recognise the argument that the ownership of property is not a right which can be invoked before a commission or before a European Court, that it is not what the British call a 'justiciable' right.

In fact I do not know if there is any right more ancient or more firmly established than the right to own property.

In all civilised nations, there are rules to protect individuals against arbitrary confiscation. There are also enactments which, with certain reservations and in certain circumstances, permit expropriation in the public interest. I think that the legislative material which will be at the disposal of a commission or a court, for reference, is abundant. Consequently, I am in no way anxious regarding any hesitations which the Commission or the Court might have.

(1) Cf. Doc. AS (2) 93, Sect. 6, pp. 982-983, and Paragraph IV, p. 986.

Ladies and Gentlemen, if I lay so much stress on the right to own property, it is because, as M. Pernot pointed out just now, this right is of particular significance for our country and because the word evokes many echoes in France.

France is essentially a rural democracy with patriotism for the soil. Many were the Frenchmen who went into battle feeling that, to a large extent, they were defending their right to the possession of the soil, which is the fruit of their labour and their lifelong savings, the extension of their individuality and the guarantees of their independence.

In France there is a mystique of property. This is so true that the Communist propaganda, designed to appeal to the peasant population of France, is obliged to take this feeling into account, not only to compromise with it but often to flatter it.

According to the French Declaration of the Rights of Man, of 1789, the ownership of property was one of the four fundamental rights on a par with the liberty and safety, which the draft Convention sets out to guarantee.

I should certainly make myself ridiculous in the eyes of my electors if I agreed to approve a text which guarantees the secrecy of the mails but which boggles at recognising the right to own property.

For this reason, if the impossible should happen and the right to own property were deleted from the draft Convention in spite of the overwhelming majority which it obtained in committee - 15 votes to 4 - I should be obliged to vote against all the rest of the text.

We are dealing here with a matter of principle. I think it will suffice if I appeal to the spirit of conciliation of this Assembly, which is desirous of setting the seal of its approval on painstaking work carried out by a Committee representative of all shades of opinion, where all divergent views were taken into consideration and mutual concessions constantly agreed.

Consequently, I request the Assembly to reject Mr. Mitchison's Amendment (1), if it is maintained, and, in accordance with Article 36, paragraph 3, of the Rules of Procedure, I request a vote by roll-call".

(Coll. ed., IV, pp. 923-4; or Rep., 1950, III, pp. 906 and 908).

(1) Cf. para. X 17 above, p. 82.

(f) M. Rolin (Belgium) (Translation):

"...

As several other speakers have pointed out, a great number of Representatives last year indicated their determination to include in the Declaration the right to own personal property, and the right of parents to supervise the training and education of their children.

Personally, I did not share this desire. I voted on the other side. Even today, if I were to listen to my conscience, I should be disposed to put forward the objection that property and education, while they are no doubt essential rights, give rise in their practical application to difficulties inside our Parliaments, and are the subject year after year of very thorny debate, which it would no doubt be unwise to carry over into the international field. I would remind you, above all, that there are other social rights which offer the same difficulties, which, for that very reason, we have not ventured to define or to submit to collective international control. Now, one section of our public opinion will certainly find it regrettable that our Assembly should have thought it a duty to guarantee the collective protection of certain rights while excluding certain others which are nearer and dearer to it.

Despite these personal objections I thought it my duty, as M. Bastid also pointed out, in view of the mandate given to us by the Assembly, to make my contribution to the search for conciliatory formulae, such as might considerably reduce the risks that we foresaw.

Last June, I put forward certain formulae with this end in view. Before I was able to return to Strasbourg again they had been somewhat modified in form.

I am sufficiently vain to believe that they were not improved in the process, but I am not sufficiently vain to request the Assembly to re-consider the earlier text, and to amend the Committee text.

Personally, I think, then, that the insertion of the right to own property and the right of choice of education, in the form at present laid down, no longer involves the objections presented by those which I opposed last year.

I may add that the Governments which would be most perturbed about this twofold insertion will find a method of lessening to a great extent the risks to be feared, by availing themselves of the option, which we propose, of leaving it to each country to exclude in certain cases the right of individual appeal ..."(1).

(Coll. ed., IV, p. 925; or Rep., 1950, III, p. 910).

(1) Cf. p. 92 above, footnote (1).

(g) M. Struye (Belgium) (Translation):

"....

Although the appeal you have just applauded appears to me to dispel all danger in this respect, I should like to avoid any misunderstandings arising in this Assembly and will say here and now that I support the statements made by Mr. Pernot and Mr. Bastid successively. I agree with those who consider that if, in the present state of affairs, the draft Convention were to be stripped of the provisions which the Committee has added to it relating to the social aspect of property-rights; if it were denuded of every provision which might be dangerous and, still more, of the one dealing with the right to education which involves the very fibres of human personality, as that term must inevitably be interpreted in our countries where liberty reigns; if by some remote chance this Convention were so whittled down, I could not in all conscience vote in favour of the Draft as a whole.

...."

(Coll. ed., IV, p. 928; or Rep., 1950, III, p. 916).

(h) Miss Bacon (United Kingdom):

"I should like, on behalf of the British Labour Party, to ask Sir David Maxwell-Fyfe two questions before he replies to this Debate.

The first question relates to the proposed Article 10 A. I should like Sir David to give us an assurance, if he can, that this Article safeguards the right of any State to undertake schemes of nationalisation and for the taxation of wealth necessary to carry out its social policy.

...." (1)

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

"I have no difficulty in giving Miss Bacon the assurances for which she asks.

With regard to Article 10 A, provisions similar to this have been included in Constitutions in countries in which nationalisation has taken place. We have precedents; and I do not think any difficulty can arise in this connection.

As far as taxation is concerned, Miss Bacon will have seen that we distinguish between arbitrary confiscation and legislation to ensure that possessions are used in accordance with the general interest.

(1) Here Miss Bacon spoke of the rights of parents in regard to their children's education (cf. the present Article 2 of the First Protocol).

If I rightly understand her, she asks whether legislation the object of which is to carry out a social policy in the general interest would be saved. In my view, it would be saved; and I feel sure that Miss Bacon has not in mind taxation which would amount to arbitrary confiscation.

... (1)"

(Coll. ed., IV, p. 929; or Rep., 1950, III, p. 918).

(j) Mr. Mitchison (United Kingdom):

"Mr. President, I put down three Amendments (2), but for the reasons I have given I have asked leave to withdraw two of them. On the third Amendment, concerning the employment of counsel, I have reason to believe there may be agreement, and I hope that my rights in the matter of this Amendment will be dealt with this afternoon."

The President (Translation) :

"Certainly".

(Coll. ed., IV, p. 929; or Rep., 1950, III, p. 918).

19. Consultative Assembly Sitting of 25 August 1950 (afternoon)

(a) The President (Translation):

"We are now going to vote on what was debated this morning. The basic document is that which was referred back by the Committee of Ministers together with the Amendments proposed by the Committee, which are Amendments to that basic text.

There are no Amendments to Articles 1 to 10. The first Amendment submitted by the Committee refers to Article 10.

This Amendment proposes that an Article 10 A should be added to the draft in these terms:

'Any person, whether physical or moral, has a right that his property shall be respected. His property cannot be subject to arbitrary confiscation. The present provisions, cannot, however, be considered as infringing, in any possible way, the right of States to pass the necessary laws in order to assure use being made of this property in the general interest.' (3)

The Amendment by Mr. Mitchison having been withdrawn (2), the only question remaining is that of whether the Assembly accepts this first addition to the draft Convention such as it was transmitted to the Assembly by the Committee of Ministers."

(1) Here Sir David Maxwell-Fyfe spoke of the rights of parents in regard to their children's education (cf. the present Article 2 of the First Protocol).

(2) Cf. para. X 17 above, p. 82.

(3) This is the wording that appears in Rep. 1950, III; the text actually suggested is set out at X 16 above, p. 82.

The President (Translation):

"I call Lord Layton."

(Coll. ed.; IV, p. 932-3; or Rep., 1950, III, pp. 926 and 928).

(b) Lord Layton (United Kingdom):

"As I was responsible last year for moving an Amendment which led to the withdrawal of the Articles dealing with property and education, I should like to give a short explanation of the vote I propose to cast. My action last year was taken on the tactical grounds that it was hard to define these rights and that to attempt to do so might divide the Assembly, in which case it might imperil the ratification of the Convention. But if the lawyers of the Committee were unanimous that it would be possible to draft Articles which would be justiciable and if it were clear that there would be general agreement, my objection would fall to the ground.

The majority of the Committee have recommended these two Articles and I shall not vote against them, but, for the reasons that were mentioned this morning by Mr. Roberts, some of my doubts remain. I am a member of perhaps the oldest legislative assembly in Europe. It also happens to be, or to contain the members of, the Supreme Court of Great Britain. Shortly, we shall be asked to commend to our Parliaments the action which has been taken here and the Recommendations which we have passed.

Because of the doubts that I have about the definition of these two rights and the fear of the effect that their inclusion might have upon the willingness of certain Parliaments not only to ratify the Convention but to pass the compulsory articles, I shall abstain from voting on them. I feel that I should not be able to defend the two Articles in the British House of Lords in the presence of, and perhaps in face of the opposition of the Lords who form the Court of Appeal. Therefore, I propose to abstain from voting on these two Articles."

(Coll. ed., IV, p. 933; or Rep., 1950, III, p. 928).

(c) Mr. de Valera (Ireland):

"When Miss Bacon had put her questions to Sir David Maxwell-Fyfe, I rose to make a few observations. Unfortunately I did not catch your eye, Sir. I propose to say now what I intended to say then in explanation of my vote.

I propose to vote for the adoption of the Report of the Committee. Anyone who was here last year and heard the remarks which I then made indicating my views, will know that the additions, and the Report as a whole, are but a rough approximation to what I think is desirable. That is particularly true of the additional articles - which I am glad to see even in the imperfect form in which they appear - in regard to education, property and elections.

On the question of property, we are here giving a very imperfect statement of the right to own property. We should say quite flatly that an individual citizen is entitled to have and to own property. I realise that the use of property must be determined in accordance with the common good, and I should be willing to accept a proviso which would ensure that the common good was taken into account. However, I accept the Committee's draft Recommendation in the belief that it is better to have it than to have nothing at all.

The right of property is one which is under attack at present. If we are to indicate the principles for which we stand, in opposition to the principles acted upon by certain dictatorial and authoritarian States, we should go much further than the Committee has done.

....(1)"

(Coll. ed., IV, p. 933; or Rep., 1950, III, p. 928).

The Amendment proposed by the Committee to insert in the Committee of Ministers' draft Convention an article relating to the right to own property was then carried by 97 votes to nil, with 11 abstentions.

(Coll. ed., IV, p. 934; or Rep., 1950, III, p. 930).

The Draft Recommendation as a whole was adopted unanimously by the 111 Representatives voting.

(Coll. ed., IV, p. 943; or Rep., 1950, III, p. 948).

20. Recommendation No. 24 of 25 August 1950

"The Consultative Assembly of the Council of Europe having been acquainted by the Committee of Ministers with a draft Proposal for the safeguarding of Human Rights and Fundamental Freedoms, which has been drawn up with due regard to the draft submitted by the Consultative Assembly to the Committee of Ministers, expresses a favourable opinion of the proposed draft; but strongly urges the Committee of Ministers to complete or modify the text as drawn up in the following manner:

.....

Article 11 (2)

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way, the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest."

(Coll. ed., IV, p. 946 and 953; or Doc. AS (2) 104, pp. 1028 and 1033. Cf. also Compilation of Recommendations and Resolutions adopted by the Assembly in August 1950, pp. 33-34)

(1) M. de Valera went on to discuss the other Amendments proposed by the Committee.

(2) Identical with text quoted in X 14 above, pp. 79-80.

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

1. Explanatory Note by the Secretariat General on Recommendation 24 (1) of the Consultative Assembly (9 September 1950) (2)

"...."

II. Right to own property

At its first Session, the Assembly had referred the question of defining this right to the Committee on Legal and Administrative Questions. During its meeting on 24 June 1950, the Committee appointed a Sub-Committee composed of MM. Bastid, Pernot, Rolin and Schmal to deal with this question.

This Sub-committee, the members of which held varying political views, produced a text which may be regarded as a compromise.

This text was adopted by the Assembly by 97 votes, with 11 abstentions.

....

The discussions that took place at the last Session of the Committee of Ministers showed that the Committee wished to see a Convention for the protection of Human Rights and Fundamental Freedoms concluded as soon as possible.

Under these circumstances the Secretary General ventures to suggest that a further meeting of Ministers' advisers takes place, either in conjunction with the proposed meeting of Advisers on 3rd October, or between this meeting and the next Session of the Committee of Ministers so that the Assembly's Proposals may be examined by them, in order to facilitate the final decision which the Committee of Ministers will be called on to take on this subject at its next Session".

(Coll. ed., IV, p. 970 and 973; or Doc. CM (50) 57, pp. 2 et 6).

(1) Cf. para. X 20 above, p. 98.

(2) Note prepared for the Sixth Session of the Committee of Ministers.

2. Letter addressed on 28 October 1950 by Mr. Downing (Official of the Western Organisations Department, Foreign Office, London) to Mr. Robertson (Member of the Secretariat)

" ... I ... would propose the following additional amendments (to the draft Convention for the Protection of Human Rights and Fundamental Freedoms):

.....

Article 11 (1)

line 1: For 'is entitled' read 'has the right'

line 2: For 'cannot' read 'shall not'

line 4: For 'infringing' read 'limiting'

(Coll. ed., IV, p. 1002).

3. Conclusions of the meeting of Representatives of the Ministers for Foreign Affairs, held in Rome on 2 November 1950

.....

It was agreed that all necessary arrangements should be made for the draft Convention on Human Rights to be signed during the Sixth Session of the Committee of Ministers.

(a) Examination of the Amendments proposed by the Consultative Assembly

The discussion revealed:

- that not all the Amendments proposed by the Consultative Assembly during its Session in August 1950 could be unanimously accepted by the Governments of Member States:

- that agreement could be reached however, on the incorporation of certain of these Amendments in the text of the Convention (in particular, the text of the Preamble submitted by the Assembly; and the reduction from nine to eight of the requisite number of declarations of acceptance of the compulsory jurisdiction of the Court before the latter could be instituted).

After one delegation had suggested that proposals on which unanimity could not be reached should be examined later by representatives of Governments and perhaps form an additional Protocol to the Convention, the meeting considered that it would be for the Committee of Ministers itself to decide on this suggestion.

./.

(1) Cf. the text quoted at X 20, p. 98 above.

(b) Final drafting of the text of the Convention

The meeting agreed that the legal experts attached to the delegations should give the final touches to the text of the Convention, the printed proofs of which had been circulated. This work would enable a carefully revised text to be laid before the Ministers and would thereby expedite the signing of the Convention.

....."

(Coll. ed., IV, p. 1005-1006; or Documents of the Committee of Ministers, 1950, Sixth Session, Appendix, I, p. 70).

4. Report of the Committee of Legal Experts to the Representatives of the Ministers for Foreign Affairs (3 November 1950)

".....

5. The legal advisers ascertained that there was not unanimous agreement on accepting paragraphs II, III, IV, V, VII and VIII (1) of the Recommendation of the Consultative Assembly for revision of the Convention.

....."

(Coll. ed., IV, p. 1010; or Doc. CM/Adj. (50) 3 revised, p. 3).

5. Meeting of the Joint Committee held on 3 November 1950 in Rome

".....

Sir David Maxwell-Fyfe asked to be allowed to say a few words on the subject of the Convention on Human Rights. The amendments which the Assembly had proposed to the text sent back to them for their opinion by the Ministers represented the fruit of prolonged and difficult negotiation. He could not sufficiently emphasise the very real spirit of conciliation which had been shown by all concerned both in the Committee on Legal and Administrative Questions and in the Assembly itself. During the first Session of the Assembly considerable difficulties and differences of opinion had been experienced of both a political and a religious nature, but they

(1) Paragraph II: inclusion of right to own property.

Paragraph III: inclusion of parental rights (cf. Art. 2 of First Protocol).

Paragraph IV: inclusion of right to free elections (cf. Art. 3 of First Protocol).

Paragraph V: extension of right of individual application.

Paragraph VII: deletion of "colonial clause" (Art. 63 of Convention).

Paragraph VIII: application of right of individual recourse to non-metropolitan territories (Art. 65 (4) of Convention).

had succeeded, to an extent which he admitted he had not dared to hope for, in finding a common ground of agreement. The amendments represented a triumph of goodwill. The Assembly were particularly attached to the re-introduction in the Convention of the clause guaranteeing what had been called the 'political rights' which had been drafted in such a way as to cover only those rights which the Ministers had themselves agreed should be guaranteed even in time of war or civil disturbance. If the amendments the Assembly had suggested were to be rejected in toto, the Ministers would, he hoped, understand the great disappointment which would be felt in the Assembly, where such efforts had been made to reach final agreement on the texts involved; the disappointment would be as great - perhaps even greater in the circumstances - if the amendments were to be referred back for an opinion to yet another committee of 'experts'. It was not possible in his opinion to bargain about a question as important and indeed vital to their civilisation as this Convention on Human Rights, yet he would say that for himself he would prefer to see the Ministers adopt the Convention without the Assembly's amendments rather than that they should have no Convention at all. He submitted that having regard to the Assembly's efforts, it was for the Ministers to give proof of a spirit of true and proper compromise, and to be generous in their attitude to the Assembly's amendments.

Mr. MacBride asked if the amendments proposed by the Assembly represented what might be called their maximum demands, or whether they should be considered to be the result of a compromise which fell short of the ideal solution which they might have had in mind.

Sir David Maxwell-Fyfe replied that they represented a compromise.

M. von Brentano stated that he simply wished to remind the Ministers in connection with this question of the Convention that the Assembly served as the medium through which European public opinion could make itself heard.

....."

(Coll. ed., IV, pp. 1021-1022; or Doc. CM/AS (50) PV 5, pp. 8-9)

6. Meeting of the Committee of Ministers on 3 November 1950 in Rome

"....."

The Chairman (1) reminded the Committee that at its fifth Session it had asked the opinion of the Consultative Assembly on the draft Convention on Human Rights which was approved by the Ministers at that Session. The Assembly in its Recommendation No. 24 had given a favourable opinion on the Convention in general and had proposed certain amendments. These amendments fell into two categories: the first group related to items which had previously been discussed in the Committee of Experts, on which the Committee had not been able to reach agreement; the second group related to the inclusion in the Convention of two rights not mentioned in the previous draft, those relating to property and education.

The discussion by the Minister's Representatives (2) had disclosed that unanimous agreement was not possible on all the amendments proposed by the Assembly and the suggestion had been made that the proposals on which unanimity could not be reached should be examined later by Governmental experts with a view to the signature of a protocol to the Convention. In the meantime, the Committee of Legal Experts appointed by the Ministers' Representatives on the previous day (3) had re-examined the text and proposed some modifications, including the addition of a Preamble based on the suggestion of the Assembly. The experts' proposals had been approved by the Representatives. The Chairman asked whether his colleagues wished to comment on any of these proposals.

Mr. MacBride (Ireland) asked whether the Chairman would give the Committee a report on the views expressed by the Representatives of the Consultative Assembly at the meeting of the Joint Committee which had taken place that morning.

The Chairman stated that Sir David Maxwell-Fyfe, Chairman of the Committee on Legal and Administrative Questions of the Consultative Assembly, had made strong representations on the necessity of accepting the amendments proposed by the Consultative Assembly.

(1) Count Carlo Sforza (Italy).

(2) Cf. para. XI - 3 above, pp. 100 - 101.

(3) Cf. para. XI - 3 and 4 above, p. 101.

M. Lange (Norway) added that Sir David Maxwell-Fyfe had also stated that, while the Consultative Assembly was anxious that its amendments should be accepted, it would nevertheless prefer that the Convention should be signed without the amendments rather than not be signed at all.

Mr. MacBride (Ireland) added further that Sir David Maxwell-Fyfe had explained that the amendments proposed by the Consultative Assembly had been much more modest than the Assembly would have desired, and represented what the Assembly considered to be the absolute minimum, which had been accepted in the hope of reaching a compromise with the Committee of Ministers.

M. Westman (Sweden) stated that his Government would be prepared to accept the amendments of the Consultative Assembly. However, they would also accept the Convention with the more modest amendments of the Legal Experts, if that were necessary to get agreement, in order to have the Convention signed without further delay. They hoped, however, that the Convention would be open for signature at a subsequent date, because for constitutional reasons it had been impossible for him to come to Rome with full powers to sign it on behalf of his Government during the current Session.

The Chairman asked whether the Committee would agree to accept the text with the changes proposed by the Legal Experts.

Mr. MacBride (Ireland) asked whether his colleagues could not accept at least one or two of the amendments proposed by the Consultative Assembly.

Mr. Davies (United Kingdom) believed that all the Ministers were agreed on accepting the suggestions of the Legal Experts. He thought that the most important thing was to make sure that the Convention would be signed during the current Session of the Committee in Rome. The British Government would find it very difficult at that stage to accept the amendments of the Assembly, and he knew that certain of his colleagues shared this view. If the amendments were to be discussed in the Committee of Ministers it was clear that it would be very difficult to reach agreement. He therefore believed it was preferable to keep the text as previously approved by the Ministers, with the slight modifications proposed by the Legal Experts. Sir David Maxwell-Fyfe has made it clear that the Assembly would be most disappointed if the Convention were not signed in Rome, even without the amendments which had been proposed.

Mr. Davies added that he wished to make the following statement for the record:

'As the Committee know, a draft Convention on Human Rights is now being discussed by the United Nations at Lake Success. If and when this United Nations Convention comes into force, there may be a situation in which two sets of provisions on human rights differing perhaps in wording or substance have been accepted by those members of the United Nations who are also members of the Council of Europe. This would clearly be liable to create confusion as to the precise obligations undertaken by such States and there might be a case for revising the list of Human Rights and Fundamental Freedoms set out in Part 1 of the Convention now before us in order to bring it into harmony with the United Nations Convention.'

M. van Zeeland (Belgium) stated that he would be in favour of certain of the amendments proposed by the Assembly, though he considered one to be unacceptable. He would be sorry if the rights of property and education were not included. He thought that the Preamble was good and would improve the Convention. However, it was apparent that further discussion would only delay signature, and in these circumstances he agreed with Mr. Davies that it was better to sign the Convention as it had been approved by the Representatives. He thought that the text might be improved at a later date by the addition of a Protocol incorporating the substance of the proposals of the Assembly after there had been an opportunity for further study.

M. Schuman (France) shared the views of M. van Zeeland. He was anxious that the Convention should be signed in Rome, the historic city which had been the cradle of European civilisation, particularly as the United Nations Declaration on Human Rights had been proclaimed in Paris in 1948.

As regards the proposed United Nations Convention, he believed that it was possible for the European States, with their common background, to assume wider and more precise commitments than could be incorporated in the United Nations Convention, which was intended to apply to sixty different countries of a widely heterogeneous character. He was prepared to accept stricter commitments for Europe than would be possible in the wider framework of the United Nations. Nevertheless, he thought that the Legal Experts might usefully study this question further.

He agreed that the amendments proposed by the Assembly should be referred to the Legal Experts to see whether agreement was not possible on their substance. In this way, he hoped that the text to be signed on the following day might be perfected during the course of the next few months by the addition of a suitable protocol.

The Chairman agreed on the desirability of immediate signature in order to show that the Council of Europe had accomplished this real achievement. Therefore he was prepared to pass over the strong desire of the Italian Government that the rights of property and education should be included. He also supported the proposal for further study of the Assembly's amendments and the preparation of a Protocol to the Convention.

M. Stikker (Netherlands) supported M. van Zeeland. Nevertheless, he would be sorry if an affirmative decision on immediate signature constituted a negative decision on the Assembly's proposals. The Netherlands Government and Parliament felt strongly in favour of the rights of property and education which had been warmly supported in the debate which had already taken place in the Dutch Parliament. He hoped, therefore, that the Experts would continue to study these proposals.

Mr. MacBride (Ireland) shared the view that the Convention should be signed in Rome, but thought that the Committee must take some positive action on the proposals of the Assembly. It was necessary to recognise the plain fact that the Assembly was dissatisfied with the way in which the Committee of Ministers treated its Recommendations, and this applied particularly to the Convention on Human Rights. It would make a disastrous impression if the Assembly met again in two weeks' time with no satisfactory answer from the Ministers. In the Joint Committee the suggestion had been made that if the Ministers did not accept the proposals of the Assembly they should refer them to a Mixed Committee consisting of Representatives of the two bodies. He advocated this procedure, which would mean that the Ministers could send an answer to the Assembly that would meet it half way and thus ease the Committee's relations with that body. Once the Convention was signed, there would be a natural tendency to avoid or postpone the signature of a Protocol; consequently, he thought that an immediate decision was necessary. At the Fifth Session he had had great difficulty in accepting the Convention in its weakened form, and this proposal would help to meet his difficulties.

Mr. Davies (United Kingdom), in reply to M. Schuman's remarks about the United Nations Convention, wished to explain that he had not meant to suggest that the commitments in the European Convention should be in any way reduced, he merely wished to avoid conflict or inconsistency.

He was quite agreeable to the suggestion that the proposals of the Assembly should be referred to the Government Experts for further study; though he could not commit his Government in advance, it seemed quite possible that a Protocol could be signed at a later date if that seemed to be desirable. He would, however, prefer a Committee of Government Experts to the Mixed Committee which had been suggested, since the members of the Assembly were parliamentarians and not responsible officials. He thought that the question should be considered first by the Government Experts then by the Legal Committee of the Consultative Assembly and finally by the Committee of Ministers itself.

M. Averoff (Greece) agreed with his colleagues on the desirability of signing the Convention at Rome and of referring the Assembly's proposals to a Committee of Experts. He informed the Committee, however, that for formal reasons resulting from the recent governmental crisis in Greece, he was not yet in possession of full powers to sign the Convention, though his Government intended to do so very shortly.

The Chairman proposed that the text of the Convention with the amendments proposed by the Legal Experts should be adopted by the Committee and signed on the following day.

This was agreed.

Mr Davies (United Kingdom) proposed an immediate decision to refer the Assembly's proposals to a Committee of Experts.

Mr MacBride (Ireland) believed that the question of procedure was important in affecting relations between the Committee and the Assembly. As the Convention had already passed through five committees, the Assembly would consider it ridiculous if their proposals were merely referred to another Committee. He therefore made a formal proposal that a Mixed Committee consisting of representatives of the Ministers and of the Assembly should be set up to consider the amendments proposed by the Assembly, with a view to the preparation of a Protocol to the Convention.

This proposal was put to the vote but was not adopted.

Mr. Davies (United Kingdom) proposed the appointment of a Committee of Government Experts to consider the amendments proposed by the Assembly, with a view to the preparation of a Protocol to the Convention.

This proposal was put to the vote, and adopted by ten votes to one.

(Coll. ed., IV, pp. 1016-1020 bis; or Documents of the Committee of Ministers, 1950, Sixth Session, pp. 24, 26, 28 and 30).

The Convention was accordingly opened for signature on the next day, 4 November 1950, without a clause relating to the right to own property.

7. Minutes of the meeting held by the Standing Committee of the Consultative Assembly in Rome on 5 November 1950 (morning)

".....

The Committee proceeded to consider the Resolutions of the Committee of Ministers adopted in connection with the Recommendations of the Consultative Assembly during their Sixth Session, and communicated to the Standing Committee in document CM (50) 88 (1).

1) Convention on the Protection of Human Rights and Fundamental Freedoms

After a discussion in the course of which Mr. Norton (2) submitted a Motion for consideration by the Committee:

'Recognising that the declaration and preservation of Human Rights on the widest practical basis is essential to the preservation of peace, freedom and the rule of law, this meeting records its profound dissatisfaction at the failure of the Committee of Ministers to embody in the draft Convention for the protection of Human Rights and Fundamental Freedoms the vital Amendments suggested by the Consultative Assembly at Strasbourg in August last, and urges the Committee of Ministers to take early steps to embody

(1) Cf. para. XIII 1 below, p.110.

(2) Ireland.

the Assembly's Amendments in a supplementary draft Convention for submission to the National Parliaments',

the Committee decided to take note that the Ministers had signed the Convention in the form of the text approved by the Committee of Ministers at their meeting in August 1950, subject to the addition of the Preamble and of the amendment to Article 56 which had been proposed by the Consultative Assembly. The Committee, however, placed on record its regret that the Ministers had not seen fit to accept other amendments to the text which had been proposed by the Assembly nor to explain the reasons which had prompted their rejection, and expressed the hope that the Committee of Experts to whom these amendments had been referred for further study would render their report with the least possible delay ... (1)

(Coll. ed., V, p. 1029; or Doc. AS/CP (2) PV 5, p. 2 - or. Engl.).

8. Minutes of the meeting held by the Standing Committee of the Consultative Assembly in Rome on 5 November 1950 (afternoon)

"....."

It was agreed that the Secretariat should be instructed to prepare a summary of the discussion in the Standing Committee on the subject of the Resolutions adopted by the Committee of Ministers, which should be submitted to the Committee at its next meeting, and when approved should be distributed together with the Resolutions themselves to the Representatives to the Consultative Assembly.

In reply to Mr. Norton it was confirmed that the said summary would take account of the contents of the draft motion which he had submitted:

'.....' (2)."

(Coll. ed., V, p. 1030; or Doc. AS/CP (2) PV 6, p. 5 - or. Engl.)

(1) Some members of the Standing Committee had, on the previous day, absented themselves from the ceremony of signing the Convention. The Foreign Ministers of France, Ireland and the Netherlands had, moreover, voiced similar regrets and hopes during the ceremony. (Coll. ed., IV, p. 1026 or Doc. IP/180, p. 3).

(2) Cf. para. XI - 7 above, p. 108.

XII. SECOND SESSION OF THE CONSULTATIVE ASSEMBLY - SECOND PART
(Strasbourg, 18 - 24 November 1950)

1. Letter from the Chairman of the Committee of Ministers to the President of the Consultative Assembly (5 November 1950)

".....

Appendix - Resolutions of the Committee of Ministers adopted in connexion with the Recommendations of the Consultative Assembly during their Sixth Session

1. Convention on the Protection of Human Rights and Fundamental Freedoms

The Committee of Ministers decided to sign, during its meeting in Rome, the text of the Convention in the form adopted by the Committee during its session of August 1950, but added to it a Preamble based on the Assembly's proposals and accepting the amendment to Article 56 proposed by the Assembly.

As far as the other amendments proposed by the Assembly are concerned, since the Committee of Ministers was not able to reach agreement on them during the present session, it was decided that they should be submitted to a committee of experts for further study. If, following this study, agreement was reached an additional protocol to complete the Convention might then be signed ...".

(Coll. ed., IV, p. 1024; or Doc. AS (2) 126, pp. 1117 - 1118, and Doc. CM (50) 88, p. 1).

2. Report to the Consultative Assembly on the work of the Standing Committee (18 November 1950)

".....

After a lengthy discussion on the conditions in which the Convention for the protection of Human Rights had been signed, and on the manner in which the decisions of the Committee of Ministers had been communicated to the Press, the Standing Committee decided:

- to note the decision of the Committee of Ministers to sign the text of the Convention as it had been adopted by the Committee, adding to it a Preamble in conformity with the proposals of the Assembly, and accepting the amendment of Article 56 proposed by the latter;

- to express regret that the Committee of Ministers should have found itself unable to adopt the other Amendments recommended by the Assembly and should have referred them without any valid (1) explanation to a Committee of Experts;

- to express the hope that the fresh Report which the Committee of Experts is to draw up on the subject of the aforesaid Amendments will be submitted to it without delay.

In the course of the discussion, Mr. Norton put the following motion before the Committee:

'Recognising that the declaration and preservation of Human Rights on the widest practical basis is essential to the preservation of peace, freedom and rule of law, this meeting records its profound dissatisfaction at the failure of the Committee of Ministers to embody in the draft Convention for the protection of Human Rights and Fundamental Freedoms the vital amendments suggested by the Consultative Assembly at Strasbourg in August last, and urges the Committee of Ministers to take early steps to embody the Assembly's amendments in a supplementary draft Convention for submission to the National Parliaments.'

The Committee decided that a discussion of the reply of the Committee of Ministers would be the first item on the agenda when the work of the Assembly was resumed.

.....".

(Coll. ed., V, pp. 1031/1032; or Doc. AS (2) 137, pp. 1126-1127).

(1) The word "valid" was, presumably in error, not deleted in the English text of Doc. AS (2) 137. Cf. footnote (1) to the French text opposite. ./.

3. Sitting of the Consultative Assembly on 18 November 1950 (afternoon)

(a) Count Sforza(1) (Translation):

The Convention on Human Rights: this Convention was signed in Rome. The Committee of Ministers felt that this must be done without delay. At a time when, unfortunately, in several European countries the most elementary Human Rights are denied or constantly violated it was urgent that these Human Rights should be solemnly affirmed and afforded a legal protection, which our signatures in Rome made effective for the first time in history. Can anyone deny that it was of the greatest importance to demonstrate without delay by the signature of this Convention the profound difference which exists between a free world and an enslaved world, whether the slaves are aware of their slavery or not?

You approved this Convention in the form in which it had been drafted after detailed study, and as submitted to you in August last. You had yourselves stressed the urgency of reaching a conclusion with the addition, I agree, of certain Recommendations which I am personally convinced would have made the text of the Convention more complete. These Recommendations have not for the moment been adopted by the Committee of Ministers; when we fail to achieve unanimity the only course is to try and understand our various points of view. Any heated controversy between us would be fruitless. Moreover you yourselves encountered serious difficulties during your deliberations on this Convention. It was only during your Second Session, that is after twelve months, that you were able to reconcile the divergences of opinion which existed. Is it surprising that the Committee of Ministers could not reach agreement at a meeting which was of necessity short - and in my opinion too short? We can only conclude that arrangements should be made for our periodical meetings to be less hurried.

(1) Chairman of the Committee of Ministers, giving the Assembly an oral account of the results of the Sixth Session of the Committee.

We were at a deadlock; but the Committee of Ministers was at least unanimous on this: that it was politically more desirable and more valuable to sign the Convention as it stood, as this in no way prevented a subsequent study which might make it possible to remove the existing differences.

....."

(Coll. ed., V, pp. 1033-1034; or Rep., 1950, V, p. 1282).

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

"Mr. President, I think we are all of one mind in saying that the Chairman of the Committee of Ministers has just fulfilled courageously a difficult duty. As a good servant he has defended a bad case which, personally, he would certainly have wished were better.

I am not competent to thank him for it. Only I should like him to know that the comments I am about to make are not addressed to him.

With particular regard to the European Guarantee of Human Rights, were the decisions of the Committee of Ministers deliberately intended to cause consternation? If this was their aim, they have achieved it.

What was the issue, Mr. President? In 1949 we drew up a Convention which gave effective guarantees of the fundamental rights of Europeans. At the beginning of this year the Committee of Ministers presented us with a counter-draft elaborated at great length by two super-imposed bodies of experts. This draft was curiously emasculated. It offered us only the shadow of a guarantee with regard to certain rights and certain fundamental freedoms.

In a spirit of conciliation and because our will to make Europe gave us the courage to negotiate and overcome all obstacles we accepted this counter-draft as a basis for discussion; and indeed we even accepted the text in its essentials.

After lengthy debate, however, we felt ourselves obliged to propose to the Committee of Ministers a certain number of Amendments of which the necessity seemed to us obvious. Here is a very brief summary of what we said.

./.

We said to the Committee of Ministers: This list of fundamental rights which you propose to guarantee is not complete. To it must be added the right to own property - subject to the requirements of the common weal; ... (1).

None of our Amendments was taken into consideration and we were told that recourse must be had to experts. Does the Committee of Ministers really need experts to reply to this question: Should the Right of Property, subject to the requirements of the common weal, be safeguarded in a democratic Europe or should it not? Are experts needed to settle that?

.....

If the Government of His Britannic Majesty wanted neither any guarantees of property rights nor of the rights of parents with regard to the free education of their children nor of the right to free elections, it had, after all, an elegant means of evading the issue. It was not necessary for the British Government to veto the suggestion in the Committee of Ministers. All it had to do was to ratify the Convention, then, on its own account, to state in the instrument of ratification that the Government of His Britannic Majesty did not accept the supervisory powers of the Committee in regard to the right to own property, the right of parents and the right to hold free elections.

We would then have known that the British were at least not preventing other people from guaranteeing these fundamental rights and that they were content to oppose such guarantees for their own case alone.

Was the aim then deliberately to outrage public opinion: we have the right to ask this question. It is a serious one.

The truth is, and I shall not insist upon it, Mr. President, that one of the statements of the Chairman of the Committee of Ministers stands in need of revision. He told us that within the Committee of Ministers the individual will of each State disappeared in face of the collective will. I do not think this is an accurate statement. I think that within the Committee of Ministers the will of the majority yields when confronted with one individual veto.

We cannot accept this situation because, in truth, the danger is very great.

(1) Here M. Teitgen mentioned the other amendments proposed by the Assembly.

We are asked to agree to adjournments and further recourse to experts in order to guarantee rights of which the necessity is obvious, while yet there are all over the globe and within this Europe in whose name we speak, thousands and thousands of men imprisoned, behind bars, or tortured in concentration camps; while yet an aggression is being prepared against this unfortunate Europe of ours and all that it represents in the way of history, tradition and civilisation: an aggression which might sweep away for ever - or at the very least for decades - all that really makes life worth living. That is the reason why we have no right to wait for new experts and to agree to new adjournments.

It is here in this Assembly that, on this question of human rights, there has been expressed the will to understand, the will to conciliation, the will to secure mutual agreements; and indeed the will to get effective results: it is here also that we find the majority which does not have to give in when faced by a single veto. Here then is Europe: and here Europe will be made."

(Coll. ed., V, pp. 1034-1036; or Rep., 1950, V, pp. 1292 and 1294).

(c) Mr. O'Higgins (Ireland):

".....

As M. Teitgen mentioned, surely one of the most important matters which we considered here was the question of the minimum rights of the people whom we represent. As Representatives of democratic countries, each having a constitution of its own, and speaking for people who have freely elected us in our own Parliaments, we had a right to expect that the document which we drew up, which we passed with certain additional Recommendations, would have been considered very carefully and with a due sense of responsibility by the Committee of Ministers.

I am glad that M. Teitgen expressed his regret at the manner in which our Recommendations on Human Rights have been dealt with by the Committee of Ministers. It is, indeed, strange.

After the clamour of war, indeed, while the last war was still on - the Representatives of the nations represented in this Assembly and represented on the present Committee of Ministers subscribed their names on behalf of their countries to the noble sentiments contained in the Atlantic

Charter. That Charter contains the statement that the signatory nations, including Soviet Russia, respect the right of all peoples to choose the form of Government under which they will live, and that sovereign rights and self-government shall be restored to those who have been forcibly deprived of them.

We are entitled to know why that solemn declaration contained in the Atlantic Charter, to which we tried to give another expression in our Recommendations here, has not been accepted by the Committee of Ministers. We are entitled to know who is the nigger in the woodpile. Is it Britain? Is it Greece? Is it Belgium? Is it Turkey? I am quite certain that it is not; but we expect on this important matter to be told which nation represented on the Committee of Ministers does not subscribe to the primary principles of democracy.

I think that this particular discussion is the very essence of our deliberations here, because if we cannot, in co-operation with the Committee of Ministers, draw up an inspired document giving hope and confidence, not merely to our own people, but those imprisoned millions on the other side of the Iron Curtain, then we are failing completely in our reason for being here. I think it is right to say that if there is to be any clash, any fight or any combat between the peoples whom we represent and those whom we say are not entitled to speak for themselves, then it is very poor consolation that we hold out to them in the present Convention on Human Rights approved by the Committee of Ministers.

We do not even give to those on the other side of the Iron Curtain the right to say that the acres of land which they till are their own. We do not even give them the right to say that the children they bring into the world will be brought up and educated according to their own desires. In our document we do not even give them the right to say they can elect to speak for them the people they wish and not those who are thrust upon them. I think that if this tendency is to continue, it is far better that this Assembly should finish its deliberations right now, because it is getting nowhere.

....."

(Coll. ed., V, pp. 1037-1038; or Rep., 1950, V, pp. 1294 and 1296).

(d) M. Serrarens (Netherlands) (Translation):

"Mr. President, Count Sforza's statement reminds me of a story I once read about a certain salon during the hey-day of Parisian salons. This salon was not noted for the luxury and opulence of the meals which were sometimes served there, but the brilliant conversation of the lady of the house made guests forget the inadequacy of the food.

The dishes prepared by the Committee of Ministers have been served by Count Sforza with a rich sauce of good-will and personal conviction. We are very grateful to him, but we are compelled to admit that the menu does not give us full and complete satisfaction.

After the brilliant speech of my friend M. Teitgen, is there any need for me to mention again our feelings when at the Standing Committee we learnt that the Convention on Human Rights and Fundamental Freedoms was going to be signed without the inclusion of the essential Amendments adopted by the Assembly? The signature of the first Convention to be produced by the Assembly was therefore to be the occasion of disagreement between the Committee of Ministers and the Assembly. We are still feeling the full bitterness of that experience. This disagreement must disappear as soon as possible.

However, we were pleased that at the time of the signature several Ministers transgressed the in camera rule so far as to express the regret that we felt that it had not been possible to include the Amendments to the Convention and our hope that these gaps would soon be filled.

What frightens me about these Resolutions of the Committee of Ministers, as it frightened M. Reynaud, is the calling in of experts. This procedure has been used on three occasions by the Committee of Ministers, namely for the Convention on Human Rights, for the question of revision of the Statute and the working of the Council of Europe, and for social security.

I had a vision of the danger of a European technocracy taking decisions which, by reason of their technical complexity, might perhaps to some extent escape parliamentary control. This danger exists to some extent in all large international organisations, the United Nations and its Specialised Agencies, and in all inter-governmental relations.

....."

(Coll. ed., V, pp. 1039-1040; or Rep. 1950, V, p. 1300)

(e) M. Maccas (Greece) (Translation):

"....."

But, and on this point I agree with our eminent colleague, M. Teitgen, I am disposed in turn to stress that I do not see why certain political principles and constitutional liberties were not affirmed and confirmed in this Document, which will certainly be an historic Document when it is complete.

"....."

(Coll. 'ed., V, p. 1040; or Rep., 1950, V, pp. 1302 and 1304)

(f) Mr. Mitchison (United Kingdom):

"I should like particularly to reply to what I thought was a very regrettable speech by M. Teitgen, for whom I have the very highest personal respect.

Before I do so, I should like to suggest to this Assembly that it should draw a clear distinction between two forms of sport. There is the ancient sport of twisting the lion's tail. It has long been practised.. What useful result it has served is perhaps somewhat doubtful, but let us at least keep it clearly distinct from the more recent sport of twisting the collective tail of the Committee of Ministers. So far as they are concerned, I really cannot see any reason for twisting their tails on this occasion.

.....

Lastly, I come to the matter with which I am particularly concerned, and that is the question of human rights. There were certain assumptions in M. Teitgen's speech which seemed to me to be wholly unjustified. I do not know whether he was in the proceedings à huis clos; I certainly was not, and I do not know on what grounds he has suggested that the only Minister concerned in referring some of these questions for agreement after expert advice was the British Minister. So far as my information goes - and I pretend to have no secret information whatever - there is no foundation for that suggestion.

I have been looking at what was said in our debate in the House of Commons, and I can only say that, looking closely at our Foreign Minister's

speech, I find it very difficult to reconcile it with that which M. Teitgen said today. Surely, the Committee of Ministers are entitled to consider these questions which to M. Teitgen are wholly obvious.

.....(1)

Then we come to the question of the rights of property. This is a very good instance of what I want to say. No one disputes these rights. They have already been declared almost without exception - I believe entirely without exception - in the Universal Declaration of Human Rights adopted by the United Nations some considerable time ago. The sole question which we had to consider - and M. Teitgen knows this perfectly well, I may say so - was how and to what extent we could put teeth into that Declaration; that is to say, which of these rights we could select as immediately enforceable within the ambit of Europe. It is not a question of the acceptance or the denial of the rights as such. It is purely a question of enforcement.

..... (2)

Just look at what we have left out. In the Universal Declaration of Human Rights there was stated the right of the individual to employment. Surely to many of the people who have sent us here that right is infinitely more important in practice than the right of property, which they may not have at all. We have put in the one and we have left out the other. Is it to be said of my country at least, and of the party to which I am proud to belong, that we attach higher importance to the right of property than to the right to employment or maintenance? The right to employment has been our ancient war-cry in our electoral battles. It is something which at long last we have brought to practical fulfilment in our own country.

It is obvious that, as regards these rights, the real question is how far we can go at present. May I remind M. Teitgen that there was one little thing which went through, I believe, without a dissentient voice - just a small preamble.

./.

(1) and (2) Here Mr. Mitchison spoke of the rights of parents with regard to children's education and the right to free elections (Articles 2 and 3 of the First Protocol).

What importance is there in preambles? Only that, in this case it did in its terms treat this Convention as a first step. We said so; the Committee of Ministers accepted it (1).

Would we rather that, if there was a difference of opinion, the Committee should thereafter reject everything upon which there was not complete agreement; or would we rather that they should do what they have done - seek by close examination of the articles, that agreement which we all want and our desire for which we signified by our votes in this Assembly?

We have reached a strange pass when people accuse my country of all others of some neglect of human rights. I believe that in that matter our history goes back beyond that of any other country which is represented in this Assembly

.....

Do not twist the lion's tail too much. He has quite a good history. He is a willing beast if he is properly treated, and on the whole he means a great deal better than you think".

(Coll. ed., V, pp. 1041-1043; or Rep., 1950, V, pp. 1308, 1310 and 1312)

(g) M. Rolin (Belgium) (Translation):

".....

But having said this, I must nevertheless tell the Chairman of the Committee of Ministers that I am disappointed at the treatment which has been accorded to the Assembly Recommendations on the subject of human rights; not that I have the slightest intention of blaming any particular Government - and incidentally I gladly pay tribute to the past history of Great Britain, the great champion of human rights - but rather because the explanations given to us in either case by Mr. Mitchison and by Count Sforza are not tenable, when we look at the facts as they are.

./.

(1) It was Mr. Mitchison himself who in August 1950 had persuaded the Legal Committee, and then the Consultative Assembly, to recommend to the Committee of Ministers the inclusion of a Preamble in the draft Convention (cf. Docs. AS/JA (2) 14 and AS/JA (2) PV 7).

Count Sforza told us: In your Parliaments, also, the laws that you pass have generally been prepared long in advance by experts belonging to the ministerial departments. But the Chairman of the Committee of Ministers should remember that in the present case, though it is true that the draft was elaborated by the Assembly, as a matter of fact on the invitation of the Committee of Ministers itself, the Assembly had before it a preliminary basic draft, which had been drawn up by the European Movement. The text elaborated in 1949 was then submitted by the Committee of Ministers to two bodies of experts in succession: a body of lawyers and what has been called a body of senior Government officials. Now, in our Parliaments, in the Italian Parliament as much as in the others, I imagine, there is a time for experts and there is a time for Parliaments. When once Parliament has announced its decision, it is not usual to send back again to the experts the proposition originally prepared by the experts and amended by Parliament.

The serious thing in this case, which Mr. Mitchison seems to have lost sight of, is that we had reached unanimity; and therefore our counsel ought to have been followed.

I am very disappointed about this matter. The fact is that those democratic principles, of which the Committee of Ministers is fond of proclaiming itself a passionate defender, demand at the very least, it would seem, that when the Representatives of all the Parliaments of every country have given their opinion, and when the executive body has had ample opportunity to consult with its experts beforehand, the will of these parliamentary delegations, unanimously expressed, ought to be followed and respected within the Committee of Ministers by every Minister belonging to these same States. Of course, if it is contended - which I am prepared to admit - that there were some technical and non-political omissions, that the wording of one item or another may have appeared defective, corrections on points of detail would have been quite in order; so we learned with pleasure that the Committee of Ministers had summoned its experts to Rome, specifically its experts on the question of human rights. But the substance should have been regarded as settled. The excuse of lack of time cannot be accepted.

The experts and the Ministers themselves had thus been acquainted with the documents for a considerable time; in any case the opportunity was open to them, if any of them were undecided, to discuss the reasons for the acceptance of the text with their own parliamentary representatives. It would appear that no such discussion took place in any country. The Ministers found themselves faced with the testimony of approval given by

the parliamentary delegations representing both the majority and the Opposition parties. All of them had declared themselves to be in agreement. In these circumstances, the attitude of the Ministers seems to me really inadmissible. Moreover, what is the meaning of the decision that was taken? Personally, I still think that decision is rather contradictory. On the one hand, we have a signed document. I do not need to tell Count Sforza that the signing of a Convention has no other legal significance than the drawing up of a ne varietur text with a view to its being implemented by the Parliaments, and its being subsequently ratified. On the other hand, at the very moment when the decision was made on this ne varietur text, the idea was that, by way of consolation, the experts should be authorized to go on working; but God only knows when or till when.

That is why the most moderate among us are bewildered and disappointed by the procedure followed.

....."

(Coll. ed., V, pp. 1044 - 1046; or Rep., 1950, V, p. 1314)

(h) Lord Layton (United Kingdom):

".....

I share M. Teitgen's disappointment ... (1).

.....

I regret that the Committee of Ministers has not attempted to expound or discuss its action in the Joint Committee, to which reference has already been made. In August I asked Mr. MacBride to give us some indication why those particular changes had been made. But no answer was given.

I find it very difficult to accept the explanation that there has not been time to consider the Amendments. This Convention has been in the making for eighteen months.

I therefore appreciate, and to a very large extent share, M. Teitgen's feelings; but I think it would be very unfortunate if the impression were given to the world that all we have to say about this Convention on Human Rights is that we are extremely disappointed; for in spite of its defects -- and I hope that in saying this I represent the opinion of the whole of this

./.

(1) Here Lord Layton spoke more particularly of the right to free elections (Article 3 of the First Protocol).

Assembly - I regard the Convention, watered down as it is, as a most important landmark in European history.

Do not forget that three months ago this Assembly quite deliberately agreed unanimously that, while it wished to have certain amendments made in the Convention, it would rather have the Convention as it stands than have none at all. The Ministers have taken us at our word in that respect. But why did we say that? Why did we say that it was better to have a Convention in that form than to have none at all? There are many reasons.

.....(1)"

(Coll. ed., V, pp. 1046-1047; or Rep., 1950, V, pp. 1322 and 1324)

(i) Count Sforza (Translation) :

".....

M. Rolin asked me how I could explain the state of mind of the Ministers, their uncertainty, if you like, or their lack of good-will, with regard to the Amendments to the Convention on Human Rights.

I think that I can only reply to him a point of grammar. He said "the Ministers"; but, personally, I have never seen "the Ministers". All I have seen are some Ministers, of whom one thought in black, another in blue, another in white and yet another with a craving for mediation, whose thoughts were a whole spectrum.

There was, therefore, no one "opinion of the Ministers", but various opinions. We had to make the best of this situation because we thought - as I still in all honesty think - that even if our Resolutions were incomplete, even, if you will, inept, it was better to have something signed rather than nothing. Surely, at a time when so many crises are developing, so many suspicions are being roused, when on so many sides we see the tendency to defeatism, we would have ill served the cause that we have in common by making it apparent that there was a division of opinion among the Ministers.

....."

(Rep., 1950, V, p. 1330)

(1) Here Lord Layton reviewed the chief merits of the Convention as signed at Rome on 4 November 1950.

4. Minutes of the meeting held by the Legal Committee on 20 November 1950

"....."

Resolved, that the Secretariat draw up a Summary Report of the discussions which took place in the Committee on Legal and Administrative Questions and in the Consultative Assembly on the three amendments which have been referred by the Committee of Ministers to a Committee of Experts (Right of property, Right of Education and Political Rights), so that this Summary Report may be sent by the Secretariat to the Foreign Ministers of Member States of the Council of Europe for reference to the Committee of Experts."

(Coll. ed., V, p. 1048; or Doc. AS/JA (2) PV 9, p. 2).

5. Sitting of the Consultative Assembly on 23 November 1950
(morning)

Mr. Finan (Ireland):

"....."

The one thing that we seem to have arrived at is an emaciated Convention on Human Rights. The fact that it is emaciated may not be entirely due to any action of this Assembly. Some Representatives would blame the Committee of Ministers, but I think Count Sforza very wisely reminded this Assembly, when he was here the other day, that the first emaciation of the first amputation was performed in this Assembly, and it was quite natural that the Committee of Ministers would refer certain matters to their experts for consideration.

....."

(Rep., 1950, V, p. 1538).

XIII. COMMITTEE OF EXPERTS ON HUMAN RIGHTS - FIRST SESSION (Paris, 21-24 February 1951)

1. Letter from the Secretary General of the Council of Europe to the Foreign Ministers of Member States (18 November 1950)

"Sir,

I have the honour to refer to the decision of the Committee of Ministers of the Council of Europe at its sixth session in Rome to refer to a committee of experts for further study the amendments to the Convention on Human Rights proposed by the Consultative Assembly on which the Committee had not succeeded in reaching unanimous agreement. I enclose herewith an explanatory note relating to the amendments in question. (1)

In order to facilitate the work of the committee of experts which will study these amendments further, I venture to suggest that the legal experts of each Government should prepare without delay a text which would be acceptable to their respective Governments, incorporating the principles set out in the proposals of the Consultative Assembly. If these texts could be forwarded to me by January 1st 1951, they could then be circulated to each Government and considered by the experts in advance of their meeting, which I suggest should take place early in February. This procedure should make it possible for agreement to be reached on a new text which could be presented to the Committee of Ministers at their next meeting, which is anticipated for March of 1951.

If agreement is reached in this way, it should be possible for the proposed Protocol to the Convention to be signed early next year, in less than six months after the signature of the Convention itself in Rome.

....."

(Coll. ed., V, p. 1077; or Doc. D 280/9/50).

./.

(1) See paragraph 2 below, page 126.

2. "Note on the amendments to the Convention on Human Rights proposed by the Consultative Assembly about which the Committee of Ministers was not able to reach unanimous agreement" (14 November 1950) (1)

".....

1. Right of Property

The Assembly proposed the inclusion of a new article worded as follows:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way, the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest.'

It is to be observed that this paragraph has been drafted as a statement of general principles rather than as an exact definition. It will be remembered that the Ministers' advisers, who drew up the text of the Convention substantially in the form in which it was finally signed, rejected the method of general statement, and adopted the system of precise definition to the greatest extent possible of the specific rights to be secured. If therefore appears necessary to define as accurately as possible what it meant by the right of property, what is meant by 'arbitrary confiscation' and what exceptions are to be permitted in the general interest to the individual rights of enjoyment of one's possessions,

The preparation of definitions on these points will presumably need to take account of the national legislation in different countries on such matters as nationalisation, requisition in time of war, expropriation for public use, agrarian reform, confiscation in criminal law, death duties and reversion to the State on intestacy.

....." (2)

(Coll. ed., V, pp. 1051 - 1052; or Doc. CM (50) 90, p. 1)

(1) Note prepared by the Secretariat General.

(2) The Secretariat General subsequently prepared a Note "on the reasons for the amendments to the Convention ... adopted by the Consultative Assembly on 25 August 1950." /Doc. A 3415 (undated) and Doc. CM (50) 96 of 14 December 1950/, with particular reference to the right to own property (pp. 1 to 5).

3. Replies from the Foreign Ministers of Member States to the above-quoted letter of the Secretary General

(a) Netherlands (19 December 1950):

"Sir,

I have the honour to inform you that I am in full agreement with the procedure suggested in your letter of 18 November, D 280/9/50, concerning amendment to the Convention for the Protection of Human Rights and Fundamental Freedoms. Since I have already had occasion, at the meeting of the Committee of Ministers in Rome, to indicate that the Netherlands Government would accept in principle the insertion in the text of the Convention of the new rights formulated by the Assembly, I feel it is unnecessary to propose a new text.

....."

(Coll. ed., V, p. 1078; or Doc. A. 3571) (1)

(b) Denmark (30 December 1950):

"..... I have the honour to inform you that the Danish Government are able to accept in principle, subject to agreement between the members of the Committee of Ministers, the changes proposed by the Consultative Assembly with regard to the right of property, the right to education and the political rights...."

(Coll. ed., V, p. 1078; or Doc. A 3570) (1)

4. Letter from the Secretary General of the Council of Europe to the Foreign Ministers of Member States (7 February 1951)

"Sir,

..... I have the honour to enclose three revised texts suggested by the United Kingdom Government relating to the right of property, the right of education and the right of political liberty(2)

The texts now suggested are intended to meet the objections which certain Governments felt to the proposals of the Assembly. I have to inform you however, that the United Kingdom Government is not committed to the acceptance of these revised texts, and wishes to consider the position further in the light of the conclusions reached by the Committee of Experts which will prepare the Protocol to the Convention.

(1) Translation: the English text in Coll. ed., V, differs very slightly.

(2) See below, paragraph XIII 6 (b), page 129.

In view of the fact that a number of Governments have expressed the wish that the Protocol to the Convention should be signed during the course of the next Session of the Committee of Ministers, I suggest that the Committee for the Revision of the Statute, which will hold its next meeting in Paris beginning on February 20th, should settle the text of the Protocol. (1) This will be made easier on account of the fact that many of the members of this Committee are the same as the experts who prepared the text of the Convention on Human Rights.

The preparation of the Protocol during February and its signature by the Ministers in March will have the added advantage that a number of Governments, who are anxious to do so, will be able to submit the Protocol to their national Parliaments at the same time as the Convention itself, in order that the two instruments should be considered and ratified at the same time.

....."

(Coll. ed., V, p. 1079; or Doc. D 1357)

5. "Draft Protocol extending Section I of the Convention" (14 February 1951) (2):

"Article 2 - The Right to Property

(in blank)"

(Coll. ed., V, p. 1081, or Docs. CM/WP I (51) 23, p. 1, and CM/WP VI (51) 1, p. 1 - or. Engl.).

6. Texts under consideration (20 February 1951)

(a) Text proposed by the Assembly :

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way, the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest."

./.

(1) It was, in fact, this Committee that undertook the drafting of the Protocol (cf. Doc. CM/WP I (51) PV 6 Fin., pp. 1-3);

(2) United Kingdom proposal (Annex B to Foreign Office letter dated 2 February 1951).

(b) Text proposed by the Government of the United Kingdom:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. This provision, however, shall not be considered as infringing in any way the right of a State to enforce such laws as it deems necessary either to serve the ends of justice or to secure the payment of monies due whether by way of taxes or otherwise, or to ensure the acquisition or use of property in accordance with the general interest."

(c) Text proposed by the Belgian Government (1):

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest, in such cases and by such procedure as may be established by law and subject to fair compensation which shall be fixed in advance. The penalty of total confiscation of property shall not be permitted (2).

The present measures shall not however infringe in any way the right of a State to pass legislation to control the use of property in accordance with the general interest or to impose taxes or other contributions."

(Coll. ed., V, pp. 1083 - 1084; or Docs. CM/WPI (51) 29 and CM/WP VI (51) 3).

7. "Proposal for addition to text of the United Kingdom Delegation, in order to protect the principle of compensation." (22 February 1951)

"Amend the last two lines as follows:

First alternative

'... or to ensure, subject to compensation, the acquisition or use of property in accordance with the general interest.'

Second alternative

'... or to ensure the acquisition or use of property in accordance with the general interest, subject to such compensation as shall be determined by law.'

(Coll. ed., V, p. 1085; or Docs. CM/WP I (51) 30 and CM/WP VI (51) 4 - or. Fr.)

- (1) Cf. also Docs. CM/WP I (51) 25 and CM/WP VI (51) 2 of 19 February 1951.
 (2) The 2nd and 3rd sentences of this paragraph were taken word for word from Articles 11 and 12 of the Belgian Constitution.

8. "Text proposed by the Belgian Delegation" (22 February 1951):

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, in such cases and by such procedure as may be established by law and subject to fair compensation."

(Coll. ed., V, p. 1086; or Docs. CM/WP I (51) 31 and CM/WP VI (51) 5 - or. Fr.).

9. Draft report of the Committee of Experts to the Committee of Ministers (22 February 1951):

.....

Differences of view were expressed on the question whether the Convention should establish the principle of compensation in the case of expropriation in the public interest. The majority of the Committee were in favour of establishing this principle. Only the Delegation of the United Kingdom was categorically opposed to this viewpoint.

The French Delegation considered that the sentence in the text proposed by the Assembly: 'such possessions cannot be subjected to arbitrary confiscation' implied the principle of compensation and that it would be difficult to find a more precise formula to cover the special conditions to which the principle of compensation was subject in the laws of all the member countries.

The majority of the delegations were nevertheless of the opinion that the principle of compensation should be expressly laid down in the Convention.

These delegations would be willing to support the amended text of the Belgian proposal, which reads as follows:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest, in such cases and by such procedure as are established by law and subject to compensation.'

'The present measures shall not however infringe, in any way, the right of a State to pass legislation to control the use of property in accordance with the general interest or to impose taxes or other contributions.'

The Delegation of the United Kingdom was unable to give its support either to the text of the Assembly or to the amended text of the Belgian Delegation. The reason for its opposition to the inclusion in the Convention of the principle of compensation in cases of expropriation in the public interest was that the Government of the United Kingdom could not admit that decisions taken on this matter by the competent national authorities should be subject to revision by international organs. Furthermore, the idea of arbitrary confiscation in the text proposed by the Assembly appeared to it to be too vague and for that reason unacceptable.

The French Delegation, although in principle inclined to support the text proposed by the Assembly, would be ready, in a conciliatory spirit, to accept the text proposed by the British Delegation, on condition that the second sentence of the text proposed by the Assembly ('Such possessions cannot be subjected to arbitrary confiscation') should be inserted after the first sentence of the British text.

Other delegations were willing to accept the text proposed by the British Delegation, on condition that the two last lines were replaced by the following text:

'or to ensure, in accordance with the general interest, the enjoyment of property, or its acquisition subject to such compensation as shall be determined in accordance with the conditions provided for by law.'

.....

The Committee decided that the conclusions of their work should be submitted to the respective governments. A new meeting should then take place in order to attempt to reach unanimous agreement and also to draft the text of the additional protocol in which the new rights should be incorporated."

(Coll. ed., V, pp. 1086 - 1087 and 1088; or Docs. CM/WP I (51) 32 and CM/WP VI (51) 6, pp. 1, 2 and 4).

10. Report of the Committee of Experts to the Committee of Ministers (24 February 1971) (1)

.....

The Committee agreed unanimously in drafting the following formula, affirming the right of property: 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions.'

(1) Compare with the text quoted in the preceding paragraph. The changes are underlined.

Differences of view were expressed, however, on the question whether the Protocol should affirm the general principle of compensation in the case of acquisition of private property in the public interest. Only the Delegation of the United Kingdom was (1) opposed for the reasons given below to the affirmation of this principle.

The French delegation considered that the sentence in the text proposed by the Assembly: 'Such possessions cannot be subjected to arbitrary confiscation' implied the principle of compensation and that it would be difficult to find a more precise formula to cover the special conditions to which the principle of compensation was subject in the laws of all the member countries.

The majority of the delegations were of the opinion that the principle of compensation should be expressly laid down in the Protocol in such a way as to make it clear that this principle is binding on national legislatures.

These delegations would be willing to support the amended text of the Belgian proposal, which reads as follows:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest, in such cases and by such procedure as are established by law and subject to compensation.'

The present measures shall not however infringe, in any way, the right of a State to pass legislation to control the use of property in accordance with the general interest or to impose taxes or other contributions.'

The Delegation of the United Kingdom was unable to give its support either to the text of the Assembly or to the amended text of the Belgian Delegation. The reason for its opposition to the inclusion in the Convention of the principle of compensation in cases of acquisition of property was that the Government of the United Kingdom did not think it possible to express this principle in terms which would be appropriate to all the various types of case which might arise, nor could it admit that decisions taken on this matter by the competent national authorities should be subject to revision by international organs. On the other hand the words 'arbitrary confiscation' in the text proposed by the Assembly were unprecise, and if 'arbitrary' meant 'not in accordance with law' this idea was completely covered by the United Kingdom draft.

(1) The word "categorically" was deleted.

The French Delegation, although in principle inclined to support the text proposed by the Assembly, accepted the text proposed by the British Delegation, on condition that the second sentence of the text proposed by the Assembly ('Such possessions cannot be subjected to arbitrary confiscation') should be inserted after the first sentence of the British text.

Other delegations were willing to accept the text proposed by the British Delegation, on condition that the two last lines were replaced by the following text:

'or to ensure the acquisition or use of property in accordance with the general interest, subject, in the case of acquisition, to such compensation as shall be determined in accordance with the conditions provided for by law.'

.....

The Committee decided that the conclusions of their work should be submitted to their respective governments. It considered that it was premature to draft the text of the Protocol until a further attempt had been made to obtain unanimous agreement on the text of the three Articles. It was however agreed that the Protocol should be so drafted as to make it possible for the Governments to subscribe to one or two of the new Articles without necessarily accepting all three."

(Coll. ed., V, pp. 1090-1091 and 1093; or Docs. CM/WP I (51) 40 and CM/WP VI (51) 7, pp. 2, 3 and 5).

XIV SEVENTH SESSION OF THE COMMITTEE OF MINISTERS (Paris, 16-17 March 1951)Official Report of the meeting of 16 March 1951 (afternoon)

".....

The Chairman (1) With regard to the preparation of the Protocol to the Convention on Human Rights, the Advisers had suggested convening a committee of jurists in Strasbourg on 18th April 1951. That Committee would have the task of preparing a Draft Protocol to be submitted to the Governments for signature(2).

M. Unden (Sweden) pointed out that of the three points on which a decision had been postponed when the Convention for the Protection of Human Rights had been signed there was one which raised particular difficulties. He referred to the right of property, which had been the subject of controversy in the past and on which it seemed that the Experts were not yet agreed. As a result there was a danger that the Committee of Ministers would either adopt a meaningless formula in order to achieve general agreement or would lay down too rigid a rule which might run counter to the political ideas of certain Governments. M. Unden considered, therefore, that it would be better not to proceed with too much haste and suggested that the Committee of Ministers should invite the Member Governments to state their views on the texts proposed by the Experts before 1st September 1951, on which date they might consider calling a further meeting of the Committee of Experts.

Mr. O'Driscoll (Ireland) ... (opposed M. Unden's suggestion)

M. Van Boetzelaer (Netherlands) was of the same opinion as Mr. O'Driscoll,...

M. Sforza (Italy) wondered whether they ought not to draw a distinction between the three texts in question. It seems that it was only the right of property that caused any real difficulty. They could therefore postpone a decision on that point until September 1951 while instructing the Experts, in April, to come to an agreement on political rights and on the right of education.

(1) M. J. Bech (Luxembourg)

(2) Documents of the Committee of Ministers, 1951, I, Appendix 3, p. 52.

M. Unden (Sweden) was ready to agree to that procedure.

M. Schuman (France) wondered whether it was appropriate to make such a distinction. He considered that it would be difficult to reach unanimity on the three texts under discussion. It would therefore be preferable to consider the possibility, if necessary, of reaching a partial agreement. The Experts would thus have the task of preparing a text which could secure the agreement of as many Governments as possible. The Committee of Ministers could then decide their attitude during their Session in May.

M. van Zeeland (Belgium) shared M. Schuman's opinion, more particularly since a series of successive ratifications would inevitably cause the Governments real practical difficulties. He considered furthermore that the question should be examined as a whole.

The Chairman having ascertained that the procedure advocated by the Advisers met with the approval of the Committee, it was decided that the Experts dealing with the question of Human Rights should meet on 18th April 1951 at Strasbourg.

(Coll. ed., V, pp. 1096-1098; or Documents of the Committee of Ministers; 1951, I, pp. 18 and 20).

XV. COMMITTEE OF EXPERTS ON HUMAN RIGHTS - SECOND SESSION (Strasbourg, 18 - 19 April 1951)

1. "Revised Texts discussed at previous meeting in Paris on 21st - 24th February 1951" (17 April 1951)

(a) Revised Belgian Proposal:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, in such cases and by such procedure as are established by law and subject to compensation.'

'The present measures shall not however infringe, in any way, the right of a State to pass legislation to control the use of property in accordance with the general interest or to impose taxes or other contributions.'

(b) United Kingdom Proposal with addition:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. This provision, however, shall not be considered as infringing in any way the right of a State to enforce such laws as it deems necessary either to serve the ends of justice or to secure the payment of monies due whether by way of taxes or otherwise, or to ensure the acquisition or use of property in accordance with the general interest.'

Proposed addition:

'... subject, in the case of acquisition, to such compensation as shall be determined in accordance with the conditions provided for by law.'

(Coll. ed., V, p. 1099; or Docs. CM/WP I (51) 46 and CM/WP VI (51) 8).

2. "Right of Property" (18 April 1951)

'The delegations of Belgium, Denmark, German Federal Republic, Greece, Ireland, Italy, Luxembourg, the Netherlands and Norway expressed themselves as ready to accept the following text (1):

(1) Compare with text quoted in paragraph XV - 1 - a) above. Changes are underlined.

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, in such cases and by such procedure as are established by law and subject to such compensation as shall be determined in accordance with the conditions provided for by law.'

The present measures shall not however infringe, in any way, the right of a State to pass legislation to control the use of property in accordance with the general interest or to impose taxes or other contributions.'

The delegations of France, the Saar and the United Kingdom expressed themselves as unable to accept this text.

The Swedish and Turkish delegations reserved their positions."

(Coll. ed., V, p. 1105; or Doc. CM/WP VI (51) 11).

3. Preliminary Draft Protocol (18 April 1951)

Article 4 (Doc. CM/WP VI (51) 9 Rev (1) or
Article 1 (Doc. CM/WP VI (51) 9 Final):

identical with the text quoted in the preceding paragraph.

(Coll. ed., V, p. 1103).

4. Draft Report and Report of the Committee of Experts to the Committee of Ministers (19 April 1951):

"....."

The majority of the Committee, comprising the Belgian, Danish, German, Greek, Irish, Italian, Luxembourg, Netherlands and Norwegian delegations, agreed upon the following text:

..... (identical with the text quoted in paragraph XV - 2 above, pages 136 - 137)

The French, Saar and United Kingdom delegations stated that they were unable to agree to this text, mainly because they could not accept a definition of the right to property comprising in all cases the principle of compensation in the event of private property being acquired by the State.

The Swedish and Turkish delegations reserved the views of their respective Governments.

....."

(Coll. ed., V, pp. 1110-1111 and 1113 - 1114; or Docs. CM (51) 33 and 33 Final, pages 1 - 2).

(1) In the first version of this document, dated 18 April 1951 (Doc. CM/WP VI (51) 9), the Article relating to the right of property [Article 2 (a)] was left blank.

XVI. THIRD SESSION OF THE CONSULTATIVE ASSEMBLY - FIRST PART (Strasbourg
5 - 15 May 1951)

1. Supplementary Report of the Committee of Ministers to the
Consultative Assembly (4 May 1951)

".....

31. The Committee noted that certain differences still existed concerning the final wording of the Protocol to the Convention on Human Rights. With a view to obtaining unanimous agreement before the ninth Session of the Committee of Ministers, the Committee instructed the experts of the Governments to review the proposed texts at the earliest possible opportunity with a view to producing a draft Protocol which would be acceptable to all the Governments. The Committee has reason to hope that this step will shortly produce satisfactory results. It had already been suggested that the Ambassadors in Paris of the Governments of Member States should be empowered to sign the Protocol even before the next meeting of the Committee of Ministers."

(Coll. ed., V, p. 1121; or Doc. AS (3) 18, p. 332. cf. also Doc. AS. (3) 5, paras. 53-57, pp. 56 - 57).

2. Consultative Assembly Sitting of 7 May 1951 (afternoon)

(a) M. Schmal (Netherlands) (Translation) "..... May I be permitted to put a simple question on this subject to M. Stikker? (1) I venture to do so in view of the extreme importance of the matter. I should like to know on precisely what point the further examination deemed necessary is not yet completed. If I have understood rightly, the questions under consideration are the rights of parents, free political elections and the right to own property. If that is so, I should like to know on which of these three problems a solution has not yet been reached.

That is the main point on which I am seeking information, and I should like in advance to thank the Chairman of the Committee of Ministers for such information as he may be good enough to supply."

(Coll. ed., V, p. 1124; or Rep., 1951, I, p. 50)

(1) Chairman of the Committee of Ministers, presenting the Report quoted in the preceding paragraph to the Assembly orally.

(b) M. Rolin (Belgium) (Translation) "..... You certainly remember that one of the questions which gave rise to lengthy debates in this Assembly and the only question on which, when we met in 1949, we registered a momentary failure, in that we were unable to reach any decision, was the definition of the freedoms or of the guarantees to be required with regard to property and freedom of education. Certain of our colleagues considered it essential that these matters should be explicitly defined in the Convention and that it would not be possible to recommend the adoption of that Convention until the Protocol, as well, had been drawn up.

We reviewed the problem in 1950 and reached an agreed formula worked out at great pains, which was a kind of compromise supported by the great majority of the Representatives. We now learn from the Report and the Supplementary Report of the Committee of Ministers that, despite our Recommendation, this Protocol containing the reserved questions, did not receive the unanimous agreement of the Committee of Ministers and that the matter has been referred again to the experts.

As M. Moutet said, experts are invaluable: they are invaluable to us too. In fact, if we are to be a Consultative Assembly - and I am here replying to Mr. Mackay - the opinions required of us are of quite a different kind from those required of the experts. What is required is something approximating to the views of our Parliaments. Such an opinion we have given. How is it that the Ministers fail to realise that, in referring this problem to experts, who do not possess the same sensitivity with regard to the definition of the right to own property and of freedom of education, they run the risk of bringing the whole matter into question again?

I sincerely believe that, despite its desire to see the Convention and the Protocol put into effect, the Assembly would be wise not to run the risk of having an experts' text incorporated in a Protocol, even before the Committee of Ministers has considered the matter further.

On this point, too, I hope that the Assembly will make its wishes clear and precise, and I suggest that it should pass the following Recommendation (1):

(1) Doc. AS (3) 25 (7 May 1951), pp. 425 - 426)!

Noting that, according to the Second Report (para. 53) and the Supplementary Report (para. 31) of the Committee of Ministers, the draft of the Protocol which it is proposed to add to the Convention for the Protection of Human Rights and Fundamental Freedoms has given rise to differences of opinion within the Committee, and that it has been referred to the Government Experts with the request that they draw up a final text to be immediately submitted for signature by the Ambassadors of the Member States in Paris,

Observes that the definitions of the right to own property and the freedom of education, which are the purport of this Protocol, are essentially matters of a political character, and and that they were the subject, in 1949 and 1950, of far-reaching discussions within the Assembly and its Committee on Legal and Administrative Questions., which finally resulted in the voting of the compromise text included in Recommendation 47 (1) of August, 1950,

Requests, consequently, that, should the Government Experts make any alterations in the text recommended by the Assembly, the Protocol incorporating them should not be submitted for the signatures of the Member States until and unless the Consultative Assembly has had an opportunity of giving its opinion upon the proposed alterations."

(Coll. ed., V, pp. 1123 and 1124 - 1125; or Rep., 1951, I, pp. 55-56)

3. Consultative Assembly Sitting of 10 May 1951 (morning)

- (a) M. D.U. Stikker: "..... As regards the enquiry of my compatriot, M. Schmal, I may say that the drafting of a Protocol by way of addition to the Convention for the Protection of Human Rights has made great headway. Complete agreement has been reached as regards the wording of the so-called political right, and on the educational right unanimity is in sight. It is the right to own property that still causes some difference of opinion. Though it would have been possible to put the finishing touches on the Protocol in time for this Session, the extent of the new obligations acceptable to Member Governments would not have been the same. As there still seems a possibility of reaching unanimity on a new formula, the Committee of Ministers preferred to request their Advisers to make a further effort to reach complete agreement on the exact formula for each of the three rights. It is only in order to meet the wish of the Assembly that this matter should be settled as soon as possible that the Committee of Ministers has considered the possibility of having the Protocol signed by the diplomatic representatives of the Member States in Paris."

(Coll. ed., V, pp. 1126 - 1127; or Rep., 1951, I, pp. 175 - 176).

(1) This should read "Recommendation 24".

- (b) Mr. Mitchison (United Kingdom): "Mr. President, you mentioned a Motion concerning the Convention for the Protection of Human Rights, standing in the names of M. Rolin, M. Moutet and myself (Doc. AS (3) 25) (1). You proposed (2) - and I respectfully agree - that that Motion should be referred to the Committee on General Affairs as part of the matters to be considered in the reply to the Committee of Ministers. All I ask is that one or other of those responsible for that Motion should be allowed to appear before the Committee on General Affairs to state not only our reasons for having put down the Motion, but also the reasons which led to an amendment (3) of it, prepared by myself in consultation with M. Rolin of Belgium, with a view to avoiding a procedural difficulty and the delay which Mr. Stikker mentioned in the course of his Reply."

(Coll. ed., V, p. 1127; or Rep., 1951, I, p. 188).

The Motion of MM. Rolin, Moutet and Mitchison (Doc. AS (3) 25), together with Mr. Mitchison's amendment thereto, was accordingly referred to the Committee on General Affairs.

(Coll. ed., V, p. 1128; or Rep., 1951, I, p. 190)

4. Draft Reply to the Report of the Committee of Ministers (4) presented by Mr. Mackay on behalf of the Committee on General Affairs (15 May 1951)

".....

11. The Assembly views with some anxiety the suggestion mentioned in the supplementary Report (paragraph 31) that, after review by experts and agreement between governments, a Protocol embodying the texts relating to the right of property, the right of education

./.

(1) Cf. para. 2 above, pp. 139 - 140.

(2) Rep., 1951, I, p. 187.

(3) The amendment (AS (3) 25, amendment No. 1, p. 427) was worded as follows:

"In the third paragraph, line 5, after 'unless' insert: 'it has been approved by the Committee on Legal and Administrative Questions (or, if the Assembly is not in Session, by the Chairman of the Committee) or"

(Coll. ed., V, p. 1126).

(4) Cf. para. 1 above, p. 138.

and political rights will be signed without further reference to the Assembly. These texts were a compromise accepted with few abstentions and no opposition in the Assembly. The Assembly therefore submits that, both as a matter of right and of courtesy, it should be given an opportunity of commenting on any modified version thereof before they are signed, or, if the Assembly is not in session, that they be transmitted to the President of the Consultative Assembly for reference to the appropriate Committee.

....."

(Coll. ed., V, p. 1128; or Doc: AS (3) 57, p. 546);

5. Consultative Assembly Sitting of 15 May 1951 (afternoon)

(a) Mr. Stanford (Ireland):

"..... My only criticism will be directed to paragraph 11 of the draft Reply (1). This is a paragraph which deals with the additions to the Convention for the Protection of Human Rights recommended by the Assembly last August.

.....

..... (2)

I turn to the matter before us - to paragraph 11 - and I should like to read the opening sentence. It says:

'The Assembly views with some anxiety the suggestion mentioned ...'

and then there is the text relating to the right to own property. Let us turn to the cause of the anxiety expressed here. You will find it on page 34 of the Recommendations and Resolutions of the Consultative Assembly in the Second Session. It says:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions may not be subjected to arbitrary confiscation. The present measures shall not, however, be considered as infringing in any way the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with general interests.'

./.

(1) Cf. preceding paragraph.

(2) Here Mr. Stanford made some general remarks on the Convention and cited the position of the Protestant minority in the Irish Republic.

I confess that, as I read this, a momentary chill passed over my enthusiasm for the Convention for the Protection of Human Rights as a whole. The exception that they shall not be considered 'as infringing in any way the right of a State to pass necessary legislation ... etc.', so far as my brief experience as a legislator goes, is no empty formula. The fact is - it is certainly the fact in Ireland and in England, and I imagine it is a fact elsewhere - that in many democratic countries today almost every month the Parliaments are passing Act after Act with clauses allowing the confiscation of lands or houses or other possessions.

Let me exemplify this with a typical example; I like to try to make these matters human. There are three or four houses in a mountain valley which have been there for two hundred or three hundred years. Some polite engineers come along and are treated hospitably by the farmers. Six months later these households receive an official letter to say that the farmhouses will be confiscated. A new reservoir is to be built for Strasbourg, Paris, Stockholm or whatever city it may be, and these houses must be evacuated. Where do the rights of property come in? The city needs water, but it is not really any consolation to those three or four farming families that they should be turned out.

I am not being naive; I know the tensions involved; but I say that, if we read it carefully, we find that there is a good deal of cant in this Article. When those houses are engulfed in those waters, the coal from the Schuman Plan will no longer warm those hearths and homes. My fellow-Representatives may think that this is sheer sentimentality. I would simply ask 'suppose your houses are confiscated' - it is less likely in the case of influential politicians, but it might happen - 'would it be any comfort to you to read in the Convention for the Protection of Human Rights the Article that we are now discussing?'

If some confiscation of this kind occurs to any of us tomorrow, we shall be told, of course, that 'every natural or legal person is entitled

to the peaceful enjoyment of his possessions.' We shall be told that there is a great difference between arbitrary confiscation and legalised confiscation; we shall be told that there is a great difference between our democratic countries and the countries under a dictatorship; but that, unfortunately, we must give up our house or home next week, because a new airport, a new arterial road or a new reservoir necessitates its obliteration.

Frankly, the more I reflect on Article 10A, which is the basis of our present discussion, the less I think it worth including in the Convention. I have no sympathy with the Communists' denial of the right to own property; but the kind of justice that gives with one hand and takes away with the other deserves little respect. I think that Article 10A, as it now stands, is not worth fighting for either here or in one's own country. It seems to me to substitute mere political expediency for those principles of higher justice which the rest of this Convention so firmly and nobly proclaims."

(Coll. ed., V, pp. 1129 and 1131-1133; or Rep., 1951, III, pp. 433 - 435)

(b) Mr. Mitchison (United Kingdom): "..... (voiced his agreement with paragraph 11 of the draft Reply)"

(Coll. ed., V, p. 1133; or Rep., 1951, III, p. 437)

(c) M. de la Vallée Poussin (Belgium) (Translation): "..... I agree with one of the previous speakers when he said that the text which we had drafted was considerably better than that on which the Committee of Ministers agreed. It will surprise nobody if I say that the protection of the right to own property seems to me to be far better assured in our text than in that which the Committee of Ministers supported - for fear of condemning nationalisation." (1)

(Coll. ed., V, p. 1135; or Rep., 1951, III, p. 441).

After Mr. Mitchison (United Kingdom) and M. van der Goes van Naters (Netherlands) had spoken in favour of paragraph 11 of the draft Reply, that paragraph was adopted by the Assembly.

(Coll. ed., V, pp. 1135 - 1136; or Rep., 1951, III, pp. 449-451).

(1) M. de la Vallée Poussin was, however, opposed on grounds of expediency (danger of further pointless delays etc.) to the adoption of paragraph 11 of the draft Reply.

6. Reply of the Consultative Assembly to the Report of the Committee of Ministers (15 May 1951)

"

11. (identical with text quoted in para. 4 above, pp. 141 - 142 ...".

(Coll. ed., V, p. 1137; or Recommendations and Resolutions of the Consultative Assembly, 1951, I, p. 11).

XVII COMMITTEE OF EXPERTS ON HUMAN RIGHTS - THIRD SESSION
(Strasbourg, 5-6 June 1951) (1)

1. "Texts proposed for Submission to the Governments"
(5 June 1951) (2)

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The present measures shall not however infringe, in any way, the right of a State to pass legislation to control the use of property in accordance with the general interest or to impose taxes or other contributions." (Coll. ed., V, p.1138; or Doc. CM/WP VI (51) 19).

2. Report of the Committee of Experts to the Committee of Ministers (6 June 1951)

In accordance with the decision of the Committee of Ministers at its eighth Session, the Committee of Experts met in Strasbourg on 5 and 6 June 1951, and proceeded to make a further examination of the texts prepared at its previous meeting (Doc. CM (51) 33 Final) in order to try to reach agreement on the text of a draft Protocol acceptable to all the Governments.

The Committee agreed to propose the texts set out in the draft Protocol annexed hereto. However, as these texts involved certain new elements, particularly in Articles 1, 2 and 4, and in order to take account of the reservations made by certain delegations, it was decided that they should first be submitted to the Governments before their acceptance could be considered as final.

The texts contained in Articles 1, 2 and 3 were the result of protracted discussions and represented the maximum of possible agreement that might be reached.

./.

-
- (1) The decision to convene this Session was taken by the Committee of Ministers at their eighth Session, held at Strasbourg from 2 to 4 May 1951 (Documents of the Committee of Ministers, 1951, II, pp. 136, 138 and 220).
- (2) Compare with the text quoted in para. XV - 2 above, p. 136. Changes are underlined.

The Committee recommended that each Government should inform the Secretary General by 15 July 1951 whether it is prepared to accept the draft Protocol annexed hereto, and whether it agrees that this draft should be transmitted to the President of the Consultative Assembly in accordance with the desire expressed by the Assembly in its reply to the Message of the Committee of Ministers.

As the texts proposed were accepted in order to reach unanimous agreement, it was understood that if these texts were not acceptable to all Governments each Government would be free to reconsider its position.

.....
(Appendix)

Article 1 (1)

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, infringe in any way the right of a State to pass legislation to control the use of property in accordance with the general interest or to impose taxes or other contributions.

....."

(Coll. ed., V, pp.1138-1139 and 1140; or Doc. CM/WP VI (51) 20 Final, pp. 1, 2 and 3).

o

o

o

(1) Compare with the text quoted in the preceding paragraph. Changes are underlined.

XVIII. MEETING OF THE ADVISERS TO THE MINISTERS FOR FOREIGN AFFAIRS, HELD AT STRASBOURG, 6 AND 7 JUNE 1951

Conclusions of the Meeting:

"....."

The Meeting approved, after amendment (1), the text of the report drafted on 6 June 1951 by the Committee on Human Rights at the end of its work (2) ...

....."

(Coll. ed., V, p.1143; or Documents of the Committee of Ministers, 1951, III, p.292).

o
o o

XIX. MEETING OF THE ADVISERS TO THE MINISTERS FOR FOREIGN AFFAIRS, HELD AT STRASBOURG, FROM 17 TO 19 JULY 1951

1. Letter from M Blankenhorn (3) to the Secretary General of the Council of Europe (10 July 1951)

"....."

With reference to the Report of the Experts on Human Rights of 6 June 1951 - CM/WP VI (51) 20 final - I have

./.

-
- (1) The nature and purport of this amendment were not specified.
 - (2) Cf. para. XVII 2 above, pp. 146-147.
 - (3) On behalf of the Minister for Foreign Affairs of the Federal Republic of Germany.

the honour to inform you that the Federal Chancellor has directed me to notify you that the Federal Government is prepared to accept the Protocol to the Convention on Human Rights on condition that, in respect of the second sentence of Article 1 of the Protocol, the Experts and Ministers' Advisers agree at a later meeting, and explicitly mention the fact in the Minutes of that meeting, that the general principles of international law entail the obligation to pay compensation in cases of expropriation .."

(Coll. ed., V, p.1144; or Doc. A.5642)

2. Amendments proposed by the Government of the United Kingdom (1)

"... Substitute for the last paragraph of Article 1 the following sentence:

'The preceding provisions shall not, however, in any way infringe the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or of penalties imposed by Courts.'

....."

(Coll. ed., V, p.1145; or Doc. CM/Adj. (51) 34 -- or. Engl.)

3. Conclusions of the Meeting of the Ministers' Advisers

"..... (background)

Before (15 July 1951) the British Government informed the Secretary General that it desired to submit certain amendments to the text drawn up by the Committee of Experts

The Ministers' Advisers thereupon re-examined the draft during their present meeting and finally reached agreement on the text of a draft Protocol.

The meeting noted the fact that the French and Italian Governments, having received no instructions on the subject, wished to reserve the attitude of their Governments towards the draft Protocol thus amended.

.....

(1) Compare with the text quoted in para. XVII 2 above, page 147. Changes are underlined.

The Swedish Delegation pointed out - and requested that the fact be mentioned in these conclusions - that the general principles of international law referred to under Article 1 of the Protocol only applied to relations between a State and non-nationals.

At the request of the German and Belgian (1) Delegations, it was agreed that the general principles of international law, in their present connotation, entailed the obligation to pay compensation to non-nationals in cases of expropriation.

.....

The Ministers' Advisers decided that at their next meeting they would draw up the final text of the Report for submission to the Committee of Ministers.

The Advisers further agreed that as soon as the final text of the Protocol had been drawn up it should be transmitted by the Chairman of the Committee of Ministers to the President of the Assembly, in accordance with the desire expressed by the Assembly in its reply to the Message of the Committee of Ministers. (2)

The meeting considered it advisable to call the attention of the Assembly to the fact that the Protocol constituted the maximum possible measure of agreement between the varying schools of thought and that its implementation would be considerably delayed if changes affecting the substance of its provisions were proposed.

(Appendix)

Article 1 (3)

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, and subject to the conditions provided for by law and by the general principles of international law.

-
- (1) The reference to the Belgian Delegation was added later - see XXI below, p. 155.
 - (2) Cf. para. XVI 4 above, pages 141-142.
 - (3) Paragraph 1: unaltered. Paragraph 2: compare with the text quoted in XIX 2 above, page 149. Change is underlined.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes (1), other contributions or (2) penalties (3).

....."

(Coll. ed., V, pp.1149-1151 and 1156; or Documents of the Committee of Ministers, 1951, III, pp. 300, 302 and 284).

4. Report of the Committee of Experts on Human Rights to the Committee of Ministers (18 July 1951)

"..... (background)

Before (15 July 1951) the British Government informed the Secretary General that it wished to submit certain draft amendments to this text

The Ministers' Advisers therefore proceeded to re-examine the draft during their meeting on 17 July 1951, and finally agreed on the text hereto attached. This Protocol is the result of a great deal of discussion and should be regarded as constituting the maximum possible measure of agreement.

The United Kingdom, French and Italian Delegations, who have received no instructions in this respect, have reserved the attitude of their Governments in respect of the draft Protocol thus amended.

The Swedish Delegation pointed out - and requested that the fact be mentioned in this Report - that the general principles of international law referred to under Article 1 of the Protocol only applied to relations between a State and non-nationals.

The German Delegation requested that it be mentioned in the Report that these general principles of international law, in their present connotation, entailed the obligation to pay compensation to non-nationals in cases of expropriation.

.....

-
- (1) "or" omitted.
 (2) "of" omitted.
 (3) "imposed by Courts" omitted.

The Ministers' Advisers recommend that each Government inform the Secretary General, if possible by 1 August 1951, whether it is willing to accept the draft Protocol attached hereto and to have it transmitted to the President of the Consultative Assembly in accordance with the wish expressed by the Assembly in its reply to the Message of the Committee of Ministers.

.....

(Appendix)

Article 1

..... Paragraph 1: identical with the text quoted in XIX.3 above, p. 150

Paragraph 2: identical with the text quoted in XIX.2 above, p. 149.

....."

(Coll. ed., V, pp.1146-1148; or Doc. CM/WP VI (51) 21, pp. 1, 2 and 3)

XX. NINTH SESSION OF THE COMMITTEE OF MINISTERS
(Strasbourg, 2 and 3 August, 1951).

1. Recommendations of the Ministers' Advisers relating to the Agenda (1) for the Session (1 August 1951)

".....

The Ministers' Advisers have drawn up the text of a draft Protocol to the Convention on Human Rights, appended to the present document. This text met with the agreement of all the delegations and is submitted to the Committee of Ministers for final approval.

./.

-
- (1) The Protocol to the Convention was Item 3 of the Agenda. (Documents of the Committee of Ministers, 1951, III, p.282).

The Ministers' Advisers further recommend that, if the Committee of Ministers approves the text of the Protocol, it should decide that the text should be communicated by the Chairman of the Committee to the President of the Assembly, in accordance with the wish expressed by the Assembly in its reply to the Message from the Committee of Ministers (1).

The Advisers also suggest that at the second meeting of the Joint Committee the Ministers who are members of that Committee should draw the attention of the Representatives of the Assembly to the fact that the Protocol represents the maximum measure of agreement possible at the present time (2) and that considerable delay would arise in putting it into effect if the Assembly proposed substantive amendments to the present text (3).

..... (4)

(Appendix)

Article 1 (identical (5) with text quoted in XIX.3 above, pp.150-151)....."

(Coll. ed., V, pp.1151 and 1152; or Doc. CM (51) 64 and 64 rev., pp.2-3 and Appendix I).

2. Official Report of the meeting of the Committee of Ministers on 3 August 1951.

".....

M Benediktsson (Iceland) stated that in his view greater protection against arbitrary confiscation of property should be given than was provided for in Article 1 of the draft Protocol. However, it was obvious that any State which wished to do so could, under its national legislation, furnish greater protection to its citizens than was provided for in the Protocol. In view of this and of the

./.

(1) Cf. para. XVI.4 above, pp.141-142.

(2) Doc. CM (51) 64 unrevised: "between the various schools of thought".

(3) This was done. (Documents of the Committee of Ministers, 1951, III, pp.268 and 278, and Doc. CM/AS (51) FV 2, pp. 3-4).

(4) Doc. CM (51) 64 unrevised also contained a paragraph recommending that, if the Protocol met with no objections on the part of the Assembly, the diplomatic representatives in Paris of Member States should be empowered to sign it.

(5) Except that, in paragraph 2, the word "infringe" appeared instead of the word "impair".

fact that, if the Assembly did not agree with the draft Protocol, the matter would in any case have to be reconsidered by the Committee of Ministers, he did not propose to object to the draft Protocol at that stage.

The Chairman (1) enquired whether the Committee was in agreement with the text of the Protocol submitted by the Ministers' Advisers (2).

The draft Protocol was unanimously approved.

.....¹⁷

(Coll. ed., V, p.1155; or Documents of the Committee of Ministers, 1951, III, p. 276).

-
- (1) M. H Lange, Norwegian Minister for Foreign Affairs.
(2) Cf. paragraph XIX.3 above, pp. 150-151

XXI. MEETING OF THE ADVISERS TO THE MINISTERS FOR FOREIGN
AFFAIRS, HELD AT STRASBOURG ON 20 AND 21 SEPTEMBER 1951

Conclusions of the Meeting:

"....."

Protocol to the Convention on Human Rights

On the request of the Belgian Delegation, it was decided to amend as follows the text of page 3, paragraph 4, of the Conclusions of the Meeting of the Ministers' Advisers held at Strasbourg from 17 to 19 July 1951 (1):

For: 'At the request of the German Delegation, it was agreed that

Read: 'At the request of the German and Belgian Delegations, it was agreed that

....."

(Coll. ed., V, p.1158; or Documents of the Committee of Ministers, 1952, I, p.102).

(1) Cf. para. XIX.3 above, p. 150.

XXII. LEGAL COMMITTEE OF THE CONSULTATIVE ASSEMBLY - MEETINGS HELD AT BRUSSELS ON 1 AND 2 OCTOBER 1951

1. Letter from the Chairman of the Committee of Ministers to the President of the Consultative Assembly (3 August 1951)

"Sir,

In conformity with the desire expressed by the Consultative Assembly in its reply to the Message conveyed to it by the Committee of Ministers on the opening of its Third Ordinary Session, the Committee of Ministers has directed me to transmit to the Assembly for an opinion the text of a Protocol to the Convention on Human Rights adopted by the Committee of Ministers at its meeting on 3 August 1951.

The text of this Protocol is enclosed herewith.

.....

(Appendix)

Article 1

..... (identical with text quoted in para. XIX.3 above, pp. 150-151)"

(Coll. ed., V, p.1158; or Docs. AS/JA (3) 11, pp. 1-2, and AS (3) 78, pp. 813-814).

2. Commentary by the Secretariat General on the draft Protocol (18 September 1951)

"..... (background and general observations)"

Article 1

The Right of Property

The text proposed by the Assembly was:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. Such possessions cannot be subjected to arbitrary confiscation. The present measures shall not however be considered as infringing, in any way, the right of a State to pass necessary legislation to ensure that the said possessions are utilised in accordance with the general interest.'

Article 1 of the draft Protocol reads as follows:

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, and subject to the conditions provided for by law and by the general principles of international law.'

The preceding provisions shall not, however, in any way infringe the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes, other contributions or penalties.'

The revised text calls for the following comments:

(a) The sentence: 'Such possessions cannot be subjected to arbitrary confiscation' has been replaced by the sentence: 'No one shall be deprived of his possessions except in the public interest, and subject to the conditions provided for by law and by the general principles of international law.'

This change was made principally because the phrase 'arbitrary confiscation' was thought to be too unprecise in a legal text, as it is capable of very varying interpretations. The phrase 'subject to the conditions provided for by law' was believed to be more precise and to cover adequately the object in mind.

(b) There was much discussion as to whether or not it should be stipulated that 'no one should be deprived of his property except subject to compensation.' A majority of the Governments were at one time in favour of a provision to this effect. Other Governments, however, felt unable to accept it, as they did not think it possible to express this principle in terms which would be appropriate to all the various types of cases which might arise, and they could not admit that decisions taken on this matter by competent national authorities should be subject to review by international organs. However, the phrase 'Subject to the conditions provided for by law' would normally require the payment of compensation, since it is normally provided for in legislation on the nationalisation or expropriation of property. Further, the phrase 'subject to the conditions provided for by the general principles of international law' would guarantee compensation to foreigners, even if it were not paid to nationals.

./.

(c) The last sentence of the Assembly's text has been expanded somewhat to make it clear that this article does not prevent the State from collecting taxes, or other penalties such as fines, even though they might constitute the whole of the property of the individual in question.

....."

(Coll. ed., V, pp.1163-1165; or Doc. AS/JA (3) 13, pp. 2-4, or. Engl.)

3. Minutes of the Meeting of 1 October 1951

".....

Article 1

The Committee deliberated. Resolved that the text proposed by the Committee of Ministers be adopted without amendment.

....."

(Coll. ed., V, p.1168; or Doc. AS/JA (3) PV 3, p. 2 - or. Engl.)

4. Letter from the Chairman of the Committee to the President of the Consultative Assembly (2 October 1951)

"Sir,

I have the honour to transmit to you herewith the opinion of the Committee on Legal and Administrative Questions on the draft Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Committee of Ministers at its Meeting of 3 August last.

In drawing up its conclusions, the Committee did not intend to prejudge the question whether, in view of the Resolution of the Consultative Assembly of 15 May 1951 (1), these conclusions could be considered as they stood to represent the opinion of the Assembly requested by the Committee of Ministers, and so be sent by you directly to the Committee, or whether they should come before the Assembly.

The Committee was of the opinion that this was a question for you to decide. If, on examining the matter, you choose the second solution, you will note that the observations transmitted to you may without difficulty be submitted to the Assembly for approval, since they contain the features both of a Resolution and of a Report. If you take that decision, Mlle CONCI could act as Rapporteur, having been appointed for this purpose by the Committee.

./.

(1) Cf. para. XVI.4 above, pp.141-142.

Opinion of the Committee on Legal and Administrative Questions

The Committee pays tribute to the efforts made by the Committee of Ministers to complete the Convention for the Protection of Human Rights and Fundamental Freedoms along the lines desired by the Consultative Assembly. It nevertheless considers that it should make the following observations regarding certain provisions of the Protocol.

Article 1 - No comments.

....."

(Coll. ed., V, pp.1179 and 1176; or Docs. AS/JA (3) 17, 18 and 18 rev., pp.1-2 - or. Fr. Cf. also Docs. AS/JA (3) PV 3, p.4 and AS (3) 81, p.826) (1)

XXIII

MEETING OF THE ADVISERS TO THE MINISTERS FOR FOREIGN AFFAIRS, HELD AT STRASBOURG FROM 21 TO 23 NOVEMBER 1951

Conclusions of the Meeting

"..... It was agreed that the Protocol to the Convention on Human Rights, as thus amended, had now received its final form and that it would be advisable to take the necessary steps for its signature without further delay. The ceremony of signature should take place in Paris either during the next session of the Committee of Ministers, if this date were not too distant, or by means of plenipotentiaries during the next few weeks. (Appendix 1.)

.....

-
- (1) The President of the Assembly transmitted the Committee's opinion to the Committee of Ministers on 3 October 1951 (Doc. AS (3) 81, p. 825).

(Appendix)

Article 1 (1)

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest, and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

....."

(Coll. ed., V, pp.1184 and 1188; or Documents of the Committee of Ministers, 1952, I, pp.108 and 190).

(1) Identical with the present text. Compare with the text quoted above in para. XIX.3, pp.150-151. The single alteration is underlined.

XXIV THIRD SESSION OF THE CONSULTATIVE ASSEMBLY - SECOND PART
(Strasbourg, 26 November - 11 December 1951)

1. Communication from the Chairman of the Committee of Ministers
to the President of the Consultative Assembly (28 November 1951)

".....

The final text of the Protocol is attached hereto, and I should be grateful if you would be so good as to communicate it to the Consultative Assembly for information. It will be signed either on the occasion of the next session of the Committee of Ministers, if that date is not long delayed, or at Paris by plenipotentiaries authorised to sign for the Governments in the course of the next few weeks.

.....

(Appendix).

Article 1

..... (identical with the text quoted in para. XXIII above, pp. 159-160) ...

....."

(Coll. ed., V, pp. 1187-1188; or Doc. AS (3) 84, pp. 835-836. Cf. also Docs. CM/Adj. (51) 67 and 67 final).

2. Report of the Legal Committee (1) on the Communication
referred to in the preceding paragraph (4 December 1951)

"..... (background)

..... Your Committee on Legal and Administrative Questions proposes that you regard the above-mentioned letter from the Committee of Ministers of 28 November 1951 as having been transmitted not for your information but for your opinion. (See also in this connection paragraph 35 of the Second Supplementary Report from the Committee of Ministers - Reference: Doc. 60 (2).

..... (background)

..... the Committee on Legal and Administrative Questions proposes that the Assembly adopt the following Recommendation: ./.

-
- (1) To which the matter had been referred by the Standing Committee. (Doc. AS/CP (3) PV 3, pp. 2-3).
- (2) Doc. AS (3) 60, paras. 33-35, pp. 583-584.

DRAFT RECOMMENDATION

The Assembly,

Having before it the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms,

Recommends to the Committee of Ministers that this draft be amended as follows:

Article 1

No alteration.

....."

(Coll. ed., V, pp.1195 and 1198; or Doc. AS(3) 93, pp.910, 912 and 913. Cf. also Docs. AS/JA (3) 23, pp. 2, 3 and 5 - or. Fr., AS/JA (3) PV 4, PV 4 rev. and PV 5, p. 3 - or. Engl.).

3. Amendment proposed by M. Hettier de Boislambert (France) to the Report referred to in the preceding paragraph (5 December 1951)

"In the draft Recommendation, leave out Article 1 of the draft Protocol and insert the following Article:

Article 1 (1)

'Every natural or legal person is entitled to the peaceful enjoyment of his possessions whether inherited or acquired.

No one shall be deprived of his possessions, except where the public interest, legally established, shall clearly demand it, and subject to the prior payment of fair compensation.'(2)"

(Coll. ed., V, pp.1198-1199; or Doc. AS (3) 93, Amendment No. -1, p.914)

-
- (1) Compare with text quoted in para. XXIII above, pp. 159-160. Changes are underlined.
- (2) The second paragraph is clearly influenced by Article 17 of the French Déclaration des Droits de l'Homme et du Citoyen (1789).

4. Consultative Assembly Sitting of 7 December 1951
(afternoon)

M. Teitgen (France) (1) (Translation):

"..... (background)"

As regards the right to own property the Ministers have proposed the following wording:

'... (identical with the present text) ...'.

This text differs, it is true, in several details from the text we accepted and voted for in the Assembly; but our Committee on Legal Affairs had already given a favourable opinion on the present text during the interval between the two parts of the Session. It has since confirmed this opinion and requests you to reply to the Committee of Ministers that we have no objections as regards this Article guaranteeing the right to property.

....."

(Coll. ed., V, p.1202; or Rep, 1951, VI, p. 900).

5. Consultative Assembly Sitting of 8 December 1951
(morning)

(a) Mr Stanford (Ireland):

"I should like first to speak in support of the Amendment of M. Hettier de Boislambert to Article 1 (2). This Article says that every natural or legal person is entitled to the peaceful enjoyment of his possessions, and that no one is to be deprived of his possessions except in the public interest.

Everyone who has had anything to do with legislation in the last few years knows that every month private property is being confiscated, or taken over under compulsory powers, in the public interest. We know, for example, that when a big aerodrome is to be built near a town, the legislature will take over, in the public interest, the private farms or houses belonging to persons

(1) Rapporteur of the Legal Committee.

(2) Cf. para. XXIV.3 above, p.162.

near that aerodrome. When a big reservoir is to be built, farms are engulfed in the floods, in the public interest. When a great road is to be made so that we may speed along at 80 miles an hour; some private farms or land have to be taken over, in the public interest.

I presume that this phrase is used because anything more precise would be unworkable, and I admit that that is so; but we must remember that not merely democratic Governments but even dictatorships have always insisted that they were acting in the public interest, and we must be on our guard against such vague phrases. However, if anything more precise would be unworkable, then I insist that the addition suggested by M. Hettier de Boislambert is necessary, and that we must insist on the principle of adequate compensation in cases of this kind. Therefore, in dealing with Article 1, I urge the Assembly and the Committee on Legal and Administrative Questions to consider this Amendment very carefully and to adopt it.

....."

(Coll. ed., V, p.1221; or Rep., 1951, VI, p.913)

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

"....."

M. Hettier de Boislambert asks us to adopt an amendment relating to the definition of property in the Protocol. I shall urge M. Hettier de Boislambert to agree to withdraw his amendment, for two reasons which I consider conclusive.

First, from the technical point of view, this amendment is open to serious criticism.

M. Hettier de Boislambert tells us that the right to own property should be defined as follows: 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions whether inherited or acquired.'

I fully understand his intention. M. Hettier de Boislambert wishes to protect property acquired by donation or inheritance. I would point out to him that our definition, proposed to the Committee of

Ministers which adopted it, also protects the methods of acquiring property known as donation and inheritance, since it protects the right to own property as provided by the rules and principles of international common law which sanctions inheritance and donation.

Consequently, as far as the purpose of the article is concerned, M. Hettier de Boislambert may be satisfied with our definition. I would point out to him, however, that his own definition, although he does not realise it, is dangerous, for, in attempting to list the methods of acquiring property, he runs the risk of forgetting some, and this is indeed what has happened. When he says that 'every natural or legal person is entitled to the peaceful enjoyment of his possessions, whether inherited or acquired', he believes that he has enumerated all the legitimate methods of acquiring property, but he has forgotten some. For example, there is a legitimate method of acquiring property called acquisitive prescription, which is not included in the list, so that in fact the definition proposed by M. Hettier de Boislambert may well be restrictive, whereas he wanted it to be extensive.

The second paragraph of this definition is also open to criticism. M. Hettier de Boislambert says 'no one shall be deprived of his possessions, except where the public interest, legally established, shall clearly demand it.'

This word 'clearly' raises many problems. Will the European judge have to establish the clarity in question supposing we are faced with a case of expropriation for reasons of public interest, legally prescribed and ordered in the country in question in accordance with the laws of that country? Judges in that country have established that the public interest demanded such expropriation. The existence of public interest and the need for expropriation have been duly confirmed. Does M. Hettier de Boislambert mean that the European judge considering the appeal against expropriation should in turn make an enquiry in order to verify the necessity and the manifest interest of expropriation?

If this is the purpose of his definition, it is perhaps outside the limits of international litigation. If not, it is useless.

There is also another reason why I urge M. Hettier de Boislambert to withdraw his amendment. It is this. We have already given a favourable reply to the Committee of Ministers on the right to own property. Three months ago,

replying legitimately in the interval between the Sessions on behalf of the Assembly to whom the matter had been, legitimately, referred by the Committee of Ministers, the Committee on Legal and Administrative Questions gave the Committee of Ministers its final agreement to the definition of the right to own property proposed by that Committee.

It seems to me that the Assembly should not go back on the approval which it has already given. The task and the subject are sufficiently complex without being further complicated by us.

In the light of these observations I ask M. Hettier de Boislambert to withdraw his amendment - in view of the fact that the Assembly, prior to his arrival among us, has already approved the definition of the Committee of Ministers. Secondly, if he does not withdraw it, I ask the Assembly on behalf of the Committee on Legal and Administrative Questions to reject it -- and to adopt the draft Recommendation."

(Coll. ed., V, pp.1231-1232; or Rep., 1951, VI, pp.923-924)

(c) M. Hettier de Boislambert (France) (Translation):

"Mr President, the study of the draft Protocol to the Convention for the Protection of Human Rights led me - having had numerous points brought to my notice both by persons in my own country and in foreign countries - to consider the problem and propose the Amendment which M. Teitgen asks me to withdraw. I know that many discussions have been held on this matter. I also know that the Committee of Ministers, which would have preferred not to go into too much detail, did not give its agreement until it had carried out a lengthy study and completed delicate negotiations.

Moreover, it is thanks to M. Teitgen that the idea of arbitrary confiscation was eliminated, and I refer to his draft Resolution of 16 August 1950, for which I thank him on behalf of the interests which I have been asked to defend.

Nevertheless, the final wording seems to me disturbing, whatever scruples there may be about bringing it into question once more. The text which I proposed reproduces Article 17 of the Declaration of the Rights of Man of 1789. Who, then, was the author of this text which I have heard criticised? I venture to think that, if we go back to the

intentions of the legislators of that time, we shall realise that the text was drafted at the time with the very greatest care and because there were urgent reasons for it.

I also know that it is not before this Assembly that the idea of property needs to be defended. A study of Article 1 of the text caused, and still causes, disquiet. That is what provoked the reactions to which I alluded. This Article does, after all, refer to the possibility of depriving a person of his possessions in the public interest and subject to the conditions provided for by law and by the general principles of international law; such provision was considered somewhat inadequate.

As this text continues: 'the preceding provisions shall not, however, in any way infringe the right of a State to enforce such laws as it deems necessary to control the use of property, in accordance with the general interest or to secure the payment of taxes or other contributions or penalties;' one cannot help being a little taken aback.

We cannot go into details of the idea of property, to the extent of mentioning legal action on fiscal matters, without ever clearly stating that property acquired or inherited, or coming from any other source mentioned a moment ago by M. Teitgen, must be protected and defended.

It seems to me that our Assembly should affirm its desire to give definite, effective and complete protection to those who by their own efforts, or those of their father, have acquired or intend to hand on the most sacred of their rights.

Having said this, and bowing, nevertheless, to M. Teitgen's arguments, I withdraw my amendment, hoping that I shall have no cause to regret my attitude and also that our Assembly will always watch over the interests of those who are the artificers of the strength and wealth of our countries and their traditions."

(Coll. ed., V, pp.1232-1233; or Rep., 1951, VI, pp.924-925)

The draft Recommendation was then adopted by 75 votes to 0, with 23 abstentions.

(Coll. ed., V, p.1233; or Rep., 1951, VI, p.925. Cf. also Recommendation 15 of 8 December 1951, Collected Recommendations and Resolutions, 1951, II, p.58).

XXV. MEETING OF THE MINISTERS' ADVISERS, HELD AT STRASBOURG
FROM 26 TO 28 FEBRUARY 1952

Conclusions of the meeting:

".....

Subject to the observations below, the Advisers approved the draft Resolution appended hereto.

.....

The German Delegate requested that mention should be made in the Minutes of the meeting of the Committee of Ministers of the decision adopted by the Ministers' Advisers during their session from 17 to 19 July 1951, by which it was recognised, on the request of the German and Belgian Delegates, that the general principles of international law as at present understood entailed the obligation to accord compensation to non-nationals in case of expropriation.

.....

(Appendix)

Article 1

... (identical with the present text) ...

....."

(Coll. ed., V, pp.1251-1252; or Documents of the Committee of Ministers, 1952, I, p.156).

./.

XXVI TENTH SESSION OF THE COMMITTEE OF MINISTERS
(Paris, 19 and 20 March 1952)

Meeting of 19 March 1952 (afternoon)

Resolution (52) 1 was adopted at that meeting and is worded as follows:

"The Committee of Ministers,

.....

.....

.....

Recognising that, as regards Article 1, the general principles of international law in their present connotation entail the obligation to pay compensation to non-nationals in cases of expropriation,

.....

.....

Approves the text of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and resolves that it shall be open to signature by the representatives of the Governments in the course of its present session."

(Coll. ed., V, pp.1253-1254; or Documents of the Committee of Ministers, 1952, I, pp. 10, 38 and 88 - Cf. also Doc. AS (4) 2, para. 88, p.31, and Appendix, p. 36).

The Protocol was signed the next day, 20 March 1952.