

European Social Charter

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COUNCIL OF EUROPE

EUROPEAN SOCIAL CHARTER

COLLECTED (PROVISIONAL) EDITION
OF THE
"TRAVAUX PREPARATOIRES"

VOLUME IV
1957

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FIRST PART

DOCUMENTS OF THE SOCIAL COMMITTEE AND OF THE COMMITTEE OF MINISTERS

Section I

Fourth session of the Social Committee

(April 1957)

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 4th April, 1957

Restricted
CE/Soc/WPI (57) 2

S O C I A L C O M M I T T E E

(Third Session)

EUROPEAN SOCIAL CHARTER

(Draft text of certain articles
prepared by the Social Division)

Introduction

1. At its Third Session, the Social Committee instructed the Secretariat to prepare draft texts of certain articles of the Social Charter, based on the replies of the Governments to a Questionnaire concerning the following rights and principles:

- (a) Individual and collective rights and principles connected with the existing system of worker/management relations.
- (b) Right of the disabled to rehabilitation and resettlement.
- (c) Right of nationals of member countries to access to employment in other member countries.
- (d) Right of migrant workers to protection and assistance.
- (e) Provision of facilities for vocational guidance and training.
- (f) Rights relating to wages.

The replies received from Governments have been circulated in document CE/Soc (56) 13.

2. The Secretariat was also instructed to prepare draft articles concerning the right to social security and protection of the needy.

3. At its Third Session, the Social Committee adopted in a provisional way certain draft articles of the Charter corresponding to rights relating to employment and working conditions (Doc. CM (56) 63, Appendix III). Certain delegations, already during that Session, proposed changes in or additions to these articles, see Appendix IV to the same document. On the other hand it was understood that the preliminary draft articles should be reconsidered by the Governments, who were requested to comment upon them. The comments received from the Governments have been circulated in document CE/Soc (56) 14.

The Secretariat has considered it useful to prepare new draft texts of these articles, based on the remarks made during the Third Session and the comments of Governments.

4. In drawing up all these draft articles, the Secretariat has been faced with a considerable difficulty as a consequence of the uncertainty which still prevails with regard to the basic nature of the Charter. In qualifying the Charter as an instrument which, in the social field, would be complementary to the European Convention on Human Rights and Fundamental Freedoms, (1) the Committee of Ministers⁷ seems to have indicated that it should go beyond a mere declaration of principles. The Committee of Ministers has also instructed the Social Committee to consider in particular whether the Charter, in addition to general principles, should contain more definite provisions binding upon the signatories. (2)

5. The Social Committee as a body has so far indicated its preference for an instrument of a declaratory nature, drafted in very broad, general terms. The Consultative Assembly has taken a quite different view. It has drawn up a draft Social Charter which, apart from a number of general principles of social policy, is of a binding nature and which is worked out in considerable detail. (3) The International Confederation

(1) Special Message from the Committee of Ministers to the Assembly of 20th May, 1954, paragraph 45.

(2) Special Message, para. 46.

(3) Recommendation 104 (1956).

of Free Trade Unions and the International Federation of Christian Trade Unions have also strongly indicated their preference for a binding instrument. Certain Governments, particularly the Governments of Belgium, Italy and Sweden, which have made express statements to this effect, share the view that the Social Charter must contain binding provisions.

6. In these circumstances, the Secretariat has chosen to prepare the draft texts of some of the articles mentioned above in two alternatives, one of a declaratory nature and the other based on the assumption that some provisions at least should be binding. In an effort to clarify the sense in which rights in the social and economic field may be conceived as binding, the Secretariat has prepared a study of the nature of such rights and their formulation in legal terms.(1)

7. A strong argument used by the delegations who favour a declaratory instrument is that many important provisions of the Charter would deal with matters which are usually settled by collective agreements and with regard to which the Government have no right to intervene. This situation might be met by a provision, either in a general article or in the specific articles dealing with labour conditions, limiting the undertakings of the Governments to areas not covered by collective agreements. The latter of these alternatives has been used in the draft Charter of the Assembly. Thus, the article dealing with the right to fair and stable conditions of work, starts with the following phrase:

"With a view to ensuring the exercise of this right, the H.C.P. undertake to secure for every worker, insofar as these measures are not put into effect by means of collective agreements or in any other way:".... (Here follows an enumeration of rights).

This formulation appears, however, not to be quite clear. It might be construed to mean that even in fields covered by collective agreements, the Governments would be obliged to intervene if the collective agreements did not reach the standards laid down in the Charter. On the other hand it would evidently not be desirable that a Government could ratify the Charter even if social standards in the country lagged far behind the standards laid down therein, simply by referring to the fact that these conditions depend on collective agreements.

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(1) Doc. CE/Sec (56) 15.

A possible solution might be to make ratification of the Charter dependent upon the fact that social conditions in a given country were equal to the standards, either through legislation or other public action or through collective agreements. (It might be added that even in fields covered by collective agreements, the Governments may exercise a considerable influence through their good offices in general and through the conciliation and arbitration procedures which exist in all countries).

8. Another provision which might be included in the Charter and which would render the ratification less burdensome is a provision to the effect that implementation of the Charter may be progressive. This is the case with the Assembly draft. It presupposes some machinery for planning programmes of implementation by stages and for control.

9. In drawing up the draft articles which follow, the Secretariat could hardly ignore the fact that the Consultative Assembly now has submitted to the Committee of Ministers the above mentioned draft Charter. It is true that the Assembly did not consider this text as final, since it recommended to the Committee of Ministers "to establish a European convention on social and economic rights, taking into consideration the present draft and the observations and suggestions made during the debates in public session, in this matter". However, the differences of opinion in the Assembly which led to this formulation, that was very carefully chosen, although bearing to some extent also on the substance of the draft, concerns much more the institutional and procedural aspects of it.

10. The draft articles contained in the present paper may be considered to be too elaborate, particularly as compared to those provisionally adopted by the Committee at its Third Session. It appears, however, from the remarks of certain delegations set out in Appendix IV to Doc. CM (56) 63, as well as from subsequent observations by certain Governments, that even some Governments who may not accept a binding instrument feel that the provisions of the Charter should be worked out in some detail.

In these circumstances, the Secretariat has considered it preferable to prepare somewhat elaborate texts, which may, with relatively small efforts, be redrafted on more general lines if the Committee so wishes.

PART IDRAFT TEXTS OF NEW ARTICLES CORRESPONDING
TO THE FIELD COVERED BY THE SECOND QUESTIONNAIRE

Individual and collective rights and principles connected with the existing system of worker/management relations.
(With particular reference to: (a) association and collective action; (b) collective bargaining; (c) joint consultation and other means of collaboration between workers and employers; (d) provision for settlement of labour disputes).

Considerations:

Among the Governments which have replied to the Questionnaire, there is a majority in favour of binding provisions concerning points (a) and (b) above. With regard to (c) and (d) the contrary is the case⁽¹⁾.

The following Member States have ratified ILO Convention No. 87 on Freedom of Association and protection of the Right to Organise: Austria, Belgium, Denmark, France, Iceland, Ireland, Netherlands, Norway, Sweden, United Kingdom.

The following have ratified Convention No. 98 on the Right to Organise and Collective Bargaining: Austria, Belgium, Denmark, France, Federal Republic of Germany, Iceland, Ireland, Norway, Sweden, Turkey, United Kingdom.

Certain Governments have referred to these conventions and stated that the Charter should be in harmony with them.

There is no ILO convention on worker/employer consultation, but there is a Recommendation (No. 94 of 1952) concerning consultation and co-operation on matters of mutual concern not within the scope of collective bargaining machinery. There is also a number of resolutions of the Conference and other organs of the I.L.O. stressing the importance of such consultation and co-operation.

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(1) It should, however, be stated, both in this connection and with regard to other rights, that two of the Governments which have indicated their wish to see the Charter established as a binding instrument had not, at the date of the preparation of this paper, replied to the Questionnaire.

The term "collective action" should presumably be taken to mean or include strike. ILO conventions and recommendations contain no explicit recognition of the right to strike, but it is implicitly recognised for example in Recommendation No. 92 of 1951 on voluntary conciliation and arbitration, as well as in several Conclusions of the Governing Body Committee on Freedom of Association. The draft Charter of the Assembly contains express recognition of the right to strike.

Draft text. Alternative I (Declaratory):

See ILO Conv. 87 Arts. 2 and 5 and Assembly draft, Art. 1, ¶ See European Conv. on Human Rights, Art. 11

Workers and employers have the right to form local, national or international organisations and to join organisations of their own choice for the protection of their economic and social interests, subject only to restrictions prescribed by law in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. This provision shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

(2)

See ILO Conv. 98, Art. 5. The signatory Governments will endeavour to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

See Assem- bly draft, Art. 1, D. The signatory Governments will endeavour to encourage and promote the development and utilisation of organs of joint consultation and co-operation of workers and employers, both on the level of the undertaking and on the industrial and the national level.

See Assem- bly draft, Art. 1, E. Adequate machinery, including organs for conciliation and arbitration, should be set up for the settlement of labour disputes, whether the dispute is of a legal nature or a conflict of interest.

Workers and employers have the right to take collective action, including stoppage of work, in case a conflict of interest cannot be settled by the means referred to in the preceding paragraph.

Alternative II:

With a view to ensuring or promoting the exercise of the rights of workers and employers in their mutual relations, the H.C.P.

1. undertake to grant workers and employers every opportunity to form local, national or international organisations of their own choice for the protection of their economic and social interests, subject only to restrictions prescribed by law in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. National law shall not be such as to impair, nor shall it be so applied as to impair, this guarantee. This provision shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State;
- See ILO Conv. 87, Art. 8 (2).

2. undertake to set up, where necessary, machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. undertake to grant workers and employers the right to collective action, including stoppage of work, in case a conflict of interest cannot be settled by the means referred to in paragraph 4 of this Article.
4. will endeavour to set up adequate machinery, including organs for conciliation and arbitration, for the settlement of labour disputes, whether the dispute is of a legal nature or a conflict of interest;
5. will endeavour to encourage and promote the development and utilisation of organs of joint consultation and co-operation of workers and employers, both on the level of the undertaking and on the industrial and the national level.

Right of the disabled to rehabilitation and resettlement whatever the cause and nature of the incapacity.

Considerations:

All the Governments who have replied to the Questionnaire prefer a declaratory provision. The replies refer to a wide range of measures, such as: Vocational training and special industrial rehabilitation courses, including the creation of special institutions for this purpose; training allowances and other forms of financial aid; special placing services; sheltered employment; obligation on the part of employers to employ a certain quota of disabled persons; conversion of certain installations so as to fit disabled persons; aid to purchase various surgical appliances, invalid carriages, etc. or for the establishment of independent business, as well as other forms of economic aid.

Chapter V of International Labour Recommendation No. 88 (1950) sets out certain principles for the vocational training of disabled persons, and Recommendation No. 99 (1955) deals with principles and methods for enabling disabled persons to prepare for, and have reasonable prospects of recovering and retaining, suitable employment.

Draft text:

See ILO Rec. 88, Arts. 26 and 27 Disabled persons have the right to rehabilitation and resettlement, whatever the origin and nature of their disability and whatever their age, insofar as medical and educational conditions permit and so long as there are reasonable possibilities of training and employment.

For this purpose adequate measures should be taken for the provision of training facilities, including special institutions where necessary.

Adequate measures should be taken for the placing of disabled persons in employment, such as special placing services, facilities for sheltered employment, and measures to encourage employers to admit disabled persons to employment.

Cash allowances and other forms of aid should be available to permit disabled persons in need of such aid to take advantage of existing training facilities or to purchase necessary surgical appliances or other equipment needed to enable them to carry out their work.

Right of nationals of member countries to access to employment in other member countries.

Considerations:

Certain Governments have seen this question partly as one of not preventing their own nationals from seeking employment abroad, and so far as this aspect is concerned, one Government would include it in the Charter in binding form. The same Government states that as regards the right to be assigned work abroad, it should not be included in the Charter in any form. Another Government states that Article 12 of the European Convention on Establishment should be sufficient in this field. The other Governments who replied, were of the opinion that the right to access to employment in other countries should be inscribed in the Charter in a declaratory form.

The Articles of the European Convention on Establishment which are of particular interest in this connection are:

Article 10

Each Contracting Party shall authorise nationals of the other Parties to engage in its territory in any gainful occupation on an equal footing with its own nationals, unless the said Contracting Party has cogent economic or social reasons for withholding the authorisation. This provision shall apply, but not be limited, to industrial, commercial, financial and agricultural occupations, skilled crafts and the professions, whether the person concerned is self-employed or in the service of an employer.

Article 12, which states that the rights mentioned in Article 10 shall be enjoyed without the restrictions of that Article by aliens who:

- (a) have been lawfully engaged in a gainful occupation in the country concerned for five years without interruption;
- (b) have resided lawfully in the country for ten years without interruption;
- (c) have been admitted to permanent residence.

However, the second paragraph of Article 12 weakens the article very considerably by allowing the Governments a great latitude to make conditions stricter.

The system established by the O.E.E.C. for the liberalisation of the circulation of manpower appears to go further and to be more precise than the above mentioned provisions. A Member of the O.E.E.C. shall raise no objections to applications from foreign workers if after a period of one month it has not been possible to fill a vacancy with a national worker. With regard to renewal of working permits, there is a distinction between cases where the foreign worker has been employed in the country during less than five years and cases where he has been employed for five years or more. In the latter case, renewal must be granted unless "imperative reasons of national policy necessitate an exception". In the former case, renewal may be refused for less strict reasons.

In general, all Member States apply some system of working permits for foreign workers, and the most the Social Charter could aim at, would presumably be a liberalisation of the rules governing the granting and renewal of such permits. Nor may one, in view of the fairly recent developments in this field both in the Council of Europe and in the O.E.E.C. expect that the Charter could lay down precise, detailed rules more liberal than those existing.

The term "access to employment" may be more or less strictly interpreted. Strictly speaking, as a technical term, it does not cover the free circulation of manpower in the sense that a worker may go to another country in search of employment. It covers only the situation where the worker is already in touch with a foreign employer who has a job for him. In the Social Charter it should, however, presumably be taken in the broadest possible sense.

In order not to fall short of the European Convention on Establishment, the Charter should even apply to independent workers, the free professions, etc.

Draft text:

The Governments signatory to this Charter accept as an aim of policy the establishment of conditions permitting the nationals of any of them to engage in any gainful activity in the territory of any of the others, on a footing of full equality with the nationals of the latter, subject only to restrictions based on considerations of security, public order and public health.

To this end, the signatory Governments will endeavour:

- (a) to apply existing restrictions in a spirit of moderation;
- (b) to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
- (c) to strive, individually and collectively within the framework of appropriate international organisations, to liberalise and harmonise national regulations governing the granting of working permits to aliens, to increase the period of validity of such permits and to extend their validity to larger sectors of economic activity, as well as to reduce the periods of employment or residence required for the alien to obtain full freedom to engage in any gainful activity.

The signatory Governments will permit their own nationals to engage in gainful activity in the territories of other signatory Governments without restrictions.

Right of migrant workers to protection and assistance.Considerations:

Among the Governments who have replied to the Questionnaire, there is a large majority in favour of a declaratory

provision in this case. One Government even wishes to restrict the principle to the field of social security. On the other hand, one Government states that if the definition of this right does not go beyond the contents of ILO Convention No. 97, the provision should be binding.

The following Member States have ratified ILO Convention No. 97 concerning Migration for Employment: Belgium, France, Italy, Netherlands, Norway, United Kingdom.

The contents of the right in question must presumably correspond to the basic provisions of this Convention. Whereas the Convention, however, by definition applies only to workers who are engaged by employers in a foreign country, the Charter might extend the protection and assistance also to independent workers, in so far as the measures in question are of such a nature that they can apply to independent workers. It should be recalled in this connection that the European Convention on Establishment, as well as the above draft article of the Charter concerning access to employment, cover also self-employed persons.

ILO Convention No. 97 provides, amongst others, for equality of treatment with regard to social security, and some Governments have stressed this point in their replies. Since the Social Charter will contain a special article on social security rights, and since it was understood at the last Session of the Social Committee that this article would cover the problem of equal treatment, there would be an overlapping if this question were dealt with also in the article on protection of migrant workers. On the other hand it would not be desirable to deal with equal treatment in the field of social security only in the article concerning protection of migrant workers, particularly if it is not agreed that the latter article should cover wider categories than wage earners. This might lead to a too restricted interpretation of the provision for equal treatment with regard to social security. For these reasons it is suggested not to refer to social security in the article on the protection of migrant workers.

Draft text, alternative I (Declaratory):

Migrant workers have the right to protection and assistance. With a view to the exercise of this right measures should be taken:

- See ILO
Conv. 97,
Art. 2 and
3.
- Idem,
Art. 4
and 5.
- Idem,
Art. 6.
- Idem,
Art. 8.
- Idem,
Art. 9.
1. to provide adequate and free services to assist migrants, particularly in obtaining accurate information, and to avoid misleading propaganda relating to emigration and immigration;
 2. to facilitate the departure, journey and reception of migrants, and to provide appropriate services for health control and medical attention;
 3. to secure for migrants equal treatment with nationals in regard of the following matters:
 - (a) in so far as such matters are regulated by law or regulation, or are subject to the control or influence of public authorities:
 - (i) remuneration and other employment and working conditions;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
 - (b) employment taxes, dues or contributions payable in respect of employed persons, and
 - (c) legal proceedings relating to matters referred to in this Article.
 4. to secure that migrants, subject to the completion of a reasonable period of employment or residence, are adequately protected against involuntary repatriation or expulsion;
 5. to permit, within legal limits, the transfer of such parts of the earnings and savings of the migrant as he may desire.
 6. to extend the protection and assistance provided for in this Article also to self-employed migrants in so far as such measures apply to this category.

Alternative II:

With a view to ensuring or promoting the exercise of the rights of migrants to protection and assistance, the H.C.I.

1. undertake to provide adequate and free services to assist migrants, particularly in obtaining accurate information, and to take measures to avoid misleading propaganda relating to emigration and immigration;
2. undertake to adopt appropriate measures to facilitate the departure, journey and reception of migrants, and to provide appropriate services for health control and medical attention;
3. will endeavour to secure for migrants equal treatment with nationals in regard of the following matters:
 - (a) remuneration and other employment and working conditions;
 - (b) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (c) accommodation;
4. undertake to secure for migrants equal treatment with nationals in regard of the matters referred to in the preceding paragraph in so far as such matters are regulated by law or regulation, as well as in regard of the following matters:
 - (a) employment taxes, dues or contributions payable in respect of employed persons, and
 - (b) legal proceedings relating to matters referred to in this Article;
5. undertake further:
 - (a) to secure that migrants, subject to the completion of a reasonable period of employment or residence, are adequately protected against involuntary repatriation or expulsion;

- (b) to permit, within legal limits, the transfer of such parts of the earnings and savings of the migrant as he may desire;
- (c) to extend the protection and assistance provided for in this Article also to self-employed migrants in so far as such measures apply to this category.

Against both these alternatives one may raise the objection (amongst others) that in so far as other articles of the Charter apply to "everyone", or to "all employed persons", the article on migrants could be restricted to measures of protection and assistance for migrants as such. In that case it would not be necessary in the Article on migrants to provide for equality of treatment.

Provision of facilities for vocational guidance and training.

Considerations:

None of the Governments who have replied to the Questionnaire wish to include in the Charter a binding provision of this kind.

There is no ILO Convention concerning this matter, but several Recommendations, such as Rec. No. 57 on Vocational Training, No. 87 on Vocational Guidance, and No. 88 on Vocational Training of Adults.

In the article dealing with the right to work, the Social Committee has already included a reference to the provision of "vocational guidance and adequate opportunities for training". The corresponding article of the Assembly draft contains a similar provision (in binding form).

If the Charter should contain a special article on vocational guidance and training it appears obvious, therefore, that it should set out in some detail the nature and organisation of such guidance and training, and in that case it would be natural to base it on the main principles of the above-mentioned ILO Recommendations, which correspond to some extent with the description of the national services of this kind given in some of the replies of the Governments to the Questionnaire.

Draft text:

The signatory Governments recognise that the provision of adequate facilities for vocational guidance and training is essential, not only to the individual in choosing and exercising an occupation suited to his personal aptitude and likely to give him full opportunity for personal development and satisfaction, but also to society as a whole in putting available manpower to the best possible use, thus stimulating productivity and facilitating the maintenance of full employment.

With these aims in view, the signatory Governments will endeavour:

1. to provide or promote the provision of the following facilities:

See ILO
Rec. 87,
I, 1.

- (a) assistance to individuals in solving problems related to occupational choice and progress with due regard for the individuals' characteristics and their relation to occupational opportunity; such assistance to be available both to young persons, including school children, and to adults.
- (b) technical and vocational education and training according to a general programme established in consultation with employers' and workers' organisations and adapted to suit the needs both of young persons who have not entered employment, and of adult workers, including theoretical and practical instruction in schools or institutions established for that purpose, as well as practical training during employment or in schools before employment where necessary;
- (c) a system of apprenticeship;
- (d) special facilities for retraining of adult workers where this is necessary as a consequence, particularly, of technological developments or of dislocations on the employment market;

See ILO
Rec. 57.

2. to encourage the full utilisation of the facilities mentioned in this Article by appropriate measures, such as:
- (a) reducing or abolishing any fees or charges relating to vocational guidance and training;
 - (b) granting training allowances in appropriate cases;
 - (c) including in the normal working hours time spent on supplementary training courses during employment;
 - (d) ensuring, through adequate supervision, the efficiency of apprenticeship arrangements and the adequate protection of apprentices.

Rights relating to wages

Considerations:

Most of the rights or principles mentioned in the Questionnaire under this heading are included in various other international instruments.

Fair wages: The Universal Declaration of Human Rights (Art. 27) speaks of "the right to just and favourable remuneration", and the UN Draft Covenant on Economic and Social Rights includes, in Article 7, the right to fair wages.

Minimum wage: The right to a minimum wage is specifically referred to in the Philadelphia Declaration of the I.L.O. and in the Inter-American Charter of Bogota.

Equal pay for equal work: This right is included both in the Universal Declaration (Art. 23), the UN Draft Covenant (Art. 7) and in the Bogota Charter (Art. 2).

Extra pay for night work and over-time is specifically referred to in the Bogota Charter, Art. 12.

Protection of wages: Protection against attachment is included in the Bogota Charter, Art. 10.

Public holidays with pay: This right is also included in the Bogota Charter (Art. 14).

Wages in relation to productivity: Under the Philadelphia Declaration, workers shall have "a just share of the fruits of progress in regard to wages and earnings", and the Bogota Charter includes the right to annual bonus (Art. 9) and the right to a share in the profits (Art. 11).

Although the replies of the Governments refer to questions of wages as being generally within the scope of voluntary collective agreements, it appears that in many cases laws or regulations intervene. In France and the Saar there are legal provisions for a guaranteed minimum wage. Restricted regulations in this field also exist in Ireland (agriculture, apprentices and limited groups of other occupations) and Norway (home workers). Other countries have established wage fixing machinery for fixing minimum wages for certain workers. All the countries that have replied to the Questionnaire have legal provisions for the protection of wages, at least so far as a certain freedom from restraint is concerned. Six Governments state that they have legal provisions governing notice of dismissal. Laws or regulations govern the question of extra pay for night work and over-time in France, Ireland (night work in industry between 8 p.m. and midnight, as well as over-time), Netherlands (partially), Norway (over-time), Saar, Turkey.

Equal pay for equal work is guaranteed by Constitution in Italy and by law in Saar and Turkey.

Some statutory provisions concerning the right to public holidays with pay exist in Ireland (certain classes of workers), Saar, Turkey and the United Kingdom. A bill is in preparation in the Netherlands.

With regard to the inclusion of rights relating to wages in the Charter, the replies are not always clear, but there is in any case a majority in favour of including all the rights mentioned in the Questionnaire in a declaratory form. The Danish Government does not wish to include the right to a fair wage, the right to a guaranteed minimum wage and the right to wages in relation to increased productivity. The Government of Ireland does not wish to include the right to a minimum wage and the right to wages in relation to family responsibilities. On the other hand, the Governments of France, the Netherlands and Saar are ready to accept binding provisions concerning certain of the rights involved.

The main instruments adopted by the I.L.O. in the field of wages are the following:

- (a) Equal Remuneration Convention, 1951 (No. 100). It is ratified by Austria, Belgium, France, Federal Republic of Germany, Italy.
- (b) Minimum Wage Fixing Machinery Convention, 1928 (No. 26). It is ratified by: Belgium, France, Federal Republic of Germany, Ireland, Italy, Netherlands, Norway, United Kingdom.
- (c) Minimum Wage Fixing Machinery Recommendation, 1928 (No. 30).
- (d) Minimum Wage Fixing Machinery Convention (Agriculture), 1951 (No. 99). It is ratified by: Austria, France, Federal Republic of Germany, Netherlands, United Kingdom.
- (e) Corresponding Recommendation, 1951 (No. 89).
- (f) Wages, Hours of Work and Manning (Sea) Convention, 1949 (No. 93). This Convention provides, inter alia, for a basic monthly wage. It is not ratified by any Member of the Council of Europe.
- (g) Labour Clauses (Public Contracts) Convention, 1949 (No. 94). It deals with the protection of wages. It is ratified by: Austria, Belgium, Denmark, France, Italy, Netherlands, United Kingdom.
- (h) Protection of Wages Convention, 1949 (No. 95). It is ratified by: Austria, France, Greece, Italy, Netherlands, Norway, United Kingdom.

Draft text. Alternative I (Declaratory):

See Pre- All employed persons have the right to fair wages,
amble to sufficient in all cases to provide them and their
ILO Con- families with an independent and decent livelihood.
stitution,

and Art. To the end that this right may be effectively
36 of the exercised, the signatory Governments recognise the
Constitu- following principles and will, within the limits of
tion of their constitutional and national procedures,
Italy. endeavour to take appropriate steps to apply them
or encourage their application:

- (a) A minimum wage adjusted to the cost of living should be established, and it should be unlawful to fix individual wages at a lower level;
- (b) Work which at the request of employers is exercised in addition to normal working hours or at such hours that it is considered, under national regulations or practice, as night work, should be paid at increased rates, the increase to be at least 25 per cent of normal rates;
- (c) All employees should be entitled to their normal wages on recognised public holidays. Work exercised on such days should be paid at increased rates;

See Phila- (d)
delphia
Declaration
Annex, III
(d).

Measures should be taken, through appropriate systems of payment or otherwise, to secure for all employees a fair share of increased prosperity resulting from increased productivity;

See ILO
Conv. No.
100 and No.
97.

- (e) Subject to systems of wage differentiation based on length of service or similar factors, no discrimination of whatever nature should be made in the fixing of wages. In particular, women should be entitled to the same wages as men for work of equal value.

See ILO Conv.Nos. 30 and 99 Appropriate minimum wage fixing machinery should be established for groups of employees not covered by collective agreements or subject to special wage regulations.

See ILO Conv.Nos. 94 and 95. Appropriate measures should be taken to ensure that wage-earners may dispose of the full amount of their wages, including, particularly, measures to restrict the right of employers to make deductions from the wages, as well as measures to protect wages, within prescribed limits, against distraint and against the consequences of the bankruptcy of employers.

Appropriate measures should be taken to protect employees against arbitrary dismissal, and to provide in all cases for a reasonable notice of dismissal.

Alternative II:

With a view to ensuring for all employed persons the right to fair wages, sufficient in all cases to provide them and their families with an independent and decent livelihood, the H.C.P., within the limits of their constitutional and national procedures,

1. will endeavour to establish a guaranteed minimum wage and to prohibit the fixing of individual wages at a lower level; to take measures, through appropriate systems of payment or otherwise, to secure for all employees a fair share of increased prosperity resulting from increased productivity, and to secure for all employees the right to normal wages on public holidays as well as pay at increased rates for work on such days;
2. undertake to:
 - (a) secure for all-employees increased wage rates, the increase to be at least 25 per cent of normal rates, for work exercised at the request of employers in addition to normal working hours or at such hours that it is considered, under national regulations or practice, as night work;

- (b) abolish discrimination of whatever nature in the fixing of wages, subject to systems of wage differentiation based on length of service or similar factors, and in particular to secure for women employees the same rates of wages as paid to men for work of equal value;
- (c) establish a minimum wage fixing machinery for groups of employees not covered by collective agreements or subject to special wage regulations;
- (d) ensure that wage-earners may dispose of the full amount of their wages, and, particularly, to take measures to restrict the right of employers to make deductions from the wages, and to protect wages, within prescribed limits, against distraint and against the bankruptcy of employers; and
- (e) take adequate measures to protect employees against arbitrary dismissal; to provide for a reasonable notice of dismissal, and to prohibit dismissal on the grounds of maternity or military service.

In the article on just conditions of work provisionally adopted by the Committee at its Third Session, a space was left open for a possible reference to rights relating to wages. In view of their basic importance, a separate article dealing with these rights may, however, be justified.

Rights relating to the family

Considerations:

Only one Government would favour the inclusion of such rights in the Charter in a binding form.

With regard to the nature of the rights or principles to be included under this heading, several Governments mention in their replies various social security benefits as well as measures to protect women in employment. In view of the fact that the Charter will contain a special article on social security rights, all measures of that nature should presumably be included in that article, and as regards protection during employment, the Committee has already adopted a provisional article for this purpose, and several delegations proposed to redraft that article in a more detailed form. It is suggested, therefore, that all measures of protection during employment should be included in that article as redrafted, see Part III of this paper.

Other measures mentioned in the replies are: . Various forms of economic protection of the family, such as tax relief, rent reduction, assistance to conscripts' families, advance payment by public authorities of maintenance allowances, etc.; establishment of maternity aid institutions for social counselling and legal and medical assistance; family counselling; general and special child welfare measures, including particularly care for orphans and for children in social or moral danger; guardianship; measures concerning adoption; protection of children born out of wedlock (equal legal position); general legislation regulating the relation between marital partners as well as between parents and children born in wedlock.

Since the legislation of the latter type is concerned with the legal position of marital partners and children in relation to one another, it falls presumably outside the scope of an article dealing with the rights of the family as such.

With regard to the other measures mentioned above, a distinction may be made between those which relate to the family as such and those which concern mothers and children irrespective of marital status and family relations. In view of this, and following the example of the Consultative Assembly, it is suggested to cover this field by two separate articles.

The right of the family to social and economic protection

Draft text, Alternative I (Declaratory):

See Art.1 (J) of the draft Charter appended to Rec.104 (1956) of the Consultative Assembly.

The signatory Governments recognise the importance of the family as a fundamental unit of society. With a view to ensuring the economic and social protection of family life, the following measures should be taken, directly or in co-operation with local authorities and competent private organisations:

- (a) the grant of allowances in proportion to the number of children;
- (b) cheap loans for the founding of homes;
- (c) preferential allocation of housing to families and persons wanting to marry, and rent reduction (or reduction of interest on building loans) for low income families with many children;
- (d) allowances to families who need such assistance because the breadwinners are subject to military service;
- (e) tax reductions related to the size of the family;
- (f) organisation of home help services;
- (g) organisation of family counselling.

Alternative II:

1. The H.C.P., recognising the importance of the family as a fundamental unit of society, will endeavour to ensure the economic and social protection of family life.
2. They undertake to make available or to encourage the provision of the following facilities and advantages:
 - (a) to (g) as above.

The right of mothers and children to social and economic protection

Draft text, Alternative I (Declaratory):

See Art.1 (K) of the draft Charter appended to Rec.104 (1956) of the Consultative Assembly.

Mothers and children, irrespective of marital status and family relations, are entitled to special protection. For this purpose the following measures should be taken:

For the protection of mothers:

- (a) provision for the necessary economic and other assistance during a reasonable period before and after childbirth, in all cases not covered by social security or otherwise;

- (b) establishment, directly or in collaboration with local authorities or appropriate private organisations, of a sufficient number of maternal and infant welfare centres, capable of providing social counselling as well as medical and legal assistance.

For the protection of children:

- (a) provision for general child welfare services;
- (b) provision for specialised organs with powers to prevent the neglect of children;
- (c) measures to ensure that every minor is provided with a guardian and to regulate guardianship by law;
- (d) establishment of special services, including appropriate institutions, for homeless children and young persons who are physically or mentally handicapped, and for juvenile delinquents and children in social or moral danger;
- (e) measures to protect the interests of minors in case of adoption;
- (f) measures to prevent legal discrimination against children born out of wedlock.

Alternative II:

1. The H.C.P. will take all necessary measures for the effective protection of mothers and children, irrespective of marital status and family relations, including the establishment or maintenance of appropriate institutions for the purpose.
2. They undertake, for the protection of mothers:
 - (a) and (b) as above, with the necessary change of form.
3. They undertake, for the protection of children:
 - (a) to (f) as above with the necessary change of form.

PART II

DRAFT TEXTS INTENDED TO COVER THE FIELDS
OF SOCIAL SECURITY AND SOCIAL ASSISTANCE

Considerations:

It appears from the conclusions of the Third Session of the Social Committee that these provisions should be based on the work undertaken by the Committee of Experts on Social Security and that a reference should be made to the desirability of eliminating obstacles to the free movement of manpower arising out of social security legislation.

It is obviously impossible in the Social Charter to enter into the details regarding provisions for social security. The most practical method is presumably the one adopted by the Assembly, which involves a reference to the European Code of Social Security. It is, however, not sufficient in a Charter which is intended to set the aims of social policy, simply to provide for the ratification of the Code, since such ratification can be effected on the basis of compliance with a limited number only of the nine branches of social security covered by the Code. Moreover, it should be taken into account that an instrument is in preparation which will embody standards considerably higher than those laid down in the Code.

Certain Governments stated in their replies to the question concerning rights relating to the family that social security benefits should be adjusted to family responsibilities. Such a provision might of course be included, but it should not be strictly necessary, because benefit rates are fixed in the Code in relation to so-called "standard beneficiaries" (for example a man with wife and two children), on the understanding that benefits should be higher for beneficiaries with greater family responsibilities.

With regard to the question of equal treatment as between nationals and aliens, the Assembly draft refers to the European Interim Agreements on Social Security. This is practical, but has the disadvantage that these agreements are of a provisional nature and may be replaced by another instrument.

Draft texts:

Social security:

Alternative I (Declaratory):

See Art. 1 (H) of the draft Charter appended to Rec. 104 (1956) of the Assembly.

Everyone has the right to social security. With a view to ensuring the exercise of this right, the social security systems of the signatory Governments should be raised to a satisfactory level, based on standards at least equal to those laid down in the European Code of Social Security for the following types of services: medical care, benefits relating to sickness, unemployment, old age, employment injury, family benefits, maternity benefits, invalidity benefits and survivors' benefits.

The signatory Governments should take steps, through the conclusion of appropriate bilateral and multilateral agreements, to ensure full equality of treatment with regard to social security rights as between their own nationals and nationals of other signatory Governments, as well as to provide for the maintenance of social security rights acquired or in acquisition by migrants, nationals of any of the signatory Governments.

Social security benefits should be fixed with due regard to the family responsibilities of the beneficiary. They should be adjusted to meet any currency depreciation.

Alternative II:

With a view to ensuring the exercise of the right to social security, the H.C.P. undertake to:

1. raise their systems of social security gradually to a satisfactory level, basing themselves on standards at least equal to those laid down in the European Code of Social Security for the following types of services: (enumeration as above).
2. take steps, through the conclusion, etc. (as above).
3. ensure that social security benefits are fixed with due regard to the beneficiary's family responsibilities and that they are adjusted to meet any currency depreciation.

Social Assistance:Alternative I (Declaratory):

Everyone without sufficient resources and not entitled to adequate benefits under a social security scheme should be granted the necessary means of subsistence and, in case of sickness, the care necessitated by his condition.

See Art. 7 (b) of the European Convention on Assistance.

Such assistance should be granted by any signatory Government also to nationals of any other signatory Government who are legally present in its territory, subject to prescribed procedures of repatriation. Such procedures should be applied with the greatest moderation and only where there is no objection on humanitarian grounds.

Alternative II:

With a view to ensuring the exercise of the right to social and medical assistance, the H.C.P. undertake:

1. to adopt adequate provisions by which every person who is without sufficient resources and not entitled to adequate benefits under a social security scheme be granted the necessary means of subsistence and, in case of sickness, the care necessitated by his condition.

2. to apply the provisions referred to in the preceding paragraph on an equal footing to nationals of the other H.C.F. legally present in their territories, subject to prescribed procedures of repatriation.

3. not to have recourse to repatriation except in the greatest moderation and then only where there is no objection on humanitarian grounds.

PART III

NEW DRAFT TEXTS OF THE ARTICLES PROVISIONALLY
ADOPTED BY THE COMMITTEE AT ITS THIRD SESSION
(BASED ON THE OBSERVATIONS OF DELEGATIONS
AND GOVERNMENTS) (1)

Article 2: The right to work:

The Irish Government has proposed to draft this article in terms more general than those adopted provisionally by the Social Committee and to omit any specification of the machinery to be employed by Governments for the maintenance of a high and stable level of employment. On the other hand, several delegations expressed, at the Third Session of the Committee, the wish to see further details included in the text.

Draft text, Alternative I (Declaratory):

Everyone has the right to earn his living by work which he freely accepts.

Dutch and
Swedish
amendment.
Irish am-
endment.
U.K. am-
endment.
Danish
amend-
ment.
Belgian
and Greek
amendment

To the end that this right may be effectively exercised, the signatory Governments will endeavour, inter alia through the establishment of long-term development programmes, including the planning of public works, to achieve and maintain a high and stable level of employment and, by providing adequate free public labour exchanges, vocational guidance and adequate assistance in or opportunities for training as well as appropriate educational services for workers, to assist in the realisation of the aim that all may have the opportunity of working in the occupation best suited to their capabilities and aptitudes.

All restrictions on the right to work should be abolished, with the exception of those needed to protect the standard of certain professions, and those necessary to protect women and young workers, or for public health reasons.

(1) See Doc. CM (56) 63, Appendices III and IV, and Doc. CE/SOC (56) 14.

Alternative II: (4)

With a view to ensuring the exercise of the right to work, the H.C.P.

1. recognise that everyone should have an opportunity to earn his living in a freely accepted occupation;
2. accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of productive employment through the pursuance of policies which will ensure adequate opportunities for work, such as, for example, the fixing of national employment targets, the preparation of national manpower budgets, and the establishment of long-term development programmes, including the planning of public works, which may be adapted to the changing employment situation;
3. undertake to:
 - (i) establish or maintain the freedom from any restrictions on the right to work, with the exception of those imposed by the need to assure the technical qualifications required in certain professions; those aiming solely at the protection of children, adolescents and women against the risks inherent in certain prescribed occupations, and those needed for purposes of public health.

(4) See Article 11 (4) of the draft Charter appended to Rec. 104 (1956) of the Assembly.

- (ii) protect effectively the right of the wage-earner freely to choose any available occupation;
- (iii) establish or maintain both general and specialised free employment services;
- (iv) promote appropriate educational services and vocational guidance, training and rehabilitation.

Article 3: Just conditions of work:

A large number of delegations proposed various additions to this article. Among these proposals there were several dealing with rights relating to wages. These proposals have been taken into account in the draft article on wages contained in Part I above.

This raises the more general question of the proper delimitation of the various articles. Thus, the above mentioned draft article on wages contains a provision for notice of dismissal as well as protection against arbitrary dismissal. These provisions might well have been included in the article on just working conditions. And the present Article 4 corresponds to what in the Assembly draft is included in the Article on just working conditions under the heading "safe and healthy working conditions".

Draft text, Alternative I (Declaratory):

All employed persons have the right to just conditions of work. To the end that this right may be effectively exercised, the following measures should be taken by all signatory Governments; in so far as these measures are not put into effect by means of collective agreements or in any other way appropriate to national conditions:

- Dutch amendment to Art. 4. 1. Provision for adequate protection of life, health and morals during work;
- Amendments proposed by the Delegations of Belgium, Denmark, France, Greece, Luxembourg and Netherlands. 2. Fixing of reasonable daily and weekly working hours, the working week to be progressively reduced, to the extent that the increase of productivity and other relevant factors permit, the aim being the establishment of the 40-hour week as a maximum, subject to essential adjustments for certain occupations, and without reduction of wages; (1)
3. Provision for a minimum of two weeks' (2) annual holidays with pay, and additional paid holidays for workers engaged in dangerous or unhealthy occupations as prescribed;
- Belgian and Dutch amendment. 4. Provision for a guaranteed weekly rest period (of at least 32 hours).
- Italian amendment. Renunciation of the rights referred to in this Article should be without legal effect, except with regard to weekly rest and annual holidays with pay.

Alternative II:

With a view to ensuring the exercise of the right of all employed persons to just working conditions, the H.C.P. undertake to adopt the following measures, in so far as such measures are not put into effect by means of collective agreements or in any way appropriate to national conditions:

-
- (1) The European Regional Organisation of the International Confederation of Free Trade Unions adopted, at its Congress at Frankfurt in May 1956, a Resolution calling for the immediate or gradual reduction of the working week to 40 hours.
- (2) The following Delegations could accept precise provisions determining the duration of the annual holidays: Belgium, Denmark, Italy, Luxembourg, Netherlands, Norway, Sweden.

(1) to (4) as above.

Renunciation of the rights referred to in this Article shall be without legal effect, except with regard to weekly rest and annual holidays with pay.

Article 4: Protection of life and health:

The contents of this article would be covered by point (1) of the above new draft of Article 3.

Article 5: Protection of children and young persons:

Several Delegations proposed the inclusion of various detailed provisions in this article. The corresponding article as drafted by the Assembly was referred to as a basis.

Draft text, Alternative I (Declaratory):

All children and young persons have the right to a special protection against the physical and moral hazards of their work.

With a view to ensuring the exercise of this right, the following measures should be taken by all signatory Governments, in so far as these measures are not put into effect by means of collective agreements or in any other way appropriate to national conditions:

- | | |
|---|---|
| Amendments of Belgium, Italy and Netherlands. | 1. The minimum age of admission to employment should be 15 years, provided that children over 14 years of age may be employed in prescribed light work; |
| Belgian amendment. | 2. A higher minimum age of admission to employment should be fixed with regard to prescribed occupations regarded as dangerous or unhealthy. |

See Art. 1
(C) of the
draft appen-
ded to Rec. 10.

- " -

- " -

- " -

Belgian and
Dutch amend-
ment.

Amendment of
Belgium, Italy
and Netherlands.

Amendment of
Belgium, Italy
and Netherlands.

3. The employment of children under the pre-
scribed minimum age, as well as the employment
of children or young persons in work which is
physically or morally injurious should be
punishable by law;
4. Persons of under 16 years of age who are still
subject to compulsory education should not be
employed in such work as would deprive them
of their education;
5. The working day of persons under 16 years of
age should be in accordance with the needs of
their development and particularly with their
need for vocational training;
6. Employed persons of under 18 years of age
should be entitled to not less than three
weeks' annual holiday with pay;
7. Persons of under 18 years of age should not
be employed in night work;
8. Employed persons of under 21 years of age
should be subject to regular medical control.

Alternative II:

With a view to ensuring the exercise of the
right of children and young persons to a
special protection against the physical and
moral hazards of their work, the H.C.P. under-
take to adopt the following measures, in so
far as such measures are not put into effect
by means of collective agreements or in any
other way appropriate to national conditions:

(1) to (8) as above, with the exception that
the word "should" be replaced by "shall"
throughout.

Article 6: Protection of women:

The Delegations of Belgium, France, Greece and Italy proposed to draft this article in a more elaborate way. The French Delegation referred in this case to the suggestions contained in Doc. CE/Soc (56) 4 concerning the contents of this article.

The Irish Government has proposed an amendment which, in harmony with the Irish Constitution, would stress the principle that mothers should not be obliged by economic necessity to engage in labour to the neglect of their duties in the home. The purpose of this amendment would to some extent be covered also by the introduction to the proposed article dealing with rights relating to wages, where it is said that wages should be sufficient to provide employed persons and their families with an independent and decent livelihood.

Draft text, Alternative I (Declaratory):

See Irish amendment in Doc. CE/SOC (56) 14.

Subject to the principle that mothers should not be obliged by economic necessity to engage in work to the neglect of their duties in the home, all employed women, and particularly expectant or nursing mothers, have the right to a special protection in their work.

With a view to ensuring the exercise of this right, the following measures should be taken by all signatory Governments, in so far as these measures are not put into effect by means of collective agreements or in any other way appropriate to national conditions:

See Art. 1 (C) of Assembly draft and Belgian amendment (night work)

1. The employment of women in work which is physically or morally injurious, including night work, should be punishable by law;

- See Belgian amendment and ILO Conv. 103.
- Belgian and Greek amendment.
- Italian amendment.
2. Expectant mothers should be granted leave with pay before and after childbirth up to a total of at least 12 weeks;
 3. Dismissal from employment on grounds of maternity absence should be prohibited.
 4. Mothers who are nursing their infants should be entitled to sufficient time off for this purpose, such time to be considered as included in the working hours;
 5. Women should not be prevented by their work from fulfilling their functions in the family.

Alternative II:

The H.C.P. recognise the principle that mothers should not be obliged by economic necessity to engage in work to the neglect of their duties in the home and will endeavour to attain conditions in which this principle may be realised. Women should not be prevented by their work from fulfilling their functions in the family. They should be granted at least one day off per month for this purpose.

With a view to ensuring the exercise of the right of employed women, and particularly expectant or nursing mothers, to a special protection in their work, the H.P.C. undertake to adopt the following measures, in so far as these measures are not put into effect by means of collective agreements or in any other way appropriate to national conditions:

(1) to (4) as above, with the exception that the word "should" be replaced by "shall" throughout.

The Committee decided at its Third Session to consider at its Fourth Session the rights listed in Appendix VII to Doc. CM (56) 63. It was further decided to include in a new Questionnaire the field of public health on the basis of a question to be drafted by the Committee of Experts on Public Health, and to consider the inclusion of "workers' education".

It is suggested to add to this list a question intended to ascertain to what extent Member States would be disposed to grant certain social and economic rights to refugees.

Section II

Fifth session of the Social Committee

(April/September 1957)

OUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 12th April 1957.

Restricted

CE/Soc (57) 5

Cr. Fr.

CONSULTATIVE ASSEMBLY

SOCIAL COMMITTEE

(Fifth Session)

REPORT

of the Working Party

appointed to draft articles for a European
Social Charter

presented by M. Delperée, rapporteur

At its fourth session (29th January to 1st February 1957) the Social Committee was unable - for lack of time - to examine all the draft texts proposed for inclusion in the European Social Charter. In order to carry out the task assigned to it in Resolution (56) 25 of the Committee of Ministers within the prescribed time limit, the Social Committee appointed a Working Party to draft the text of the European Social Charter. The Working Party was composed of the delegates of Belgium, the Federal Republic of Germany, France, Greece, Italy, Norway, and the United Kingdom. Appendix I gives the list of members. The Working Party's first task was to examine the rights covered by the first two groups of questionnaires sent out by the Secretariat to Governments and to propose draft texts to the Committee (including alternatives, where appropriate), with due regard to the points of view expressed by the Governments, the opinions given by the Social Committee and the suggestions set out in Doc. CE/Soc/WP I (57) 2 (formerly CE/Soc (56) 19) prepared by the Secretariat and in Recommendation 104 of the Assembly.

Doc. CE/Soc/WP I (57) 2, used by the Working Party as its basic document, contains, in Parts I and III, draft articles relating to the two questionnaires referred to above. These questionnaires dealt with the two following groups of rights:

First group; right to work, fair conditions of work, protection of children and adolescents, protection of women;

Second group: individual and collective rights and principles arising in the field of industrial relations, right of disabled persons to rehabilitation and resettlement, right of nationals of one member country to take up employment in other member countries, right of migrant workers to protection and assistance, adoption of measures to facilitate vocational guidance and training, rights relating to wages, rights relating to the family.

The Working Party's second task was to prepare a preliminary draft of the report to be drawn up subsequently by the Social Committee for submission to the Committee of Ministers in pursuance of Resolution (56) 25, instructing the Social Committee to report to the Committee of Ministers on the result of its work before 1st July 1957. The preliminary draft set up by the Working Party has been added as Appendix IX.

The Working Party met at Strasbourg from 9th to 12th April 1957 in the absence of the French delegation.

The meeting was opened by the Research Director, M. von Schmieden. The Chairman and Vice-Chairman of the Social Committee did not attend the meeting. M. Geller was elected Chairman of the working Party and M. Delperée Rapporteur.

Appendix I gives the list of members present. Appendix II gives the agenda adopted by the working Party.

After a general discussion on the nature of the Charter, a discussion taken up again at the end of the session (a brief account is given below), the Working Party re-examined in detail the draft texts contained in the 3rd part of Doc. CE/Soc (56) 19 (reproduced subsequently under reference CE/Soc/WP I (57) 2). In this connection the Working Party had before it an opinion by the I.L.O. (see Appendix III) dealing with the following questions:

1. Is it possible to reconcile the provisions of Article 2, paragraph 3, sub-paragraph (ii), dealing with freedom to choose any available employment with the so-called "closed shop" practice?
2. How far would the implementation of the Social Charter through collective agreements really solve the problems of the responsibility of those States, where certain important labour questions (wages, hours of work, holidays etc.) are settled exclusively by direct negotiations between employers' and workers' organisations?

The I.L.O. Representative gave an oral explanation of the questions covered by his organisation's Opinion.

Below are certain comments on the draft articles prepared by the Working Party (reproduced in Appendix IV).

Right to work

The Working Party adopted with modifications alternative II of the text prepared by the Secretariat-General (CE/Soc/WP I (57) 2). On the proposal of the Norwegian delegation, it adopted the amendment proposed by the I.L.O. for (former) sub-paragraph (ii) of paragraph 3 of this text, concerning the "closed shop". The Italian delegate entered a reservation on this matter on the grounds that the Italian Constitution did not recognise the validity of clauses on "closed shop". The United Kingdom delegation proposed that (former) sub-paragraph (i) of paragraph 3 should be deleted as in its opinion it duplicated paragraph 1. This was agreed. The United Kingdom delegation still considered it impracticable to ensure free choice of any particular occupation [the words "to compete for" might be substituted for "choose"].

Just conditions of work

The Working Party examined Alternative II of the text prepared by the Secretariat-General (loc. CE/Soc WP I (57) 2). A discussion developed over the fact that this text provides that matters relating to working conditions shall be settled

by regulative measures insofar as these matters are not already covered by collective agreements. The Working Party adopted an amended version of this clause proposed by the German delegation. At the request of the Norwegian delegation the representative of I.L.O. explained the task imposed on the governments when the provisions of the collective agreements fall short of the standards envisaged by the Social Charter. The United Kingdom and the Norwegian delegations, taking into account the opinion expressed by the I.L.O. representative, made a reservation regarding the text adopted by the Working Party. The United Kingdom delegation also made reservations regarding Points 2 to 4 of the text adopted in respect of which the Government of the United Kingdom could not accept even a residual obligation. The Italian delegation stated that, in its opinion, the text adopted by the Working Party should be absolutely binding in character. It also opposed the exception contained in the last paragraph of the text of the Secretariat draft relating to renunciation of the rights referred to in the Article. After a discussion on this paragraph, during which several delegations opposed the Italian point of view, the Italian delegation announced that it would not object to a proposal by the Norwegian delegation to delete the whole paragraph concerning renunciation of the rights referred to in this Article.

Protection of life and health

The Working Party unanimously considered that the Article in question called for no further examination, as its contents were covered by Point 1 of the preceding Article.

Protection of children and young persons

The United Kingdom delegation questioned the need of special protection on the lines proposed for all young persons and made the same reservations as above regarding the possibility of residual governmental obligations. It made other reservations regarding the binding character of Points 2, 4 and 5 of the text adopted by the Working Party. The Norwegian delegation made the same reservations. The German delegation made a reservation in respect of the clause fixing 15 years as the age of admission to employment, as provided in Point 1, instead of which it proposed 14 years. The Greek delegation made the same reservation. The United Kingdom delegation suggested deleting Point 2. On the proposal of the Italian delegation, Point 3 (old) was deleted; the Greek delegation made reservations regarding this deletion. Point 7 (old), now Point 6, was amended at the suggestion of the Norwegian and German delegations.

Protection of women

On the proposal of the Belgian delegation, the first paragraph of the old text was deleted. The United Kingdom and the Norwegian delegations repeated their former reservations regarding the clause referring to collective agreements and regarding the general tenor of the text. The old Point 5 was deleted at the suggestion of the Belgian delegation. A discussion took place on the final form of the old Point 4 (now Point 3). The Working Party decided to delete the disputed part, which provided that time off for nursing infants should be considered as included in the working hours. The Italian delegation made reservations regarding this matter.

Rights connected with industrial relations

The Belgian delegation proposed the insertion of the term "trade union" in paragraph 1 of the text and the omission of the words "for the protection of their economic and social interests." After discussion, the Working Party decided to retain the text with a few changes of detail. A proposal by the I.L.O. Representative to omit the words "or of the administration of the State" was rejected by the members of the Working Party, with the exception of the Belgian delegation which entered reservations on the subject.

After discussion, (former) paragraph 3 of the text was amended to take account of the requirements of the public interest in respect of the right to collective action. The Italian delegation entered reservations, being unable to recognise the right of employers to bring work to a stop.

An amendment by the German delegation to paragraph 4 of the text concerning arbitral procedure, was not agreed upon after meeting with the opposition of the Belgian, Italian and United Kingdom delegations. The Norwegian delegation called attention to the difference between the settlement of conflicts of rights and conflicts of interest, only the latter lending themselves to compulsory arbitration. In order to solve this difficulty, the Working Party inserted the words "and agreed" after the word "appropriate".

The Belgian delegation entered a reservation concerning the omission, in paragraph 5, of the word "organisations" for consultation. The German delegation made a reservation concerning the last part of paragraph 5.

Right of the disabled to rehabilitation and resettlement

The Working Party introduced into the former text the amendments shown in the text annexed to this report (Appendix IV).

Right of migrant workers to access to employment in other member countries

The United Kingdom delegation considered that an article on the lines proposed was unrealistic and inappropriate for inclusion. On a proposal of the Belgian delegation, based on the existence of the European Convention on Establishment, the Working Party decided to limit the scope of the present text to wage-earners. The Italian and Greek delegations entered reservations on this matter. The United Kingdom, the German and Greek delegations entered reservations in view of the rejection of the amendment they had proposed. This amendment is included, for documentary purposes, in Appendix IV.

The Italian delegation proposed certain amendments which are reproduced in the attached draft (Appendix IV), and suggested the deletion of the word "reduce" in paragraph (b) concerning chancery dues and other charges. It entered reservations in view of the rejection of these amendments by the Working Party.

A proposal by the Chairman that the final sub-paragraph of the text should be omitted or its application limited to wage-earning and salaried persons was not accepted, after observations had been made, inter alia, by the Italian delegation based on the fact that the right to emigrate is a right that is not guaranteed as a whole by the totalitarian countries of the East.

Right of migrant workers to protection and assistance

The Italian delegation made reservations regarding the text adopted by the Working Party on the grounds that it did not provide an effective safeguard for migrant workers and was limited to provisions of a declaratory character.

The Belgian delegation commented that this Article must have a binding character, particularly in respect of equality of treatment with regard to remuneration and membership of trade unions.

Provision of facilities for vocational guidance and training

The Working Party accepted a proposal by the Belgian delegation to amend the first paragraph of the text examined, partly for reasons of simplicity. A proposal by the United Kingdom and Norwegian delegations to delete point 2 (c) was negatived at the request of the Italian delegation.

Rights relating to wages

The United Kingdom delegation stated that, in view of the system of industrial relations in that country, it could not approve any binding and detailed provision in the field of wages. The delegation of the Federal Republic of Germany expressed a similar opinion. The Greek delegation supported this point of view and preferred the simple adoption of a number of general directives. /

The Italian delegation felt bound to take up a diametrically opposed position. It agreed with the text prepared by the Secretariat-General (Alternative II). The Norwegian delegation stated that the existence of collective agreements and the part they played conflicted, in its opinion, with the idea of binding and detailed regulations.

A draft amendment proposed by the United Kingdom delegation was discussed at length. The draft was adopted with a number of alterations.

The Italian and Belgian delegations made reservations on account of the purely declaratory character of the text adopted.

The Working Party expressed the opinion that the Provision in Point 2 should be considered in relation to a general clause which would appear in the final provisions of the Charter and would apply to cases of natural disaster and other exceptional economic circumstances (Emergency).

With regard to the question of reasonable notice of dismissal (Point 2(e) of the Secretariat's text (Doc. CE/Soc (56) 19)), the Working Party, after a detailed discussion, shared the opinion of the Norwegian delegation that the matter should be submitted to the Social Committee at its plenary session. This question should, in principle, come under the heading "Just conditions of work".

The Working Party then decided to submit a second question to the Social Committee, namely the period of notice, together with the relation between compensation in case of dismissal and the age of the worker.

The right of the family to social and economic protection

The Working Party only adopted the first paragraph of the text prepared by the Secretariat, since the majority of the delegations thought it best to avoid provisions which were too detailed or which did not come directly within the scope of the Social Charter. The Working Party did not support the proposal made by the delegation of the Federal Republic of Germany on the basis of an amended text (Appendix V to this report).

Right of mothers and children to social and economic protection

The Working Party was unable to accept an amended text (Appendix VI) presented by the delegation of the Federal Republic of Germany. It adopted the text contained in the first paragraph of alternative II of the draft prepared by the Secretariat, amended in accordance with a proposal by the United Kingdom delegation.

Finally, the Italian delegation raised the question whether the Social Charter should not be limited to wage-earners. After discussion, the Working Party adopted the opinion of the Norwegian delegation that the Charter should not be altogether limited to wage-earners, "as indeed follows" from the various provisions concerning social security in the draft prepared by the Secretariat. The Working Party however shared its Chairman's opinion that it is not always easy to delimit the social sphere exactly, particularly in respect of the question of education.

Having finished preparing the draft articles reproduced in the Appendix IV to this report, the Working Party took up again the question of the nature and legal scope of the Charter. In order not to anticipate the final solution of this question, the Working Party was obliged to adopt an essentially pragmatic approach. The various articles in the draft were given an alternative declaratory or binding form, a choice being offered between the words "will endeavour" and "undertake". However, the United Kingdom delegation thought that the substance of some articles was such that the use of the words "will endeavour" was not sufficient to make the articles declaratory in character.

The Working Party had before it two drafts on this subject, one presented by the United Kingdom delegation (Appendix VII), and the other by the delegation of the Federal Republic of Germany (Appendix VIII).

Under the United Kingdom proposal the Charter would have a first part of a declaratory character applicable to all States and a second part containing optional binding provisions. The first part of the Charter would set out in general terms the various rights which Governments would recognise. The Governments would also undertake to accept as an aim of policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the full enjoyment of these rights could be realised. The first part of the Charter would thus be more than a mere declaration, and acceptance of this Part would be required of all Governments desirous of ratifying the Charter. The Second Part would contain more precise obligations relating to each right. It would set out various measures to be taken to make more effective the full enjoyment of the rights and would, to the extent that might be appropriate, contain certain elaborations of the rights set out in the First Part. On ratifying the Charter, Governments would be required to declare the extent to which they accepted the obligations in this Part. Ratification would not however depend on acceptance of all these obligations. It would be a matter for discussion whether any minimum

In addition to the British proposal the Social Committee examined a proposal by the delegation of the Federal Republic of Germany, which took the form of an optional clause. The German proposal advocates a solution which, while respecting, in principle the declaratory character of the text relating to the various aims of the Social Charter, offers the possibility of making these texts binding in the sense that the signatory States could subsequently either at the time of signature or ratification or at a later stage, declare that they undertake to abide by them. This would apply to those aims which, in the opinion of the State concerned, it could undertake to accept. In order to facilitate the decision to be taken subsequently by the Committee in the light of the German proposal, the Working Party worded the articles in question in such a way that only a simple declaration is required to turn these measures, whose adoption the texts advocate in declaratory terms, into undertakings binding upon the signatory States. By and large this would merely mean changing the words "will endeavour" into "undertake".

The Belgian and Italian delegations observed that the two drafts did not take sufficient account of the fact that, in its Resolution (56) 25, the Committee of Ministers had pronounced itself in favour of a Social Charter which contained at least a certain number of commitments binding on the signatory States. In the view of the Italian delegation, the drafts presented by the German and United Kingdom delegations did not provide the necessary guarantees that the commitments provided for would really be assumed. For these reasons, the Italian delegation said that it preferred a Charter which was of an obligatory character from the outset, while leaving the door open to reservations by those signatory States which were unable to subscribe to all its provisions.

The Belgian delegation stressed the importance of the implementation of the Charter and suggested in particular the submission of annual reports, such submission following the procedure laid down for the application of the Conventions of the International Labour Organisation, would be an essential element in the procedure to be laid down in due course for the implementation of the Charter. This suggestion was approved by a number of delegations.

The delegations of the United Kingdom and the Federal Republic of Germany made statements on their respective proposals, but the Norwegian delegation doubted the value of a prolonged discussion of the subject. Taking into account the terms of reference given by the Social Committee to the Working Party, this delegation expressed the opinion that the Working Party was not competent to decide in the matter, as its terms of reference were restricted to considering the rights covered by the two questionnaires and to suggesting draft texts (see Doc. CM (57) 24, p.6). After a discussion, the Working Party agreed unanimously to submit the two German and British drafts to the next plenary session of the Social Committee for examination.

The Belgian delegation told the Working Party that it would be prepared to submit a text relating to the implementation of the Charter, on the assumption that the latter would contain at least some binding provisions.

The Italian delegation could not see its way to accepting a draft Social Charter unless all the delegations declared themselves in favour of a minimum number of undertakings binding upon the signatory States.

The United Kingdom delegation expressed the view that the British and German drafts were not incompatible, but that it might be useful to have a more detailed version of the British draft. It declared its willingness to send to the Secretariat, before 1st June, a more detailed draft Social Charter in two parts and based on the system envisaged in the proposal appended to the present report. It was decided that this draft would then be communicated to the members of the Social Committee.

A P P E N D I X I

Working Party appointed to draft
articles for a European Social Charter

9th - 12th April, 1957

List of members and observersBELGIUM

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 du Ministre du Travail et de la
 Prévoyance sociale

Mme C. Gilon-
 Pichault Service des Relations Interns-
 tionales au Ministère du
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M. B. Ulsaker

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Mr. C. A. Larsen

Principal, Ministry
of Labour and National
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I.L.O. M. P. P. Feno

Head of the Inter-
national Organisation
Division

A P P E N D I X I I

Working Party appointed to draft
articles for a European Social Charter

9th - 12th April, 1957

AGENDA

1. Opening of the meeting by the representative of the Secretariat-General.
2. Election of the Chairman of the Working Party.
3. Preparation of the draft European Social Charter.
4. Preliminary draft Report of the Social Committee to the Committee of Ministers.

A P P E N D I X III

Working Party appointed to draft
articles for a European Social Charter

9th - 12th April 1957

Memorandum

by the I.L.O. in reply to the questions
raised by the Social Committee
at its Fourth Session

1. The first question is how the principle of the right freely to choose an occupation, embodied in the draft Charter, can be reconciled with the union security clause or the "closed shop", a practice which prevails in certain countries and according to which trade union membership is made a condition for obtaining certain jobs.

As a way out of this difficulty, it was suggested during the Fourth Session of the Social Committee that Article 2, para. 3 (II) which in its present form reads "The High Contracting Parties undertake to protect effectively the right of the worker freely to choose any available occupation" should be completed by the following words "in accordance with national legislation, practice and collective agreements".

However, the Social Committee decided to request the I.L.O. "to examine further the question as to the extent to which such a clause would reconcile the positions of those countries where the closed shop practice existed and those where it did not exist". (Report of the Social Committee (4th session), Document CM (57) 24, p.6).

This formula, however, would have the drawback of enabling legislation, practice or collective agreements to be used to restrict the principle of the free choice of occupation. Such limitations might be brought to bear on cases other than those which concern union security clauses and might thus go beyond the aim of the Social Committee, since they would make it possible in practice to frustrate the principle to be laid down in the Charter.

It would seem, therefore, that the best way of reconciling different national practices in this respect would be clearly to specify that the rule of the free choice of occupation laid down in the Charter cannot be interpreted as either authorising or prohibiting any union security clause or practice.

The words "any union security clause or practice" are employed because the "closed shop" clause is but one of the various ways in which employment can be made subject to membership of a trade union. Indeed, in some countries, in particular the United States, other clauses such as "Union shop, Maintenance of membership or Preferential shop" are also in force. Although such clauses are not widely resorted to in Europe at the present time they may become more widespread in the future; this should be taken into account when drafting the relevant article of the Social Charter.

Lastly, as other articles of the draft Charter refer to "workers" instead of "wage earners" it would seem advisable to use the same term in the article concerning the right to work.

This article might then read as follows:

"With a view to ensuring the exercise of the right to work, the High Contracting Parties 3. undertake to (ii) protect effectively the right of the worker freely to choose any available occupation; this provision shall not be interpreted as prohibiting or authorising any union security clause or practice".

2. [According to the report of the Social Committee's Fourth Session, the second question] concerns "the extent to which the possibility of implementation of the Social Charter by means of collective agreements would really solve the problems of those States where certain important labour problems (such as wages, hours of work, holidays, etc.) were solved directly by negotiations between the labour market partners." The Committee, having noted that certain international labour conventions contained a similar implementation clause, asked for clarification "of the view of the I.L.O. regarding the implementation of such conventions and particularly whether, in spite of the said clause of implementation, a certain obligation would not be left for the Governments in case the collective agreements fail to cover the standards of the convention or cease to be in force. A similar question arises with regard to groups of workers not covered by collective agreements". (Doc. CM (57) 24, p. 7).

As regards the implementation of International Labour Conventions, it should be noted that the Constitution of the I.L.O. provides [in its Article 19, para. 5(d)] that a State which ratifies a Convention "will take such action as may be necessary to make effective the provisions of such Convention". On the basis of this provision the I.L.O. has already had occasion to state (in 1950) that "from an international point of view, what is essential is that the provisions of a convention should be fully applied; in regard to the manner of application, both the Constitution of the Organisation and the terms of the individual convention deliberately leave a wide measure of discretion to each country" [(cf. Advice to the Government of the United States, 13th November 1950, in the "International Labour Code, 1951", Geneva, 1952, Note 352, Article 1082, p. 264).] Thus the Convention can be implemented by methods other than legislation as such, namely by custom, simple administrative measures, practice, or, in some cases, collective agreements.

The last-named are, in some cases, expressly provided for in the International Labour Conventions themselves [(cf. for a full list of such cases, the International Labour Code, 1951, Title III, Book VII, Note 24, p. 701-703)]. The following practices are in current use: (a) the existence of a collective agreement is a condition which must be fulfilled before advantage may be taken of certain permitted exceptions; (b) allusions are made to the possibility of a higher standard than that required by the Convention being fixed by collective agreement; (c) it is stipulated that certain of the standards prescribed by the Convention are to be defined in greater detail by national laws or regulations or by collective agreement; (d) the determination by national laws or regulations or by collective agreement of certain classifications of persons to whom differing standards apply [(cf. the "International Labour Code, 1951" p. LXXVIII)].

Even where the International Labour Conventions make no specific mention of possible implementation by collective agreement but refer explicitly to national legislation, either by prescribing that such legislation must lay down certain conditions for the implementation of the Convention, or by allowing that this legislation depart in certain respects from international standards, it does not necessarily follow that these instruments cannot, at least to some extent, be implemented by collective agreements. Indeed, it has always been recognised that the term "national legislation" should be taken in its widest sense as denoting both regulations laid down by the central authorities and those laid down by the local authorities. It is also considered that this term might cover all other forms of legislation, namely decrees, various types of orders, the principles of common law and even principles laid down by jurisprudence. By extending this notion, though there is no precedent on this point, it may be considered that collective agreements which have been made binding by decision of the competent authority may be regarded as constituting the "national legislation" required under some Conventions.

In the case of International Labour Conventions where no definite provision is made for their manner of implementation in the country in question (national legislation or other methods, including collective agreements) and where the countries concerned are therefore free to take their own measures for giving effect to such conventions, it may be considered, as a general rule - though, here again, no formal decision of principle has been taken in the matter - that, if the collective agreements in force in a given country prescribe standards similar to those provided for in a convention of this kind, the provisions of the convention are thereby made effective, as required under the I.L.O. Constitution, and that there is therefore no need for specific legislation in this field. In practice, however, it is difficult to envisage the case of international conventions which do not call for the adoption of legislation and which can be made fully effective by collective agreements, for instance conventions whose implementation presupposes the operation of public services, namely conventions on labour inspection, the organisation of employment services, problems of industrial safety and health and most social security questions.

Even assuming that the international instrument in question, given its content, can be applied by way of collective agreement, certain questions still arise. Indeed, a collective agreement represents only a reciprocal obligation as between the Contracting Parties (unless the competent authority has extended this obligation to third parties), whereas the ratification of a convention constitutes an international obligation on the part of a State. These questions which were raised by the Social Committee in connection with the possible implementation of the European Social Charter by way of collective agreement, concern the respective level of the standards established under collective agreements and those provided for in the international instrument, the categories of persons covered by or excluded from collective agreements and the situation created when, after the international instrument has been ratified, collective agreements expire.

(a) In the first place, the Social Committee wondered whether, in cases where an international convention contains a clause to the effect that it may be implemented by way of collective agreement, there would not still be an obligation on the Governments if the collective agreements in question failed to reach the standards laid down in the convention. The reply to this question is undoubtedly in the affirmative for, as we have seen above, any state which ratifies a convention is bound under the I.L.O. Constitution to "take such action as may be necessary to make effective the provisions of such a convention". In other words, if the collective agreements made by the country in question do not meet the standards stipulated by the international convention, such convention will not be fully implemented. The government must accordingly take appropriate steps, by way of legislation or regulations, to meet this situation, but this only in cases where it is unable to make effective use of the means at its disposal to persuade the parties to the collective agreements themselves to raise the standards provided for under these agreements to the level of those prescribed by the international convention.

(b) The governments are under the same obligation in cases where an international convention of a general character is implemented only by collective agreements applying to particular categories of workers. In such cases, the government must take the same measures as those mentioned in (a) above to ensure that the provisions in the international instrument are extended to categories of workers hitherto excluded from the benefit of these provisions.

(c) The last question to be considered is the position in cases where collective agreements which originally provided for the implementation of an international convention were subsequently modified or were no longer in force.

Here it should be noted that although this problem can arise in theory, in actual practice it could only do so in a limited number of cases. No doubt collective agreements are frequently modified but it is rare for such modifications to effect adversely the position of the workers under former collective agreements.

Assuming that such an exceptional case did arise, the State which has ratified the instrument in question and which has accepted an international obligation to apply on its territory the provisions contained therein, would then be obliged either to take the necessary measures by way of legislation or regulations to meet the situation or to denounce the convention.

This need not, however, be such a hard choice, because here again it is mitigated by the fact that the State can, even if it takes no part in drawing up collective agreements, bring some influence to bear on the parties, for instance by drawing their attention to international obligations in the matter. It is also possible to envisage a system whereby the repudiation clauses of collective agreements and those of the international instrument to which they give effect could be brought into a temporal relation, so as to make it possible for the international instrument to be denounced under its own terms, when the collective agreements had run their course. But for the reasons mentioned above it is unlikely that there will be many cases in which such clauses will operate.

A P P E N D I X IV

Provisional draft of articles for a European Social
Charter prepared by the Working Party

I. Right to work

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

1. recognise that everyone shall have an opportunity to earn his living in a freely accepted occupation;
2. accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of employment;
3. will endeavour ~~undertake~~⁽¹⁾ to:

- (i) protect effectively the right of the worker freely to choose any available occupation; this provision shall not be interpreted as prohibiting or authorising any union security clause or practice;

Note: Reserve by the delegation of the United Kingdom who considers it impracticable to ensure free choice of any occupation.
Reserve by the delegation of Italy on the grounds that the Italian Constitution does not recognise the validity of "closed-shop".

- (ii) establish or maintain free employment services;
- (iii) promote appropriate vocational guidance, training and rehabilitation.

⁽¹⁾ For the explanation of this alternative, see the text of the report.

II. Just conditions of work

With a view to ensuring the exercise of the right of all employed persons to just working conditions, the H.C.P. will endeavour /undertake/ to adopt the following measures, in so far as such measures are not left, under national schemes, to agreements between employers' and workers' organisations or are not normally carried out otherwise.

/Note: Reserve by the delegations of the United Kingdom and Norway concerning residual Government responsibility in cases not generally covered by collective agreements.

Reserve by the Italian delegation which is in favour of a text of a binding character. /(1)

1. Provision for adequate protection of life and health during work;
2. Fixing of reasonable daily and weekly working hours, the working week to be progressively reduced, to the extent that the increase of productivity and other relevant factors permit;
3. Provision for recognised public holidays with pay, a minimum of two weeks' annual holidays with pay, and additional paid holidays for workers engaged in dangerous or unhealthy occupations as prescribed;

/Note: United Kingdom delegation reserve on the length of paid holidays. /

4. Provision for a guaranteed weekly rest period.

III. Rights relating to wages

1. All workers have the right to a fair wage sufficient for a decent standard of living for themselves and their families.
2. All workers have the right to additional wages for any work performed at the request of the employer in addition to normal working hours.

(1) For a fuller development of the reserves expressed by members of the Working Party, see the report. ./.

[Note: At a later stage of the drafting of the Social Charter consideration should be given to the inclusion of a clause dealing with the conditions under which limitations of this right may be allowed.]

3. Men and women workers have the right to equal pay for work of equal value.
4. The exercise of these rights may be realised by voluntary collective agreement, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

[Note: Reserve by the Belgian and Italian delegations which would favour an obligatory text.]

5. Deductions from wages shall be permitted only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award.

[Note: Reserves by the United Kingdom, the German and the Greek delegations which object against provisions of a binding and detailed character.]

IV. Rights connected with industrial relations

With a view to ensuring or promoting the exercise of the rights of workers and employers in their mutual relations, the H.C.P.:

1. recognise the freedom of workers and employers to form local, national or international organisations and to join organisations for the protection of their economic and social interests, subject only to restrictions prescribed by law for reasons of national security or public interest, for the prevention of disorder or crime, or for the protection of the rights and freedoms of others. National law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. This provision shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State;

Note: Reserve by the delegation of Belgium which demands deletion of the words "or of the administration of the State"

2. will endeavour undertake to promote, where necessary and appropriate, machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
3. recognise for workers and employers the right to collective action, subject only to restrictions prescribed by law for reasons of national security or public interest, in case a conflict of interest cannot be settled by the means referred to in paragraph 4 of this Article;

Note: Reserve by the delegation of Italy concerning the admissibility for the Charter to recognise the right of lock-out

4. will endeavour to promote the establishment and use of appropriate and agreed machinery, for conciliation or arbitration, for the settlement of labour disputes;
5. will endeavour to encourage and promote joint consultation and collaboration of workers and employers, both on the level of the undertaking and on the industrial and the national level.

Note: Reserve by the delegation of Belgium. Consultation concerning the application of this right should take place with employers' and workers' organisations.
Reserve by the German delegation with respect to the end of paragraph 5

V. Protection of children and young persons

With a view to ensuring the exercise of the right of children and young persons to a special protection against the physical and moral hazards of their work, the H.C.P. will endeavour undertake to adopt the following measures, in so far as such measures are not left, under national schemes, to agreements between employers' and workers' organisations or are not normally carried out otherwise.

[Note: Reserve by the United Kingdom delegation. See reserve on article relating to just conditions of work.]

1. The minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health morals or education;

[Note: Reserve by the delegations of the Federal Republic of Germany and of Greece with reference to the age limit of 15 years (14 years)]

2. A higher minimum age of admission to employment shall be fixed with regard to prescribed occupations regarded as dangerous or unhealthy;
3. Persons who are still subject to compulsory education shall not be employed in such work as would deprive them of their education;
4. The working day of persons under 16 years of age shall be in accordance with the needs of their development and particularly with their need for vocational training;
5. Employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;

[Note: Reserve by the delegation of the United Kingdom concerning the obligatory character of the provisions of paragraphs 2, 4 and 5]

6. Persons of under 18 years of age shall not be employed in night work, with the exception of certain occupations provided for by national law and regulations;
7. Employed persons of under 18 years of age shall be subject to regular medical control, with the exception of certain occupations provided for by national law and regulations.

[Note: Reserve by the delegation of Greece with respect to the deleting of paragraph 3 of the draft of the Secretariat]

VI. Protection of women

With a view to ensuring the exercise of the right of employed women, and particularly expectant or nursing mothers, to a special protection in their work, the H.C.P. will endeavour undertake to adopt the following measures, in so far as these measures are not left, under national schemes, to agreements between employers' and workers' organisations or are not normally carried out otherwise:

Note: Reserve by the delegations of the United Kingdom and Norway. See reserve on article relating to just conditions of work.

1. Provision either by paid leave or by adequate social security benefits to enable women to take leave before and after childbirth up to a total of 12 weeks.
2. Dismissal from employment on grounds of maternity absence should be prohibited.
3. Mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

Note: Reserve by the delegation of Italy, this time being either paid or covered by social security benefits.
Reserve by the United Kingdom delegation with respect to paragraphs 2 and 3

VII. Provision of facilities for vocational guidance and training

The High Contracting Parties recognise the necessity of providing the individual with appropriate facilities for vocational guidance and training to enable him to choose an occupation suited to his personal aptitude and to his interests, thereby furthering the interests of society.

With these aims in view, the High Contracting Parties will endeavour:

1. to provide or promote the provision of the following facilities:
 - (a) assistance to individuals in solving problems related to occupational choice and progress with due regard for the individuals' characteristics and their relation to occupational opportunity; such assistance to be available both to young persons, including school children, and to adults;
 - (b) as necessary, the technical and vocational training of workers;
 - (c) a system of apprenticeship;
 - (d) as necessary, special facilities for retraining of adult workers where this is necessary as a consequence, particularly, of technological developments or of dislocations on the employment market.

2. to encourage the full utilisation of the facilities mentioned in this Article by appropriate measures, such as:
 - (a) reducing or abolishing any fees or charges relating to vocational guidance and training;
 - (b) granting financial assistance in appropriate cases;
 - (c) including in the normal working hours time spent on supplementary training, taken by the worker, at the request of his employer, during employment;
 - (d) ensuring, through adequate supervision, the efficiency of apprenticeship arrangements and the adequate protection of apprentices.

VIII. Social Security

Pro memoria.]

IX. Social Assistance

Pro memoria.]

X. Right of the disabled to rehabilitation and
resettlement

The High Contracting Parties recognise the right of disabled persons to rehabilitation and resettlement, whatever the origin and nature of their disability and whatever their age, in so far as medical and educational conditions permit and so long as there are reasonable possibilities of training and employment.

For this purpose adequate measures should be taken for the provision of training facilities, including specialised institutions where necessary.

Adequate measures should be taken for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment, and measures to encourage employers to admit disabled persons to employment.

XI. Right of the family to social and economic
protection

The High Contracting Parties, recognising the importance of the family as a fundamental unit of society, will endeavour to ensure the economic and social protection of family life.

XII. Right of mothers and children to social and
economic protection

The High Contracting Parties will take all appropriate and necessary measures for the effective protection of mothers and children, irrespective of marital status and family relations, including the establishment or maintenance of appropriate institutions for the purpose.

XIII. Right of migrant workers to access to employment in other member countries

The High Contracting Parties accept as an aim of policy the establishment of conditions permitting the nationals of any of them to engage in any wage-earning or salaried employment in the territory of any of the others, on a footing of full equality with the nationals of the latter, subject only to restrictions based on considerations of security, public order and public health.

∟Note: Reserve by the delegations of the Federal Republic of Germany, Greece and the United Kingdom, after rejection of the following text proposed by U.K.: "and provided that it is not to the detriment of the High Contracting Party's own nationals and that suitable employment is available."∟

∟Note: Amendments proposed by the Italian delegation

to substitute for the above text either:

1. Article 10 of the European Convention on Establishment
- or
2. "The High Contracting Parties undertake to permit the nationals of the others to engage freely in any employment"

Note: Reserve by the Italian delegation to text adopted.∟

To this end, the High Contracting Parties will endeavour:

- (a) to apply existing restrictions in a spirit of liberality;
- (b) to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
- (c) to strive, individually or collectively, to liberalise regulations governing the employment of foreign workers.

The High Contracting Parties will permit their own nationals to engage in gainful activity in the territories of other High Contracting Parties subject only to restrictions prescribed by law for reasons of national security or public interest.

Note: Amendment proposed by the Italian Delegation

to substitute all from "To this end" to "employment of foreign workers" by "To this end the High Contracting Parties undertake to abolish progressively all existing restrictions".

Note: Reserve by the Italian delegation to text adopted. /

XIV. Right of migrant workers to protection and assistance

With a view to ensuring or promoting the exercise of the rights of migrants to protection and assistance, the H.C.P.

1. will endeavour undertake to provide adequate and free services to assist migrants, particularly in obtaining accurate information, and to prevent so far as national laws and regulations permit misleading propaganda relating to emigration and immigration;
2. will endeavour undertake to adopt appropriate measures to facilitate the departure, journey and reception of migrants, and to provide appropriate services for health control and medical attention;
3. will endeavour in so far as such matters are regulated by law or regulations or are subject to the control of administrative authorities, to secure for migrants lawfully within their territories equal treatment with nationals with regard to the following matters:
 - (a) remuneration and other employment and working conditions;

- (b) membership of trade unions and enjoyment of the benefits of collective bargaining;
- (c) accommodation.

[Note: Reserve by the Belgian and Italian delegations which consider that 3 (a) and (c) should have an obligatory character.]

- 4. will endeavour [undertake] to secure for migrants equal treatment with nationals with regard to the following matters:
 - (a) employment taxes, dues or contributions payable in respect of employed persons, and
 - (b) legal proceedings relating to matters referred to in this Article.
- 5. will endeavour [undertake] further:
 - (a) to secure that migrants, subject to the completion of a reasonable period of employment or residence, are adequately protected against involuntary repatriation or expulsion;
 - (b) to permit, within legal limits, the transfer of such parts of the earnings and savings of the migrant as he may desire;
 - (c) to extend the protection and assistance provided for in this Article also to self-employed migrants in so far as such measures apply to this category.

[Note: Reserve by the delegation of Italy in principle to the general trend of this text.]

A P P E N D I X V

Proposal submitted by the
Delegation of the Federal Republic of Germany

Rights relating to the Family

(Alternative I)

The High Contracting Parties recognise that the family is of basic social and moral importance to society. They consider one of their aims and responsibilities to be to create or maintain such conditions as will protect the family, safeguard its right to lead its own life, and its integrity and facilitate the discharge of family responsibilities.

They will encourage the fullest discharge of individual and family obligations towards children, accept the responsibility of taking measures to protect the health and welfare and ensure the education of all children and young persons in accordance with the intention of the person in whom the right of education is vested, regardless, however of family circumstances.

With a view to ensuring the protection of family life the following measures should be taken, directly or in co-operation with local authorities and competent private organisations:

- aa) Strengthening of the own responsibility of the family.
- ab) Providing the possibility of leading a common family life.

- ac) Recognising the right of the parents to the care for and education of their children, and facilitating the discharge of the responsibilities involved; interference with such rights should only be permissible in accordance with legal provisions in case of failure of the person in whom the right of education is vested or where there is danger of the children being neglected for other reasons.

- ad) Recognising the right to maintenance and regulating by law the obligation of providing for such maintenance by defining the family members who have a right to, or are obliged to provide for, such maintenance, as well as the limits of such rights or obligations, respectively. Where a family is unable to provide for such maintenance, assistance should be given to such family, as may be required; where a family is deserted by its breadwinner, such family should be protected.

- b) Facilitating of the founding of homes, in particular by cheap loans and by preferential allocation of housing.

- c) Promotion of the erection of tenement houses with dwellings suitable for families or privately owned houses, in particular by financial aid and rent reduction for families with many children.

- e) Reductions in taxes and other dues as well as in the rates and fares of public utilities, railways etc., related to the size of the family.

- f) Encouragement of the provision of recreation facilities for families.

- g) Creation and maintenance of appropriate family counselling and home help services.

A P P E N D I X VI

Proposal submitted by the
Delegation of the Federal Republic of Germany

Rights of Mothers and Children

(Alternative I)

The High Contracting Parties recognise that motherhood should be particularly protected, and that mothers and children, irrespective of marital status and family relations, are entitled to special protection. For this purpose the following measures should be taken:

For the protection of mothers:

- aa) In respect of all mothers - in particular of those in families where there is no breadwinner - measures to ensure that such mothers can devote themselves exclusively to their household duties.
- ab) Encouragement of the provision of recreation facilities for mothers.
- ac) Appointment of an assistant in cases where the parental power solely rests with the mother.
- b) Creation and maintenance of appropriate counselling and help services.

For the protection of children:

- a) Creation and maintenance of appropriate counselling and help services.
- c) Measures to ensure that every minor is provided with a guardian and to regulate guardianship, as well as measures for the protection of foster children.
- d) Establishment of appropriate services for homeless children and juvenile delinquents, as well as for children in social and moral danger.
- e) Measures to protect the interests of minors in case of adoption.
- f) In respect of children born out of wedlock, the creation of equal conditions for their physical and mental development and for their social position.
- g) Protection of juveniles against moral danger arising out of unwholesome influences by alcoholic drinks, nicotine, films not suitable for juveniles, public dancing, variety, cabaret and revue shows as well as pornographic and trashy literature.

A P P E N D I X VII

Note by the U.K. Delegation

At the Fourth Session of the Social Committee, the United Kingdom delegation suggested that the Social Charter might contain two Parts, the first to be of a declaratory nature and applicable to all States and the second to embody binding provisions, from which Governments might individually decide those to which they wished to adhere. This note is intended to amplify that suggestion for the benefit of the Working Group.

Under the United Kingdom proposal, the First Part of the Charter would enunciate in general terms the various rights which Governments would recognise. It would also contain an undertaking by Governments to accept as an aim of policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the full enjoyment of those rights could be realised. It would thus be more than a mere declaration, and acceptance of this Part would be required of all Governments desirous of ratifying the Charter.

The Second Part would contain more precise obligations relating to each right. It would set out various measures to be taken to make more effective the full enjoyment of the rights, and would, to the extent that might be appropriate, contain certain elaborations of the rights enunciated in the First Part. On ratifying the Charter, Governments would be required to declare the extent to which they accepted the obligations in this Part. Ratification, however, would not depend on acceptance of all the obligations set forth therein. It is a matter for discussion whether any minimum should be set to the extent of the obligations to be accepted in this Part. The most flexible arrangement, and the one which would enable the widest ratification, would be to allow ratification on the basis of acceptance of the First Part only, leaving it to Governments to declare acceptance of as much of the Second Part as they could. It would be open to Governments to declare their acceptance of additional obligations in the Second Part, as and when they could do so.

By this means the Charter would retain the necessary flexibility, and would leave each country, while subscribing to the rights as a whole, to choose its own way of implementing each right. This is particularly necessary in the case of economic and social rights, because in a number of countries many of these rights are secured, not by the action of Governments, but by free agreement between employers and workers or their organisations, and it is desirable that those Member States in which certain rights are secured in this way should not be prevented, on that account, from ratifying the Charter.

To illustrate the type of Charter here described, drafts are attached of two Articles as they might appear in the First and Second Parts respectively.

A P P E N D I X VIIIProposal of the German Delegation

Article ...

This Charter shall be open to the signature of the Members of the Council of Europe. It shall be ratified.

Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe. The present Charter shall enter into force after the deposit of the th instrument of ratification. As regards any signatory ratifying subsequently, the Charter shall come into force on the date of the deposit of its instrument of ratification.

Any State may at the time of its ratification declare by notification addressed to the Secretary-General which of the articles of the Charter it considers as binding on it. Any signatory which shall have ratified the Charter may subsequently notify the Secretary-General of the Council of Europe that it accepts further obligations which it had not already accepted by its ratification. Such obligations accepted subsequently shall be deemed to be an integral part of the ratification, and shall have the same effect as the ratification as from the date of the notification addressed to the Secretary-General of the Council of Europe.

A P P E N D I X IX

Preliminary Draft Interim Report
to the Committee of Ministers
established by the Working Party
appointed to draft articles for
a European Social Charter

The Committee of Ministers, in its Special Message of 20th May 1954 to the Assembly, declared that it would "endeavour to elaborate a European Social Charter which would define the social objectives aimed at by Members and would guide the policy of the Council in the social field." "The preparation of the Charter", the Message continued, "would be entrusted to the Social Committee, which would decide on the form and content of the document and, in particular, consider whether, in addition to general principles, it should contain more definite provisions binding upon the signatories."

The Social Committee took up the task given it by the Committee of Ministers at its first session from 4th to 7th October 1954. It continued its study at the second (4th to 6th May 1955), third (24th to 27th April 1956) and fourth (29th January to 1st February 1957) sessions, examining the replies which it had received from the Governments to a series of questionnaires submitted to them and on the basis of which the Secretariat had prepared a number of commentaries and draft articles relating to the social and economic rights covered by each of the questionnaires.

In accordance with Resolution (56) 25 of the Committee of Ministers, the International Organisation of Employers, the International Confederation of Free Trade Unions and the International Federation of Christian Trade Unions were invited to consult with the Social Committee. So far only the last of these organisations has acted on the invitation, by making an oral statement at a special session of the Social Committee held during the latter's third session.

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At its fourth session the Social Committee had before it the text of Resolution (56) 25, adopted by the Committee of Ministers on 15th December 1956 and referring to Recommendation 104, adopted by the Assembly on 26th October 1956. Bearing in mind the timing laid down by the Resolution, the Committee proceeded to set up a Working Party to draft the text of the Social Charter, taking into account Recommendation 104 and the commentaries and draft texts prepared by the Secretariat.

The Working Party drafted a number of articles based on replies received from Governments to two questionnaires, suggestions made in Doc. CE/Soc (56) 19 prepared by the Secretariat-General and views previously expressed in the Social Committee. Account was also taken of Recommendation 104 of the Assembly and the draft Social Charter annexed thereto. The questionnaires referred to the following groups of rights:

First group: right to work, fair conditions of work, protection of children and adolescents, protection of women;

Second group: individual and collective rights and principles arising in the field of industrial relations, right of disabled persons to vocational and social rehabilitation, right of nationals of one Member State to take up employment in other member countries, right of migrant workers to protection and assistance, adoption of measures to facilitate vocational guidance and training, rights relating to wages, rights relating to the family.

The Working Party had its report submitted to the Social Committee at the latter's fifth session by its rapporteur, M. Delperée. The Social Committee examined this report as well as another group of rights relating to social security and social and medical assistance and a draft prepared by the Committee of Experts on Public Health which concerned the social rights and principles relating to public health. Lastly, it examined the replies from Member Governments to a final questionnaire concerning the right to an adequate standard of living, the right to food, clothing and housing and the right to social services.

It will be observed that the body of rights discussed in the foregoing summary of the activities of the Committee, tallies by and large with that contained in Part I of the draft appended to Recommendation 104 of the Assembly. Nevertheless the Social Committee had to make certain reservations, firstly over the right to education (Article I(M) of the Assembly draft) and, secondly, regarding the fundamental character of the Charter, in particular as to whether it should be in its broad outline a document binding upon the signatory States (method adopted in the Assembly draft) or rather a document of a declaratory character.

As regards the right to education, the Committee decided not to undertake a more detailed examination since there was some doubt whether the right in question could be regarded as properly forming part of a body of social and economic rights, and since it was already covered in the Protocol to the European Convention of Human Rights. Accordingly the Committee is merely submitting the question to the Committee of Ministers with a request for instructions as to the expediency of including rights related to education or teaching in the Social Charter. It will be noted that rights of the same kind are embodied in the Universal Declaration of Human Rights (Articles 26 (1) and 27 (1 and 2)), the United Nations draft Covenant on Economic, Social and Cultural Rights (Art. 14, paras. 2 (a, b and c) and 3 and Art. 15) and the American Declaration of the Rights and Duties of Man proclaimed at Bogota on 2nd May 1948 (Art. XII, XIII (1) and XV).7(1)

The question whether the Social Charter should have a declaratory or a binding form, was carefully examined and thoroughly discussed by the Committee and its Working Party, with particular reference to the considerations on this subject contained in Resolution (56) 25 of the Committee of Ministers. In the event the Social Committee, which, when examining the question, had before it an opinion prepared by I.L.O. concerning the implementation of the Charter by means of collective agreements, was divided over the interpretation of para. 2 of the Resolution.

(1) Those parts of this report in square brackets are left for subsequent decision by the Social Committee.

Some delegations thought that this instruction, seen in the context of the Resolution as a whole, gave fresh terms of reference to the Social Committee, which now had the task of elaborating a Social Charter containing provisions of a binding character. These delegations made the following points:

1. The Committee is instructed to take into account the draft appended to Recommendation 104 (1956) of the Assembly - a text which is drawn up in the form of binding provisions.
2. Paragraph 4 of the operative part of the Resolution speaks of the implementation of the Charter and also of supervising its implementation, which seems to presuppose the existence of binding provisions.
3. The third paragraph of the preamble to the Resolution states that a "Social Charter...which does not contain specific provisions binding upon the signatory States is of doubtful value, since comparable international instruments such as the Universal Declaration of Human Rights already exists within the framework of the United Nations."

Some other delegations, without going so far, thought that Resolution (56) 25 at all events implied a fresh starting point, since the Committee was now instructed to examine the possibility of incorporating binding provisions in the Charter by providing for implementation by stages and by recognising that this may be effected by means of collective agreements or other appropriate measures as well as by legislation. These delegations considered that, although leaving the Social Committee free to make up its own mind on the possibility of including binding provisions in the Charter, the Committee of Ministers had yet expressed a certain preference for an instrument of a binding character. The Resolution, moreover, contained new elements in that the Social Committee was now instructed to take the draft appended to Recommendation 104 into account and to consider measures for implementing the Charter.

Other delegations, finally, expressed the opinion that Resolution (56) 25 made no essential change in the terms of reference of the Committee as defined in the Special Message dated 20th May 1954 from the Committee of Ministers to the Assembly.

The Social Committee should, therefore, continue its work, taking into account the draft appended to Recommendation 104 and considering whether it would be possible, in the ways proposed in Resolution (56) 25, to incorporate some binding provisions in the Charter; but the Committee was perfectly free to give the Committee of Ministers such advice as it thought best on the issue of the Charter's binding or declaratory character. Moreover, there was no need to choose between these alternatives. The Charter might very well contain both binding provisions and declaratory provisions. Following up this idea, the United Kingdom delegation submitted a proposal to the effect that the Charter should comprise a first part of a declaratory character applicable to all the States and a second part containing optional binding provisions.

Under the United Kingdom proposal, the First Part of the Charter would enunciate in general terms the various rights which Governments would recognise. It would also contain an undertaking by Governments to accept as an aim of policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the full enjoyment of those rights could be realised. It would thus be more than a mere declaration, and acceptance of this Part would be required of all Governments desirous of ratifying the Charter.

The Second Part would contain more precise obligations relating to each right. It would set out various measures to be taken to make more effective the full enjoyment of the rights, and would, to the extent that might be appropriate, contain certain elaborations of the rights enunciated in the First Part. On ratifying the Charter, Governments would be required to declare the extent to which they accepted the obligations in this Part. Ratification, however, would not depend on acceptance of all the obligations set forth therein. It is a matter for discussion whether any minimum should be set to the extent of the obligations to be accepted in this Part.

In addition to the British proposal the Social Committee examined a proposal submitted by the delegation of the German Federal Republic, which took the form of an optional clause. The German proposal advocates a solution which, while respecting, in principle the declaratory character of the text relating to the various aims of the Social Charter, offers the possibility of making these texts binding in the sense that the signatory States could subsequently either at the time of signature or ratification or at a later stage, declare that they undertake binding obligations. This would apply to those aims which, in the opinion of the State concerned, it could undertake to accept. In order to facilitate the decision to be taken subsequently by the Committee in the light of the German proposal, the Working Party worded the articles in question in such a way that would readily enable them to be expressed in either a declaratory or a binding form. By and large this would merely mean changing the words "will endeavour" into "undertake".⁷(1)

(1) Those parts of this report in square brackets are left for subsequent decision by the Social Committee.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 15th May, 1957

Restricted
CE/Soc. (57) 7

Or. Fr.

SOCIAL COMMITTEE

(Fifth Session)

EUROPEAN SOCIAL CHARTER

Letter and Memorandum from the International
Federation of Christian Trade Unions.

Sir,

We learn that the Working Party set up by the Social Committee to prepare the final draft of the European Convention on Social and Economic Rights has now completed work and is to submit its conclusions to the Social Committee when that Committee meets at Strasbourg in July.

We regret that we had no opportunity of sending an observer to the meeting of the Working Party, and should be grateful if you could hear a representative of the International Federation of Christian Trade Unions at the July meeting of the Social Committee.

To ensure that a useful purpose will be served by this arrangement, we should be glad if you would supply us beforehand with the documents which the Working Party is to submit to the Social Committee, with the Minutes of the meeting held by the Social Committee in January 1957 and with the Minutes of the April meeting of the Working Party.

In anticipation of a favourable reply,

I remain, with thanks,

Yours obedient Servant,

A. VANISTENDAEL
Secretary-General

MEMORANDUM

SUBJECT: Doc. CE/Soc. (56) 15

1. The attitude of the I.F.C.T.U. to the draft Convention appearing in Doc. 536 of the Council of Europe, and to the work of the Consultative Assembly on this subject, was explained to the Social Committee at the special meeting held on 29th January, 1957. The I.F.C.T.U. would now like to put before the Social Committee a few comments on Doc. CE/Soc. (56) 15.
2. This document, though an excellent legal study, is open to criticism in some respects. The I.F.C.T.U. will mention only such points as it considers controversial, leaving its approval of the rest of the document to be implicitly understood.
3. The distinction made between such rights as the right to work, the right to food and housing and the right to social security, on the one hand, and the right to life and to freedom of thought, conscience and religion, on the other, seems somewhat vague and theoretical. It seems vague, since it is impossible to place on the same footing an "elementary" right such as the right to work, and one which is a corollary of it, such as the right to an adequate standard of living; or to link together the right to life, the infringement of which is subject to immediate penalties, and the right to freedom of thought, which is a principle rather than a right enforceable by penalties. It seems theoretical, because in a modern community the right to work is among the positive signs of the right to life, just as the right to social security or to decent housing is a sign of the right to set up a family.
4. This view may seem heretical to the purely legal mind, imbued with traditional theories from which it departs in many respects. It is, however, an outcome of the desire to adapt legal concepts to the social and economic realities

of present-day society, and to bring the law - an essentially conservative branch of study - into alignment with real life. It would seem, incidentally, that, by adopting certain of the definitions and concepts found in Doc. CE/Soc. (56) 15, the Social Charter would lag not only behind present-day economic and social conditions, but even behind domestic legislation. The right to work, for instance, is recognised in most member countries of the Council of Europe, if not in all, by the granting of unemployment benefits not as a matter of charity but in recognition of a right. An unemployed worker has the right to be registered with an employment bureau and to draw the appropriate benefits. Moreover, this right may be enforced by individual appeal should registration be refused. The appeal is administrative in the first instance, but may be taken to law in the event of rejection. Though these observations may invalidate some of the arguments in Doc. CE/Soc. (56) 15, they are in no way incompatible with the case made out in the document for the complementary nature of individual rights and positive principles; from which it follows that the Charter should take both into account.

5. The document under consideration regards social and economic rights as "partial" rights, because "the individual beneficiary has no legal claim" to them. Here again, it faithfully reflects legal theory in its attitude towards some of these rights, but takes no account of social developments. For while our legislation, inherited from the 18th and 19th centuries, has remained essentially individualistic, the social aspects of rights and duties have gradually gained the ascendancy over their individual aspects. This applies, for instance, to the property law, where the number of people who still venture to defend the classical "ius utendi et abutendi" is steadily diminishing. Thus we are justified in asking whether a right which is sanctioned by a social demand instead of by an individual legal claim should not be regarded as a full right, supported by social sanctions whereby the individual has the right to plead his case through collective organisations. This would mean that, in addition to individual rights which an individual may uphold in a court of law, we should be witnessing the development of social rights, accompanied by social sanctions and collective, legal, administrative or other action, resulting from the recognition of the right of association.

6. Point 4 of the Conclusions of Doc. CE/Soc. (56) 15 suggests that it would be preferable to avoid the formula

"everyone has the right . . .", so as to beg the question of the individual beneficiary. The I.F.O.T.U. would point out that to abandon an excessively individualistic view of the law in no way detracts from the rights of the individual as beneficiary of any social measure, but considers that the version of the draft Convention appearing in Doc. 536 is preferable to a list incorporating the word "everyone" but preceded by a provision so general as to rule out any real commitment.

7. The wording of paragraph 5 of the Conclusions is slightly ambiguous. The refusal of a State to pledge itself to take positive steps to ensure the exercise of a right does not necessarily imply that it denies the existence of that right. It is true, on the other hand, that the mere recognition of a right is insufficient, and that the European Convention on Social and Economic Rights can be of real value only if supported by positive undertakings on the part of the signatory States.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 16th May 1957.

Restricted
CE/Soc (57) 8
Or. Fr.

SOCIAL COMMITTEE

Fifth Session

EUROPEAN SOCIAL CHARTER

Memorandum of the Belgian Delegation on the implementation of the Charter

At the meeting held in Strasbourg from 9th April to 12th April 1957 of the Working Party set up to prepare the Articles of a draft European Social Charter, the Belgian delegation announced its intention of presenting a text concerning the implementation of the Charter on the assumption that it would contain at least a certain number of compulsory provisions.

The Belgian delegation, which has always advocated a Charter binding on the signatories, considers, however - in the hope of reaching a compromise solution acceptable to all - that the British and German proposals regarding the nature and legal scope of the Charter could be combined and clarified in such a way as not to leave it entirely to the Member States to decide on the extent of their undertakings.

The Belgian delegation points out that the terms of reference assigned to the Social Committee by the Committee of Ministers in its Resolution of 15th December 1956 were to determine whether and to what extent definite and detailed provisions could be introduced into the Charter by providing for its implementation by stages, and to consider measures of implementation which would allow employers' and trade union organisations to assist in supervising its implementation.

It shares the view of the British delegation that the Charter might consist of two sections, the first being of a declaratory nature and the second comprising compulsory provisions regarding the application of the principles set forth in the first section. Nevertheless, it considers that the two sections cannot be considered separately but as forming a whole, which will be submitted to the Member States for ratification.

In ratifying the Social Charter, the Governments would undertake to adopt the first section as setting forth the aims of their social policy to be pursued at the national and international level. The second section would comprise definite binding provisions. Ratification would only be valid if the State undertook to accept certain minimum obligations to be determined; this system is based on the International Labour Convention No. 102 on minimum standards of social security.

The States would be asked to draw up an Annual report describing the measures taken to bring into force the rights they had accepted; reports would also be drawn up from time to time explaining the reasons for which they were not in a position to agree to other rights but stating the arrangements they were making to establish them gradually. If the reports dealt with matters which were already the subject of international labour conventions, the Governments could refer to the reports they send to the I.L.O. The reports would be communicated to the most widely representative employers' and trade union organisations.

The Belgian delegation suggests that these reports should be examined by European experts selected from the I.L.O. Experts' Committees on the application of international labour conventions and recommendations, with the help of the Secretariat-General of the Council of Europe and the technical assistance of I.L.O.; the Experts' reports and conclusions would then be submitted to a Committee of the fewest possible members. The Belgian delegation considers that a tripartite committee of 15 members would be adequate.

Recourse to the I.L.O. Committee of Experts would be useful in the examination of the reports and help towards standardising jurisprudence in the interpretation of similar provisions. The Committee of Experts could meet immediately after the I.L.O. Committee of Experts. The tripartite committee would then submit a report to the Committee of Ministers to enable it to comment on the way in which Member

States fulfil the obligations incurred by the ratification of the Charter. The Assembly would also receive the report for information and would be invited to make such recommendations as it considered necessary to the Committee of Ministers.

The final articles of the Charter might therefore, depending on the extent to which these suggestions are adopted, be drafted as follows:

Articles of Procedure:

- (a) This Charter is open to the signature of the Member States of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.
- (b) The present Charter shall enter into force after five instruments of ratification have been deposited.
- (c) In respect of any signatory ratifying subsequently, this Charter shall enter into force at the date of the deposit of its instrument of ratification.
- (d) Every Member which ratifies this Charter undertakes:
 - (i) to consider the first section of this Charter as a declaration of the aims which it will pursue by all possible means;
 - (ii) to consider itself bound by ... of the X provisions appearing in the second section of the Charter, namely by the following provisions:

.....
- (e) Any Member ratifying this Charter may, subsequently, notify the Secretary-General of the Council of Europe that it accepts the provisions of the Charter as regards one or other of Articles X to Y which were not specified in its ratification. These undertakings shall be regarded as an integral part of the ratification with identical effect from the date of the notification.

Articles of Implementation

- (a) Any Member ratifying this Charter undertakes to submit to the Secretary-General of the Council of Europe an annual report, in a form to be determined by the Committee of Ministers on the provisions to which it has adhered.
- (b) Any Member ratifying this Charter shall send to the Secretary-General of the Council of Europe, at the intervals and in the form determined by the Committee of Ministers, reports on the state of its legislation and practice relating to the provisions of each of the Articles X to Y which it did not accept at the time of its ratification or in a subsequent notification.
- (c) The Members shall communicate copies of the annual and periodical reports to the most widely representative employers' and trade union organisations.
- (d) The report shall be examined by a committee of European experts selected from the I.L.O. Committee of Experts on the application of conventions and recommendations. This Committee shall be assisted by the Secretariat-General of the Council of Europe and the International Labour Office.
- (e) The reports and conclusions of the Committee of Experts shall be submitted to a tripartite committee representing in equal membership the Governments, employers and workers.

The Members shall be nominated by the Committee of Ministers after consultation with Governments and the appropriate employer and worker organisations.
- (f) The tripartite committee shall meet once a year. It shall be re-elected every three years.

It shall present an annual report to the Assembly and to the Committee of Ministers.

The Committee of Ministers shall, on the basis of this report, make to each Member State any necessary recommendations and useful observations on the manner in which the State fulfils the obligations arising from the ratification of this Charter.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 14th May 1957

Restricted
CE/Soc (57) 9
Cr. Eng.

SOCIAL COMMITTEE

(Fifth Session)

EUROPEAN SOCIAL CHARTER

NOTE BY THE UNITED KINGDOM DELEGATION

At the meeting of the Working Party between 9th and 12th April, 1957, (CE/Soc/WPI (57) 13), the United Kingdom delegation circulated an illustrative draft of the way in which the European Social Charter might be drawn up (Appendix VI of CE/Soc/WPI (57) 13). Another proposal for the form of the Charter was circulated by the German delegation (Appendix VII of CE/Soc/WPI (57) 13). The United Kingdom delegation expressed the view that the two proposals were not altogether incompatible, but that it might be useful to have a more detailed version of the British draft. It declared its willingness to circulate such a draft, covering all the rights discussed by the Working Party, for the information of the Social Committee. This draft is appended to the present note.

The texts of the articles in this draft follow as nearly as possible those adopted by the Working Party, which have been altered only to the extent that was necessitated by the different form of the suggested United Kingdom draft. This does not imply, however, that the United Kingdom is in agreement with everything in these texts, either in the First or the Second Part.

The Third Part of the appended draft follows the German proposal closely. It assumes that countries would accept binding obligations in respect of as many of the articles in the Second Part as they were able.

EUROPEAN SOCIAL CHARTERSuggested draft of the first 16 RightsFirst Part:

1. The High Contracting Parties accept as an aim of policy to be pursued by all appropriate means both national and international in character the attainment of conditions in which the rights and principles set forth hereafter in this First Part may be effectively realised.
2. Everyone should have the opportunity to earn his living in a freely accepted occupation.
3. All workers have the right to just conditions of work.
4. All workers have the right to safe and healthy working conditions.
5. All workers have the right to a fair wage sufficient for a decent standard of living for themselves and their families.
6. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
7. All workers and employers have the right to bargain collectively.
8. Children and young persons have the right to a special protection against the physical and moral hazards of their work.
9. Employed women, and particularly expectant or nursing mothers, have the right to a special protection in their work.
10. The individual has the right to appropriate facilities for vocational guidance and training to enable him to choose an occupation suited to his personal aptitude and to his interests.
11. (Social Security)
12. (Social assistance)

13. Disabled persons have the right to rehabilitation and resettlement, whatever the origin and nature of their disability and whatever their age, in so far as medical and educational conditions permit and so long as there are reasonable possibilities of training and employment.

14. Because of the importance of the family as a fundamental unit of society it has the right to appropriate social and economic protection.

15. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.

16. The nationals of any of the High Contracting Parties have the right to engage in any wage earning or salaried employment in the territory of any of the others, on a footing of full equality with the nationals of the latter, subject only to restrictions based on considerations of security, public order and public health.

17. Migrant workers have the right to protection and assistance.

Second Part:

The right to work

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

- (1) to accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of employment;
- (2) to protect effectively the right of the worker ⁽⁴⁾ freely to choose any available occupation, though this provision shall not be interpreted as prohibiting or authorising any union security clause or practice;
- (3) to establish or maintain free employment services;
- (4) to promote appropriate vocational guidance, training and rehabilitation.

The right to just conditions of work

With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not left under national schemes to agreements between employers' and workers' organisations or are not normally carried out otherwise:

- (5) to provide for reasonable daily and weekly working hours, the working week to be progressively reduced, to the extent that the increase of productivity and other relevant factors permit;
- (6) to provide for recognised public holidays with pay, a minimum of two weeks' annual holidays with pay, and additional paid holidays for workers engaged in dangerous or unhealthy occupations as prescribed;
- (7) to provide for a guaranteed weekly rest period.

The right to safe and healthy working conditions

- (8) With a view to ensuring the effective exercise of this right the High Contracting Parties undertake to provide for adequate protection of life and health during work.

The right to a fair wage

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

- (9) to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award;

and recognise:

- (10) the right of all workers to additional wages for any work performed at the request of the employer in addition to normal working hours;

- (11) the right of men and women workers to equal pay for work of equal value.

The exercise of these rights may be realised by voluntary collective agreement, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

The right to organise

- (12) With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations and to join organisations for the protection of their economic and social interests, the High Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom, subject only to restrictions prescribed by law for reasons of national security or public interest or for the prevention of disorder or crime or for the protection of the rights and freedoms of others. Restrictions may be lawfully imposed on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

The right to bargain collectively

With a view to the promotion of this right the High Contracting Parties will endeavour:

- (13) to promote, where necessary and appropriate, machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- (14) to promote the establishment and use of appropriate and agreed machinery for conciliation or arbitration for the settlement of labour disputes;
- (15) to encourage and promote joint consultation and collaboration of workers and employers both on the level of the undertaking and on the industrial and the national level;

and recognise:

- (16) the right of workers and employers to collective action, subject only to restrictions prescribed by law for reasons of national security or public interest, in case a conflict of interest cannot be settled through the appropriate and agreed machinery for conciliation or arbitration.

The right of children and young persons
to protection

With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not left under national schemes to agreements between employers' and workers' organisations or are not normally carried out otherwise:

- (17) to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;
- (18) to provide that a higher minimum age of admission to employment shall be fixed with regard to prescribed occupations regarded as dangerous or unhealthy;
- (19) to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of their education;
- (20) to provide that the working day of persons under 16 years of age shall be in accordance with the needs of their development and particularly with their need for vocational training;
- (21) to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
- (22) to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national law and regulations;
- (23) to provide that employed persons under 18 years of age shall be subject to regular medical control, with the exception of certain occupations provided for by national law and regulations.

The right of women to protection

With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not left under national schemes to agreement between employers' and workers' organisations or are not normally carried out otherwise:

- (24) to provide either by paid leave or by adequate social security benefits for women to take leave before and after childbirth up to a total of 12 weeks;
- (25) to prohibit dismissal from employment on grounds of maternity absence;
- (26) to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

The right to vocational guidance

With a view to ensuring the effective exercise of this right the High Contracting Parties will endeavour:

- (27) to provide or promote assistance to individuals in solving problems related to occupational choice and progress with due regard for the individual's characteristics and their relation to occupational opportunity; such assistance to be available both to young persons, including school children, and to adults;
- (28) to encourage the full utilisation of the facilities provided, by appropriate measures such as reducing or abolishing any fees or charges.

The right to vocational training

With a view to ensuring the effective exercise of this right the High Contracting Parties will endeavour:

- (29) to provide or promote, as necessary, the technical and vocational training of workers;
- (30) to provide or promote a system of apprenticeship;

(31) to provide or promote, as necessary, special facilities for re-training of adult workers where this is necessary as a consequence, particularly, of technological developments or of dislocations of the employment market.

and will endeavour to encourage the full utilisation of the facilities provided, by appropriate measures such as:

(32) reducing or abolishing any fees or charges;

(33) granting financial assistance in appropriate cases;

(34) including in the normal working hours time spent on supplementary training taken by the workman, at the request of his employer, during employment;

(35) ensuring, through adequate supervision, the efficiency of apprenticeship arrangements and the adequate protection of apprentices.

The right to social security

(to be drafted)

The right to social assistance

(to be drafted)

The right of the disabled to rehabilitation and resettlement

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

(36) to take adequate measures for the provision of training facilities, including specialised institutions where necessary;

(37) to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment, and measures to encourage employers to admit disabled persons to employment.

The right of the family to social and
economic protection

- (38) The High Contracting Parties, recognising the importance of the family as a fundamental unit of society, will endeavour to ensure the economic and social protection of family life.

The right of mothers and children to
social and economic protection

- (39) With a view to ensuring the effective exercise of this right the High Contracting Parties will take all appropriate and necessary measures for the effective protection of mothers and children including the establishment or maintenance of appropriate institutions for the purpose.

The right of access to employment
in other member countries

With a view to promoting the effective exercise of this right the High Contracting Parties will endeavour:

- (40) to apply existing restrictions in a spirit of liberality;
- (41) to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
- (42) to liberalise, individually or collectively, regulations governing the employment of foreign workers;
- (43) to permit their own nationals to engage in gainful activity in the territories of the other Member States subject only to restrictions prescribed by law for reasons of national security or public interest.

The right of migrant workers to protection
and assistance

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

- (44) to provide adequate and free services to assist migrants, particularly in obtaining accurate information, and to prevent, so far as national laws and regulations permit, misleading propaganda relating to emigration and immigration;
- (45) to adopt appropriate measures to facilitate the departure, journey and reception of migrants, and to provide appropriate services for health control and medical attention;
- (46) to endeavour in so far as such matters are regulated by law or regulations or are subject to the control of administrative authorities, to secure for migrants lawfully within their territories equal treatment with nationals with regard to the following matters:
 - (i) remuneration and other employment and working conditions;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
- (47) to secure for migrants equal treatment with nationals with regard to the following matters:
 - (i) employment taxes, dues or contributions payable in respect of employed persons, and
 - (ii) legal proceedings relating to matters referred to in this Article;
- (48) to secure that migrants, subject to the completion of a reasonable period of employment or residence, are adequately protected against involuntary repatriation or expulsion;
- (49) to permit, within legal limits, the transfer of such parts of the earnings and savings of the migrant as he may desire;

(50) to extend the protection and assistance provided for in this Article also to self-employed migrants in so far as such measures apply to this category.

Third Part:

1. This Charter shall be open to the signature of the Members of the Council of Europe. It shall be ratified.
2. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe. The present Charter shall enter into force after the deposit of the nth instrument of ratification. As regards any signatories ratifying subsequently, the Charter shall come into force on the date of the deposit of its instrument of ratification.
3. Ratification shall be dependent on acceptance at least of the First Part of the Charter.
4. Any State may at the time of its ratification declare by notification addressed to the Secretary-General which of the undertakings in the Second Part of the Charter it is prepared to give. Any signatory which shall have ratified the Charter may subsequently notify the Secretary-General of the Council of Europe that it is prepared to give further undertakings which it had not already given at the time of its ratification. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, and shall have the same effect as the ratification as from the date of the notification addressed to the Secretary-General of the Council of Europe.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 20th June 1957

Restricted

CE/Soc (57) 12

Cr. Fr.

SOCIAL COMMITTEE

(Fifth Session)

EUROPEAN SOCIAL CHARTER

(Rights relating to health, a proper standard of living etc.)

R E P O R T

prepared by the Social Division of the Research Directorate on the basis of replies from Governments to the Questionnaire drawn up by the Social Committee

Chapter I

Part I

At its Third Session, the Social Committee decided that one of the fields covered by the Social Charter should be public health. On its recommendation, the Ministers' Deputies decided at their 40th meeting to request the Committee of Experts on Public Health to draft a number of questions for transmission to the Governments in the form of a questionnaire, so that the relevant articles of the Charter could be based on the replies received. The Committee of Experts accordingly submitted to the Ministers' Deputies a draft questionnaire, which was put before the Social Committee at its Fourth Session (Doc. CE/Soc (56) 21 - see Appendix I to the present Report) and sent to the Governments. The replies received from Governments on rights relating to health are attached at Appendix II. Part I of the next Chapter contains a brief analysis of these replies, together with specimen articles drafted by the Secretariat-General.

Part 2

At its Fourth Session, the Social Committee also selected certain proposals from a provisional list prepared by the Secretariat-General (Appendix II to Doc. CE/Soc (56) 4). These proposals related to the following rights: "Right to an adequate standard of living", "Right to food, clothing, housing" and "Right to social services". The Committee requested Governments (see Appendix I to the present Report) to indicate whether the above three rights should be included in the Charter and, if so, in what form. Governments were also informed that similar rights were embodied in the draft Social Charter presented by the Assembly in its Recommendation 104. The replies received from Governments to date (1), which appear in Appendix II to this Report, are analysed and used as a basis for draft articles in Part 2 of the next Chapter.

Part 3

With regard to rights relating to education, which are also included in the provisional list (Doc. CE/Soc (56) 4, Appendix II), the Committee decided not to incorporate them in the Charter at the present stage. On the other hand, it decided to mention them in its interim Report to the Committee of Ministers and ask for instructions regarding the advisability of including them in the Charter.

(1) No replies have yet been received from the following Governments: France, Greece, Iceland, Ireland and Italy.

Part 4

It should be further noted that the Social Committee has still to draft articles on rights relating to social security and social and medical assistance. In view of the conclusions of the Third Session of the Social Committee (see Doc. CM (56) 63, page 4), which state that these provisions are to be based on the work of the Committee of Experts on Social Security, the Secretariat-General has prepared a "draft text of certain articles" in two alternative versions (Doc. CE/Soc (56) 19, Part II) at the request of the Social Committees. These provisions also should therefore be examined by the Social Committee at its forthcoming session.

CHAPTER II

Part 1

Rights relating to health

(a) General Remarks

The basic text, drawn up by the Committee of Experts on Public Health and reproduced at the head of the Questionnaire (see Doc. CE/Soc (56) 21, attached at Appendix I), draws its inspiration from the preamble to the Constitution of the World Health Organisation adopted on 22nd July 1946, from which the following clauses may be quoted:

"Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

"The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

"The health of all peoples is fundamental to the attainment of peace and security and is dependent upon the fullest co-operation of individuals and States.

"The achievement of any State in the promotion and protection of health is of value to all.

"Unequal development in different countries in the promotion of health and control of disease, especially communicable disease, is a common danger.

.....

"The extension to all peoples of the benefits of medical, psychological and related knowledge is essential to the fullest attainment of health.

.....

"Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures."

The same clauses influenced the authors of the draft Covenant on Economic, Social and Cultural Rights adopted by the United Nations Commission on Human Rights on 16th April 1954. Article 13 of the draft Covenant proclaims "the right of everyone to the enjoyment of the highest attainable standard of health".⁽¹⁾

Following the amendments to this text made by the Assembly in Article 1 (I) of the draft Social Charter appended to Recommendation 104, the Committee of Experts on Public Health defined the right in question in more precise terms. Thus the words "right ... to the enjoyment of the highest attainable standard of health" were replaced in the Assembly text by the words "right to a high standard of health⁽²⁾ (and in that of the Experts by the words "to benefit from all measures which will enable him to enjoy the highest possible standard of health attainable.") On the other hand an appreciable difference will be noted between the Assembly's text (almost identical with the United Nations draft Covenant) and that of the Experts, as regards the measures to be taken by Member States in order to ensure the exercise of this right. On this point the Experts' text (Paras. 3 and 4) seems to be more cautiously and realistically worded than the corresponding clauses of the Assembly's text (paras. (a) to (d)). Secondly, as the reply from the Government of the Federal Republic of Germany points out, paragraph 4 (b) of the Experts' text, which concerns rehabilitation and ensuring adequate medical attention, should be omitted, since the matter is already covered in another connection in the draft Articles to be examined by the Social Committee (see Doc. CE/Soc (57) 5, Appendix IV, Point X, and Doc. CE/Soc (56) 19, Part II - social and medical assistance).

(1) Cf. Article 25 of the Universal Declaration of Human Rights and also Article 13 of the draft Covenant, as amended by the Third Committee of the United Nations General Assembly (see Doc. CE/Soc (57) 10).

The German Government's reply raises another question, namely the legal implications of the right to health, with particular reference to the responsibility of Governments under the terms of paragraph 3 of the Experts' text. The German Government considers that a more precise definition is required either of the concept of health mentioned in paragraph 1 or of the responsibility of Governments mentioned in paragraph 3, and suggests that this might be provided by adding the words "so far as conditions in the country allow" to the latter. It seems doubtful, however, whether such a qualification would be sufficient to mitigate the legal consequences of a Government's responsibility under paragraph 3 of the Experts' text, since the text states that this responsibility "can be fulfilled only by the provision of adequate health and social measures" - some of which are immediately specified in paragraph 4.

It was probably for the same reasons that the Government of the Federal Republic of Germany, supported on this point by the replies of Belgium, Denmark(1), the United Kingdom and Turkey, advocated a definition of the right to health in the form of a declaration of principle. In view of the above remarks on the legal consequences of Member States being responsible for the health of their citizens, the Secretariat has prepared alternative provisional articles (see below), adding certain phrases taken from the Assembly draft (cf. paragraph 2 (b), (iii)). Moreover, the difficulties mentioned by the Government of the Federal Republic of Germany with regard to the inclusion of a definition of health in the Charter raise the question whether such a definition might not be dispensed with. It will be noted that the corresponding definition has been deleted from the new version of the United Nations draft (Art. 13), as amended by the General Assembly and reproduced in Doc. CE/Soc (57) 10. In view of this, the relevant passage in the draft Articles below has been placed in square brackets.

(1) But the Danish Government states that it is not opposed to a binding form of wording.

(b) Draft articlesAlternative I (declaration).

"1. Considering health as a state of complete physical, mental and social well-being, everybody has the right to benefit from all measures enabling him to enjoy the highest possible standard of health attainable.

Alternative

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

(a) recognise that, subject to the individual responsibility of their nationals, and so far as the political and administrative conditions of the country allow, they have a certain responsibility for the health of their population

Alternative

(b) will endeavour, either directly or in co-operation with local authorities and private organisations, to take appropriate measures designed inter alia:

(i) to remove as far as possible the causes of ill-health;

(ii) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

See Constitution of W.H.O., Chapter II, Article 2(g) (iii) to prevent as far as possible epidemic, endemic and other diseases."

and
Assembly draft,
Article 1, I (c).

Alternative II (binding text)

"With a view to ensuring that everyone has the right to benefit from all measures enabling him to enjoy the highest possible standard of health attainable, the High Contracting Parties,

Variant

Considering that health is a state of complete physical, mental and social well-being,

Variant / Recognising that, subject to the individual responsibility of their nationals, and so far as the political and administrative conditions of the country allow, they have a certain responsibility for the health of their population /

Will, either directly or in co-operation with local authorities and private organisations, take appropriate measures designed inter alia:

(i) to remove as far as possible the causes of ill-health;

(ii) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;

See Consti-
tution of W.H.O.,
Chapter II,
Article 2(g)
and
Assembly draft,
Article 1, I (c).

(iii) to prevent as far as possible epidemic, endemic and other diseases."

Part 2

The right to a proper standard of living, including adequate food, clothing and housing.

(a) General comments

In the opinion of the Governments of Belgium and the Federal Republic of Germany, it would be preferable to include these rights in the Preamble to the Charter. In the opinion of the Governments of Denmark, the Netherlands, the United Kingdom and Turkey, these provisions should, at most, take the form of a declaration.

The right to a proper standard of living, mentioned in Article 1, Section G, of the draft Convention submitted by the Assembly, appears in the following international instruments:

Universal declaration of Human Rights;

Article 25 (1): "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and..."

Draft United Nations Covenant on Economic, Social and Cultural Rights.

Article 11: "The States...recognise the right of everyone to adequate food, clothing and housing".

Article 12: "The States...recognise the right of everyone to an adequate standard of living and the continuous improvement of living conditions."

The Constitution of the I.L.O. provides for the carrying out of programmes designed to achieve a "raising of standards of living" as well as "adequate nutrition and housing" (Article III, i). In addition, many I.L.O. instruments stipulate the provision of adequate housing (see Doc. AS/Soc (7) 32, pages 26 and 27).

Inter-American Charter of Social Guarantees
(Bogotá, 2nd May, 1946):

"Workers have the right to share in the equitable distribution of the national well-being by obtaining the necessary food, clothing and housing at reasonable prices (cf. Article 1 of the Assembly draft, Section G, paras. (a) and (b)).

As certain Governments have already noted in their replies to the Questionnaire, the right to an adequate standard of living seems to be covered, so far as workers are concerned, by the Working Party's text on rights relating to wages (Doc. CE/Soc (57) 5, Appendix IV, point III: "All workers have the right to a fair wage sufficient for a decent standard of living for themselves and their families."

To avoid duplication, therefore, it might be preferable to follow the lead of the Governments which wish to insert this right in the Preamble to the Charter. A proposal on these lines will be found in the following draft Articles provisionally prepared by the Secretariat.

(b) Draft ArticlesThe right to an adequate standard of living, etc..Variant I Text for insertion in the Preamble:

-(see para. 1 of the Preamble to the Assembly's Draft - Rec.104). "The High Contracting Parties recognise that the object of this Charter is to promote a progressive improvement in the well-being of their nationals by a continuous raising of living standards and by the equitable sharing of resources and burdens."

Variant II Article for inclusion in the body of the Charter in the form of a declaration:

-(See Art. 25 of the Universal Declaration (quoted above)). "The High Contracting Parties recognise that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing and housing".

Part 3The Right to Social Services(a) General Comments

In their replies to the Questionnaire, the Governments of the United Kingdom and the Federal Republic of Germany saw no purpose in the Social Charter containing a general provision on social services since social services are already specifically covered in the context of other rights dealt with or still to be examined by the Social Committee. The Belgian Government takes the view that these provisions should be of a binding nature and come under the section on social security. On the other hand, the Governments of the Netherlands and Denmark are in favour of a general provision modelled on the text of Article 1, Section L, of the Draft Charter submitted by the Assembly. It will be recalled that this Section, entitled "The right to social and cultural aid and guidance" is worded as follows:

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

- (a) promote or maintain, directly or in collaboration with local authorities and appropriate voluntary organisations, social welfare services for aid and guidance to the individual in industrialised society;
- (b) secure the provision of free legal advice and assistance to those who need it."

The replies of the above Governments call for the following comments by the Secretariat:

- (1) It is true that the draft Articles originally proposed by the Secretariat in its Doc. CE/Soc (56) 19 and the amendments thereto put forward by the Federal Republic of Germany (see Doc. CE/Soc. (57) 5, Appendices V and VII) stipulated the provision of certain social services, but the text finally adopted considerably reduced their scope. Indeed, following the Working Party's rejection of the German amendments, its version of the draft Charter contains no specific provision relating to social services, apart from the field of employment and working conditions. It is difficult to see, therefore, how the present terms of the draft Charter could be used as an argument against the inclusion of a general article on social services.
- (2) The underlying idea of the Assembly when it drafted a general article on social services (see Article 1, Section L, of its draft Charter) seems to have been the need to set up, on both a national and a local scale, general assistance and guidance services which would be accessible to every individual and family and would help them to see their way through the maze of administrative and other bodies, each acting within its own specific field of social life. If the Services devoted strictly to social welfare are to be effective, it seems essential that they should be co-ordinated by means of general guidance services.

- (3) It would seem for the same reasons, that these general services could hardly, as the Belgian Government proposes, form part of the social security system, nor, as the United Kingdom Government proposes, be conceived as welfare services like the social services proper. The distinctive feature of the general services is that they provide guidance rather than welfare.
- (4) It has been left to the discretion of the Social Committee whether the text on this subject should be binding in nature, as proposed by the Danish Government on the basis of the Assembly's text, which is also acceptable to the Netherlands Government, provided that the words "in industrialised society" are deleted.

(b) Draft Articles

It is proposed that the text of Article 1, Section L, of the Assembly draft be adopted, omitting the words "in industrialised society". The words "undertake to" could, if need be, be replaced by the words "will endeavour to".

A P P E N D I X I

EUROPEAN SOCIAL CHARTER

(Draft Questionnaire relating to
public health)

Prepared by
the Committee of Experts on Public Health

1. Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.
2. Every person has the right to benefit from all measures which will enable him to enjoy the highest possible standard of health attainable.
3. Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.
4. Such measures may be taken either by the State or by local authorities or private organisations; in the public health field itself these will include in particular such measures as will:
 - (a) tend to remove as far as possible the causes of ill health;
 - (b) ensure adequate medical attention in case of sickness and suitable means of rehabilitation;
 - (c) make available advice and education facilities for the promotion of health and the encouragement of individual responsibility.

./.

Questionnaire:

1. Are these principles acceptable to you?
2. Should these principles appear in a European Social Charter as a declaration of principles or in the form of commitments binding the signatory States?
3. Have you any remarks to make on the nature of these principles or any observations of a general character?

Note: The Committee of Experts on Public Health decided to limit itself strictly to the health aspects of the question. It considers it necessary, however, not to overlook the considerable influence which certain social factors may have on the promotion of the health of individuals. The Committee also considers that the countries concerned should contribute to the promotion of health by means of effective co-operation, in particular within the framework of international organisations.

Strasbourg, 14th February, 1957

Your Excellency,

I have the honour to inform you that the Social Committee at its 4th Session, in pursuance of its preparatory work relating to the establishment of the European Social Charter, decided to consult the Governments on the inclusion in the Charter of certain rights not covered by previous questionnaires established by the Committee and replied to by the Governments.

Rights Relating to Health

The Committee had before it Documents CE/Soc (56) 21 prepared at its request by the Committee of Experts on Public Health concerning the inclusion in the Charter of certain rights and principles relating to health. It decided to transmit this document to the Governments requesting them to be good enough to reply to the questions contained therein. I am therefore enclosing this document.

Other rights

The Committee further decided to request the opinion of the Governments with regard to the inclusion in the Charter of the following rights:

The right to an adequate standard of living;

The right to food, clothing and housing;

The right to social services.

The Committee did not consider it necessary in this connection that the replies should be based on the detailed standard questionnaire previously established by the Committee. The Governments are requested simply to state their opinion as to whether and in what form the above-mentioned rights should be included in the Charter.

It should be noted that the draft text of a European Convention on Social and Economic Rights, which is appended to Assembly Recommendation 104 (1956) which appears in the list of Texts Adopted sent to Governments by letter D/13.070 of 9th November 1956, contains provisions covering all the above rights, see Article 1(I) concerning the right to a high standard of health; Article 1 (G) with regard to the right to a proper standard of living and Article 1 (L) concerning the right to social and cultural aid and guidance.

As the Social Committee will hold its 5th Session from 16th to 19th July 1957, I should greatly appreciate it if Your Excellency would be good enough to arrange for the replies to the above questions to reach me not later than 1st May 1957.

I am,

Your Excellency's obedient Servant,

G. SCHLOESSER,
Clerk of the Assembly
(for the Acting Secretary-General)

Encl.

CE/Sec (56) 21

A P P E N D I X I I

*

Replies of the governments to the questionnaire relating to:

the right of health

the right to an adequate standard of living

the right to food, clothing and housing

the right to social services.

* On the date of the establishment of this document replies had not been received from the following Governments: France, Greece, Ireland, Iceland and Italy.

Reply of the Belgian Government

Strasbourg, 9th May 1957

Sir,

I have the honour to reply to your letter reference D/2370 of 14th February 1957 concerning the Social Committee's consultation of the Governments on the inclusion in the Charter of certain rights not covered by previous questionnaires already replied to by the Governments.

I am instructed to inform you that the opinion of the Belgian Government on the inclusion of these rights in the Charter is as follows:

Rights relating to health

The principles laid down in CE/Soc (56) 21 seem to be acceptable; they should appear in a Social Charter in the form of a declaration of principles. The Government has no comments to make either on the nature of these principles or of a general character.

Right to an adequate standard of living

The Government considers that the whole Social Charter is directed towards implementing this right, which is, moreover, specifically mentioned in the draft text of the rights relating to wages, prepared by the Social Committee Working Party on 9th April and worded as follows:

1. All workers have the right to a fair wage sufficient for a decent standard of living for themselves and their families.

It would be enough to devote a paragraph of the Preamble to the Charter to this matter.

Right to food, clothing and housing

These rights should not logically be included in a Social Charter, which is concerned mainly with the rights of workers.

Allusion might possibly be made to it in the Preamble to the Charter.

Right to social services

This right should be included in the Social Charter in a binding form, but linked with the right to social security. The right to social aid in the form of services or allowances should, in fact, be guaranteed to everyone who receives no social security benefits.

I am, Sir,

Your obedient Servant,

J.C. SALMON,

Permanent Representative of Belgium.

Reply of the Danish Government

Conseil de l'Europe
99.928. 26/4/57

MINISTRY FOR FOREIGN AFFAIRS

Copenhagen, 24 April 1957.

P.J.IV. Index Nr. 5.E.34.f/5 n.

Sir,

By your letter No. D.2370 of 14th February you asked for an opinion as to the inclusion in a European Social Charter of certain rights not covered by previous questionnaires established by the Social Committee.

Following correspondence with the Ministry of Social Affairs and the Ministry of the Interior, I have the honour to communicate the following replies to the questionnaire CE/Soc (56) 21, concerning rights relating to public health, which was enclosed in your said letter:

Question 1: Yes.

Question 2: It is felt that the most realistic form would be for the principles to appear as a declaration in the same way as in the Constitution of the World Health Organisation, W.H.O., but if they are adopted in the form of commitments binding the States, Denmark would have no objection thereto.

Question 3: The Constitution of W.H.O. contains a more complete enumeration of the principles on which international co-operation is based in the field of public health. However, the four principles set out in the Questionnaire are the decisive ones and ought, therefore, to be included in a Social Charter.

The Acting Secretary General,
Council of Europe
Strasbourg

In regard to the other rights referred to in your above-mentioned letter of 14th February 1957, the Danish authorities concerned have no objection to the inclusion in a Social Charter of provisions in the form of declarations on the right to a proper standard of living and the right to food, clothing and housing.

Furthermore, the Danish authorities are agreeable to the inclusion, in a Social Charter, of a provision on the right to social services, provided that this term is to be understood in the sense of Article 1 (L) in the Draft European Convention on Social and Economic Rights (annexed to Recommendation 104 (1956) of the Consultative Assembly) concerning the right to social and cultural aid and guidance. In the charter on social rights, a provision concerning this question of social services could probably appear as a binding commitment. This would, however, depend on the form, in which the provision be ultimately drafted.

Please accept, Sir, the assurance of my high consideration.

For the Minister

b.a.

Reply of the Government of the Federal
Republic of Germany

Public Health

Question 1

Paragraph 1 of the questionnaire declares that health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. This can scarcely be disputed. It may, however, be wondered how paragraph 1 is to be interpreted when read with paragraph 3 of the questionnaire. The wide definition of the concept of health contained in paragraph 1 might suggest that paragraph 3 implied the responsibility of Governments for the treatment of spiritual and mental as well as physical disorders. There are considerable objections to the acceptance of such a responsibility in the case of infirmities the treatment of which may in many cases continue for a score of years or more without noticeable improvement. The Government of the Federal Republic therefore considers that there should be a clarification and more precise definition either of the concept of health or of the responsibilities of Governments according to the terms of paragraph 3 of the questionnaire. There is also some doubt as to the meaning of the phrase "a state of complete social well-being". These words might be interpreted as covering remuneration, leisure pursuits, civil and cultural needs, sports facilities, entertainments, etc., which can hardly be envisaged. This again calls for clarification.

Paragraph 3 should avoid conveying the impression that a Government is responsible for every aspect of the health of its population; this could be done by adding at the end of the paragraph the words: "so far as conditions in the country allow".

Paragraph 4 (b) of the questionnaire mentions adequate medical attention and measures of rehabilitation as possible means of preventing illness. As these points are already covered elsewhere in the Charter, they might be omitted here.

Question 2

If this "right to health" is to be mentioned at all, it should merely appear in the form of a declaration of principle in the Social Charter. The Federal Republic suggests that it might be considered whether the "right to health" should not rather be mentioned in the Preamble, which is still to be drafted.

Question 3

See comments on Questions 1 and 2.

The right to a proper standard of living, the right to food, clothing and housing, and the right to social security.

The Federal Government welcomes every effort made, whether at the national or international level, to raise the standard of living. It therefore suggests that the question be considered whether the improvement of the standard of living, as one of the aims of the Council of Europe and of the Social Charter, might not most effectively be embodied in the Preamble.

On the other hand, the Federal Government considers that there are certain objections to making separate provision for the right to food, clothing and housing and the right to social security, as in Article 1 (G) and (L) of the Draft Convention on Economic and Social Rights appended to Recommendation 104. These matters, which it is desirable on social and political grounds to provide for, should more properly be mentioned in the group of rights into which they naturally fall - those concerned with social protection, the rights of the family and those of mothers and children.

Reply of the Government of Luxembourg

The Permanent Representative of the Grand Duchy of Luxembourg to the Council of Europe, Luxembourg, 6th June 1957.

Sir,

With reference to your letter D. 2370, of 14th February, 1957, concerning the Social Charter, and particularly the possible inclusion therein of certain rights and principles relating to public health, I have the honour to send you the following replies to the questions contained in Document CE/Soc (56) 21:

- 1 : Yes;
- 2 : An undertaking binding upon the signatory States would be preferred;
- 3 : No comment.

Regarding the inclusion of the other rights mentioned in your letter, the Luxembourg Government wishes to reserve its position pending the preparation of draft texts by the Experts.

I have the honour to remain, Sir,

Your obedient Servant.

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The Secretary-General,
Council of Europe,
Strasbourg.

Reply of the Netherlands Government to the
Questionnaire

Public Health

Question 1 : Are these principles (i.e. the principles laid down in Doc. CE/Soc (56) 21) acceptable to you?

Answer: Yes.

Question 2 : Should these principles appear in a European Social Charter as a declaration of principles or in the form of commitments binding the signatory States?

Answer: In the form of commitments binding the signatory States.

Question 3 : Have you any remarks to make on the nature of these principles or any observations of a general character?

Answer: Naturally the principles laid down in Doc. CE/Soc (56) 21 have been formulated rather vaguely. This wording will enable the public health authorities in the various countries to apply these principles, adapted to the local conditions.

The right to an adequate standard of living;
the right to food, clothing and housing;
the right to social services.

With regard to the "right to an adequate standard of living" and the "right to food, clothing and housing", the Netherlands Government is of the opinion that these expressions are too vague to admit of effective application. It would be impossible at the moment to assess the consequences of including these rights in the Charter, especially in a binding form. Moreover, the ideas underlying the definitions are inconsistent with the prevailing conception in the Netherlands, which finds expression in general national regulations according to which wages and assistance - whether under social insurance or under social assistance - are generally provided in the form of money, the manner in which the money is spent being left to the discretion of the citizen himself. In view of what has been said above, the Netherlands Government thinks it would be better not to include these two rights in the Charter. If this opinion is not shared by the other Governments, the Netherlands Government might, as a compromise, agree to their insertion in a declaratory form.

The Netherlands Government would have no objection to the inclusion of the "right to social services" in the Charter, for example in the form in which it is formulated in Recommendation 104, page 10, Article L (a). The social services in the Netherlands are already promoted or maintained directly or in collaboration with local authorities and appropriate voluntary organisations. The Netherlands authorities only wish to make a reservation regarding the restriction implied by the words "in industrialised society" in that same Article - a restriction for which they see no need.

What is said in Article L (b) concerning the provision of free legal advice and assistance is also acceptable to the Netherlands.

Reply of the Norwegian Government

Rights relating to public health

The four paragraphs are partly in conformity with the corresponding paragraphs of the Statutes of the World Health Organisation. In part they are couched in more general terms which on the whole embrace the same purposes and guiding principles, though having a somewhat narrower scope than the said Statutes. The principles stated do not in themselves call forth any objections.

All member countries of the Council of Europe are also members of the World Health Organisation and are accordingly bound by the more detailed and inclusive Statutes of this Organisation.

In these circumstances it would seem superfluous to embody these principles in yet another international convention. If none the less somebody should deem this necessary or desirable, it is in the view of the Norwegian Authorities of no consequence whether this is done in the form of a declaration of principle or in the form of a binding agreement.

Right to an adequate standard of living.

Right to food, clothes and housing.

Right to the benefit of social services.

We would like to point out that the concept "adequate standard of living" is rather vague but is usually held to include several of the rights which have been considered in connection with the elaboration of the Charter, inter alia the rights mentioned under No. 2 and also the right to a reasonable wage and adequate leisure, the right to social security, etc.

It seems natural that an adequate (and rising) standard of living should be mentioned as a target in the preamble and that only specially mentioned elements of the standard of living should be listed as separate rights (cf. the first paragraph of the preamble of the draft social charter included in recommendation No. 104 of the Consultative Assembly). In any case the right to an "adequate standard of living" cannot

be established as a legally binding right of the individual as against the State. The right to food, clothes and housing can also only be established as a principle of Government policy and not as legally binding rights of the individual citizens as against the State.

Particularly as far as the right to housing is concerned we would like to mention that since the war the Norwegian Authorities have considered it a matter of prime importance to create favourable conditions for house building. The Norwegian Authorities will no doubt continue to lay great stress on the provision of housing and will avail themselves of every practical means to promote a good housing standard. It would accordingly be in line with Norwegian housing policy if this is included in the Social Charter as a principle. It is on the other hand impracticable to establish a right to housing as a legal obligation of the State vis a vis the individual citizen.

As regards the "right to the benefit of social services" mentioned under 3) above, it is difficult to express an opinion before it is defined more clearly what social services one has in view and the extent to which the benefit of such services could be made subject to certain conditions. We would therefore recommend that this matter be clarified before any such right is included in the Charter.

Reply of the Swedish Government

Ministry of Foreign
Affairs.

Stockholm, 7th June 1957.

Sir,

With reference to your letters of 14th February (D/2370) and 21st May, 1957 (D/6800), concerning the inclusion of certain rights in the Social Charter, I have the honour to inform you that the Swedish Government takes the following view of this matter:

Rights relating to public health. - In its widest sense, the term "social" would, of course, cover rules defining what each State should do in order to improve public health. The Swedish Government considers, however, that it would be inadvisable to extend scope of the Charter in this manner. The Charter should be restricted to social questions properly so called, which means that it would be preferable to exclude provisions relating to public health. Should it be decided otherwise, however, the principles laid down should take the form of a general recommendation and not of a binding commitment.

Furthermore, measures for the protection of public health have already been included in the draft Social Charter, for Article 8 on the right to social security refers to the draft European Code of Social Security.

Right to an adequate standard of living - right to food, clothing and housing - right to social services. All these rights are suitable for inclusion in the Social Charter, but, being of a very general character, they should take the form of a recommendation, not of a binding obligation.

I have the honour to remain, Sir,

Your obedient Servant,

pp the Minister:
The Political Director,
(signed) (Sverker Aström)

Mr. D. Curtis,
Acting Secretary-General,
Council of Europe,
Strasbourg.

Reply of the Turkish Government

646/14

Strasbourg, 11th May 1957.

Sir,

In reply to letter D/2370 of 14th February 1957, I have the honour to inform you that my Government would approve the inclusion in a European Social Charter of the rights relating to health laid down in Document CE/Soc (56) 21, which are, moreover, in conformity with the Charter of the United Nations and the Statute of the World Health Organisation. It considers, however, that these principles, on which it has no particular comments to make, should only be included in the Charter in the form of a declaration of principles.

With regard to the other rights on which the Committee of Experts asked for the opinion of the Governments, the Turkish Government, while holding itself free to comment on the final draft which will be submitted, sees no objection to their being included in the Charter in the form of a declaration of principles, like all the rights and principles to be embodied in that document.

I am, Sir,

Your obedient Servant,

Permanent Representative of Turkey.

Reply of the Government of the United Kingdom

Conseil de l'Europe
100.820 14/5/57

THE FOREIGN OFFICE
 LONDON S.W.1.

3rd May 1957

Memorandum

In regard to the rights relating to health set out in document CE/Soc (56) 21, the replies of the United Kingdom Government to the questions therein are as follows:

1. The principles set out in the document are acceptable to the United Kingdom.
2. The opinion of the United Kingdom Government is that these principles should appear in a European Social Charter in a declaratory form.
3. The United Kingdom Government has no remarks to make on these principles at present but may have further observations to make when the form of the Charter as a whole has been more nearly determined. The precise form of the Article relating to health can only be settled when the nature and form of other Articles in the Charter have been decided. The Committee of Experts on Public Health drew attention to this point when they drafted the Article as it is now set out in CE/Soc (56) 21.

In regard to the right to an adequate standard of living, the United Kingdom Government sees no objection to the inclusion of this right in a European Social Charter, provided that it is stated simply and in a declaratory form.

It is, however, the view of the United Kingdom Government that it is unnecessary to include the rights to food, clothing and housing as separate rights, because these rights are implicit in the rights to an adequate standard of living and to health.

The United Kingdom Government does not consider

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that the Charter should include a statement of a right to social services. It has already been proposed that the Instrument should contain statements of the rights to specific services and forms of protection that ought to be provided, and it is, therefore, unnecessary to have, in addition, a general statement of these rights.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 15th September 1957

Restricted
 CE/Soc/WP II (57) 1
 Or. Fr.

SOCIAL COMMITTEE

(Fifth Session)

Working Party

appointed to prepare the Sixth Session of the Committee

MEMORANDUM AND DRAFT TEXTS

prepared by the Social Division of the Research Directorate
 for the use of the Working Party

1. At its fifth session from 15th to 19th July, 1957, the Social Committee instructed the Working Party which it had appointed during the fourth session to hold a fresh meeting from 7th to 11th October 1957, to consider certain questions set forth in paragraph 120 of the Committee's Report, (CM (57) 107).

To facilitate the Working Party's discussions, the Social Division of the Research Directorate (hereinafter called "the Secretariat") has produced the present memorandum recapitulating questions in need of study and - where necessary - suggesting provisional texts.

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A 35.832
 T 2085/DMM/WM

CHAPTER I

Right to Social Security and Assistance
(Items 10 and 11 of the first part of the
draft Charter prepared by the Social Committee).

2. When instructing the Working Party to prepare the ground, the Social Committee had already drafted the general declaratory clauses intended to cover this subject in the first part of the draft Charter. The Working Party will thus require to study only the appropriate clauses in the second part of the Social Charter, in particular those designed as the basis of obligations binding on the Signatory States.

A provisional version of these clauses already exists in the document entitled "Draft Text of certain Articles" reproduced as Annex I to the present Memorandum and previously drafted by the Secretariat (former reference CE/Soc (56) 19). Since these texts consist of two alternatives, one declaratory (I) and the other mandatory (II), it follows from the foregoing that the Working Party may wish to concentrate chiefly on alternative II.

Finally, three proposals (CE/Soc/Misc (57) 3, 4 and 5) have been submitted to the Working Party by the Social Committee's Belgian, Italian and German delegations respectively. The Belgian text deals with Social Security and the German with Social Assistance. All three texts are reproduced as Appendix II (a-c) to the present Memorandum.

(a) Social Security

3. The declaratory clause recently established by the Social Committee at its fifth session (CM (57) 107, Appendix IV) reads:

"10. All workers and their dependents shall have the right to social security".

4. In paragraph 39 of the Social Committee's report (CM (57) 107) it is stated that the delegations of Denmark, Norway and Sweden made a reservation on this point, considering that the right to social security should not be restricted to workers and their dependents, but should cover everyone. It would, in fact, appear indisputable that certain branches of social security, such as old age benefits and medical assistance, are by no means intended to be the prerogative of workers alone. Incidentally, the same consideration applies to other clauses of the Social Charter. The Working Party might therefore usefully reconsider this matter.

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5. The Social Committee also decided /CM (57) 107, paragraph 37/ that the text of the Article relating to Social Security and Assistance should make no reference to migrant workers, since the rights of migrants would be covered by other provisions in part I. Neither in the first part (1) nor in the second part of the draft now in preparation, which is based on the United Kingdom proposal (CE/Soc (57) 9, part 2, items 44 to 50), is there any express mention of equality of treatment for migrants under social security arrangements. The Working Party should consequently re-examine this question and propose either that the clauses dealing with the rights of migrant workers should be expanded, or that those dealing with social security and assistance should be extended to such persons. If the second solution were chosen, the Working Party might take as a basis the Belgian and Italian proposals (Appendix II, (a) and (b) of the present Memorandum), together with the draft Articles previously prepared by the Secretariat (Appendix I, alternative II) which broadly correspond to the Belgian proposal (2).

6. It should be observed, however, that the Belgian proposal departs from the Secretariat's text inasmuch as in its second paragraph it refers, inter alia, to the Protocol to the European Code of Social Security and not to the Code itself. To give the Social Charter some flexibility in this regard, the Working Party may wish to decide on a text embodying a binding undertaking, on the basis of the standards laid down in the Code, which would permit of later accessions on the basis of the standards in the Protocol and other higher standards. Similarly paragraph 2 of the Belgian proposal would apply only to the Code, whereas the Protocol would follow the system suggested in paragraph 3 thereof. For the rest, the Working Party might usefully follow the Belgian proposal, after comparing its paragraph 4 in fine with paragraph 2 of the Secretariat proposal (Appendix I to the present Memorandum, alternative II).

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(1) See Doc. CM (57) 107, Appendix IV, first part, item 16.

(2) See also the proposal by the Italian and Luxembourg delegations taken as a basis for the Social Committee's studies at its fifth session (CE/Soc/Misc (57) 2).

(b) Social and Medical Assistance

7. The basic declaratory clause prepared by the Social Committee (CM (57) 107 Appendix IV, first part, item 11) reads:

"11. Everyone without adequate resources shall have the right to social and medical assistance".

8. Here too the Working Party has been furnished with a provisional text by the Secretariat (Appendix I to the present Memorandum, in fine, alternative II) and a proposal by the German delegation (Appendix II (c)). With regard to the comment on this subject in paragraph 5 above (migrant workers) it may be wondered whether this text should be amended so as to cover persons (workers) not having the nationality of the Contracting State. A clause to this effect was explicitly included in the European Convention on Social and Medical Assistance, (Article 7). Moreover, item 16 of the Social Committee's text, (CM (57) 107, Appendix IV, first part) states that migrant workers have the right to assistance, without specifying the type of assistance meant.

The German proposal (Appendix II, (c) of the present Memorandum) makes no mention of the European Convention. However, the Working Party might usefully either include a reference to the latter instrument or take as a basis the principles it embodies, as was done by the Secretariat in its earlier text (Appendix I to this Memorandum, alternative II in fine). Since the States signatory to the Charter have all signed the Convention on Assistance, they will feel logically obliged to adopt the same attitude in both cases.

9. Finally, the German proposal contains certain more detailed provisions which are not in the Secretariat's draft. When pronouncing on their expediency, the Working Party will observe:

- (i) that the provisions of paragraphs 1 (a) and (c) concerning the right to food, etc., to vocational training and special aid for physically or mentally disabled persons are already covered by other clauses of the Charter;
- (ii) that the underlying notion in paragraph 3 already finds general expression in the Secretariat text dealing with social services (CE/Soc (57) 12, part 3);
- (iii) that the Working Party might therefore usefully consider the points in question together (see below, chapters II and X, (b) and (c)).

CHAPTER II

The right to health, an adequate standard of living, etc.

10. The second point for consideration by the Working Party concerns the rights to health, a decent standard of living, adequate food, housing and clothes, and social services. The Secretariat has already prepared a relevant study in a report circulated to the Social Committee under reference CE/Soc (57) 12 and addenda (1), to which were appended Governments' replies to the appropriate questionnaire. The present observations are therefore confined to a reference to the document quoted (cf. also Chapter X below).

CHAPTER III

Irish proposal concerning prohibition of certain work by women

11. At its fifth session the Social Committee referred to the Working Party a proposal by the Irish delegation to insert, after the present paragraph 26 (CM (57) 107, Appendix IV, second part), a new paragraph reading:

(1) Addendum II, the reply by the Irish Government, was distributed after the Committee's fifth session.

"To prohibit the employment of women on night-work in specified employments or on specified work underground, or on certain processes as may be prescribed by national laws as unsuitable for women".

In the present Memorandum it is doubtless sufficient to draw attention to doc. CM (57) 107, paragraph 99, which contains the comments of various delegations.

CHAPTER IV

Preamble

12. In instructing the Working Party to draft a Preamble to the Social Charter, the Social Committee was apparently inspired by the procedure used in drafting the Charter (European Convention on Social and Economic Rights) presented by the Assembly in its Recommendation 104. By departing from this procedure, however, to present the provisions of the Charter in two parts, the first of which declares itself to consist of a number of objectives of social policy, the Committee has to some extent anticipated the question of the Preamble, since the Preamble in the Assembly's draft in fact bears the sub-title "Principles and Objectives of Social Policy". A number of clauses in the first part of the Committee's draft relate to the same objective as the corresponding clauses in the Assembly's Preamble (compare clauses 1, 13 (14), 11 and 15 (16) respectively with paragraphs 6, 4 (5), 8 and 15 of the Preamble). In addition the Assembly's Preamble contains several paragraphs which might well be included among the social policy objectives mentioned in part 1 of the draft already prepared by the Committee.

13. Bearing these reservations in mind, it would nevertheless seem desirable to preface the draft Charter with a brief Preamble relating to general principles of social policy not necessarily postulating any specific social rights. The Secretariat has therefore thought it expedient to draft a text (Appendix III below) as a possible basis for discussion by the Working Party.

14. In this connection the Working Party might usefully study at the same time the question of how the document under discussion is to be styled, having regard to the fact that the Assembly's Recommendation 104 presents the Social Charter under the title of "European Convention on Social and Economic Rights". The Assembly's choice of working was in conformity with the system adopted by the United Nations, and in particular its Commission on Human Rights, when preparing the draft Covenant on Economic, Social and Cultural Rights. The term "Convention" would appear in fact to be more consonant with the aim and legal scope of the instrument in question, which is designed to ensure that the Signatory States shall multilaterally give a series of legal undertakings. Since, in addition, workers and trade union circles seem to set great store by the term "Social Charter", the draft Preamble appended to this Memorandum represents a middle course, on the lines of the Assembly's draft, which opens with the words: "The object of this Convention, or Social Charter, is to promote a progressive improvement ... etc."

CHAPTER V

Final clauses

15. As stated by the Social Committee in its report (CM (57) 107, paragraph 120), the preparation of the final clauses has been entrusted to the Legal Department of the Secretariat-General. A draft text has been distributed under reference CE/Soc/WP (57) 2. It is accompanied by a commentary, also drafted by the Legal Department.

CHAPTER VI

Ratification

16. The final clauses of an International convention usually contain a provision on ratification, stating the place where instruments of ratification are to be deposited and how many of them must be received before the convention can enter into force.

17. A distinction of principle should also be drawn between the question of ratification (in particular the depositing of instruments) and that of the legal scope of the Convention, or more specifically the scope of the Signatory States' commitments. These are generally determined at the time of signature, i.e., before the ratifications are deposited.

Similar reasons led the Assembly, in its draft, to include the general provision on the nature of the Signatory States' undertakings in the actual body of the Convention and not among the final clauses (cf. beginning of Article 1 of part 1). The same consideration appears to underlie the general clause at the beginning of the first part of the United Kingdom delegation's draft (CE/Soc (57) 9) (1).

18. It will be noted that the British draft, with respect to the undertakings to be given pursuant to the second part of the Charter, departs from this system by proposing a general clause for insertion, not at the beginning of the second part (in line with the arrangement of the first part), but as part of the final provisions, or more specifically those dealing with ratification. The Belgian proposal adopts the same method: in both cases the authors seem to have been inspired by the system used in the I.L.O. Convention No. 102 on Social Security. The latter instrument - admittedly by way of an exception - establishes a link between the question of ratification and the legal scope of the Signatory States' commitments by permitting them to specify the precise number and scope of their undertakings at (or after) the time of ratification (Articles 2 - 4).

19. This does not prevent any States' obligations under a Convention, as a general rule, from being fixed at the time of signature. Such obligations must be clearly apparent in the text signed. Parliaments must be in a position to appreciate the scope of the undertakings given, not only by their own State, but also by the other signatories, before approving or withholding ratification.

It would therefore seem advisable to make a precise statement of the undertakings at the time when a convention is signed, as is already envisaged, incidentally, in the introductory clause to the first part of the draft Charter. As the Italian delegation has observed (CM (57) 107, paragraph 107), the system of binding provisions to be used in the Social Charter is not the same as in I.L.O. Convention 102. Even in the event of progressive implementation, i.e., if it were decided to leave open the possibility of increasing the number of provisions binding upon all parties at the time of ratification or at some later date, it would appear normal to determine the minimum number of binding obligations required for ratification of the Charter at the moment of signature. In other words, for a Convention to be ratified, the minimum requirement must be that the binding provisions it contains shall be established at the time of signature.

(1) The same system was adopted in the United Nations draft Covenant on Economic, Social and Cultural Rights (Article 2).

CHAPTER VII

General Structure of the Charter

20. If the Working Party agrees, the Charter should be composed of four parts, of which the first two would begin with a general provision on the legal scope of the obligations, the third would comprise implementation clauses and the fourth the final clauses, including those on ratification (see provisional text by the Legal Department, doc. CE/Soc/WP (57) 2).

As an illustration, and to facilitate the Working Party's discussions, the Secretariat has drafted a number of texts which are reproduced hereafter.

CHAPTER VIII

Legal Scope

21. On the basis of the foregoing considerations, and reverting to the idea expressed in the Belgian and British proposals, it is suggested that the introductory clause in Part II be drafted as follows, by choosing one of the three alternatives:

22. General Clause (Introductory)

Alternative I

"The High Contracting Parties consider themselves bound by the provisions of paragraphs Nos. appearing in this part of the Charter (Convention)."

Note: This alternative is based on the Belgian proposal, which is considered to imply that all the participating States are bound to subscribe to a minimum number of obligations. It is given here on the assumption that the Social Committee succeeds in reaching agreement on the minimum concerned (cf. also doc. CM (57) 107, paragraph 110).

Alternative II

Add to the preceding paragraph a second paragraph reading:

"Each of the High Contracting Parties further considers itself bound by the provisions of at least three additional paragraphs /or groups of paragraphs/ to be selected by it from the other paragraphs in this part of the Charter (Convention). It shall notify these provisions to the Secretary-General of the Council of Europe not later than the time when its instrument of ratification is deposited.

Any of the High Contracting Parties may, at any later date, declare by notification to the Secretary-General that it considers itself bound by provisions appearing in this part of the Charter (Convention), if it has not already accepted them under the terms of the preceding paragraphs. Such undertakings subsequently given shall be deemed to be an integral part of the ratification and shall have the same effect as from the date of the notification.

The Secretary-General shall communicate to all the other High Contracting Parties any notification which he shall have received pursuant to sub-paragraphs 2 and 3 of the present paragraph".

Note: Alternative II is based on the idea expressed at the Joint Meeting with representatives of the Consultative Assembly, to which reference is made in paragraph 106 of doc. CM (57) 107. The Working Party should make a choice between the terms "paragraphs" and "groups of paragraphs". The provisions of sub-paragraphs 2 and 3 of this Alternative might also appear in Alternative I.

Alternative III (United Kingdom proposal)

"Any High Contracting Party may at the time when its instrument of ratification is deposited declare by notification addressed to the Secretary-General, which of the undertakings in this part of the Charter (Convention) it is prepared to consider as binding.

Any High Contracting Party which shall have ratified the Charter may subsequently notify the Secretary-General that it is prepared to give further undertakings appearing in this part of the Charter (Convention) which it had not already given at the time of its ratification. Such undertakings subsequently given shall be deemed to be an integral part of the ratification and shall have the same effect as from the date of notification".

Note: Alternative III corresponds to the system advocated in the United Kingdom proposal (CE/Soc (57) 9). A few stylistic changes only have been made to the text appearing as paragraph 4 of the third part of this proposal, in order to bring it into line with the other clauses.

It should, however, be noted that if this alternative were adopted, it would be possible for States to accept none of the provisions in the second part. The Charter would then have only a declaratory value for those States, without any legal effects. This type of declaration of principle would not even require ratification.

CHAPTER IX

Implementation

23. The Working Party may here wish to base its discussions, first, on a proposal by the Belgian Delegation, which provides for an Experts' Committee and a Tripartite Committee (cf. CE/Soc (57) 8) and, secondly, on the German and Netherlands proposals (CM (57) 107, paragraphs 112 and 116).

The German Delegation observed:

(1) That the I.L.O. experts would be too overburdened with work to be able to examine the Charter. (This might lead to the appointment of another Committee of Experts);

(2) That instead of a tripartite organ, supervision might be assigned to the Social Committee, which would also examine the views of the trade union organisations on the annual reports.

The Netherlands Delegation proposed a single control instance instead of the two proposed by the Belgian Delegation; the independent experts could form the third part of the Tripartite Committee.

24. On the basis of these proposals and observations, the Secretariat's provisional text reproduced hereafter has been drafted in four alternative forms, so far as concerns the provisions of Article 3 dealing with control of implementation. The proposals by the Social Committee, considered jointly, give rise to four possibilities, two of which relate to the composition of the Experts Committee and the other two to the composition of the final control instance.

Third Part of the Charter

Implementation

Article 1.

"Each of the High Contracting Parties shall present to the Secretary-General of the Council of Europe, in a form to be determined by the Committee of Ministers, an annual report on the state of its social legislation and practice with regard to those provisions of the second part of the Charter (Convention) to which it shall have adhered".

Article 2.

"Each High Contracting Party shall address a copy of these reports to such of its national associations of employers and workers as it deems the most representative, with a request for their observations".

Alternative 1.

Article 3.

1. "The Secretary-General of the Council of Europe shall send the reports and observations mentioned in Articles 1 and 2 to the Director-General of the International Labour Office with the request that he consult in their regard the appropriate body of the International Labour Organisation (Committee of Experts on the Application of Conventions and Recommendations) and transmit to the Secretary-General the conclusions reached by such body.

(Belgian
proposal)

2. The Reports and observations mentioned in Articles 1 and 2, together with the conclusions of the International Labour Organisation, shall be submitted by the Secretary-General of the Council of Europe to a Tripartite Committee of fifteen, composed in equal membership of representatives of Governments, employers and workers.

3. Members of the Tripartite Committee shall be appointed by the Committee of Ministers after consultation with Governments, which shall in their turn have consulted the representative national organisations of employers and workers.

4. The Tripartite Committee shall meet once annually. Its membership shall be renewed every three years. Members shall be re-eligible.

5. The Committee shall present an Annual Report to the Committee of Ministers.

6. The Committee of Ministers, after consulting the Consultative Assembly, shall address to each High Contracting Party such recommendations as it deems necessary and any other useful observations on the implementation of the Charter."

Note: Under the Belgian proposal the chapter in question might be concluded by an Article 4, dealing with the presentation of reports on the unaccepted provisions of the Charter (see doc. CE/Soc (57) 8, page 4).

(Based on first Alternative II.
German obser-
vation)

Article 3.

1. "The Secretary-General of the Council of Europe shall submit the reports and observations mentioned in Articles 1 and 2 to a Committee composed of (5) independent experts, appointed by the Committee of Ministers /from among those members of the International Labour Organisation's "Committee of Experts on the Application of Conventions and Recommendations" who are nationals of the High Contracting Parties/ from a list of fifteen persons including one candidate presented by each of the High Contracting Parties.

(/ 7 sub-
alternative,
based on Bel-
gian proposal)

2. The reports and observations mentioned in Articles 1 and 2, together with the conclusions of the Committee of Experts, shall be submitted by the Secretary-General etc... (remainder of text as in paragraphs 2 to 6 of Article 3, alternative I above)"

Alternative III.

(Netherlands
proposal)

Article 3.

1. "The Secretary-General of the Council of Europe shall submit the reports and observations mentioned in the preceding articles to a Tripartite Committee of fifteen members, composed in equal membership of independent experts, representatives of employers' organisations and representatives of workers' organisations.
2. The independent experts shall be nominated by the Committee of Ministers from a list of fifteen persons including one candidate presented by each of the High Contracting Parties.
3. Members of the other two groups shall be nominated by the Committee of Ministers, after consultation with Governments, who shall in their turn have consulted the appropriate employer and worker organisations.
4. The Tripartite Committee shall meet etc... (remainder of text as in paragraphs 4 to 6 of Article 3, Alternative I above.)"

Note 1: Alternative III is based on the Netherlands proposal, under which the two control instances might be combined. The first third of the tripartite body would be represented by independent experts. There would then be no longer any point in retaining the Committee of Experts.

Note 2: The final alternative, No. 4, which follows hereafter, is based on the second German observation, to the effect that the Committee of Experts might be retained at the expense of the Tripartite Committee, whose place would be taken by the Social Committee. The trade union organisations would then be consulted, on the one hand through the medium of the reports submitted under Article 2, and on the other hand by hearings within the Social Committee.

Alternative IV.Article 3.

1. "The Secretary-General of the Council of Europe
..... (text to be selected from alternatives I and
II, paragraph 1).

2. The reports and observations mentioned in
(Second German Articles 1 and 2, together with the experts' con-
observation) clusions, shall be submitted by the Secretary-General
to the Governmental Social Committee of the Council
of Europe.

3. After examining the said reports, observations
and conclusions and consulting the employer and
worker associations, the Social Committee shall
present an Annual Report to the Committee of Ministers.

4. The Committee of Ministers, after consulting the
Consultative Assembly, shall address to each High
Contracting Party such recommendations as it deems
necessary and any other useful observations on the
implementation of the Charter (Convention). "

25. Note: To facilitate a choice by the Social Committee and its
Working Party among the different Alternatives, the following
observations may be useful:

(1) Committee of Experts: Since certain clauses of the
Charter are akin to those in the ILO Conventions, it is
desirable that, to the fullest extent practicable, a link
should be forged between the Committee of Experts instructed
to supervise the application of the Charter and the ILO
Committee on the Application of Labour Conventions. This
suggestion is made not only in the interests of unity of
jurisdiction between the two bodies, but also to enable the
experts of the Council of Europe, as well as the Departments
assisting them, to profit by the great experience gained by
the I.L.O., its organs and departments in such matters over a
period of nearly forty years. However, when negotiations
were conducted with the object of establishing some such link
between the two organisations in regard to implementation of
the European Code of Social Security, it was found preferable
to entrust the organisation of the work in question directly
to I.L.O. and fully to recognise the competence of the latter's
Committee of Experts. This was the background for drafting
Alternative I, which adopts the relevant text appearing in the
European Code of Social Security (Article 75, paragraph 3).
There is reason to believe that within the agreement to be
negotiated with I.L.O. on this matter an unofficial arrangement
can be established whereby control would be entrusted to a
small body consisting only of nationals of Council of Europe
Member States who are members of the ILO Experts Committee,
as suggested in the Belgian proposal, which is the basis of
Alternative II (paragraph 1).

(2) Tripartite Committee: In advocating the establishment of a tripartite body, with participation by employers and workers, the Belgian delegation has conformed not only to the relevant recommendations by the two Trade Union Confederations, but seems also to come close to the suggestion underlying the Assembly's draft, in which the tripartite body appears under the title of "Social Chamber". There is reason to believe that the supporters of a tripartite body are opposed to control of the implementation of the Charter by the Social Committee alone (Alternative IV). As was stated in the explanatory memorandum in Document 536 (page 33 of the Report of the General Affairs Committee being the basis for the Assembly's Recommendation 104), "the Members of that Committee (so. the Social Committee) would in that event become judges of their own action as senior Government officials responsible for taking an active part in putting the Charter into effect in their respective countries". Without expressing any views on this dispute, it should nevertheless be agreed that the concept of Trade Union consultation through tripartite control has become traditional because it is one of the essential factors in the system of implementing International Labour Conventions and is expressly recognised by the ILO Constitution.

It would also be advisable to take into consideration developments in the field of consultation between workers and management within the framework of European economic integration. It will be recalled that a consultative organ of the same type is provided for in the Treaty establishing the European Economic Community, under the title of Economic and Social Council, the extension of which in connection with the Free Trade Area is also, it is thought, likely to be requested by the Trade Unions. In view of these prospects it may be wondered whether, in the present state of drafting of the Social Charter, it would not be preferable to refrain temporarily from specifying the tripartite body and to leave any decision and subsequent instructions in this respect to the Committee of Ministers. If the Social Committee were in agreement with such an approach, it might be convenient to adopt the provisional solution envisaged in Articles 1, paragraph 1 (b); 2, paragraph 3; 75, paragraph 4; and 79, paragraph 3, of the draft European Code of Social Security, where the term "the Committee" alone is used, it being left to the Committee of Ministers to specify which organ will subsequently take over the functions of this "Committee".

This solution is the more desirable since the composition of the tripartite body contemplated in the Belgian proposal (alternative II) raises delicate problems of distribution and weighting having regard to the small number of five members for each of the three component parts and the need to select them from the employer and worker representatives of 15 states (cf. in this connection the proposed division in Article 10 of the Assembly's draft, and the system of weighting provided for in Article 7 of the ILO Constitution with regard to the nomination of employers' and workers' representatives to the ILO Governing Body).

CHAPTER X

Draft Texts to Complete the First Part

in connection with such new texts as may be adopted for the Second Part, on the basis of those proposed in Document CE/Soc (57) 12 (see Chapter II above).

(a) Right to Health (Part 1 of doc. CE/Soc (57) 12).

26. It is proposed that a new paragraph 11, worded as follows:

"Everybody has the right to benefit from all measures enabling him to enjoy the highest possible standard of health attainable".

be inserted after paragraph 10 (Part 1 of the Draft appearing in Appendix 4 to CM (57) 107).

(b) Right to a Proper Standard of Living, including adequate food, clothing and housing (Part 2 of doc. CE/Soc (57) 12).

27. Should the Working Party adopt Alternative II given in Part 2 of CE/Soc (57) 12, it is proposed that, after the paragraph 11 mentioned above (CM (57) 107, Appendix 4), a new paragraph 12 be inserted, reading:

"12. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing and housing."

(c) Right to Social Services

28. Should the Working Party decide in favour of the conclusion appearing under (b) of Part 3 of CE/Soc (57) 12, it is proposed that, after paragraph 16 of Part 1 of doc. CM (57) 107, Appendix 4, a new paragraph be inserted, as follows:

"Everyone has the right to benefit by the social services".

(d) Right to Education

29. (Reserved pending instructions from the Committee of Ministers).

(e) The Right to Leisure

30. The first Questionnaire on the Social Charter comprised the right to leisure. The Governments of Belgium, France, the Federal Republic of Germany, Luxembourg, Norway and Turkey declared in their replies that this right might be included in the charter in a declaratory form. It was, however, not quite clear what should be understood by the term "leisure". Some governments took it in the sense of free time only, so that it became more or less synonymous with a reasonable limitation of working hours; weekly rest or annual holiday.

Other governments, in their replies, described various types of leisure time activities and facilities organised or provided by private initiative as well as by public organs. In some cases private activities in this field were subsidised by public authorities.

In doc. CE/Soc (56) 4 - based on the replies of governments and other sources - the Secretariat referred to and partly quoted the ILO Recommendation of 1924 relating to the utilisation of spare time (p. 28). However, the Social Committee decided not to include any provision on leisure in the Charter.

Much attention has lately been given to the problem of leisure time activities in the light of the development of automation and the reduction of working hours which will presumably be one of the consequences of that development. Thus, the German professor and member of parliament Carlo Schmid - a member of the Consultative Assembly - has stated in a pamphlet dealing with the problems of automation that the problem of spare time takes a central position among the social issues raised by what he calls "the second industrial revolution".

And at the 1957 session of the International Labour Conference, where the main theme of the general discussion was automation, the Representative of the Dutch Government, Mr. van Rhijn, devoted his speech to leisure time questions. He started by quoting from the Report of the Director-General the following passage:

"Finally, it is clear that reduced hours of work bring more leisure. Indeed, many have suggested that the age of automation and atomic energy will find the bulk of its social problems centred in the field of leisure".

Mr. van Rhijn then went on to speak of the importance of a proper use of leisure time, both for the worker himself, for his family and for society on the whole.

He posed the question: "has the government a responsibility with regard to leisure time activities?" The reply was: Yes, but only a secondary one. People should of course decide for themselves how they want to spend their leisure time, but what the government can and should do is to encourage people to spend their leisure time well by giving proper guidance and by creating ample opportunities.

In the light of the above, the Social Committee may wish to reconsider the question of including the right to leisure in the Social Charter. The following preliminary draft text is suggested:

"The High Contracting Parties recognise the necessity of providing the individual with proper guidance with regard to the use of leisure time as well as with ample opportunities for spare time activities conducive to his physical, cultural and moral development. They will endeavour, in collaboration with local authorities and private organisations to provide or promote the provision of adequate facilities for this purpose."

A P P E N D I X I

PART II

DRAFT TEXTS INTENDED TO COVER THE FIELDS OF SOCIAL SECURITY AND SOCIAL ASSISTANCE

Considerations:

It appears from the conclusions of the Third Session of the Social Committee that these provisions should be based on the work undertaken by the Committee of Experts on Social Security and that a reference should be made to the desirability of eliminating obstacles to the free movement of manpower arising out of social security legislation.

It is obviously impossible in the Social Charter to enter into the details regarding provisions for social security. The most practical method is presumably the one adopted by the Assembly, which involves a reference to the European Code of Social Security. It is, however, not sufficient in a Charter which is intended to set the aims of social policy, simply to provide for the ratification of the Code, since such ratification can be effected on the basis of compliance with a limited number only of the nine branches of social security covered by the Code. Moreover, it should be taken into account that an instrument is in preparation which will embody standards considerably higher than those laid down in the Code.

Certain Governments stated in their replies to the question concerning rights relating to the family that social security benefits should be adjusted to family responsibilities. Such a provision might of course be included, but it should not be strictly necessary, because benefit rates are fixed in the Code in relation to so-called "standard beneficiaries" (for example a man with wife and two children), on the understanding that benefits should be higher for beneficiaries with greater family responsibilities.

With regard to the question of equal treatment as between nationals and aliens, the Assembly draft refers to the European Interim Agreements on Social Security. This is practical, but has the disadvantage that those agreements are of a provisional nature and may be replaced by another instrument.

Draft texts:

Social security:

Alternative I (Declaratory):

See Art. 1 (H) of the draft Charter appended to Rec. 104 (1956) of the Assembly.

Everyone has the right to social security. With a view to ensuring the exercise of this right, the social security systems of the signatory Governments should be raised to a satisfactory level, based on standards at least equal to those laid down in the European Code of Social Security for the following types of services: medical care, benefits relating to sickness, unemployment, old age, employment injury, family benefits, maternity benefits, invalidity benefits and survivors' benefits.

The signatory Governments should take steps, through the conclusion of appropriate bilateral and multilateral agreements, to ensure full equality of treatment with regard to social security rights as between their own nationals and nationals of other signatory Governments, as well as to provide for the maintenance of social security rights acquired or in acquisition by migrants, nationals of any of the signatory Governments.

Social security benefits should be fixed with due regard to the family responsibilities of the beneficiary. They should be adjusted to meet any currency depreciation.

Alternative II:

With a view to ensuring the exercise of the right to social security, the H.C.P. undertake to:

1. raise their systems of social security gradually to a satisfactory level, basing themselves on standards at least equal to those laid down in the European Code of Social Security for the following types of services: (enumeration as above).
2. take steps, through the conclusion, etc. (as above).
3. ensure that social security benefits are fixed with due regard to the beneficiary's family responsibilities and that they are adjusted to meet any currency depreciation.

Social Assistance:Alternative I (Declaratory):

Everyone without sufficient resources and not entitled to adequate benefits under a social security scheme should be granted the necessary means of subsistence and, in case of sickness, the care necessitated by his condition.

See Art. 7 (b) of the European Convention on Assistance. Such assistance should be granted by any signatory Government also to nationals of any other signatory Government who are legally present in its territory, subject to prescribed procedures of repatriation. Such procedures should be applied with the greatest moderation and only where there is no objection on humanitarian grounds.

Alternative II:

With a view to ensuring the exercise of the right to social and medical assistance, the H.C.P. undertake:

1. to adopt adequate provisions by which every person who is without sufficient resources and not entitled to adequate benefits under a social security scheme be granted the necessary means of subsistence and, in case of sickness, the care necessitated by his condition.
2. to apply the provisions referred to in the preceding paragraph on an equal footing to nationals of the other H.C.P. legally present in their territories, subject to prescribed procedures of repatriation.
3. not to have recourse to repatriation except in the greatest moderation and then only where there is no objection on humanitarian grounds.

A P P E N D I X II

(a - c)

(a) Draft text on the right to social security
submitted by the Belgian Delegation

In order to ensure the exercise of the right of all workers to social security, the High Contracting Parties undertake:

1. to establish or maintain systems of social security;
 2. progressively to raise the social security system to a satisfactory minimum level, based upon standards at least equal to those defined in the Protocol annexed to the European Code of Social Security for the following categories of benefits: medical care, sickness allowances, benefits in respect of occupational accidents and diseases, family benefits, maternity benefits, invalidity benefits and survivors' benefits;
 3. to try to establish a higher European standard of social security with a view, when the risks have been assessed, to maintaining the previous standard of living of beneficiaries by adequate benefits;
 4. to take steps, by concluding bilateral and multilateral agreements, to ensure complete equality of treatment between their own nationals and those of the other signatory governments in respect of social security rights, in order to ensure the maintenance of social security rights already acquired or in course of being acquired by migrants having the nationality of another signatory government and to ensure the accumulation of insurance or assimilated periods completed under the legislation of each of the Contracting Parties, with a view to the opening, maintenance or recovery of the right to social security benefits, as well as for the calculation of such benefits;
 5. to fix social security benefits, taking due account of the beneficiary's family burdens and to adjust them to meet the effects of currency depreciation.
- ./.

(b) Draft text submitted by the Italian Delegation
on the right to social security

With a view to ensuring the exercise of the right of all workers and their dependents to social security, the High Contracting Parties undertake:

- (1) to establish or maintain systems of social security;
- (2) to endeavour progressively to raise social security systems to a satisfactory level based upon the standards defined in the Protocol annexed to the European Code of Social Security for the following categories of benefits: medical care, sickness allowances, unemployment and old age benefits, benefits in respect of occupational accidents and diseases, family benefits, maternity benefits, invalidity benefits and survivors' benefits;
- (3) to take steps, by the conclusion of appropriate bilateral and multilateral agreements, to ensure:
 - equal treatment with all nationals of each of the Contracting Parties in the application of national social security legislation;
 - the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties, with a view to the opening, maintenance or recovery of the right to social security benefits, as well as for the calculation of such benefits;
 - the retention of benefits arising out of social security legislation, whatever movements the persons protected may be obliged to undertake between the territories of the Contracting Parties;
- (4) to endeavour to fix social security benefits, taking due account of the beneficiary's family burdens, and to adjust them to meet the effects of currency depreciation.

(c) Proposal of the German Delegation
Social and Medical Assistance

With a view to ensuring the exercise of the right to social and medical assistance the High Contracting Parties undertake to adopt adequate provisions by which:

1. every person who for whatever reason is not able to secure the necessary means of subsistence by his own resources or by payments by third parties, in particular by benefits under a social security scheme, be granted such assistance by counselling and help as the particular case may require to remove want.

The necessary means of subsistence include:

- (a) the necessaries of life (food, housing, clothing);
 - (b) care in case of sickness and maternity;
 - (c) aid for minor children for education and vocational training, and special aid for the blind, persons suffering from hearing disturbance or logopathy, and other physically or mentally disabled persons.
2. as a rule, assistance should be granted in the form of benefits in cash leaving the indigent person in his home (non-institutional care), unless institutional care is required in particular cases; involuntary placing in an institution should be permitted only by virtue of legal authorisation;
 3. regulated assistance be granted by the services of the State, of the communities or of private institutions; private initiative and services for preventing and removing indigence should be particularly encouraged;
 4. political, economic, social or other discrimination of persons receiving public assistance be excluded.

A P P E N D I X IIIDRAFT PREAMBLE

The Governments signatory to the present Convention or Social Charter, being Members of the Council of Europe,

Whereas the purpose of the Council of Europe is to achieve a closer unity among its Members, in order inter alia to facilitate their social progress;

Desirous of progressively improving the well-being of their citizens by a continuous raising of living standards and the equitable sharing of resources and burdens, in order to ensure the dignity of man affirmed in the European Convention on Human Rights and Fundamental Freedoms;

Conscious that the standard of living primarily depends on economic conditions;

Resolved to ensure a regular increase of production and trade among themselves, a high and stable level of employment and the stability of their economies;

Considering economic policy not as an end in itself but as a means of achieving those social objectives reflecting the spiritual and moral values which are the common heritage of the European peoples,

Have agreed as follows:

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, 12th September, 1957

Restricted
CE/Soc WP II (57) 2
Or. Fr.

SOCIAL COMMITTEE

Fifth Session

Working Party

appointed to prepare the Sixth Session
of the Committee

EUROPEAN SOCIAL CHARTER

(Final Clauses)

Memorandum and draft texts

prepared by the Legal Department of
the Secretariat-General for use by the
Working Party

1. The Social Committee, at its Fifth Session from 15th to 19th July 1957, instructed the Legal Department to prepare a draft, for the Working Party, of the Final Clauses of the European Social Charter (see CM (57) 107, page 25). The attached preliminary draft is accordingly submitted.

2. The suggested draft is merely an outline: it contains certain formulae, on the substance of which the Working Party will be called upon to state its views. Particular consideration should be given to the question whether the Charter is to be exclusive in character, i.e. whether only Council of Europe Member States may become Parties to it, or whether - as Article 23 (b) of the Assembly's draft proposes - other States will be allowed to accede. In the latter event the Working Party may wish to make use of the text of the appended Article (g). It will also be necessary to re-examine the Final Clauses after the Working Party has drafted all the provisions it wishes to insert in the Charter, in particular the implementation clauses. Conversely, the wording of the Final Clauses may well necessitate changes in other provisions.

3. It is proposed that at the end of the first part of the Charter, the following clause should be inserted as a separate paragraph:

"The rights set forth in the first part of the present Charter (Convention) shall be subjected to no restrictions or limitations other than such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others and for the protection of public order, security, health and morals".

This proposal is based on the second paragraphs of Articles 9, 10 and 11 of the Convention for the Protection of Human Rights, and on Article 1 of the European Convention on Establishment. If it is adopted, point 15 of the first part of the Charter will need to be reviewed.

APPENDIXFINAL CLAUSESArticle (a)

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any High Contracting Party availing itself of this right of derogation shall within a reasonable lapse of time keep the Secretary-General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary-General when such measures have ceased to operate and the provisions of the Charter (Convention) to which it has subscribed are again being fully executed. The Secretary-General shall in turn inform the other High Contracting Parties accordingly. (1)

Article (b)

The restrictions permitted under this Charter (Convention) to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed. (2)

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- (1) This Article is identical with Article 20 of the Assembly's Draft, Article 15, paragraph 1 and 3, of the Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 28 of the European Convention on Establishment, with the exception of the words "within a reasonable lapse of time" (second line of second paragraph) and the last sentence of paragraph 2, which have been added in the interests of clarity. Another question is whether the Secretary-General ought not to bring such derogations to the notice of other bodies.
- (2) This Article corresponds to Article 18 of the Convention for the Protection of Human Rights.

Article (c)

The provisions of this Charter (Convention) shall not prejudice the provisions of domestic law or of any bilateral or multilateral conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected. (1)

Article (d)

1. This Charter (Convention) shall apply to the metropolitan territory of each High Contracting Party. Each High Contracting Party may, at the time of signature or of the deposit of its instrument of ratification (or accession) (2), specify, by declaration addressed to the Secretary-General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose. (3)

2. Any High Contracting Party may at the time of signature or ratification of this Charter (Convention), or at any time thereafter, declare, by notification addressed to the Secretary-General of the Council of Europe, that the present Charter (Convention) shall extend in whole or in part to a territory or territories specified in the said declaration for whose international relations it is responsible. It shall specify in the declaration the provisions of the paragraphs /groups of paragraphs/ appearing in the second part of the Charter (Convention) which it accepts as binding in respect of the territories named in the declaration. (4)

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- (1) This text conforms to Article 25 of the European Convention on Establishment.
- (2) Assuming that provision is made for accession (see paragraph 2 of this Memorandum.)
- (3) This paragraph reproduces Article 81, paragraph 1 of the draft European Code of Social Security, mutatis mutandis.
- (4) This paragraph is based on Article 63, paragraph 1, of the Human Rights Convention, Article 29, paragraph 2, of the European Convention on Establishment, Article 24 (a) of the Assembly's Draft and Article 81, paragraph 2, of the draft Code of Social Security.

3. The Charter (Convention) shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary-General of the Council of Europe shall have received notification of such declaration.

4. In the said territories the provisions of this Charter (Convention) shall be applied with due regard to local requirements. (1)

5. The Secretary-General shall communicate to the other High Contracting Parties any declaration transmitted to him in accordance with the present Article. (2)

Article (e)

Any High Contracting Party may propose amendments to this Convention in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the High Contracting Parties any amendments so proposed, which shall then be considered by the representatives of the High Contracting Parties on the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments thus approved shall be transmitted to all signatory Governments and shall enter into force as soon as all the High Contracting Parties have informed the Secretary-General of their acceptance. (3)

Article (f)

1. This Charter (Convention) shall be open for signature by the Members of the Council of Europe. It shall be ratified. Instruments of ratifications shall be deposited with the Secretary-General of the Council of Europe.

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- ./.
- (1) Paragraphs 3 and 4 correspond with Article 63, paragraphs 2 and 5, of the Human Rights Convention and Article 24 (b) and (c) of the Assembly's Draft.
 - (2) Paragraph 5 conforms to Article 29, paragraph 4, of the European Convention on Establishment.
 - (3) This Article reproduces Article 21 of the Assembly's draft. It must be decided whether amendments have to be accepted by all the Signatories, or only by States which have ratified the Charter (Convention) (i.e. the High Contracting Parties).

2. This Charter (Convention) shall come into force on the date of deposit of the fifth instrument of Ratification.

3. In respect of any Signatory ratifying subsequently the Charter (Convention) shall come into force on the date of deposit of its instrument of ratification.

4. The Secretary-General shall notify all the Members of the Council of Europe of the entry into force of the Charter (Convention), the names of the High Contracting Parties which have ratified it and the subsequent deposit of any instruments of ratification. (1)

Article (g)

After the entry into force of this Charter (Convention) the Committee of Ministers of the Council of Europe may invite any State not a Member of the Council to accede to it. Any State receiving such invitation may accede to this Charter (Convention) by depositing its instrument of accession with the Secretary-General of the Council who shall inform all the High Contracting Parties accordingly. In respect of any State so acceding, this Charter (Convention) shall come into force immediately upon deposit of its instrument of accession (2).⁷

Article (h)

1. A High Contracting Party may denounce this Charter (Convention) only at the end of a period of five years from the date on which the Charter (Convention) entered into force for such High Contracting Party, or at the end of any successive period of five years, and in each case after giving six months notice to the Secretary-General of the Council of Europe, who shall inform the other Parties accordingly. Such denunciation shall not affect the validity of the Charter (Convention) in respect of the other High Contracting Parties (3).

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- (1) This Article reproduces Article 34 of the European Convention on Establishment.
- (2) Text based on Article 10 of the European Convention on the equivalence of periods of University study, and corresponding to Article 23 (b) of the Assembly's Draft.
- (3) The first paragraph is based on Article 82 of the draft Code of Social Security. It corresponds to Article 22 of the Assembly's Draft.

2. Any High Contracting Party may denounce the present Charter (Convention), on the terms specified in the preceding paragraph, in respect of any territory to which the said Charter (Convention) is applicable by virtue of a declaration made in accordance with Article (d), paragraph 2.

3. Any High Contracting Party which ceases to be a Member of the Council of Europe shall also cease to be a party to this Charter (Convention)7. (1)

In witness whereof, the undersigned, being duly authorised thereto, have signed this Charter (Convention).

Done at.....

this.....day of..... 19..., in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the Signatories.

(1) This paragraph corresponds to Article 65, paragraph 3, of the Human Rights Convention. It will have to be omitted if the Working Party decides that the Charter (Convention) will be open to the accession of non-member States (see Article g).

Section III

Sixth session of the Social Committee

(October/November 1957)

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 10th October 1957

Restricted
 CE/Soc (57) 18 Final
 Cr. Fr.

SOCIAL COMMITTEE

(Sixth Session)

R E P O R T

of the Working Party appointed to prepare draft texts for the Sixth Session of the Social Committee, presented by M. Delpéréc, Rapporteur.

1. At its fifth session (15th to 19th July 1957), the Social Committee instructed the Working Party which it had appointed at its fourth session to hold a further meeting from 7th to 11th October 1957, when it would consider certain questions set forth in paragraph 120 of the Committee's Report (Doc. CM (57) 107) in preparation for the next meeting of the Social Committee in November 1957.

The Working Party was to examine the following questions:

- (i) Right to social security and assistance, see Doc. CE/Soc (56) 19, Part II and Doc. CE/Soc/Misc (57) 3, 4 and 5;
- (ii) The rights dealt with in Doc. CE/Soc (57) 12 (health, standard of living, social services);
- (iii) The Irish proposal mentioned in paragraph 100 above;
- (iv) Preamble;
- (v) Final clauses. Draft texts would be prepared by the Legal Department of the Secretariat-General;

- (vi) Ratification and implementation;
- (vii) Draft texts to add to Part I if additions to Part II render this necessary.

2. The Working Party met on 7th October at 10 a.m. It consisted of delegates from Belgium, the Federal Republic of Germany, France, Greece, Italy, Norway and the United Kingdom. The names of the delegates are listed in Appendix I to this report. The Secretariat had prepared two memoranda and draft texts to serve as working papers. The first of these memoranda deals with the final clauses of the Charter (Doc. CE/Sec/WP II (57) 2), the second with the other questions submitted to the Party (Doc. CE/Sec/WP II (57) 1).

3. M. Veysey, as Chairman of the Social Committee, opened the meeting. The Research Director of the Secretariat-General announced the decisions concerning the establishment of the Social Charter which were taken by the Ministers' Deputies at their meeting from 23rd September to 1st October 1957. (The Ministers' Deputies approved the three meetings proposed by the Secretariat, that is, the present meeting of the Working Party, the Social Committee's meeting in November and a joint meeting of members of the governmental Social Committee and representatives of the Assembly's Social Committee.) The Research Director mentioned the criticisms made by some Deputies of the fact that the second part of the Charter contains provisions which are not all binding and which in some cases fall below international standards (for example provisions relating to Trade Union rights do not go as far as those in Convention 87 of the I.L.O.) The Director of Research also informed the Working Party of the Deputies' instructions to the Social Committee with regard to the inclusion of the right to education in the Charter; this right was laid down in the Protocol to the Convention on Human Rights; what was now needed was to include the idea of free education. The Deputies instructed the Social Committee to draft a text in the matter and would decide later whether the text it drew up should be included in the Charter. Finally the Deputies had considered it advisable that the draft Charter should be submitted to legal experts. It was suggested that members of the Social Committee should if necessary bring legal experts with them to their next meeting. For the same reasons, the Legal Department of the Secretariat took part in the preparation and work of this meeting.

4. M. Veysey being ex officio Chairman of the meeting, M. Delpech was again appointed Rapporteur. The Working Party

decided to start by considering the rights on its programme, namely points i,ii,iii and vii of paragraph 120 of Doc. CM (57) 107 (including education) and to end up with points iv, vi and v of the same paragraph.

I. Right to Social Security

5. It was decided to base discussion of this right on the Belgian proposal reproduced in Appendix II (a) to the memorandum prepared by the Secretariat (Doc. CE/Soc/WP II (57) 1), since this proposal was similar to the Italian proposal in Appendix II (b) and to the text previously drawn up by the Secretariat (Doc. CE/Soc/WP (57) 1, Appendix 1). ~~After paragraph 1 of the Belgian proposal had been adopted,~~ there was an exchange of views on paragraph 2: should this paragraph mention both the draft Code of Social Security and the Protocol thereto, although these instruments are not officially in force? After the representatives of Norway, Belgium and the United Kingdom had agreed that paragraph 2 should be sub-divided so that references to the Code and the Protocol should appear separately, the representatives of Belgium and France supported an amendment by Norway which would alter the text to read as follows:

"2. To maintain the social security system at a satisfactory minimum level complying with the requirements for ratification of the European Code of Social Security" (see final texts in Appendix III to this Report).

6. It was decided to refer to the Protocol in a paragraph 3, worded as follows (the reference to be placed in square brackets):

"3. To endeavour progressively to raise the system of social security to a higher level [based upon standards defined in the Protocol annexed to the European Code of Social Security]".

7. There was a long discussion on whether it was advisable to retain the mention of the different categories of social security benefits. In the opinion of the Norwegian Delegation an enumeration of the categories might lead to confusion among the public, which might interpret it to mean that the standards referred to in the text applied to each individual category. In fact this was not so, insofar as the Code was based only on a selected few of these standards. At the suggestion of the Norwegian Delegation the reference to the different categories of benefits was deleted in the amended text adopted by the Working Party; a suggestion by the Italian Delegation that these categories should be inserted in paragraph 1 was rejected. Also rejected was a proposal that the text of the Code should be reproduced as an Annex to the final text of the Charter.

8. Next the Belgian and Italian Delegations each spoke in defence of their own draft text of paragraph 4 (para. 3 of the Italian draft) concerning equality of treatment. Supported by the Norwegian and German Delegations the Italian text (paragraph 4) was adopted, with a slight alteration at the end of the second paragraph. This text is reproduced in Appendix III to this Report.

9. Finally, after a discussion in which the Norwegian, French, Belgian, German and United Kingdom Delegations took part, the Working Party decided to delete paragraph 5 which deals with the adjustment of social security benefits to meet the effects of currency depreciation (Belgian proposal). According to the Delegations mentioned above, the object of this paragraph 5 was already provided for in the European Code and it was therefore unnecessary to repeat it in the Charter. The Italian Delegation opposed this point of view after the rejection of a Belgian proposal that benefits should be adjusted according to any appreciable variations in the cost of living.

II. Right to Social and Medical Assistance

10. The Working Party had before it a text drawn up by the Secretariat and a detailed text put forward by the German Delegation which was replaced in the course of the meeting by a new text which is reproduced as Appendix II to this Report (Doc. CE/Soc/WP II (57) 1, Appendix II in fine (c), replaced by Doc. CE/Soc/WP II Misc. (57) 1).

11. A discussion arose over paragraph (a) of the new German text. This paragraph was adopted in an amended form in accordance with a proposal by the Norwegian Delegation to omit the list of means of subsistence.

12. Paragraph (b) of the German text concerning the placing of assisted persons in a foster family was rejected. Discussion then followed on paragraphs (c) and (d) of the German text, of which the first (relating to help by appropriate services) was adopted, while the second, concerning private initiative and private services, was rejected at the proposal of the Norwegian Delegation, supported by France, Italy and Belgium.

13. Paragraph (e) of the German text which deals with discrimination in the matter of assistance, led to lengthy discussion. This took account of the possibility that the right to public assistance may entail the loss of other rights (for example the loss of the right to vote). Despite the amendments made to the text at the suggestion of the Chairman, the members of the Working Party could not reach agreement. It was, however, decided that the amended text will be included among the texts submitted to the Social Committee but that it will be placed in square brackets in order to call the Committee's attention to the difficulties to which the discussion gave rise. (See amended text (paragraph 3) in Appendix III).

14. The Working Party then examined the question of equal treatment in the matter of assistance for foreign workers as provided for in paragraph 2 of the text drafted by the Secretariat and reproduced as alternative II at the end of Appendix I to Doc. CE/Sec/WP II (57) 1.

15. After agreeing to accept this text in principle - in order to have a certain counterpart to the similar provision laid down in the right to social security - the Working Party adopted an amendment put forward by the Chairman to incorporate this text in the following paragraph (paragraph 3 of Alternative II drafted by the Secretariat). The final text, which then became paragraph 4 of the amended German draft, is reproduced in Appendix III.

16. Before adopting the final text the Working Party discussed at length whether it was necessary, in principle, to refer in the Charter to existing instruments dealing with the same question (in this case the European Convention on Social and Medical Assistance). At the suggestion of the Norwegian and Belgian Delegations, the Working Party decided that there was no reason why they should not include such a reference and adopted paragraph 4 which refers to the European Convention.

17. A proposal by the Greek Delegation to insert the phrase "insofar as possible" in paragraph I was rejected. The Greek Delegation expressed reservations with regard to the adopted text.

III. The right to health

18. The Working Party based its consideration of this subject on the text drafted by the Secretariat (Chapter II, Part I, of Doc. CE/Sec (57) 12). This text was prepared in the light of the opinion by the Committee of Experts on Public Health. After deciding that the passages in square brackets in Alternative II should be omitted, the Working Party adopted the wording reproduced in the attached Appendix III. Since the text thus adopted is to be inserted in Part II of the draft Charter, the Working Party reserved the right to draft a corresponding text for inclusion in Part I. (See Chapter IX below).

IV. Right to a proper standard of living, etc.

19. In this connection the Working Party examined the considerations and proposals in Chapter II, Part 2, of Doc. CE/Soc (57) 12. On a motion by the Norwegian Delegation, they agreed that this right be referred to in the Preamble to the Charter. The Italian representative alone dissented; he suggested that the right in question should be inserted in the body of the Charter and entered a reservation as regards the majority decision of the Working Party. It was decided that the final text would be drafted when the Preamble was discussed.

V. The right to Social Services

20. After considering the draft text prepared by the Secretariat, which appears in Chapter II, part 3, of Doc. CE/Soc (57) 12 (amended text of Article 1 of the Consultative Assembly's draft), the Working Party adopted a proposal by the German representative to omit the provision on the right to social services. The Working Party's decision was based on the fact that there was no longer any need for such a clause, since the draft in its present state already included a number of provisions on social services (see the agreed text on social and medical assistance, as well as certain clauses relating to the right to work).

VI. Irish proposal on the protection of women workers

21. At the previous meeting of the Social Committee the Irish Delegation had proposed the adoption of a text worded as follows:

"To prohibit the employment of women on night work in specified employments or on specified work underground, or on certain processes which may be prescribed by national laws as unsuitable for women."

The Social Committee had referred this question to the Working Party for study (Doc. CM (57) 107, paragraph 99).

The Greek, Italian, Luxembourg and Turkish Delegations had stated that they were in favour of the principle embodied in the text concerned.

22. During the discussion by the Working Party the Italian and German Delegations said that in principle they supported the Irish text, but the Belgian, French and Norwegian Delegations were opposed to it. In particular, they recalled recent criticism by the women's organisations of the notion of special protection for women in their work. The importance of that criticism was recognised by the United Kingdom Delegation.

23. The I.L.O. representative called the attention of the Working Party to the International Labour Conventions on women workers, namely Convention 4 of 1919 as amended in 1934, and Convention 45 of 1935. After noting that the principle of special protection for women at work was already implicitly recognised in Part I, paragraph 8 of the draft Charter (Doc. CM (57) 107, Appendix IV, Part I, Point 8: "other employed women as appropriate"), the Chairman suggested a slightly amended version of the Irish text. The Norwegian and Belgian Delegations upheld their opposition to the text, which reads as follows:

"The High Contracting Parties undertake to take action to regulate the employment of women workers on night work in specified employments and to prohibit their employment in specified work underground or as appropriate on heavy work which is unsuitable for them."

24. Subject to a reservation by the French Delegation, it was agreed that the Working Party would submit that text to the Social Committee at its next meeting, but solely with the object of preparing the ground for final consideration of the problem, since the Working Party had been unable to reach agreement.

VII. The right to education

25. As mentioned in paragraph 3 of the present Report, the Ministers' Deputies instructed the Social Committee to draft a text on the right to education. Since the Working Party had received no instructions on the subject, the Secretariat was asked to prepare an appropriate draft for consideration by the next meeting of the Social Committee.

VIII. The right to leisure

26. Certain aspects of this right were discussed in the Secretariat's memorandum (CE/Soc/WP II (57) I, Chapter X, Point (e)). The Working Party debated whether the subject should be dealt with in the draft Charter. In the opinion of the Belgian, German, Italian and Norwegian Delegations it more fittingly belonged to the cultural field, and they felt that it would be out of place in a Social Charter. Since it had no specific instructions, and since the Social Committee had previously decided that the right to leisure should not be included in the Charter, the Working Party did not draft a text.

IX. Draft texts to complete the First Part of the draft Charter

27. After discussing this question, which is dealt with in Chapter X of the Secretariat's memorandum (CE/Soc/WP II (57) I), the Working Party adopted a new Article on the right to health (cf. decision in paragraph 13 of the present Report). The text proposed by the Secretariat and adopted by the Working Party reads:

"Everybody has the right to benefit from all measures enabling him to enjoy the highest possible standard of health attainable" (Chapter X, Point (a), of Dec. CE/Soc/WP II (57) I).

An amendment by the Norwegian Delegation to insert the words "scientifically accepted" after the phrase "all measures" was rejected.

X. Legal scope of the Charter

(Ratification conditions)

28. The head of the Secretariat's Legal Department attended the meeting of the Working Party at which this subject was discussed. The Secretariat had drafted certain articles (CE/Soc/WP II (57) I, Chapter VIII) and the Belgian and United Kingdom Delegations had previously submitted two proposals to the Committee (CE/Soc (57) 8 and 9).

29. The Chairman summarised the attitudes adopted by the Delegations in the Social Committee (see Doc. CM (57) 107, paragraph 110). There appeared, he said, to be three schools of thought. The first held that all the clauses of the Charter should be accepted as mandatory. The second took the opposite view, namely that the Signatory States should be entirely free to choose those clauses by which they wished to be bound (United Kingdom proposal). The third school of thought, to the effect that there should be a minimum number of binding provisions, was reflected in the Belgian text; it might give rise to two interpretations: first, that there should be a minimum number of provisions accepted and freely chosen by participating States ("numerical minimum"), and second, that there should be a "prescribed minimum" of provisions which would be binding on all participating States. The two interpretations might be alternative or complementary. The Belgian, Norwegian, Italian, German and French Delegations supported a system combining the "numerical minimum" and the "prescribed minimum". The United Kingdom Delegation preferred the system of a "numerical minimum" freely chosen. It was agreed, on a proposal by the German Delegation, to defer a final decision until the Social Committee had finished drafting the various Articles, and the replies of Governments had been received regarding their acceptance of the binding clauses. In that connection it will be recalled that the Secretariat circulated a questionnaire to Governments in accordance with the Social Committee's decision (CM (57) 107, paragraph 119), asking them to state which provisions of Part II they would be prepared to accept as binding.

30. The Working Party drew up a text for submission to the Social Committee, so that the latter could take a final decision in the matter and fix the exact minimum number of obligations to be assured by all the Governments.

31. On the basis of the draft submitted by the Secretariat (CE/Soc/WP II (57) 1) Chapter VIII Alternate II) and a proposed amendment by the Belgian Delegation, the Working Party drew up a text founded on the idea of a "numerical minimum". This text met the approval of all the Delegations except that of Italy, which made an express reservation in the matter. The adopted text can be found in Appendix IV to the present Report.

32. The adopted text calls for the following comments:

(a) Sub-paragraph (a) of the first paragraph refers to Part I of the Charter. It was drawn up in accordance with the Belgian memorandum (Ecc. CE/Soc (57) 8) on which the Secretariat's draft was based. (CE/Soc/WP II (57) 1, Chapter VIII).

(b) Two alternative versions were drafted for sub-paragraph (b) of paragraph 1 concerning the settlement of a numerical minimum, of which the first is based on a minimum number of the numbered paragraphs in Part II of the Charter and the second on a minimum number of Chapters, that is to say of groups of paragraphs relating to the same right. At the suggestion of the Belgian Delegation, it was agreed that the minimum number of obligations could be higher if the Governments were to be bound by a number of paragraphs rather than chapters. The Belgian Delegation proposed that, should the latter solution be adopted, the minimum number of chapters required for ratification should amount to 50% of the total number of chapters. It would rest with the Social Committee to take the decision in the matter at its next meeting. The Italian Delegation protested against a system of ratification based on a choice by paragraphs, which, in its opinion, would seriously lower the prestige of the Charter. The other Delegations did not share this view.

(c) After a long discussion as to which part of the Charter should contain this text, the Working Party decided that it might be advisable to place it in a new part which would become Part III of the Charter and which would thus contain provisions dealing with matters of substance as distinct from those dealing with ratification procedure which appear in the last part of the Charter (final clauses).

33. The Italian Delegation again drew the attention of the Working Party to the need for having specified obligations binding on all the Member States within a system of a "numerical minimum" (see paragraph 31 above). The Working Party, aligning itself with the opinion of the German Delegation, thought that the idea put forward by the Italian Delegation might be re-examined by the Social Committee after receipt of the replies to the questionnaire sent to Governments (referred to in paragraph 28 of this Report).

34. At the request of the Chairman, the representative of the Secretariat stated that, in accordance with the decision of the Social Committee at its last Session (see paragraph 119 of the Report - CM (57) 107), a circular letter had been sent to the members of the Social Committee, asking them to state to what extent they could accept the mandatory provisions.

35. At the suggestion of the German Delegation, it was decided that in a further letter communicating the texts now being drafted by the Working Party, the Secretariat would invite all the members of the Social Committee to endeavour to obtain specific instructions from their Governments as to the acceptability of these texts and others not yet considered by the Social Committee so as to enable them, at their meeting on 25th November, to come to a final conclusion with regard to the minimum number of provisions (chapters and/or numbered paragraphs) which the Governments are prepared to accept as mandatory. /

36. The Chairman suggested that in his opinion the Charter could now be drawn up in five parts. The first two would deal with social rights and principles and the resulting obligations devolving on the Contracting States. Part III would contain certain provisions on questions of substance concerning ratification and the legal scope of the Charter. Part IV would deal with its implementation and Part V would contain a number of final provisions including those relating to ratification procedure.

37. The Working Party having agreed to this scheme, the Secretariat was instructed to prepare a complete draft text of the Social Charter for the Social Committee, having due regard to the texts drawn up at the present meeting and the suggestions made for the general lay-out of the Charter.

XI. Implementation of the Charter

38. Concerning the implementation of the Charter and the supervision of its implementation, the Working Party had before it a text drafted by the Secretariat giving four alternative versions (CE/Sec/WP II (57) I Chapter IX).¹ A provisional draft text had previously been submitted to the Social Committee by the Belgian Delegation (CE/Sec (57) 8).² In addition, the German Delegation had submitted a new proposal to the Working Party (see Appendix VI).³

39. The German Delegation came back to the question it raised during the 5th session of the Social Committee. First, it thought that the Committee of Experts referred to in the Secretariat's draft should not be identical with the I.L.O. Committee of Experts for the application of Conventions and Recommendations. These highly qualified experts had enough to do as it was. It was surely not impossible to find equally qualified experts in the Western countries.

40. The second point raised by the German Delegation was in connection with the supervision of the Charter's implementation by a tripartite body. The German Delegation was not convinced by the arguments in favour of the tripartite principle in the implementation of the Charter. To apply this principle in the Council of Europe would jeopardise the very structure of the Council as an organ of intergovernmental co-operation. There was no valid comparison between the proposed body and the consultative Economic and Social Committee of the Common Market. With regard to the Consultative Assembly's idea of a Social Charter it should be pointed out that the Assembly had not adopted this proposal but had only recommended the Committee of Ministers to establish a Social Charter taking into consideration the draft annex to Recommendation 104 and the differing observations and suggestions made during the debates in public session on this matter.

41. Finally, the German Delegation thought that the mechanism for the implementation of the Charter and its supervision should be as simple as possible. It accordingly proposed that a sub-committee of the Social Committee should receive the reports and conclusions of the Committee of Experts. The German Delegation could not agree with the argument of the General Affairs Committee of the Assembly (reproduced in the Secretariat's memorandum) that by acting as the body supervising the implementation of the Charter the Social Committee would be a "judge in its own cause". The Reports submitted by a High Contracting Party would not be examined by the representative of that Party only but by several delegates representing various High Contracting Parties. The same procedure applied within the I.L.O.

42. The German Delegation saw no reason to fear that the solution proposed in this matter would exclude the participation of trade union representatives in the implementation of the Charter. Under the terms of the German proposal there would be two stages in which workers and employers organisations should participate in implementing the Charter. The national organisations could be consulted on the national level and representatives of international organisations would have every opportunity of putting forward their opinions in the proposed Sub-Committee. This system would be in conformity with No.5 of the operative part of the Resolution (50) 25 of the Committee of Ministers.

43. The Italian Delegation favoured the idea of supervision by independent experts, but wondered whether the task should not be assigned to the I.L.O. experts or experts working in close contact with them so as to ensure unity of jurisprudence. The questions raised by the implementation of the Charter could often be the same as those judged by the I.L.O. Committee of Experts for the application of Conventions and Recommendations. The Italian Delegation was against the idea of a tripartite body to supervise the implementation of the Charter and gave its unqualified support to the solution advocated in the German proposal.

44. The Belgian Delegation persisted in its belief that the only way of associating the trade union organisations with the implementation of the Charter - as advocated by the Committee of Ministers in its Resolution (56) 25 - was to set up a Tripartite Committee. It could not therefore accept the German proposal. This proposal did, however, involve a simplification and so should be regarded as a sound basis for discussion on the understanding that a solution would still have to be found to two difficulties not provided for in the proposal, namely (1) the need to create a link between the proposed Committee of Experts and the Committee of Experts of I.L.O., so as to ensure unity of jurisprudence and (2) the need to find a satisfactory alternative solution which would permit the effective association of trade union and employers' representatives.

45. The United Kingdom Delegation accepted the German proposal as a sound basis for a solution.

46. The Norwegian Delegation was of the same opinion. It considered that the German proposal met the need for simplicity, even if it could not accept it in its entirety.

47. The Greek Delegation supported the German proposal on condition that a genuine link was established between the two Committees of Experts in question and that the employer and trade union organisations should somehow or other be represented at the international and not at the national level.

48. The French Delegation shared the opinion of the Greek Delegation.

49. Summing up the general discussion, the Chairman observed that there seemed to be agreement in the Working Party on the following points:

(a) The appointment of a Committee of independent experts, on the understanding that there would have to be a link between them and the I.L.O. experts.

(b) The idea of enabling the representatives of the employer and trade union organisations to be associated in one way or another with the implementation of the Charter. One aspect of this association would be to send copies of the periodical reports to these organisations.

50. The only point on which the Working Party had not reached complete agreement was the composition of the body to which the Committee of Experts would submit its conclusions, which raised the whole problem of the participation of employers and trade union representatives in this body.

51. With regard to the link with the I.L.O. Committee of Experts, the Working Party adopted the Belgian proposal that the I.L.O. should appoint a representative to sit in a consultative capacity in the Committee of Experts, appointed by the Committee of Ministers (as provided for both in the German proposal and in the Secretariat's text).

52. The I.L.O. representative informed the Working Party that the proposed solution appeared satisfactory. He said he agreed with the opinion of the Belgian Delegation that it was essential that the I.L.O. representative should sit on the Committee of Experts rather than on the Committee to which its conclusions were submitted.

53. The majority of the Working Party agreed with the idea that copies of the governments reports should be transmitted to national trade union and employers organisations. The French Delegation, however, expressed a reservation with regard to this procedure. The most representative trade union and employers' organisations were not always affiliated to international organisations which had consultative status with the Council of Europe. It did not seem appropriate to transmit the reports to the national trade union and employers' organisations, since they were not all in a position to make known their views within the Council of Europe. The French Delegation would be prepared to support a provision that international organisations should be kept informed through Secretariat channels.

54. Following this general discussion, the Working Party examined the clauses of the text submitted by the German Delegation (see Appendix VI).

Article A (1)

55. At the suggestion of the Norwegian Delegation the Working Party decided to substitute the phrase "a report at two-yearly intervals" for "annual report". Article A was adopted with this amendment and a few purely formal alterations. (See new text in Appendix V).

Article B

56. At the request of the Norwegian Delegation, the Working Party next discussed Article B which provides for the transmission of reports relating to the provisions of the Charter which have not been accepted by a Contracting Party. This provision based on the practice in I.L.O., was supported by the Belgian, Italian, German and French Delegations - the latter invoking the necessity of gradual implementation.

(1) The following numbering refers to the texts drawn up by the Working Party. ./.

It was opposed however by the Greek and Norwegian Delegations, the latter calling attention to the difference between the task of the I.L.O. and that of the Council of Europe with regard to the implementation of the Social Conventions.

57. The German Delegation expressed the opinion that it was precisely the reports on the unaccepted provisions which could pave the way for the eventual acceptance of these measures.

58. The Working Party agreed to an amendment proposed by the Italian Delegation, by which the Committee of Ministers would decide which provisions should be dealt with in the reports, and adopted a new version of Article B. (See Appendix V).

59. The Working Party decided not to adopt the Article C of the proposal of the German Delegation.

Article C (new text)

60. With regard to the former Article D, which has become the new Article C, the question arose whether trade union organisations should be authorised to furnish comments on the reports of which they receive copies and what action should be taken on such comments. The French Delegation reaffirmed its previous observations. It thought that the transmission of reports to national trade union or employers' organisations would be justified only if their opinions could be made known, through international organisations with consultative status, to the organs of the Council which will consider the reports of the High Contracting Parties.

61. The Working Party, after considering the possibility of finding another formula to satisfy the French Delegation, agreed to a compromise proposal, suggested by the Head of the Legal Department of the Secretariat, to add to the former Article D (now Article C, paragraph 1,) in fine the words "which are members of the international organisations of employers and trade unions in consultative status to the Council of Europe".

62. The German Delegation pointed out that this amendment did not take into account the fact that the International Organisation of Employers did not (or not yet) possess consultative status. The amended text was nevertheless retained and the members of the Working Party expressed the hope that the I.O.E. would in the near future decide to apply for consultative status with the Council of Europe.

63. The Working Party then discussed the purpose of sending copies of the reports to the national employer and trade union organisations and what was to be done with the comments made by them on these reports.

64. The I.L.O. Representative said that the question presented itself differently in his Organisation. In certain countries the trade union organisations were in the habit of submitting comments on the reports in question. These comments were transmitted to the Committee of Experts and the organisations had the opportunity of making known their views in the Tripartite Committee for the application of Conventions and Recommendations.

Article C and D

65. Following the information given by the I.L.O. Representative, the Norwegian Representative said that the Charter should lay an obligation on the governments to transmit the comments of the employer and trade union organisations to the Committee of Experts. The French Delegation said it agreed with this principle. The German, Greek and United Kingdom Delegations being against making it compulsory for governments to transmit the comments of the trade union organisations to the Experts, the Working Party agreed on a compromise, supported by the French, Belgian and Italian Delegations, which is incorporated in the amended text of the new Articles C, paragraph 2, and D, paragraph 1, (see Appendix V).

Article E

66. In drafting the text of the new Article E, the Working Party discussed the question of the composition of the Committee of Experts provided for in former Articles E and F. The paragraphs 2 - 4 of the new Article E contain a more or less modified text of the German Delegation's proposal, made under former Section G, concerning the terms of reference of the experts.

Article F

67. In a new Article F the Working Party has provided for a link between the Committee of Experts and I.L.O.

Article G

68. In connection with the new Article G concerning the body responsible for examining the conclusions of the Committee of Experts, the Belgian Delegation expressed the desire that there should be a genuine association of workers and employers in the work of this body. In the opinion of the Belgian Delegation the terms of Resolution (56) 25 of the Committee of Ministers allowed only for the active participation of trade union representatives in this body, which should therefore be a Tripartite Committee. In practice, it was the international trade union organisations which would send representatives. This would meet with the desire of the French Delegation in this matter.

69. The Italian Delegation took the view that the constitution of a Tripartite Committee would be incompatible with the Council of Europe as an inter-governmental organisation.

70. The Norwegian and United Kingdom Delegations expressed their agreement with the text of former Articles I and K in the German proposal (see Appendix VI). The Belgian Delegation adhered to its views. It did not attach any importance to words, but, in the interests of efficiency, advocated a solution which would allow for the effective association of trade union representatives with the work of the Committee in question. It would, as an ultimate concession, agree to a Sub-committee in which the trade union delegates would sit in a consultative capacity. The other Delegations could not accept this proposal. They agreed on the formula set out in paragraph 2 of the new Article H (see Appendix V) by which "The Sub-committee shall hear the views of representatives of the international employers and trade union organisations..." The Belgian Delegation did not find this text satisfactory and expressed its reservations.

Article H

71. The former Article I having been adopted with some modifications becomes Article H.

XII. Final Clauses

72. In the presence of the Head of the Legal Department the Working Party next considered the memorandum by the Secretariat (Doc. CE/SOC/WP II (57) 2). Articles (a) and (b) of the text, reproduced in an Appendix to that Memorandum, were adopted with a few small amendments. The amended texts appear in Appendix VII to the present report. Article (c) was adopted unchanged, after some discussion of its necessity. A United Kingdom proposal to insert a reference to custom and social practices after "agreements" was not adopted.

73. The Working Party then adopted with slight amendments Article (d) relating to the application of the Charter in non-metropolitan territories. The Working Party was unanimous in its view that the Charter should be applied with flexibility in these territories. The Norwegian Delegation thought that it should be recorded that the phrase "in whole or in part" in the present draft should be interpreted as follows: The number of obligations assumed by the Contracting Parties may differ according to the non-metropolitan territories concerned and need not be identical with the number of those accepted by the metropolitan country itself. This view has been expressed in the amended text (Appendix VII). The Greek Delegation considered that the Charter should extend to all European territories administered by the member countries of the Council of Europe and situated within the European geographical orbit. The United Kingdom Delegation said that international agreements could not be applied to self-governing non-metropolitan territories without their agreement. The Text before the Working Party took account of the fact by making the extension of the Charter to non-metropolitan territories the subject of a separate declaration by the metropolitan country and the United Kingdom Delegation could not accept any provision which did not safeguard this situation. The matter was left to the decision of the Social Committee.

74. Article (e) dealing with amendments to the Charter after its ratification was adopted with a few drafting changes. Passing on to Article (f), on ratification formalities, the Working Party agreed on a minimum of five ratifications and a period of thirty days.

75. Article (g), dealing with the accession of non-member countries of the Council of Europe, which was proposed as a basis for discussion in the Legal Department's draft, gave rise to a long discussion. Some of the delegation, including those of Greece and France, opposed the idea of an "open" Charter. The Greek Delegation based its objections partly on the fact that the Charter, according to wishes of the Committee of Ministers, should form a counterpart to the European Convention on Human Rights, and also on the fact that the latter was a "closed" Convention. After the Norwegian, German and Belgian Delegations had expressed the view that the Charter should be of an "open" character, which would make it more effective and increase its impact, the Working Party thought it advisable to leave the text as it stood, while drawing the attention of the Social Committee to the differences of opinion in the Working Party.

76. On the question of denunciation of the Charter, provided for in Article (h), some members of the Working Party thought that the procedure should be made more flexible by allowing High Contracting Parties in certain circumstances to denounce individual Chapters or paragraphs of the Second Part of the Charter. The French and Belgian Delegations had misgivings about this proposal. An amended text reflecting the majority view was drawn up for the opinion of the Social Committee.

77. It will be seen that the text of paragraph 4 of Article (h) has been placed in square brackets; the reason is that the retention of the provision in question depends on whether the Charter is to be "open" or "closed".

78. In regard to the Final Clauses, the Working Party discussed the text put forward by the Legal Department in paragraph 3 of its Memorandum, amended according to the Department's own proposal (see Appendix VIIB). This text constitutes a general guarantee clause limiting the restrictions to which the States may subject the applications of the principles set forth in the first part of the Charter. The German and Norwegian Delegation opposed the idea of such a clause, which in instruments of this kind was only justified when it was a question of the rights and not of principles, as in Part I of the Charter. The Belgian, United Kingdom and Greek Delegations having expressed themselves in favour of this clause, the Working Party decided to reproduce the text in Appendix VIIA. The text has been placed in square brackets in order to call the attention of the Social Committee to the divergence of views within the Working Party.

XIII. Preamble of the Charter

79. The Working Party had before it a draft Preamble prepared by the Secretariat and reproduced as an appendix to Doc. CE/SCC/WP II (57) 1. The United Kingdom Delegation submitted another text for the Preamble, appearing in a proposal which it had put forward earlier (Doc. CE/SOC (56) 7). After considering both texts, the Working Party unanimously accepted the United Kingdom proposal (see Appendix VIII to the present report).

A P P E N D I X IWorking PartyList of Members

(7th - 11th October 1957)

BELGIUM

M.A. Delpérée

Conseiller économique et social du Ministre du Travail et de la Prévoyance sociale.

Mme. C. Gilon-Fichault

Service des Relations Internationales au Ministère du Travail et de la Prévoyance sociale.

FRANCE

Mlle. Legrand

Administrateur civil au Secrétariat d'Etat au Travail et à la Sécurité sociale.

FEDERAL
REPUBLIC OF
GERMANY

M. Geller

Directeur au Ministère du Travail.

Dr. H. Ernst

Ministère du Travail.

GREECE

M. A. Psaras Directeur Général du
Ministère de la Prévoyance
sociale, Fokionos Negri
21, Kypseli, Athènes.

M. A. Triantafylou Directeur au Ministère du
Travail.

ITALY

M. Carloni Inspecteur Général au
Ministère du Travail

NORWAY

M. A. Kringlebotten Secretary General of the
Ministry of Social Affairs.

M. B. Ulsaker Director in the Ministry of
Labour and Municipal Affairs.

UNITED
KINGDOM

Mr. G.C. Veysey, C.B. Under Secretary
Ministry of Labour and
National Service.

Mr. C.A. Larsen Principal
Ministry of Labour and
National Service.

OBSERVERS

E. I. T. M. P. P. Fano Chef de la Division des
Organisations Internationales.

A P P E N D I X I I

Proposal of the Federal Republic of Germany

Right to Social and Medical Assistance

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

- (a) to ensure by State, community or private services, that every person who is without adequate resources and who is unable to secure such resources on his own or with the aid of third parties, in particular by benefits under a Social Security Scheme, be granted such assistance as the case may require in order to secure food, medical care, housing, clothing, education and vocational training;
- (b) to ensure that, as a rule, the necessary benefits in cash or in kind will be granted in the form of non-institutional care, unless the circumstances of the case require placing in a foster family or in an institution, and that involuntary placing in a foster family or in an institution will be permitted only by virtue of legal provisions;
- (c) to provide that everyone may receive by appropriate services such counselling and personal help as may be required to prevent, to remove or to alleviate want;
- (d) to encourage and promote private initiative and private services for preventing and removing indigence;
- (e) to ensure that there will be no political, economic, social or other discrimination against persons receiving public assistance.

A P P E N D I X III

Texts adopted by the Working Party

Texts to be inserted in Part I of the Charter
(after point G)

"Everybody has the right to benefit from all measures enabling him to enjoy the highest possible standard of health attainable".

Texts to be inserted in Part II of the Charter

Right to Social Security

In order to ensure the exercise of this right, the High Contracting Parties undertake:

1. to establish or maintain a system of social security;
2. to maintain the social security system at a satisfactory minimum level complying with the requirements for ratification of the European Code of social security;
3. to endeavour to raise progressively the system of social security to a higher level /based upon standards defined in the Protocol to the European Code of social security/;
4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements, to ensure:
 - equal treatment with all nationals of each of the Contracting Parties in respect of social security rights;
 - the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties, with a view to the opening, maintenance or recovery of the right to social security benefits, as well as for the calculation of such benefits;
 - the retention of benefits arising out of social security legislation, whatever movements the persons protected may be obliged to undertake between the territories of the Contracting Parties;

Right to social and medical assistance

In order to ensure the exercise of this right the High Contracting Parties undertake:

1. to ensure that every person, who is without adequate resources and who is unable to secure such resources on his own or from other sources in particular by benefits under a social security scheme, be granted the necessary means of subsistence and in case of sickness the care necessitated by his condition;
2. to provide that everyone may receive by appropriate services such counselling and personal help as may be required to prevent, to remove, or to alleviate want;
3. to ensure that persons receiving public assistance shall not for that reason, suffer from a diminution of their political or social rights;
4. to apply the provisions referred to in the preceding paragraphs on an equal footing to nationals of other High Contracting Parties legally present in their territories, subject to the provisions regarding repatriation contained in the European Convention on Social and Medical Assistance.

Right to Health

In order to ensure the exercise of this right, the High Contracting Parties undertake, either directly or in co-operation with public or private organisations to take appropriate measures designed inter alia:

- (a) to remove as far as possible the causes of ill-health;
- (b) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- (c) to prevent as far as possible epidemic, endemic and other diseases.

Protection of women workers

The High Contracting Parties undertake to take action to regulate the employment of women workers on night work in specified employment and to prohibit their employment in specified work underground or as appropriate on heavy work which is unsuitable for them.

A P P E N D I X I VText adopted by the Working Party
relating to Part III of the Charter
(legal scope)

"(1) Each of the H.C.P. undertakes:

- (a) to consider the first Part of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part.
- (b) to consider itself bound by not less than X of the Chapters or by not less than Y of the numbered paragraphs of the second Part of this Charter to be selected by it. The Chapters or paragraphs selected shall be notified to the Secretary-General of the Council of Europe not later than the time when the instrument of ratification of the H.C.P. concerned is deposited.

(2) Any High Contracting Party may, at a later date, declare by notification to the Secretary-General that it considers itself bound by any numbered paragraphs of the second Part of the Charter which it has not already accepted under the terms of the preceding paragraph. Such undertakings subsequently given shall be deemed to be an integral part of the ratification and shall have the same effect as from the date of the notification.

(3) The Secretary-General shall communicate to all the other High Contracting Parties any notification which he shall have received pursuant to this Part of the Charter."

A P P E N D I X V

Draft Articles adopted by the Working Party
relating to the implementation of
the Social Charter

Article (A)

The H.C.P. undertake to send to the Secretary -General of the Council of Europe a report at two yearly intervals, in a form to be determined by the Committee of Ministers, concerning the provisions of the second Part of the Charter which they have accepted.

Article (B)

The H.C.P. shall send to the Secretary-General of the Council of Europe, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of the second Part of the Charter which they did not accept at the time of their ratification or in a subsequent notification. The Committee of Ministers shall determine from time to time, on which provisions such report shall be requested and the form of the reports to be provided.

Article (C)

(1) Each H.C.P. shall communicate copies of its reports referred to in Articles A and B to its national organisations which are members of the international organisations of employers' and trade unions in consultative status to the Council of Europe.

(2) The H.C.P. shall forward to the Secretary-General of the Council of Europe any comments on the said reports received from these national organisations, if so requested by them.

Article (D)

The reports sent to the Secretary-General of the Council of Europe under Articles A and B shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary-General under paragraph 2 of Article C.

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Article (E)

(1) The Committee of Experts shall consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity, and of recognised competence in social and international questions, nominated by the High Contracting Parties.

(2) The members of the Committee shall be appointed for a period of six years. They may be re-appointed. However, of the members first appointed, the terms of two members shall expire at the end of four years.

(3) The members whose terms are to expire at the end of the initial period of four years, shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.

(4) A member of the Committee of Experts appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article (F)

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Article (G)

(1) The reports and conclusions of the Committee of Experts shall be submitted for examination to a Sub-committee of the Governmental Social Committee of the Council of Europe. This Sub-committee shall be composed of one representative of each of the H.C.P.

(2) The Sub-committee shall hear the views of representatives of the international employers' and trade union organisations in consultative status with the Council of Europe.

(3) The Sub-committee shall present to the Committee of Ministers a report containing its conclusions and appending the report of the Committee of Experts.

Article (H)

The Committee of Ministers may, on the basis of the report of the Sub-committee, and after consultation with the Consultative Assembly, make to each M.C.P. any necessary recommendations.

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A P P E N D I X VIProposal of the Federal Republic of Germany
relating to the implementation
of the Social CharterArticle (A)

The H.C.P. undertake to submit to the Secretary-General of the Council of Europe an annual report, in a form to be determined by the Committee of Ministers on the provisions to which they have adhered.

Article (B)

The H.C.P. shall send to the Secretary-General of the Council of Europe, at the intervals and in the form determined by the Committee of Ministers, reports on the state of their legislation and practice relating to the provisions of each of the Articles X to Y which they did not accept at the time of their ratification or in a subsequent notification.

Article (C)

The H.C.P. may, where appropriate, reproduce in full or in part the reports which they have previously submitted to the International Labour Organisation or any other competent international organisation on the same points.

Article (D)

The H.C.P. shall communicate copies of the annual and periodical reports to the most widely representative employers' and trade union organisations.

Article (E)

The reports shall be examined by a Committee of Experts. The Committee of Experts shall consist of five members and shall be constituted in the following manner.

Article (F)

(1) Each H.C.P. shall name an expert of recognised competence in social or international questions and of the highest integrity, independent of governments, employers or workers.

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(2) The members of the Committee of Experts shall be elected by the Committee of Ministers by an absolute majority of votes.

Article (G)

(1) The members of the Committee shall be elected for a period of five years. They may be re-elected. However, of the members elected at the first election, the terms of two members shall expire at the end of three years.

(2) The members whose terms are to expire at the end of the initial period of three years, shall be chosen by lot by the Committee of Ministers immediately after the first election has been completed.

(3) A member of the Committee of Experts elected to replace a member whose terms of office has not expired shall hold office for the remainder of his predecessor's term.

Article (H)

The members of the Committee of Experts shall receive for each day of duty a compensation to be determined by the Committee of Ministers.

Article (I)

The reports and conclusions of the Committee of Experts shall be submitted to a Sub-Committee of the Social Committee. This Sub-committee shall be composed of one representative of each of the H.C.F.

Article (K)

(1) The Sub-committee shall examine the reports and the conclusions of the Committee of Experts submitted to it.

(2) The Sub-committee may hear the views of representatives of the most widely representative international employers' and trade union organisations.

(3) The Sub-committee shall present to the Committee of Ministers through the Social Committee an annual report containing its conclusions.

Article (L)

The Committee of Ministers may, on the basis of this report, make to each H.C.F. any necessary recommendations.

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A P P E N D I X VIIFINAL CLAUSESArticle (a)

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any High Contracting Party which has availed itself of this right of derogation shall within a reasonable lapse of time keep the Secretary-General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary-General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed. The Secretary-General shall in turn inform the other High Contracting Parties accordingly. (1)

Article (b)

The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed. (2)

Article (c)

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected. (3)

(1) This Article is identical with Article 20 of the Assembly's Draft, Article 15, paragraphs 1 and 3, of the Convention for the Protection of Human Rights and Article 28 of the European Convention on Establishment, with the exception of the words "within a reasonable lapse of time" (second line of second paragraph) and the last sentence of paragraph 2 which have been added in the interests of clarity.

(2) This Article corresponds to Article 28 of the Convention for the Protection of Human Rights.

(3) This text corresponds to Article 25 of the European Convention on Establishment.

Article (d)

1. This Charter shall apply to the metropolitan territory of each High Contracting Party. Each High Contracting Party may, at the time of signature or of the deposit of its instrument of ratification/or accession(1), specify, by declaration addressed to the Secretary-General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose. (2)

2. Any High Contracting Party may at the time of ratification of this Charter or at any time thereafter, declare by notification addressed to the Secretary-General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible. It shall specify in the declaration of the Chapters or paragraphs of the second Part of the Charter which it accepts as binding in respect of the territories named in the declaration. (3)

3. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary-General of the Council of Europe shall have received notification of such declaration.

./.

(1) Assuming that provision is made for accession.

(2) This paragraph reproduces Article 61, paragraph 1 of the draft European Code of Social Security, mutatis mutandis.

(3) This paragraph is based on Article 63, paragraph 1, of the Human Rights Convention, Article 29, paragraph 2, of the European Convention on Establishment, Article 24 (a) of the Assembly's Draft and Article 61, paragraph 2, of the draft Code of Social Security.

4. In the said territories the provisions of this Charter shall be applied with due regard to local requirements. (1)

5. The Secretary-General shall communicate to the other High Contracting Parties any declaration transmitted to him in accordance with the present Article. (2)

Article (e)

Any Signatory Government may propose amendments to this Charter in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the other Signatory Governments any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as soon as all the High Contracting Parties have informed the Secretary-General of their acceptance. (3)

Article (f)

1. This Charter shall be open for signature by the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

2. This Charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification.

3. In respect of any Signatory ratifying subsequently, the Charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification.

4. The Secretary-General shall notify all the Members of the Council of Europe of the entry into force of the Charter, the names of the High Contracting Parties which have ratified it and the subsequent deposit of any instruments of ratification. (1)

(1) Paragraphs 3 and 4 correspond with Article 63, paragraphs 2 and 5, of the Human Rights Convention and Article 24 (b) and (c) of the Assembly's Draft.

(2) Paragraph 5 conforms to Article 29, paragraph 4, of the European Convention on Establishment.

(3) This Article corresponds with Article 21 of the Assembly's Draft. The Working Party is of the opinion that amendments have to be accepted by States which have ratified the Charter (i.e. the High Contracting Parties).

Article (g)

After the entry into force of this Charter the Committee of Ministers of the Council of Europe may invite any State not a Member of the Council to accede to it. Any State receiving such invitation may accede to this Charter by depositing its instrument of accession with the Secretary-General of the Council who shall inform all the High Contracting Parties accordingly. In respect of any State so acceding, this Charter shall come into force immediately upon deposit of its instrument of accession. (2)

Article (h)

1. A High Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force, or at the end of any successive period of two years, and in each case after giving six months notice to the Secretary-General of the Council of Europe, who shall inform the other Parties accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other High Contracting Parties provided that at all times there are not less than five such Contracting Parties. (3)

2. A High Contracting Party may on the terms specified in the preceding paragraph, denounce any of the Chapters or paragraphs of the second part of the Charter which it has accepted, provided that the number of Chapters or paragraphs binding upon that Party shall at all times not be less than X or Y respectively.

3. Any High Contracting Party may denounce the present Charter or any of the chapters or paragraphs of the second Part of the Charter, on the terms specified in the first paragraph of this article, in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with Article (d), paragraph 2.

(1) This Article reproduces Article 34 of the European Convention on Establishment.

(2) Text based on Article 10 of the European Convention on the equivalence of periods of University study, and corresponding to Article 25 (b) of the Assembly's Draft.

(3) The first paragraph is based on Article 62 of the draft Code of Social Security. It corresponds to Article 22 of the Assembly's Draft.

4. Any High Contracting Party which ceases to be a Member of the Council of Europe shall also cease to be a Party to this Charter. (1)

In witness whereof, the undersigned, being duly authorised thereto, have signed this Charter.

Done at

this..... day of.....19..., in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the Signatories.

./.

(1) This paragraph corresponds to Article 65, paragraph 3, of the Human Rights Convention. It will have to be omitted if the Working Party decides that the Charter will be open to the accession of non-member States (see Article g).

Amended draft of the introductory paragraph
of Part I of the Social Charter
adopted by the Working Party.

First Part:

"The High Contracting Parties accept as an aim of policy to be pursued by all appropriate means both national and international in character the attainment of conditions in which the rights and principles set forth hereafter in this First Part may be effectively realised. [Subject only to such restrictions or limitations as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others and for the protection of public order, security, health and morals]"

Working Party

in charge to prepare the Sixth Session
of the Social Committee

Amendment to Doc. CE/Soc/WP II (57) 2
presented by the Secretariat

It is proposed to modify the clause inserted in paragraph 3 of Document CE/Soc/WP II (57) 2 as follows:

"In implementing their policy the High Contracting Parties will not subject the rights and principles set forth in this Part of the Charter to restrictions or limitations other than such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others and for the protection of public order, security, health and morals."

A P P E N D I X VIII

Draft preamble
of the
European Social Charter
adopted by
the Working Party

The High Contracting Parties, Members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention on Human Rights and the Protocol thereto the Member States of the Council of Europe agreed to secure to their peoples the civil and political rights and freedoms therein specified;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of their peoples;

Have agreed as follows:

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 31st October 1957

Restricted
CE/Soc (57) 19

SOCIAL COMMITTEE

6th Session

European Social Charter

Draft texts drawn up by the Social Committee
and by the Working Party

Information document

drawn up by the Social Division

PREAMBLE

The High Contracting Parties, Members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention on Human Rights and the Protocol thereto the Member States of the Council of Europe agreed to secure to their peoples the civil and political rights and freedoms therein specified;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of their peoples;

Have agreed as follows: 7(1)

PART I

The High Contracting Parties accept as an aim of policy to be pursued by all appropriate means both national and international in character the attainment of conditions in which the rights and principles set forth hereafter in this First Part may be effectively realised. [Subject only to such restrictions or limitations as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others and for the protection of public order, security, health and morals] 7.(1)

1. Everyone shall have the opportunity to earn his living in a freely accepted occupation.
2. All workers have the right to just conditions of work.
3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair wage sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to negotiate collectively.
7. Children and young persons have the right to a special protection against physical and moral hazards arising in their work.
8. Expectant or nursing mothers in employment and other employed women as appropriate have the right to a special protection in their work.

(1) The texts between square brackets have not yet been adopted definitively by the full Committee.

9. Everyone has the right to appropriate facilities for vocational guidance and training to help him to choose an occupation suited to his personal aptitude and to his interests.
10. Everybody has the right to benefit from all measures enabling him to enjoy the highest possible standard of health attainable.⁽¹⁾
11. All workers and their dependants shall have the right to social security.
12. Everyone without adequate resources shall have the right to social and medical assistance.
13. Disabled persons have the right to rehabilitation and resettlement, whatever the origin and nature of their disability.
14. The family as a fundamental unit of society has the right to appropriate social and economic protection.
15. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
16. The nationals of any of the High Contracting Parties have the right to engage in any gainful occupation in the territory of any of the others, on a footing of equality with the nationals of the latter, subject only to restrictions based on considerations of security, public order and public health, or on cogent economic or social reasons.
17. Migrant workers have the right to protection and assistance.

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(1) Not yet definitively adopted by the full Committee.

PART IIThe right to work

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

- (1) to accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of employment;
- (2) to protect effectively the right of the worker freely to choose any available occupation, though this provision shall not be interpreted as prohibiting or authorising any union security clause or practice;
- (3) to establish or maintain free employment services;
- (4) to promote appropriate vocational guidance, training and rehabilitation.

The right to just conditions of work

With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not put into effect under national schemes by agreements between employers' and workers' organisations or are not normally carried out otherwise:

- (5) to provide for reasonable daily and weekly working hours, the working week to be progressively reduced, to the extent that the increase of productivity and other relevant factors permit;
- (6) to provide for recognised public holidays with pay;
- (7) to provide for a minimum of two weeks' annual holiday with pay;
- (8) to provide for additional paid holidays for workers engaged in dangerous or unhealthy occupations as prescribed;

- (9) to provide for a guaranteed weekly rest period.

The right to safe and healthy working conditions

- (10) With a view to ensuring the effective exercise of this right the High Contracting Parties undertake to provide for adequate protection of life and health during work.

The right to a fair wage

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

- (11) to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award;

and recognise:

- (12) the right of all workers to additional wages for work performed at the request of the employer in addition to normal working hours;
- (13) the right of men and women workers to equal pay for work of equal value.

The exercise of these rights may be realised by voluntary collective agreement, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

The right to organise

- (14) With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations and to join organisations for the protection of their economic and social interests, the High Contracting Parties undertake that national law shall not be such as to ~~impair~~, nor shall it be so applied as to impair, this freedom, subject only to restrictions prescribed by law for reasons of national security or public interest or for the prevention of disorder or crime or for the protection of the rights and freedoms of others. The extent to which the guarantees provided for in this paragraph shall apply to the armed forces, the police and the administration of the State shall be determined by national laws or regulations.

The right to bargain collectively

With a view to the promotion of this right the High Contracting Parties undertake:

- (15) to promote, where necessary and appropriate, machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- (16) to promote the establishment and use of appropriate machinery for conciliation or arbitration for the settlement of labour disputes;
- (17) to encourage and promote joint consultation of workers and employers;

and recognise:

- (18) the right of workers and employers to collective action in cases of conflicts of interest, subject only to limitations prescribed by law for reasons of national security or public interest.

The right of children and young persons
to protection

With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not put into effect under national schemes by agreements between employers' and workers' organisations or are not normally carried out otherwise:

- (19) to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

- (20) to provide that a higher minimum age of admission to employment shall be fixed with regard to prescribed occupations regarded as dangerous or unhealthy;
- (21) to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of their education;
- (22) to provide that the working day of persons under 16 years of age shall be limited in accordance with the needs of their development and particularly with their need for vocational training;
- (23) to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
- (24) to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national law and regulations;
- (25) to provide that employed persons under 18 years of age shall be subject to regular medical control, with the exception of certain occupations provided for by national law and regulations.

The right of employed women to protection

With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not put into effect under national schemes by agreement between employers' and workers' organisations or are not normally carried out otherwise:

- (26) to provide either by paid leave or by adequate social security benefits for women to take leave before and after childbirth up to a total of 12 weeks;
- (27) to prohibit dismissal from employment during or on account of maternity absence;
- (28) to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

Protection of women workers(1)

- (29) The High Contracting Parties undertake to take action to regulate the employment of women workers on night work in specified employment and to prohibit their employment in specified work underground or as appropriate on heavy work which is unsuitable for them.

The right to vocational guidance

With a view to ensuring the effective exercise of this right the High Contracting Parties will endeavour:

- (30) to provide or promote assistance to individuals in solving problems related to occupational choice and progress with due regard for the individual's characteristics and their relation to occupational opportunity; such assistance to be available both to young persons, including school children, and to adults;
- (31) to encourage the full utilisation of the facilities provided, by appropriate measures such as reducing or abolishing any fees or charges.

The right to vocational training

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

- (32) to provide or promote, as necessary, the technical and vocational training of workers;
- (33) to provide or promote a system of apprenticeship;
- (34) to provide or promote, as necessary, special facilities for re-training of adult workers where this is necessary as a consequence, particularly, of technological developments or of dislocations of the employment market;

•/•

(1) Not yet definitively adopted by the full Committee.

- (35) to encourage the full utilisation of the facilities provided, by appropriate measures such as:
- (a) reducing or abolishing any fees or charges;
 - (b) granting financial assistance in appropriate cases;
 - (c) including in the normal working hours time spent on supplementary training taken by the workman, at the request of his employer, during employment;
 - (d) ensuring, through adequate supervision, the efficiency of apprenticeship arrangements and the adequate protection of apprentices.

Note: The following paragraphs 36 - 59 have not yet been definitively adopted by the full Committee.

Right to Health

- (36) In order to ensure the exercise of this right, the High Contracting Parties undertake, either directly or in co-operation with public or private organisations to take appropriate measures designed inter alia:
- (a) to remove as far as possible the causes of ill-health;
 - (b) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
 - (c) to prevent as far as possible epidemic, endemic and other diseases.

Right to Social Security

In order to ensure the exercise of this right, the High Contracting Parties undertake:

- (37) to establish or maintain a system of social security;
- (38) to maintain the social security system at a satisfactory minimum level complying with the requirements for ratification of the European Code of social security;
- (39) to endeavour to raise progressively the system of social security to a higher level based upon standards defined in the Protocol to the European Code of social security;
- (40) to take steps, by the conclusion of appropriate bilateral and multilateral agreements, to ensure:
 - equal treatment with all nationals of each of the Contracting Parties in respect of social security rights;
 - the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties, with a view to the opening, maintenance or recovery of the right to social security benefits, as well as for the calculation of such benefits;
 - the retention of benefits arising out of social security legislation, whatever movements the persons protected may be obliged to undertake between the territories of the Contracting Parties;

Right to social and medical assistance

In order to ensure the exercise of this right the High Contracting Parties undertake:

- (41) to ensure that every person, who is without adequate resources and who is unable to secure such resources on his own or from other sources in particular by benefits under a social security scheme, be granted the necessary means of subsistence and in case of sickness the care necessitated by his condition;

- (42) to provide that everyone may receive by appropriate services such counselling and personal help as may be required to prevent, to remove, or to alleviate want;
- [(43) to ensure that persons receiving public assistance shall not for that reason, suffer from a diminution of their political or social rights;]
- (44) to apply the provisions referred to in the preceding paragraphs on an equal footing to nationals of other High Contracting Parties legally present in their territories, subject to the provisions regarding repatriation contained in the European Convention on Social and Medical Assistance.

The right of the disabled to rehabilitation
and resettlement

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

- (45) to take adequate measures for the provision of training facilities, including specialised institutions where necessary;
- (46) to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment, and measures to encourage employers to admit disabled persons to employment.

The right of the family to social and
economic protection

- (47) The High Contracting Parties, recognising the importance of the family as a fundamental unit of society, will endeavour to ensure the economic and social protection of family life.

The right of mothers and children to
social and economic protection

- (48) With a view to ensuring the effective exercise of this right the High Contracting Parties will take all appropriate and necessary measures for the effective protection of mothers and children including the establishment or maintenance of appropriate institutions for the purpose.

The right of access to employment
in other member countries

With a view to promoting the effective exercise of this right the High Contracting Parties will endeavour:

- (49) to apply existing restrictions in a spirit of liberality;
- (50) to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
- (51) to liberalise, individually or collectively, regulations governing the employment of foreign workers;
- (52) to permit their own nationals to engage in gainful activity in the territories of the other Member States subject only to restrictions prescribed by law for reasons of national security or public interest.

The right of migrant workers to protection
and assistance

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

- (53) to provide adequate and free services to assist migrants, particularly in obtaining accurate information, and to prevent, so far as national laws and regulations permit, misleading propaganda relating to emigration and immigration;

- (54) to adopt appropriate measures to facilitate the departure, journey and reception of migrants, and to provide appropriate services for health control and medical attention;
- (55) to endeavour in so far as such matters are regulated by law or regulations or are subject to the control of administrative authorities, to secure for migrants lawfully within their territories equal treatment with nationals with regard to the following matters:
 - (i) remuneration and other employment and working conditions;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
- (56) to secure for migrants equal treatment with nationals with regard to the following matters:
 - (i) employment taxes, dues or contributions payable in respect of employed persons, and
 - (ii) legal proceedings relating to matters referred to in this Article;
- (57) to secure that migrants, subject to the completion of a reasonable period of employment or residence, are adequately protected against involuntary repatriation or expulsion;
- (58) to permit, within legal limits, the transfer of such parts of the earnings and savings of the migrant as he may desire;
- (59) to extend the protection and assistance provided for in this Article also to self-employed migrants in so far as such measures apply to this category.

PART III (1)

(1) Each of the H.C.P. undertakes:

- (a) to consider the first Part of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part;
- (b) to consider itself bound by not less than X of the Chapters or by not less than Y of the numbered paragraphs of the second Part of this Charter to be selected by it. The Chapters or paragraphs selected shall be notified to the Secretary-General of the Council of Europe not later than the time when the instrument of ratification of the H.C.P. concerned is deposited.

(2) Any High Contracting Party may, at a later date, declare by notification to the Secretary-General that it considers itself bound by any numbered paragraphs of the second Part of the Charter which it has not already accepted under the terms of the preceding paragraph. Such undertakings subsequently given shall be deemed to be an integral part of the ratification and shall have the same effect as from the date of the notification.

(3) The Secretary-General shall communicate to all the other High Contracting Parties any notification which he shall have received pursuant to this Part of the Charter.

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(1) Part III has not yet been definitively adopted.

PART IV (1)

Article (A)

The H.C.P. undertake to send to the Secretary-General of the Council of Europe a report at two yearly intervals, in a form to be determined by the Committee of Ministers, concerning the provisions of the second Part of the Charter which they have accepted.

Article (B)

The H.C.P. shall send to the Secretary-General of the Council of Europe, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of the second Part of the Charter which they did not accept at the time of their ratification or in a subsequent notification. The Committee of Ministers shall determine from time to time, on which provisions such report shall be requested and the form of the reports to be provided.

Article (C)

(1) Each H.C.P. shall communicate copies of its reports referred to in Articles A and B to its national organisations which are members of the international organisations of employers' and trade unions in consultative status to the Council of Europe.

(2) The H.C.P. shall forward to the Secretary-General of the Council of Europe any comments on the said reports received from these national organisations, if so requested by them.

Article (D)

The reports sent to the Secretary-General of the Council of Europe under Articles A and B shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary-General under paragraph 2 of Article C.

(1) Part IV has not yet been definitively adopted.

Article (E)

- (1) The Committee of Experts shall consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity, and of recognised competence in social and international questions, nominated by the High Contracting Parties.
- (2) The members of the Committee shall be appointed for a period of six years. They may be re-appointed. However, of the members first appointed, the terms of two members shall expire at the end of four years.
- (3) The members whose terms are to expire at the end of the initial period of four years, shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.
- (4) A member of the Committee of Experts appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article (F)

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Article (G)

- (1) The reports and conclusions of the Committee of Experts shall be submitted for examination to a Sub-committee of the Governmental Social Committee of the Council of Europe. This Sub-committee shall be composed of one representative of each of the H.C.P.
- (2) The Sub-committee shall hear the views of representatives of the international employers' and trade union organisations in consultative status with the Council of Europe.
- (3) The Sub-committee shall present to the Committee of Ministers a report containing its conclusions and appending the report of the Committee of Experts.

Article (H)

The Committee of Ministers may, on the basis of the report of the Sub-committee, and after consultation with the Consultative Assembly, make to each H.C.P. any necessary recommendations.

PART V (1)

Article (a)

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any High Contracting Party which has availed itself of this right of derogation shall within a reasonable lapse of time keep the Secretary-General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary-General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed. The Secretary-General shall in turn inform the other High Contracting Parties accordingly.

Article (b)

The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article (c)

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article (d)

1. This Charter shall apply to the metropolitan territory of each High Contracting Party. Each High Contracting Party may, at the time of signature or of the deposit of its instrument of ratification [or accession], specify, by declaration addressed to the Secretary-General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

(1) Part V has not yet been definitively adopted.

2. Any High Contracting Party may at the time of ratification of this Charter or at any time thereafter, declare by notification addressed to the Secretary-General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible. It shall specify in the declaration of the Chapters or paragraphs of the second Part of the Charter which it accepts as binding in respect of the territories named in the declaration.

3. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary-General of the Council of Europe shall have received notification of such declaration.

4. In the said territories the provisions of this Charter shall be applied with due regard to local requirements.

5. The Secretary-General shall communicate to the other High Contracting Parties any declaration transmitted to him in accordance with the present Article.

Article (e)

Any Signatory Government may propose amendments to this Charter in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the other Signatory Governments any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as soon as all the High Contracting Parties have informed the Secretary-General of their acceptance.

Article (f)

1. This Charter shall be open for signature by the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

2. This Charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification.

3. In respect of any Signatory ratifying subsequently, the Charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification.

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

Article (g)

After the entry into force of this Charter the Committee of Ministers of the Council of Europe may invite any State not a Member of the Council to accede to it. Any State receiving such invitation may accede to this Charter by depositing its instrument of accession with the Secretary-General of the Council who shall inform all the High Contracting Parties accordingly. In respect of any State so acceding, this Charter shall come into force immediately upon deposit of its instrument of accession.

Article (h)

1. A High Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force, or at the end of any successive period of two years, and in each case after giving six months notice to the Secretary-General of the Council of Europe, who shall inform the other Parties accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other High Contracting Parties provided that at all times there are not less than five such Contracting Parties.

2. A High Contracting Party may on the terms specified in the preceding paragraph, denounce any of the Chapters or paragraphs of the second part of the Charter which it has accepted, provided that the number of Chapters or paragraphs binding upon that Party shall at all times not be less than X or Y respectively.

3. Any High Contracting Party may denounce the present Charter or any of the chapters or paragraphs of the second Part of the Charter, on the terms specified in the first paragraph of this article, in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with Article (d), paragraph 2.

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

In witness whereof, the undersigned, being duly authorised thereto, have signed this Charter.

Done at

thisday of19..., in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the Signatories.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 8th November 1957

Confidential
CE/Soc (57) 20

Or. Eng.

SOCIAL COMMITTEE

(6th Session)

25th November - 2nd December 1957

Note by the United Kingdom Delegation

Chapter of the draft European Social Charter dealing with the right to just conditions of work and the rights of children and young persons and of women to protection

1. The Chapters in the Second Part of the draft European Social Charter dealing with (1) the right to just conditions of work, (2) the right of children and young persons to protection, and (3) the right of employed women to protection are at present prefaced by the words:

"With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not put into effect under national schemes by agreement between employers' and workers' organisations or are not normally carried out otherwise."

2. It will be recalled that at the last meeting of the Social Committee this text was the subject of a sharp division of opinion and of reservations by a considerable number of delegates. The reason for these reservations was that in some member countries of the Council of Europe, including the United Kingdom, it is the policy of Governments that terms and conditions of employment, to which a number of the paragraphs of these Chapters relate, should in general be settled by voluntary negotiation between employers and workers without State intervention. Thus the United Kingdom Government, for instance, could not undertake obligations on such matters which could be regarded as intervention in the processes of voluntary negotiation. Under the text quoted above, even in a case where the provisions of any of these paragraphs were put into effect through collective agreements except in one small part of the field, the Government would be under obligation to intervene there in order to secure full compliance.

3. An alternative text which seeks to avoid the extremes of too rigid or too flexible obligations and which may be acceptable to a larger number of countries is suggested for consideration by the Committee as follows:

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

(a) to provide etc.

(b) to provide etc.

In countries where the provisions of any of these paragraphs are matters normally left to agreements between employers' and workers' organisations or are normally carried out otherwise than by law, the undertakings of these paragraphs may be given and compliance with them shall be treated as effective if their provisions are widely observed through such agreements or other means."

4. Another alternative text, in simpler form but conveying the same meaning, might be:

"With a view to ensuring the effective exercise of this right the H.C.P. undertake, except where such measures are normally left under national practice to agreements between employers' and workers' organisations or are normally carried out otherwise than by law and are widely observed through such agreements or otherwise."

5. Compliance with any of the undertakings would be dependent upon the provisions of the relevant paragraphs being "widely observed". It is necessary to include the word "widely" for two reasons. In the first place, it cannot be expected that a network of collective agreements will attain the completely uniform standard of observance that may be secured through legislation. In the second place, even if the observance, through collective agreements or other means, is general, it may be impossible to establish the facts with more than reasonable certainty.

6. It will moreover, be remembered that adequate opportunities will exist in the implementation procedure of the Charter for examining the extent to which the provisions of the Charter are carried out in practice.

7. The alternative texts are suggested as a basis for discussion, in the hope that they may resolve the difference of opinion in the Committee and enable them to reach a generally acceptable solution of this difficult problem.

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COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 14th November, 1957

Restricted
CE/Soc (57) 23

Or. Fr.

SOCIAL COMMITTEE

(6th Session)

EUROPEAN SOCIAL CHARTER

Memorandum by the Social Division on the right to education

In its Interim Report of 24th July, 1957, to the Committee of Ministers (Doc. CM (57) 105) the Social Committee stated that it had "not included provisions on the right to education, since there was some doubt whether the right in question could be regarded as properly forming part of a body of social and economic rights, and since a reference to it was made in the Protocol to the European Convention on Human Rights."

At their 52nd meeting, the Ministers' Deputies, after hearing a statement by the Director of Research, held an exchange of views, more particularly on whether a provision concerning the right to free and compulsory primary education should be included in the draft Social Charter. In their conclusions (Concl. (57) 52, Point X), the Ministers' Deputies instructed the Social Committee to draft such a provision, bearing in mind the idea of free education, so that they could consider at their next meeting whether it should be included in the draft Charter.

Before submitting this draft, the Social Division (henceforth referred to as the "Secretariat") wishes to recall and make a few general comments on the survey of

the question made to the Committee of Ministers by the Director of Research. As the Director pointed out, the right to education appears in the draft Charter appended to Recommendation 104 of the Consultative Assembly, which, by its Resolution (56) 25, the Committee of Ministers transmitted to the Social Committee with instructions to take it into account in its work. Moreover, this right is mentioned in the Universal Declaration of Human Rights, the United Nations Draft Covenant on Economic, Social and Cultural Rights, the Philadelphia Declaration of the International Labour Organisation and the American Declaration of the Rights and Duties of Man (Bogota, 1948).

To fail to include this right in the European Social Charter might therefore be interpreted as a departure from international tradition in this field.

It may be added that the report on automation submitted by the Director-General of the I.L.O. at the 1957 Session of the International Labour Conference laid great stress on the need to improve education in an age of automation and atomic energy. Higher skills are required. Both general education and vocational training must be adapted to changes in methods of production. So far as education is concerned the first essential in most countries, according to the I.L.O. report, is for better and longer basic schooling. Moreover, a greater percentage of the population than hitherto will need university or other higher education.

The idea of free education is not covered by the Protocol to the European Convention on Human Rights, for its Article 2 simply states that no person shall be denied the right to education, and goes on to guarantee the right of parents to ensure that their children receive an education in conformity with their convictions.

While it is true that this provision affords a guarantee apparently lacking in totalitarian States, the fact remains that the extension of free education to larger sections of the community is eminently a social question.

In view of these considerations, which are given full weight in the draft submitted by the Assembly, the Secretariat submits below two texts, the first of which, being of a declaratory nature, should be inserted in Part I of the draft Charter, and the other, being of a binding nature, in Part II.

Declaratory text:

Everyone has the right to education.

Binding text:

The right to education.

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

1. undertake to make primary education compulsory and free;
2. will take the necessary steps:
 - (a) to make secondary education, in its different forms, including technical and professional training, available to everyone at least up to the age of 18 years and to make it increasingly free;
 - (b) to ~~do~~ everything possible to ~~to~~ ensure a basic education for those persons who have not received or have not completed their primary education;
 - (c) to make university and other higher education accessible to all [who are capable of benefiting by it];
3. will respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Note: The declaratory text appears in the first draft Social Charter, as submitted by the Social Committee to the Consultative Assembly (Doc. 403, Section D, Art.17).

The binding text appears in both the drafts submitted to the Consultative Assembly by the Social Committee (Docs. 403 and 468) and in that appended to Recommendation 104 (Art. 1 M). The words in square brackets are those which appear only in Doc. 403.

CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

Strasbourg, 15th November 1957

Restricted
CE/Soc (57) 24

SOCIAL COMMITTEE

(Sixth Session)

EUROPEAN SOCIAL CHARTER

Replies from Delegations concerning the extent to which certain draft provisions of the Social Charter may be accepted by the Governments

In conformity with a decision taken by the Social Committee at its Fifth Session, the Secretariat on 26th July 1957 addressed a letter to the members of the Committee requesting them to indicate, in the light of national legislation and practice, to what extent the draft provisions adopted by the Committee might be accepted by Governments. The members were also asked to give brief reasons why certain other of these draft provisions could not be accepted.

Replies have so far been received in respect of the following countries: Belgium, Denmark, Federal Republic of Germany, Greece, Ireland, Netherlands, Norway, Turkey and the United Kingdom.

The text of these replies is reproduced in this paper. The Secretariat has also prepared a table of the replies, arranged by draft provisions of the Charter and intended to give a quick impression of the situation.

BELGIUM:

Ministry of Labour and Social Welfare,
International Relations,
2 rue Lambermont,
Brussels.

27th August, 1957.

Your Ref.: R.2.9485
Our Ref.: CG/GA/4960

Subject: Your letter of 26th July, 1957, concerning the
European Social Charter

Sir,

I have the honour to inform you of the results of a preliminary examination by the competent branches of my Department of the rights to be included in a European Social Charter.

The Belgian Government would be prepared forthwith to accept Part I of the Charter and all the rights listed in Part II, except for the following provisions:

Right of children and young persons to protection

Point 19

The authorised minimum age of admission to employment in Belgium is 14 and not 15 years.

Point 22

There is no general provision limiting the working day of persons under 16 years of age in accordance with the needs of their development and their need for vocational training.

Right of employed women to protection

Point 28

There is no general provision whereby nursing mothers in employment may be entitled to sufficient time off to feed their infants.

Right to vocational training ./.

Article 34 (c)

There is no general provision whereby time devoted to supplementary training at the request of the employer may be included in normal working hours.

I should also point out, in connection with Point 13, that Belgium has ratified International Labour Convention No. 100 concerning equal pay for male and female workers engaged in similar work; it therefore "recognises" the right of men and women workers to equal pay for work of equal value. However, this right is not yet in full operation, though the Government is doing everything within its power to encourage its generalisation, in accordance with the terms of the International Convention.

* * *

I wish to make it clear that, in my view, the discrepancies between the Social Charter and Belgian law are not such as to require amendment of the draft Charter. The Government will attempt to subscribe in the near or more distant future those rights which cannot be applied for the time being.

The Social Charter should be progressive and not reflect the minimum social measures now adopted throughout the member countries of the Council of Europe.

In this respect, I would re-affirm that the formula defining the right to organise, which casts doubt upon the right of civil servants to form trade unions, seems to call for the strongest reservations on my part, since it falls short of the normal standards now accepted on a world scale.

I remain, Sir,

Your obedient Servant,

Léon-Eli Troclet
Minister.

DENMARK:

MINISTRY OF SOCIAL AFFAIRS,
COPENHAGEN.

October 1957.

Statement on the Position of Denmark with regard
to the draft text of a European Social Charter
adopted by the Social Committee at its 5th Session

Re First Part:

In the view of the Danish members of the Social Committee the rights and principles set forth in that Part could be accepted as an aim of policy.

Re Second Part:The right to work

The provisions can either be accepted as an aim of policy or are being complied with.

The right to just conditions of work

The provisions are complied with, as far as paragraphs 7 and 9 are concerned.

As for paragraphs 5 and 6, the questions concerned are regulated by collective agreement between employers' and workers' organisations. As regards paragraph 8, it should be noted that the statutory annual holiday in Denmark is three weeks for all workers, employees and apprentices, irrespective of the question whether they are engaged in dangerous or unhealthy occupations.

The right to safe and healthy working conditions

The provision is being complied with.

The right to a fair wage

The provision of paragraph 11 is being complied with. The matters dealt with in paragraphs 12 and 13 are in Denmark

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regulated by collective agreements; and the principle of equal pay to men and women workers for work of equal value is not applied in wage-fixing by collective agreement.

The right to organise

The provision is being complied with. The right of the police and the administration of the State to form organisations for the protection of their professional interests is subject to no restrictions.

The right to bargain collectively

The provisions are being complied with. The joint-consultation machinery dealt with in paragraph 17 has been introduced in Denmark by agreement between the industrial organisations.

The right of children and young persons to protection

As regards paragraph 19, it should be noted that the minimum age of admission to employment in Denmark is 14 years. The provisions of the other paragraphs (20 to 25) are being complied with.

The right of employed women to protection

The provisions concerned are not being complied with, the Danish provisions on the subject providing for a maternity leave of no more than four weeks, as a rule; besides, no provision has been made for prohibiting dismissal from employment on account of maternity absence or for nursing mothers to be granted time off for that purpose subject to certain provisions concerning women civil servants and salaried employers.

The right to vocational guidance

The provisions are being complied with.

The right to vocational training

The provisions are being complied with. As regards paragraph 34 (c), however, it should be noted that this particular field is not subject to legislative regulation in this country.

FEDERAL REPUBLIC OF GERMANY:

Bonn, 17th October 1957.

Comments on Appendix IV to the report of the 5th Session
of the Social Committee

- (1) to (4): Yes
- (5) to (9): These rights can be accepted by the Federal Republic of Germany as binding obligations only if the introductory paragraph was modified in the light of the proposals of the Working Party. (Doc. CE/Soc (57) 5) or in accordance with the suggestion made under 70c of Doc. OM (57) 107.
- (10) Yes
- (11) Yes, provided, however, that not only deductions from wages explicitly prescribed by national legislation but also those warranted by law would still be permitted.
- (12) This right could be accepted as a binding obligation only if, according to a reservation made by the German delegation, an exemption from the obligation to pay additional wages for overtime work would be granted for overtime worked in emergency cases.
- (13) Yes. In the light of the discussions which took place during the Fifth Session of the Social Committee I take it that the principle of equal pay for work of equal value does not in any way create a right to equal pay for different types of occupations.
- (14) Yes; in my opinion it would be appropriate, however, to substitute in the second sentence the word "may" for the word "shall".
- (15) Yes.
- (16) Yes.
- (17) Yes.
- (18) Yes. ./. .

- (19) For the time being, the Federal Republic of Germany cannot accept this right as a binding obligation. Under the constitution of the Federal Republic of Germany the "Laender" (constituent states) are responsible for legislation in the field of education. As long as the "Laender" do not raise the school-leaving age to 15 years, the Federal Government will not be in a position to provide that the minimum age of admission to employment shall be 15 years.
- (20) Yes.
- (21) Yes.
- (22) Yes.
- (23) The Federal Republic will be in a position of accepting this right as a binding obligation only at a later date because legislation incorporating this right is under active consideration.
- (24) Yes.
- (25) This right will be accepted as a binding obligation in the near future because legislation incorporating this right is under active consideration.

GREECE:

Ministry of Labour
ATHENS

22nd October, 1957

THE RIGHT TO JUST CONDITIONS OF WORK

Para. 5 would be acceptable, since it is in line with the Greek Government's policy on working hours.

Para. 6 would also be acceptable, since Greek legislation provides for the payment of wages on public holidays (except Sundays), the total number of such holidays in Greece being five.

It should be noted that it is the national practice in Greece to pay workers, as of right, an annual sum equal to 25 days' wages during the Christmas and New Year holidays and 15 days' wages during the Easter holidays. Workers paid on a monthly basis consequently receive a month's pay and half a month's pay respectively.

Para. 7 would not be acceptable for the time being, since, under Greek legislation, annual holidays are fixed sometimes at less and sometimes at more than 2 weeks. The minimum annual holiday, depending on the length of service with the same employer and on the nature of the work, may vary from 6 days to 1 month.

Para. 8 would be acceptable, since the principle of granting additional paid holidays to workers engaged in dangerous or unhealthy occupations is recognised by Greek legislation. Law No. 539/1945 on holidays with pay lays down that by Royal decree additional holidays may be granted to workers employed in unhealthy or exhausting work.

Para. 9 would also be acceptable, because Greek legislation recognises the right of all workers to a weekly rest period of 24 hours on end.

THE RIGHT TO A FAIR WAGE

Para. 11 would be acceptable, as Greek legislation has long prohibited deductions from wages. Authorised deductions in the form of fines may not exceed 1/25th of the wage. Moreover, the Civil Code provides that wages are not subject to distraint and it is prohibited to subtract from wages, by way of compensation, sums owed to employers.

Para. 12 would also be acceptable, since Greek legislation provides for the payment of additional wages for all overtime. The supplement varies between 25% and 75% of the wage.

Para. 13 is not acceptable at present, since Greek legislation has laid down no standards for assessing the comparative value of male and female labour. In the civil service, banks and public utilities no discrimination is to be found in the matter of wages and salaries. There are also various collective agreements providing for equal pay for equal work as between men and women.

THE RIGHT TO ORGANISE

Para. 14 is acceptable, because Greek legislation recognises the right of both workers and employers to protect their economic and social interests by forming local and national unions and joining international trade union federations.

The law also recognises the right of civil servants to organise, although they are not permitted to strike.

THE RIGHT TO BARGAIN COLLECTIVELY

Para. 15 is acceptable. There are many collective agreements, national, local and professional, regulating working conditions, and particularly wages.

Para. 16 would be acceptable, since Greek legislation provides machinery for settling individual and collective labour disputes.

Apart from attempts at conciliation by the Ministry of Labour, the law has established a system of compulsory arbitration of the first and second degree. Professional magistrates sit on the arbitration boards as well as workers' and employers' representatives.

Para. 17 would be acceptable. Greek legislation long ago introduced joint consultation between workers and employers as regards both the composition of bodies responsible for social policy and the management of social insurance funds.

Para. 18 would also be acceptable. Workers enjoy the right to collective action, including strikes, subject to their respecting the law, which in some cases makes it compulsory to give notice of strikes in order to protect public health, national security or the public interest.

THE RIGHT OF CHILDREN AND YOUNG PERSONS TO PROTECTION

Para. 19 is not acceptable, at present since under Greek legislation the minimum working age for children is 14 years.

Para. 20 would be acceptable, since the law acknowledges the principle of fixing a higher minimum age of admission to occupations regarded as dangerous or unhealthy.

Para. 21 is also acceptable. The employment of children who have not completed their primary education is prohibited by Greek law.

Para. 22 cannot be accepted in toto, since Greek legislation has not admitted the principle that a shorter working day should be prescribed for persons under 16 years of age.

Para. 23 would not be acceptable. Greek legislation provides for a minimum of 12 days' holiday, instead of the 3 weeks proposed for workers under 18 years of age.

Para. 24 would be acceptable, being in conformity with Greek legislation.

Para. 25 is not acceptable for the time being, since Greek legislation upholds this principle only up to the age of 16.

Replies to the remaining points will reach you in a few days.

IRELAND:

Department of Social Welfare
DUBLIN

7th November, 1957.

Dear Mr. Tennfjord,

I regret that I have been unable before now to reply to your letter of the 26th July 1957 (R.2-9485 FT/PS) relative to the preparation of the Social Charter.

It is not possible at this stage to give a firm answer as to the extent to which the Articles of Part II already drafted could be accepted as binding obligations, but the following tentative opinion may be helpful:

Articles which can probably be accepted (17):

1, 2, 3, 4, 10, 11, 14, 15, 16, 17, 18, 29, 30, 31, 32, 33, 34

Residual responsibility cannot be accepted in respect of any matters normally left to collective bargaining. In view of this the introductory text to the following Articles cannot be accepted:

5 - 9, 19 - 25, 26 - 28.

Whether or not the principle of residual responsibility is carried through to the final text of the Charter - and we suggest that the matter be reviewed by the Committee - no undertaking can be given to amend existing laws or introduce new legislation in respect of the following Articles:

7, 8, 13, 23, 26 (re holidays), 27, 28.

Article 12 cannot be accepted as it stands. The text is too flat-footed.

Articles 19 and 20 cannot be accepted. The school-leaving age in Ireland is 14 years.

Yours sincerely,

W. A. Honohan

NETHERLANDS:

Ministerie van Sociale Zaken en
Volkgezondheid,
Flatgebouw "Willemspark",
Zeestraat 73,
'S.-Gravenhage.

9th October, 1957.

No. 1111,
International Affairs Division.

Dear Mr. Tennfjord,

Reference is made to your letter of 26 July 1957, R.2-9485, with enclosed Appendix IV to the report of the 5th Session of the Social Committee. In this connection please find enclosed the results of the examination of the texts so far adopted by the Committee.

1st Part of the Draft-Charter: no observations.

2nd Part of the Draft-Charter:

The right to work

(points 1 - 4)

You may remember that the Netherlands delegation had to make a provisional reservation on this item because certain provisions in our national legislation do not seem to be into line with the present text. The discussions on the question whether we will have to maintain that reservation are still going on. So, much to my regret, I am not in a position to let you know whether the present text of the provision on the right to work could be accepted as a binding obligation.

The right to just conditions of work

(point 6)

In the Netherlands, there are no statutory regulations with regard to public holidays with pay. However, in many collective agreements provision has been made in this respect, and as far as is known, it does not occur that part of the wages is deducted on account of the workers not

having worked on a public holiday. Of course workers paid by the day are not always entitled to a public holiday with pay.

(point 8)

As regards point 8 (to provide for additional paid holidays for workers engaged in dangerous or unhealthy occupations) I would like to point out that in 1953 the International Labour Conference was of opinion that this point should not be dealt with in connection with holiday rights, as the risks concerned should be provided for in another way, e.g. through safety measures, shorter working hours, more frequent periods of rest, etc.

Convention nr. 52 of 1936 and recommendation nr. 98 of 1954 do not provide for this point. I wonder whether it would be opportune to insert it now. The more so as this might interfere with the observance of point 10: to provide for adequate protection of life and health during work. This was at the time also one of the main arguments in Geneva for deleting this point from the text of the Bureau.

The right of children and young persons to protection

(point 19)

In the Netherlands it will not be possible in the near future to raise the minimum age of admission to employment to 15.

(point 20)

The wording of this article, although acceptable for the Netherlands, might be improved upon. The first part of points 19 and 20 are identical and nevertheless I believe that they do not mean the same thing. If I am not mistaken art. 20 does not only provide for the minimum age of admission to employment, but also for a minimum age of admission with regard to prescribed occupations regarded as dangerous or unhealthy. This may be illustrated by the following example:

In the Netherlands the minimum age for admission to underground work in a mine is 18. Apart from that, however, there are activities in the mine for which the minimum age is 21. In my opinion the latter has not sufficiently been made clear by the wording of art. 20. In my opinion the following text would be preferable:

"un âge plus élevé doit être fixé pour l'admission à des emplois ou l'exécution des travaux déterminés qui sont considérés comme dangereux ou insalubres".

(point 22)

The Labour Act in this country does not provide that the working day of persons under a certain age shall be limited, so for the time being it will not be possible to ratify this point.

(point 23)

As regards point 23 (three weeks' holiday with pay for persons under the age of 18) I would like to point out that this minimum has been provided for in the draft bill concerning statutory holiday provisions, but that an exception to the rules laid down in these provisions remain possible. In the advice of the Social Economic Council it is suggested to make the exceptions a bit easier.

(point 25)

We already made a reservation in this respect. As far as is known to me, it is not the intention of the Government to provide for this medical control by statute. For a large number of occupations or activities this medical control in our view is by no means necessary. In the Netherlands this matter has, therefore, been approached from a different angle, viz. by instituting a compulsory medical control for certain prescribed activities or occupations regarded as dangerous or unhealthy.

Yours sincerely,

T. M. Pellinkhof
Head of the International
Affairs Division

NORWAY:P R O M E M O R I A

from the Norwegian members of the
Governmental Social Committee of
the Council of Europe on the texts adopted
during the fifth session of the committee (July 1957)

First Part

The provisions in this part are supposed to be accepted by the Norwegian Government. It is understood that the acceptance of these provisions as an "aim of policy" will not make any hindrance in giving the rights such a content in relation to the individual citizens as conditions in our country require or make practically possible. Limitations may be necessary due to special natural conditions and industrial life, and on account of limited economical capacity.

Reservations must be made to reconsider the provisions in part one if additional provisions are made to the draft, proposed in the Working Parties meeting, October 1957, to add a general clause which would restrict the steps which the individual country would be allowed to take.

Respecting part one, paragraph 8, it is assumed that our country will be left free to limit the special protection for employed women to "expectant and nursing mothers" (cfr. the term "as appropriate" and the discussion at the committee meeting July 1957).

Second PartThe right to work

Paragraphs 1 - 4 can be accepted. It is understood that paragraph 2 will not prevent the maintenance of provisions in operation stating that the right to unemployment benefit will be lost if an unemployed person refuses to take such work as the authority in charge finds suitable for him.

The right to just conditions of workParagraph 5

Working hours for the great majority of the Norwegian employees are limited by legislation. Exempt from this are certain groups working under special conditions. The main part of these groups are in this respect forest workers (seasonal work paid by result and carried out under the worker's own arrangement of working time), workers in fishing and catching (seasonal work where workers have a share in the catch); workers in the theatres and entertainment establishments; workers in rescuing and diving work; crew on ships under 25 gr. reg. tons, hospital-ships, rescue-boats, etc. In the different acts regulating the working-hours there are further exemptions for persons in special jobs, e.g. in leading and controlling positions. However, it is supposed that regulations of working hours concerning the main part of the employees, will in reality influence on the working hours of employees which are not directly covered.

Norway can only accept paragraph 5 provided that every country has the opportunity to except from the regulations certain relatively small groups or positions of a special character.

Paragraph 6

Wages for two public holidays - 1 May and 17 May (Workers' Day and Constitution Day) - are secured by legislation. Most of the organised employees are paid for the remaining public holidays according to collective agreements. Certain groups of organised workers having shorter jobs or special conditions, however, are not covered. Further it is supposed that this is the case for many unorganised workers paid for piece work or per hour.

Thus, paragraph 6 can only be accepted provided that every country has a certain possibility to make exceptions.

Paragraph 7

According to the Act on Holiday with Pay every employee has the right to a three weeks' annual holiday with pay. The act does not cover certain close relatives of the employer or his wife, and persons having minor part-time jobs. It is supposed that such exemptions which have limited practical importance, will make no hindrance from Norway accepting paragraph 7.

Paragraph 8

It is supposed that Norway can accept this paragraph in view of the fact that there are general provisions for three weeks annual holiday with pay. Cfr. paragraph 7.

Paragraph 9

The great majority of employees have a weekly rest period, but there are certain groups or positions which are not covered directly by legislation or practice. Paragraph 9 can be accepted only if it is provided that there is a certain opportunity to make exemptions under special conditions. Cfr. what has been stated under paragraph 5 and 6.

The right to safe and healthy working conditions

Paragraph 10 can be accepted.

The right to a fair wageParagraph 11

The great majority of workers is covered by legislation but there are special groups which are not covered, such as workers in the fishing and the whaling industry and in domestic work. The paragraph can not be accepted unless each state can make exemptions for smaller groups.

Paragraph 12

This paragraph concerns wage-questions which according to Norwegian practice are left to workers' and employers' organisations. This paragraph can be accepted if the term "recognise" only means the recognition of a principle without an obligation for the individual Governments to intervene positively in order to secure wage supplement for work outside normal working hours.

This paragraph should be limited to workers which have working hours regulated by legislation, agreement or otherwise.

Paragraph 13

The same reply given to paragraph 12. In Norway equal pay has been applied in the public services. As regards the private sector the matter is under investigation and deliberation. The general framework of paragraph 13, however, is not clear, since there is no definition of the expression "equal pay for work of equal value".

The right to organise

Paragraph 14 can be accepted.

The right to bargain collectively

Paragraphs 15 - 18 can be accepted.

The right of children and young persons to protection

Paragraph 19 is covered by provisions in the general Workers' Protection Act and the Seamen's Act except for young workers in agriculture and in the fishing industry. Employment of children under 15 years of age appears in agriculture chiefly as short-time work in picking weeds and in harvesting, further in agricultural family undertakings where children within a reasonable limitation take part in the work, side by side with other family members. In the fishing industry employment of children under 15 years of age is rare, but not prohibited, and it happens that children under 15 years of age take part in fishing activities near their homes together with their father or other close relatives.

Paragraph 19 can only be accepted if the individual states are allowed to make exceptions as mentioned.

Paragraphs 20 and 21 can be accepted.

Paragraph 22 can be accepted. It is provided that to some extent the individual states must be free to consider to what extent limitation of the working day is necessary.

Paragraph 23 can be accepted, cfr. paragraphs 7 and 8.

Paragraph 24

For industrial undertakings, transport industry, building and construction work, the Workers' Protection Act lays down that persons under 18 years of age shall

not work during the night, unless it is necessary owing to vocational training or force majeure. These regulations do, however, not cover other fields, such as commerce and office work, hotels and restaurants, hospitals and other nursing institutions, domestic work, shipping and agriculture. It is understood that the right to make exceptions mentioned in this paragraph, is not so comprehensive as to cover all these cases. The paragraph can therefore not be accepted.

Paragraph 25

Norway has in the Workers' Protection Act of 7 December, 1956, got provisions which are still not enforced, but which will cover the minimum requirement in ILO-Convention No. 77 on medical examination of children and young persons in industrial work, and in Convention No. 78 on medical examination of children and young persons in non-industrial occupations (excluding agriculture and seafaring), namely examination of persons under 16 years of age. For the merchant marine more extensive regulations are in force.

Since paragraph 25 is more far-reaching than the conventions mentioned, it can not be accepted.

The right of employed women to protection

Paragraphs 26 - 28

These provisions are covered throughout the major parts of industry by the Workers' Protection Act. However, this does not apply to women workers in agriculture, seafaring, air navigation and domestic work. These paragraphs are therefore not acceptable.

The right to vocational guidance.

Paragraphs 29 - 30 can be accepted.

The right to vocational training

Paragraphs 31 - 34 can be accepted.

Oslo, 28 October, 1957.

TURKEY:The Right to Work

- (1) We can undertake to accept this paragraph.
- (2) We can accept this also, provided that it does not apply to workers who are nationals of other contracting parties. The reason is that Act No. 2007 reserves certain trades and occupations for Turkish citizens (for further information, see our reply to the first questionnaire of the Committee).
- (3) We can likewise accept this.
- (4) This also.

The right to just conditions of work

We can directly undertake to accept paragraphs 5, 6 and 9. As regards paragraphs 7 and 8, Turkish labour legislation does not provide for annual holidays with pay. It is therefore impossible to accept these provisions as binding obligations. In practice, however, workers in larger undertakings (public or private) are entitled to such holidays varying from one to four weeks, as may be provided for in rules of employment or contract of employment. On the other hand, the Government intends to introduce a Bill to provide for statutory annual holidays with pay. In the light of these considerations we hope that paragraphs 7 and 8 will likewise be acceptable by this country in the long run.

The right to safe and healthy working conditions

- (10) We can directly undertake to accept this paragraph.

The right to a fair wage

- (11), (12) and (13). We can likewise accept these paragraphs.

The right to organise.

- (14) We can undertake this paragraph, except the last sentence, because the Trade Unions Act does not apply to persons who are not covered by the definition of the term "worker" as laid down in Article 1 of the Labour Act - "a worker is a person who does manual work or work which is partly manual and partly non-manual under

a contract of service". This definition would of course exclude persons mentioned in the last sentence of the paragraph, as well as persons who do not fall within the said definition. Furthermore, Article 12 of the Association Act prohibits civil servants, including members of the armed forces and the police, from organising professional associations. They may join other organisations or associations.

The right to bargain collectively

- (15) This is acceptable.
- (16) This also, except that our legislation provides for a compulsory machinery for conciliation and arbitration. Under the civil procedure, however, conciliation or arbitration is voluntary.
- (17) This paragraph is also acceptable.
- (18) This we cannot accept at present, because Article 72 of the Lab. Act prohibits all types of strikes and lockouts. However, major political parties have recognised this right in their programmes and we hope that this country will be able to accept this provision in the long run.

The right of children and young persons to protection

- (19) For the time being this is not acceptable by this country for the reason that the minimum age of admission to industrial employment and employment in mines is fixed by the Public Health Act at 12.
- (20) This we can accept.
- (21) This also.
- (22) The Labour Act and the Public Health Act do not quite seem to permit this country to accept this, because these acts limit the maximum daily hours of work of children under the age of 16, at 8 hours, the hours spent at school being reckoned as part of the 8-hour working day.
- (23) See comments on paragraphs 7 and 8, under the Right to Just Conditions of Work.
- (24) This is acceptable.
- (25) This also.

The right of employed women to protection

(26) to (28) These paragraphs are acceptable.

The right to vocational guidance

(29) and (30) Acceptable.

The right to vocational training

(31) to (34) Acceptable.

Note: We would like to point out that although the above is the correct interpretation of the position of Turkey on the Draft-Social-Charter, ~~the Turkish Government reserves the right to comment on the Charter later when it is finally completed.~~

UNITED KINGDOM:First Part

The introductory paragraph is acceptable with the additional words suggested in paragraph 7⁸ and Appendix VIIA of the Report of the Working Party (C.E./SOC (57) 18). Paragraphs 1 to 6, paragraphs 8 to 14 and paragraphs 16 are acceptable. Paragraphs 7 and 15 are not acceptable as they stand.

In regard to paragraph 7 it is suggested that a distinction should be drawn between children and young persons, and the provision relating to children might be strengthened since there is far greater need for the strict supervision of the employment of children. For this purpose the paragraph might be replaced by the following two paragraphs:

"7. Children have the right to special protection against employment and working conditions which would be physically or morally injurious or would prejudice their education.

7A. Young persons have the right to special protection where necessary against physical and moral hazards arising in their work."

As to paragraph 15 the existence of a right (unqualified by the grant of permission) to engage in a gainful occupation in another country seems open to question. Unless modified accordingly, it would be unacceptable.

Second PartThe right to work

Paragraph (1) Acceptable

(2) Acceptable

(3) Acceptable

(4) Acceptable

The right to just conditions of work

- Paragraph (5) Unacceptable. Whatever the terms of the preamble no undertaking can be given as regards the future, in relation to a matter which is normally left to negotiation between employers and workers.
- (6) Unacceptable with the terms of the preamble as at present worded.
- (7) Unacceptable with the terms of the preamble as at present worded.
- (8) Unacceptable in the absence of statutory provision of conformity of practice.
- (9) Unacceptable, because of the terms of the preamble and because of the inclusion of the word "guaranteed" which is unnecessary and also confusing if ratification is to be allowed on the basis of collective agreements. It would be better moreover if the paragraph read: "to provide for regular rest periods". This would take account of shift workers, and others who enjoy regular but not necessarily weekly rest periods.

The right to safe and healthy working conditions

- Paragraph (10) Unacceptable, because legislation in this field though extensive is not comprehensive.

The right to a fair wage

- Paragraph (11) Unacceptable, because legislation is not comprehensive. The relevant ILO Convention permits exceptions. The paragraph would be acceptable if these were allowed.
- (12) Acceptable
- (13) Acceptable

The right to organise

- Paragraph (14) Acceptable

The right to bargain collectively

Paragraph (15) Acceptable

(16) Acceptable

(17) Acceptable

(18) Acceptable

The right of children and young persons to protection

Paragraph (19) Unacceptable in its present form, but a paragraph in the same sense would be acceptable if reworded as follows:

"(19) to provide that the school leaving age shall be not lower than 15 years and that employment permitted below that age shall not be such as to interfere with the child's education or be physically or morally injurious".

(20) Acceptable. As a matter of drafting the words "dangerous or unhealthy" should preferably be replaced by the words "hazardous or unhealthy for them".

(21) Acceptable

(22) Unacceptable, because the law provides not for general limitation but for specific limitations in specific kinds of work.

(23) Unacceptable, because practice does not conform.

(24) Unacceptable, because legislation does not prescribe exceptions from a general rule but specifies types of work in which night work under the age of 18 is not allowed, e.g. employment in industrial undertakings. An acceptable rewording which maintains the main sense of the paragraph, would be as follows:

"(24) to provide where appropriate that persons under 18 years of age shall not be employed in night work".

(25) Unacceptable, because legislation does not prescribe exceptions from a general rule but specifies the types of work in which the medical examination of young persons is required, i.e., employment in factories. An acceptable rewording, which would retain the main sense of the paragraph would be as follows:

"(25) to provide where appropriate that employed persons under 18 years of age shall be subject to regular medical examination".

The right of employed women to protection

Paragraph (26) Acceptable

(27) Unacceptable, in the absence of legislative provision or conformity of practice.

(28) Unacceptable, in the absence of legislative provision or conformity of practice.

The right to vocational guidance

Paragraph (29) Acceptable

(30) Acceptable

The right to vocational training

Paragraph (31) Acceptable

(32) Acceptable

(33) Acceptable

(34) Acceptable, on the understanding that the measures suggested are examples of what might be done where appropriate.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 21st November 1957.

Restricted
Addendum to
CE/Soc (57) 24

SOCIAL COMMITTEE

(Sixth Session)

EUROPEAN SOCIAL CHARTER

Replies of the Delegations of Luxembourg and Sweden
concerning the acceptability of the draft provisions
of the Social Charter

LUXEMBOURG:

As the Secretariat-General requested in its letter R.2-13.580 of 8th November 1957, the Luxembourg delegation has considered, on the basis of Document CE/Soc (57) 19 of 31st October 1957, the question of the binding provisions to be included in the European Social Charter.

As the above document gives a complete draft text of the Charter, the Luxembourg delegation referred to this rather than to the incomplete text prepared at the 5th session and transmitted by the Secretariat-General in its letter R.2-9465 of 26th July 1957.

A.37.358
T.3631a/CC/HRG

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Subject to any comments it may feel called upon to make in the light of the discussions at the 6th session, the Luxembourg delegation approves in principle to the document in question.

With regard to Part II of the draft Charter, the Luxembourg delegation accepts all the binding provisions contained therein and recommends that binding commitments be entered into in respect of all the rights mentioned except that of access to employment (paras. 49-52), for which it considers more appropriate a statement of intention, as given in Document CE/Soc (57) 19.

SWEDEN:

Stockholm,

14th November 1957.

Sir,

Referring to your letter of November 8th 1957 concerning to what extent the suggestion of provisions in the Social Charter could be accepted as binding, I can, after consultation with the other Swedish delegate, Mr. Björck, make the following statement.

As the Swedish delegation has had the opportunity to state at the Committee's discussions in Strasbourg, the delegation does not consider that other provisions than those that may be easily controlled, can be accepted as binding. Certain provisions which in the proposal have been given a binding character, do not seem to satisfy the demands of exactitude which reasonably could be made. This e.g. is the case with the articles 1, 5, 10 and 36.

The Swedish delegation has also previously had the opportunity to point out that it was not prepared to accept as binding obligations, articles which might be ratified on the basis of collective negotiation.

Concerning article 6 the Swedish delegation has likewise had the opportunity to state that this article could not be accepted as binding, the question of payment on public holidays not being subject to legislation in Sweden where it instead is solved through collective negotiation. Similar objections are made concerning the articles 12 and 13.

In connection with article 11 it may be said that Sweden has no legislation which prevents deduction from wages.

Neither does Swedish legislation meet with the directions in article 19.

As regards article 22 there is no equivalent Swedish legislation.

To article 40, point 3, may be said that Sweden does not pay old age pension to persons resident outside of the country except after special examination and consent.

Yours sincerely,

Ernst Bexelius,
Director General,

The Royal Social Insurance Board

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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 25th November 1957

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Cr. Eng.

SOCIAL COMMITTEE

(Sixth Session)

EUROPEAN SOCIAL CHARTER

Statement on the position of Denmark with regard to various provisions of the draft European Social Charter
(The enumeration refers to document CE/Soc (57) 19)

(29) Protection of women workers

As this provision has not yet been agreed upon by the Working Party, we prefer to reserve our position until the question has been discussed by the Social Committee.

(36) Right to Health

The provisions are being complied with.

(37)-(40) Right to Social Security

The provisions are being complied with.

(41)-(44) Right to social and medical assistance

The provisions of paragraphs (41), (42) and (44) are being complied with. As paragraph (43) has not been agreed upon by the Working Party, we have not found it appropriate to give any statement as to Denmark's compliance with the draft text of the provision.

(45)-(46) The right of disabled to rehabilitation and resettlement

The provisions are being complied with.

- (47) The right of the family to social and economic protection

The provision can be accepted as an aim of policy.

- (48) The right of mothers and children to social and economic protection

The provision is being complied with.

- (49)-(52) The right of access to employment in other member countries

The provisions can be accepted as aims of policy.

- (53)-(59) The right of migrant workers to protection and assistance

The provisions of paragraphs (53) and (55)-(59) are being complied with. Paragraph (54) is not complied with.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 20th November 1957

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SOCIAL COMMITTEE

6th Session

EUROPEAN SOCIAL CHARTER

Summary of replies from Governments
concerning examination of draft texts of rights
to be included in the European Social Charter

FIRST PART OF THE CHARTER

All nine Governments which have replied to date find the first part of the Charter acceptable as an objective of long-term policy. The United Kingdom Government, however, asks for the inclusion in the introductory paragraph of the additional words suggested in paragraph 78 and Appendix VII A of the Report of the Working Party (CE/Soc (57) 18) and for certain modifications to paragraphs 7 and 15.

Même PARTIE PART II		Belgique Belgium	Danemark Denmark	Rép. Féd. d'Allemagne Fed. Rep. of Germany	Grèce Greece	Irlande Ireland	Pays-Bas Netherlands	Norvège Norway	Turquie Turkey	Royaume-Uni United Kingdom			
Droit au travail - The right to work													
Paragraphe Paragraph	1										7		1
"	2										6		
"	3										7		
"	4										7		
Droit à des conditions de travail équitable - The right to just conditions of work													
"	5										4		2
"	6										5		3
"	7				•••••				•••••		3	2	2
"	8								•••••		4	1	3
"	9										4		3
Droit à la sécurité et à l'hygiène dans le travail - The right to safe and healthy working conditions													
"	10										6		1
Droit à une rémunération équitable - The right to a fair wage													
"	11										5		3
"	12										5		3
"	13				•••••						4	1	1
Droit syndical - The right to organise													
"	14										6		2
Droit de négociation collective - The right to bargain collectively													
"	15										8		
"	16										7		1
"	17										8		
"	18								•••••		7	1	
Droit des enfants et des adolescents à la protection - The right of children and young persons to protection													

"	19										6	4	11	
"	20										7	1	11	
"	21										7		11	
"	22										3	2	2	12
"	23										3	2	1	13
"	24										5	1	12	
"	25										3	2	1	13

Droit des travailleuses à la protection - The right of employed women to protection

"	26										4		12
"	27										3		13
"	28										3	1	13

Droit à l'orientation professionnelle - The right to vocational guidance

"	29										6		
"	30										6		

Droit à la formation professionnelle - The right to vocational training

"	31										6		
"	32										6		
"	33										6		
"	34 a)										5	1	
"	b)										5	1	
"	c)										3	2	11
"	d)										5	1	

Ensemble des réponses reçues :

	189		23		32		31
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Légende - Legend:

- acceptance - acceptance
- acceptance aux objectifs d'une politique à long terme - acceptance as an aim of long-term policy
- acceptance conditionnelle - conditional acceptance
- impossibilité d'accepter - non-acceptance

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 21st November, 1957

Restricted
CE/Sec (57) 27

SOCIAL COMMITTEE

Sixth Session

European Social Charter

Draft text
revised by the Legal Department

PREAMBLE

The High Contracting Parties, Members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the protection and further realisation of human rights and fundamental freedoms;

Considering that in the European Convention on Human Rights and the Protocol thereto the Member States of the Council of Europe agreed to secure to their peoples the civil and political rights and freedoms therein specified;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of their peoples;

Have agreed as follows:⁷⁽¹⁾

./.

(1) The texts between square brackets have not yet been finally adopted by the full Committee.

PART I

The High Contracting Parties accept as an aim of policy to be pursued by all appropriate means both national and international, the attainment of conditions in which the rights and principles set forth hereinafter in this first Part may be effectively realised, Subject only to such restrictions or limitations as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others and for the protection of public order, security, health and morals. (1)

Everyone shall have the opportunity to earn his living in an occupation freely accepted by him.

2. All workers have the right to fair conditions of work.

3. All workers have the right to safe and healthy working conditions.

4. All workers have the right to a fair wage sufficient for a decent standard of living for themselves and their families.

5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.

6. All workers and employers have the right to negotiate collectively.

7. Children and young persons have the right to a special protection against physical and moral hazards arising in their work.

8. Expectant or nursing mothers in employment and other employed women as appropriate have the right to a special protection in their work.

9. Everyone has the right to appropriate facilities for vocational guidance and training in order to help him to choose an occupation suited to his personal capacity and to his interests.

./.

(1) The texts between square brackets have not yet been finally adopted by the full Committee.

10. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.(1)

11. All workers and their dependants shall have the right to social security.

12. Anyone without adequate resources shall have the right to social and medical assistance.

13. Disabled persons have the right to rehabilitation and resettlement, whatever the origin and nature of their disability.

14. The family as a fundamental unit of society has the right to appropriate social and economic protection.

15. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.

16. The nationals of any of the High Contracting Parties have the right to engage in any gainful occupation in the territory of any other Party, on a footing of equality with the nationals of the latter Party, subject only to restrictions based on considerations of security, public order and public health or on cogent economic or social reasons.

17. Migrant workers have the right to protection and assistance.

./.

(1) Not yet finally adopted by the full Committee.

PART IIArticle 1The right to work

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

- (1) to accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of employment;
- (2) to protect effectively the right of the worker freely to choose any available occupation, provided that this provision shall not be interpreted as prohibiting or authorising any union security clause or practice;
- (3) to establish or maintain free services as to employment;
- (4) to promote appropriate vocational guidance, training and rehabilitation.

Article 2The right to fair conditions of work

With a view to ensuring the effective exercise of this right, the High Contracting Parties undertake insofar as such measures are not put into effect under national schemes by agreements between employers' and workers' organisations or are not normally carried out otherwise:

- (1) to provide for reasonable daily and weekly working hours, the working week to be progressively reduced, to the extent that the increase of productivity and other relevant factors permit;
- (2) to provide for recognised public holidays with pay;
- (3) to provide for a minimum of two weeks' annual holiday with pay;
- (4) to provide for additional paid holidays for workers engaged in dangerous or unhealthy occupations as prescribed;
- (5) to provide for a guaranteed weekly rest period.

Article 3The right to safe and healthy working conditions

- (1) With a view to ensuring the effective exercise of this right, the High Contracting Parties undertake to provide for adequate protection of life and health during work.

Article 4The right to a fair wage

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

- (1) to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award;

and recognise:

- (2) the right of all workers to additional wages for work performed at the request of the employer in addition to normal working hours;
- (3) the right of men and women workers to equal pay for work of equal value.

The exercise of these rights may be assured by voluntary collective agreement, by statutory wage-fixing machinery or by other means appropriate to national conditions.

Article 5The right of association

- (1) With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations and to join organisations for the protection of their economic and social interests, the High Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom, subject only to restrictions prescribed by law for reasons of national security or public interest or for the prevention of disorder or crime or for the protection of the rights and freedoms of others. The extent to which the guarantees provided for in this paragraph shall apply to the armed forces, the police and the administration of the State shall be determined by national laws or regulations.

Article 6The right to negotiate collectively

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

- (1) to promote, where necessary and appropriate, machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- (2) to promote the establishment and use of appropriate machinery for conciliation or arbitration for the settlement of labour disputes;
- (3) to encourage and promote joint consultation of workers and employers;

and recognise:

- (4) the right of workers and employers to collective action in cases of conflicts of interest, subject only to limitations prescribed by law for reasons of national security or public interest.

Article 7The right of children and young persons to protection

With a view to ensuring the effective exercise of this right, the High Contracting Parties undertake insofar as such measures are not put into effect under national schemes by agreements between employers' and workers' organisations or are not normally carried out otherwise:

- (1) to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work, which does not endanger their health, morals or education;
- (2) to provide that a higher minimum age of admission to employment shall be fixed with regard to prescribed occupations regarded as dangerous or unhealthy;
- (3) to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of such education;

- (4) to provide that the working day of persons under 16 years of age shall be limited in accordance with the needs of their development and particularly with their need for vocational training;
- (5) to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
- (6) to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national law and regulations;
- (7) to provide that employed persons under 18 years of age shall be subject to regular medical control with the exception of certain occupations provided for by national law and regulations.

Article 8

The right of employed women to protection

With a view to ensuring the effective exercise of this right, the High Contracting Parties undertake insofar as such measures are not put into effect under national schemes by agreement between employers' and workers' organisations or are not normally carried out otherwise:

- (1) to provide, either by paid leave or by adequate social security benefits, for women to take leave before and after childbirth up to a total of 12 weeks;
- (2) to prohibit dismissal from employment during or on account of absence due to pregnancy or childbirth;
- (3) to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

Article 9

Protection of women workers⁽¹⁾

- (1) The High Contracting Parties undertake to take measures in order to regulate the employment of women workers on night work in specified employment and to prohibit their employment in specified work underground or, as appropriate, on heavy work which is unsuitable for them.

(1) Not yet finally adopted by the full Committee.

Article 10

The right to vocational guidance

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

- (1) to provide or promote assistance to individuals in solving problems related to the choice of, and progress in, a profession with due regard to the capacity of the individual and his consequent placing in the employment market; such assistance shall be available both to young persons, including school children, and to adults;
- (2) to encourage, by appropriate measures such as reducing or abolishing any fees or charges, the full use of the facilities provided.

Article 11

The right to vocational training

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

- (1) to provide or promote, as necessary, the technical and vocational training of workers;
- (2) to provide or promote a system of apprenticeship;
- (3) to provide or promote, as necessary, special facilities for re-training of adult workers where this becomes necessary as a consequence, particularly, of technological developments or of dislocations of the employment market;
- (4) to encourage the full use of the facilities provided, by appropriate measures such as:
 - (a) reducing or abolishing any fees or charges;
 - (b) granting financial assistance in appropriate cases;
 - (c) including in the normal working hours time spent on supplementary training taken by the workman, at the request of his employer, during his hours of employment;
 - (d) ensuring, through adequate supervision, the efficiency of apprenticeship arrangements and the adequate protection of apprentices.

Note: The following paragraphs have not yet been finally adopted by the plenary Committee.

Article 12Right to Health

- (1) In order to ensure the exercise of this right, the High Contracting Parties undertake, either directly or in co-operation with public or private organisations to take appropriate measures designed inter alia:
- (a) to remove as far as possible the causes of ill-health;
 - (b) to provide advisory and educational facilities for the betterment of health and the encouragement of individual responsibility in matters of health;
 - (c) to prevent as far as possible epidemic, endemic and other diseases.

Article 13Right to Social Security

In order to ensure the exercise of this right, the High Contracting Parties undertake:

- (1) to establish or maintain a system of social security;
- (2) to maintain the social security system at a satisfactory minimum level complying with the requirements for ratification of the European Code of social security;
- (3) to endeavour to raise progressively the system of social security to a higher level /based upon standards defined in the Protocol to the European Code of social security/;
- (4) to take steps, by the conclusion of bilateral and multilateral agreements, to ensure:
 - equal treatment as between nationals of each of the Contracting Parties in respect of social security rights;
 - the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties, with a view to the opening, maintenance or recovery of the right to social security benefits, as well as for the calculation of such benefits;
 - the retention of benefits arising out of social security legislation, whatever movements the persons protected may be caused to undertake between the territories of the Contracting Parties;

Article 14

Right to social and medical assistance

In order to ensure the exercise of this right, the High Contracting Parties undertake:

- (1) to ensure that every person, who is without adequate resources and who is unable to obtain such resources either on his own efforts or from other sources, in particular, by benefits under a social security scheme, be granted the necessary means of subsistence and, in case of sickness, the care necessitated by his condition;
- (2) to provide that everyone may receive by appropriate services such advice and personal help as may be required to prevent, to remove or to alleviate want;
- (3) to ensure that persons receiving public assistance shall not for that reason suffer from a diminution of their political or social rights;
- (4) to apply the provisions referred to in the preceding paragraphs on an equal footing to nationals of other High Contracting Parties lawfully within their territories, subject to the provisions regarding repatriation contained in the European Convention on Social and Medical Assistance.

Article 15

The right of the disabled to rehabilitation and resettlement

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

- (1) to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions;
- (2) to take adequate measures for the placing of disabled persons in employment, such as specialised employment services, facilities for protected employment and measures to encourage employers to admit disabled persons to employment.

Article 16The right of the family to social and economic protection

- (1) The High Contracting Parties, recognising the importance of the family as a fundamental unit of society, shall endeavour to ensure the economic and social protection of family life.

Article 17The right of mothers and children to social and economic protection

- (1) With a view to ensuring the effective exercise of this right, the High Contracting Parties shall take all suitable and necessary measures for the effective protection of mothers and children including the establishment or maintenance of institutions appropriate for that purpose.

Article 18The right of access to employment in other member countries

With a view to promoting the effective exercise of this right the High Contracting Parties shall endeavour:

- (1) to apply existing restrictions in a spirit of liberality;
- (2) to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
- (3) to liberalise, individually or collectively, regulations governing the employment of foreign workers;
- (4) to permit their own nationals to engage in gainful activity in the territories of the other High Contracting Parties subject only to restrictions prescribed by law for reasons of national security or public interest.

Article 19The right of migrant workers to protection and assistance

- (1) to provide appropriate and free services to assist migrant workers, in particular, to supply them with accurate information and to prevent, insofar as national laws and regulations permit, misleading propaganda relating to emigration and immigration;
- (2) to adopt appropriate measures in order to facilitate the departure, journey and reception of migrant workers, and to provide appropriate services for health control and medical attention;
- (3) to endeavour, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, to secure for migrant workers lawfully within their territories equal treatment with their own nationals in regard to the following matters:
 - (i) remuneration and other employment and working conditions;
 - (ii) membership of trade unions and enjoyment of the benefits of collective negotiation;
 - (iii) accommodation;
- (4) to secure for migrant workers equal treatment with their own nationals in regard to the following matters:
 - (i) employment taxes, dues or contributions payable in respect of employed persons, and
 - (ii) legal proceedings relating to matters referred to in this Article;
- (5) to ensure that migrant workers are subject to the completion of a reasonable period of employment or residence, adequately protected against involuntary repatriation or expulsion;
- (6) to permit, within the limits laid down by law, the transfer of such parts of the earnings and savings of the migrant worker as he may desire;
- (7) to extend the protection and assistance provided for in this Article to self-employed migrants insofar as such measures apply to this category.

PART III(1)Article 20Undertakings

- (1) Each of the High Contracting Parties undertakes:
- (a) to consider the first Part of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part;
 - (b) to consider itself bound by not less than X of the Articles or by not less than Y of the numbered paragraphs and Articles containing only one paragraph of the second Part of this Charter to be selected by it. The Articles or paragraphs selected shall be notified to the Secretary-General of the Council of Europe not later than the date when the instrument of ratification of the High Contracting Party concerned shall be deposited.
- (2) Any High Contracting Party may, at a later date, declare by notification to the Secretary-General that it considers itself bound by any Articles or numbered paragraphs of the second Part of the Charter which it has not already accepted under the terms of the preceding paragraph. Such undertakings subsequently given shall be deemed to be an integral part of the ratification and shall have the same effect as from the date of the notification.
- (3) The Secretary-General shall communicate to all the other High Contracting Parties any notification which he shall have received pursuant to this Article.

Article 21Report concerning accepted provisions

The High Contracting Parties shall send to the Secretary-General of the Council of Europe a report at two yearly intervals, in a form to be determined by the Committee of Ministers, concerning such provisions of the second Part of the Charter as they have accepted.

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(1) Part III has not yet been finally adopted.

Article 22

Report concerning provisions which are not accepted

The High Contracting Parties shall send to the Secretary-General of the Council of Europe, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of the second Part of the Charter which they did not accept at the time of their ratification or in a subsequent notification. The Committee of Ministers shall determine from time to time, in respect of which provisions such report shall be requested and the form of the reports to be provided.

Article 23

Communication of copies

(1) Each High Contracting Party shall communicate copies of its reports referred to in Articles 21 and 22 to such of its national organisations as are members of the international organisations of employers' and trade unions in consultative status with the Council of Europe.

(2) The High Contracting Parties shall forward to the Secretary-General of the Council of Europe any comments on the said reports received from these national organisations, if so requested by them.

Article 24

Examination of the Reports

The reports sent to the Secretary-General of the Council of Europe under Articles 21 and 22 shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary-General under paragraph 2 of Article 23.

Article 25

Committee of Experts

(1) The Committee of Experts shall consist of not more than seven members who shall be appointed by the Committee of Ministers from a list of independent experts being of the highest integrity and of recognised competence in social and international questions. Such experts shall be proposed by the High Contracting Parties.

(2) The members of the Committee shall be appointed for a period of six years. They may be re-appointed. However, of the members first appointed, the terms of two members shall expire at the end of four years.

(3) The members whose terms are to expire at the end of the initial period of four years shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.

(4) A member of the Committee of Experts appointed to replace a Member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 26

Participation of the International Labour Organisation

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Article 27

Sub-committee of the Governmental Social Committee

(1) The reports and conclusions of the Committee of Experts shall be submitted for examination to a Sub-committee of the Governmental Social Committee of the Council of Europe. This Sub-committee shall be composed of one representative of each of the High Contracting Parties.

(2) The Sub-committee shall hear the views of representatives of the international employers' and trade union organisations in consultative status with the Council of Europe.

(3) The sub-committee shall present to the Committee of Ministers a report containing its conclusions and with the report of the Committee of Experts attached thereto.

Article 28

Committee of Ministers

The Committee of Ministers may, on the basis of the report of the Sub-committee and after consultation with the Consultative Assembly, make to each High Contracting Party any necessary recommendations.

PART IV(1)

Article 29

Emergency clause

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Charter to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any High Contracting Party which has availed itself of this right of derogation shall within a reasonable lapse of time keep the Secretary-General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary-General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed. The Secretary-General shall in turn inform the other High Contracting Parties accordingly.

Article 30

Restrictions

The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article 31

Relationship between the Charter
and domestic law or international agreements

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral treaties, conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article 32

Territorial Application

1. This Charter shall apply to the metropolitan territory of each High Contracting Party. Each High Contracting Party may, at the time of signature or of the deposit of its instrument of ratification /or accession/, specify, by declaration addressed to the Secretary-General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

2. Any High Contracting Party may at the time of ratification of this Charter or at any time thereafter, declare by notification addressed to the Secretary-General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible. It shall specify in the declaration of the Articles or paragraphs of the second Part of the Charter which it accepts as binding in respect of the territories named in the declaration.

3. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary-General of the Council of Europe shall have received notification of such declaration.

4. In the said territories the provisions of this Charter shall be applied with due regard to local requirements.

5. The Secretary-General shall communicate to the other High Contracting Parties any declaration transmitted to him in accordance with the present Article.

Article 35

Amendments

Any Signatory Government may propose amendments to this Charter in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the other Signatory Governments any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as soon as all the High Contracting Parties have informed the Secretary-General of their acceptance.

Article 34

Signature, Ratification and Entry into Force

1. This Charter shall be open for signature by the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

2. This Charter shall enter into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification.

3. In respect of any Signatory ratifying subsequently, the Charter shall enter into force as from the thirtieth day after the date of deposit of its instrument of ratification.

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

Article 55

Accession

After the entry into force of this Charter the Committee of Ministers of the Council of Europe may invite any State not a Member of the Council to accede to it. Any State receiving such invitation may accede to this Charter by depositing its instrument of accession with the Secretary-General of the Council who shall inform all the High Contracting Parties accordingly. In respect of any State so acceding, this Charter shall come into force immediately as from the thirtieth day after the date of deposit of its instrument of accession.

Article 56

Denunciation

1. A High Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force, or at the end of any subsequent period of two years, and in each case after giving six months' notice to the Secretary-General of the Council of Europe, who shall inform the other Parties accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other High Contracting Parties provided that at all times there are not less than five such Contracting Parties.

2. A High Contracting Party may on the terms specified in the preceding paragraph, denounce any of the Chapters or paragraphs of the second Part of the Charter which it has accepted, provided that the number of Chapters or paragraphs and Articles containing only one paragraph binding upon that Party shall at all times not be less than X or Y respectively.

3. Any High Contracting Party may denounce the present Charter or any of the articles or paragraphs of the second Part of the Charter, on the terms specified in the first paragraph of this article, in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with Article 32, paragraph 2.

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

In witness whereof, the undersigned, being duly authorized thereto, have signed this Charter.

Done at

this day of 19 ..
 in English and French, both texts being equally authoritative,
 in a single copy which shall be deposited within the archives
 of the Council of Europe. The Secretary-General shall trans-
 mit certified copies to each of the Signatories.

Section IV

Reports of the Social Committee to the Committee of Ministers

(February 1957/February 1958)

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

Strasbourg, 11th February, 1957.

Confidential
CM (57) 24

COMMITTEE OF MINISTERS

REPORT OF THE

S O C I A L C O M M I T T E E

(Fourth Session)

The Social Committee held its Fourth Session at Strasbourg from January 29th to February 1st, 1957. The list of members and observers participating in the Session is contained in Appendix I. The Agenda adopted by the Committee is set out in Appendix II.

The meeting was opened by the Director of Research of the Secretariat-General of the Council of Europe. He pointed out that the most important item on the Agenda was, no doubt, the continued discussion of the European Social Charter. In this connection he drew the attention of the Committee to Recommendation 104 (1956) of the Consultative Assembly which was now officially before the Committee, and to Resolution (56) 25 of the Committee of Ministers, in which the latter had given the Social Committee certain new instructions relating to the Social Charter.

The Committee then elected M. J. DOUBLET (France) as Chairman and M. G.C. VEYSEY C.B. (United Kingdom) as Vice Chairman.

SUMMARY OF THE DEBATE OF THE THIRD SESSION

The draft summary contained in Doc. CE/Soc (56) 12 was adopted, subject to corrections made by the Delegations of Belgium, Denmark and the United Kingdom. It was understood that a revised issue of the summary would be circulated and that it would contain also a list of the persons who had participated in the Third Session.

At the request of the Secretariat-General, the Committee agreed that in the future detailed summaries of the debates might be dispensed with, thus rendering unnecessary the stenographic records which involve considerable expense.

HEARING OF A REPRESENTATIVE OF THE INTERNATIONAL FEDERATION OF CHRISTIAN TRADE UNIONS

At its Third Session the Committee had decided to invite the International Federation of Christian Trade Unions and the International Confederation of Free Trade Unions, which have consultative status in category "A" with the Council of Europe, to send representatives to a special meeting in accordance with the rules of procedure. The purpose of this special meeting, to be held in connection with the Fourth Session of the Committee, was to hear the views of these organisations concerning the Social Charter.

As the representative of the International Confederation of Free Trade Unions was prevented from attending the meeting, the Committee heard a statement by the representative of the International Federation of Christian Trade Unions, who also replied to certain questions posed by individual members of the Committee.

A summary of the proceedings of this special meeting is contained in Appendix III to this report.

EUROPEAN SOCIAL CHARTER

The Committee first undertook a general discussion based on Resolution (56) 25 of the Committee of Ministers, which contains the following instructions to the Social Committee:

1. To direct its work in this field, in consultation with European employers' and trade union organisations, towards the establishment of a European Social Charter, taking into account the draft appended to Recommendation 104 of the Consultative Assembly and the deliberations of the Assembly;
2. To determine whether and, if so, how far, definite and detailed provisions binding upon the signatory States could be incorporated in the Charter, by providing for its implementation by stages and by recognising that this may be effected by means of collective agreements or other appropriate measures as well as by legislation;

3. To report to the Committee of Ministers on the results of its work by 1st July 1957, and to complete the drafting of the Social Charter by 31st December 1957;
4. To consider measures for the implementation of the Social Charter such as will enable employers' and trade union organisations to assist in supervising its implementation.

In connection with paragraph 1 above, the Committee was informed that no employers' organisation had applied for consultative status with the Council of Europe. On the other hand, Article 14 A of the Rules of Procedure for Committees of Governmental Experts states that such Committee "may decide by a unanimous vote to hear the views of representatives of non-governmental organisations admitted to consultative status in Category A."

Having heard a statement by a representative of the External Relations Division of the Secretariat-General, the Committee came to the conclusion that the express instruction of the Committee of Ministers must prevail and that the Social Committee was therefore free to undertake any necessary consultation. It was consequently decided to instruct the Secretariat to contact the International Association of Employers. This organisation should be given the opportunity to study Recommendation 104 (1956) of the Consultative Assembly, the Records of Assembly debates on the Social Charter and Resolution (56) 25 of the Committee of Ministers. It should be requested to state its opinion in writing, or by sending a representative to a Special Meeting.

The representative of the ILO recalled the Resolution adopted in 1955 by the Consultative Assembly (1) and supported by the International Confederation of Free Trade Unions and the International Federation of Christian Trade Unions to the effect that the draft European Social Charter being prepared by the Council of Europe should be submitted for an opinion to a tripartite conference convened under the agreement between the Council of Europe and the ILO.

He also recalled that the Governing Body of the ILO, on being informed of the Assembly Resolution in question, had stated that, should the Committee of Ministers endorse that suggestion, the Governing Body for its part would not fail to give it sympathetic consideration.

(1) Resolution No. 69 (1955) in reply to the Fourth Report of the ILO.

A considerable discussion arose in connection with the proper understanding of paragraph 2 of Resolution (56) 25 quoted above. Certain delegations considered that this instruction, seen in the light of the Resolution as a whole, involved a new mandate for the Social Committee and that in fact the Committee was now charged with the preparation of a Social Charter containing binding provisions. These Delegations stressed the following points:

1. The Committee was instructed to take into account, inter alia, the draft text appended to Assembly Recommendation 104 (1956), and this text was drawn up in a binding form.
2. Paragraph 4 of the operative part of the Resolution refers to the implementation of the Charter and a supervision of the implementation, which seems to presuppose binding provisions.
3. The third paragraph of the Considerations introducing the Resolution states that "a European Social Charter.... which does not contain specific provisions binding upon the signatory States is of doubtful value, since comparable international instruments such as the Universal Declaration of Human Rights already exist within the framework of the United Nations".

Other Delegations, while not going so far, considered that Resolution (56) 25 in any case involved a new point of departure because the Committee was now instructed to consider the possibility of incorporating binding provisions in the Charter by providing for its implementation by stages and by recognising that the implementation may be effected by means of collective agreements or other appropriate means and not only by legislation. These Delegations felt that, while leaving the Social Committee free to arrive at its own conclusions as to the possibility of including binding provisions in the Charter, the Committee of Ministers had nevertheless expressed a certain preference for a binding instrument. Moreover, the Resolution contained new elements in the sense that the Social Committee was now instructed to take into account the draft appended to Recommendation 104, and to consider measures for the implementation of the Charter.

Other Delegations again held the view that Resolution (56) 25 did not radically change the mandate of the Committee, as contained in the Special Message of 20th May 1954 from the Committee of Ministers to the Assembly. The Social Committee should continue its work, taking into account the draft appended to Recommendation 104 and considering whether the devices suggested in Resolution (56) 25 might enable some binding provisions to be incorporated in the Charter, but the Committee remained entirely free to advise the Committee of Ministers as it saw fit with regard to the binding or declaratory nature of the Charter. Moreover, there was no need to make a clear cut choice between these possibilities. The Charter might well contain a combination of binding and declaratory provisions. In this connection the Delegation of the United Kingdom suggested that the Charter might contain a First Part of a declaratory nature and applicable to all States, and a Second Part embodying binding provisions, out of which Governments might individually decide those to which they wished to adhere.

It was not possible to arrive at a concerted point of view with regard to the above mentioned questions, and the Committee decided to proceed to an examination of Doc. CE/Soc (56) 19, which was prepared by the Secretariat and contained a number of draft provisions based on the replies of the Governments to the Questionnaire adopted by the Committee at its Third Session and on the comments of Governments concerning the draft articles of the Charter provisionally adopted by the Committee at the same Session. In drawing up this document, the Secretariat had also taken into account the draft text appended to Assembly Recommendation 104 (1956).

The Committee examined in detail the proposed new draft texts of Article 2 (the right to work) and Article 3 (the right to just conditions of work), both with a view to their substance and with regard to their declaratory or binding nature. Several Delegations made proposals for amendments to these draft texts, and the proposed amendments are included in Appendix IV to this Report.

The Committee realised, however, that due to the brevity of its Session it would not be possible to examine in detail all the draft texts contained in Doc. CE/Soc (56) 19. For this reason, and because of the time limits given in paragraph 3 of Resolution (56) 25, it was decided to set up a Working Group, consisting of representatives of the following countries:

Belgium, Federal Republic of Germany, France, Greece, Italy, Norway (or Denmark) and the United Kingdom.

This group should meet for a week from 9th April 1957. It should consider the rights covered by the first two groups of Questionnaires and suggest to the Committee draft texts - including where appropriate alternative drafts - taking into account the views expressed by Governments, the views expressed during the present Session of the Social Committee and the suggestions in Document CE/Sec (56) 19 and in Assembly Recommendation 104 (1956). It should also prepare a draft of the interim Report called for in paragraph 3 of Resolution (56) 25.

During the debate on the two above mentioned articles two specific questions arose, with regard to which the Committee recommended to request the advice of the International Labour Office:

1. Article 2, paragraph 3, (ii) deals with the protection of the right of wage-earners freely to choose any available occupation. The question arose how this could be reconciled with the so-called "closed shop" practice which prevails in certain countries and according to which trade union membership may be a condition for obtaining certain jobs. It was suggested to complete the above sub-paragraph by the following words: "in accordance with national legislation, practice and collective agreements". It was decided, however, to request the ILO to examine further the question as to the extent to which such a clause would reconcile the positions of those countries where the closed shop practice existed and those where it did not exist.

However, the Delegations of Italy and Luxembourg wanted it to be recorded that in their view the right to work also involved the right to free choice of work, and it was incompatible with this right to make membership in a trade union a condition for obtaining employment.

2. The other question concerned the extent to which the possibility of implementation of the Social Charter by means of collective agreements would really solve the problems of those States where certain important labour problems (such as wages, hours of work, holidays, etc.) were solved directly by negotiations between the labour market partners. Reference was made to certain International Labour Conventions which had a similar clause of implementation. The questions which the Committee would wish to have clarified were concerned with the view of the ILO regarding the implementation of such conventions and particularly whether, in spite of the said clause of implementation, a certain obligation would not be left for the Governments in case the collective agreements fail to cover the standards of the convention or cease to be in force. A similar question arises with regard to groups of workers not covered by collective agreements.

The Committee then went on to consider the desirability of including in the Charter certain other rights, not hitherto covered by its work. It had before it a document prepared by the Committee of Experts on Public Health (CE/Soc (56) 21), containing questions intended for submission to the Governments concerning rights relating to health. It was decided to transmit these questions to the Governments.

The Committee then turned to a list of proposals contained in Appendix VII to Doc. CM (56) 63.

A number of these proposals dealt with certain rights relating to education. It was decided not to include these rights in the Charter at the present stage. The Committee would, however, in its interim Report to the Committee of Ministers, make a reference to such rights and request instructions concerning the opportunity of including the right to education in the Charter.

The list under consideration also referred to "adequate standard of living"; "food, clothing and housing"; and "social services". It was pointed out to the Committee that corresponding provisions were included in Article 1 (G) and (L) of the draft appended to Recommendation 104.

It was decided to request the opinion of the Governments as to whether and in what form the three above mentioned rights should be included in the Charter. It would not be necessary for the Governments in this connection to reply to the detailed standard Questionnaire which had been used previously, but their attention should be drawn to the fact that similar rights were envisaged by the Assembly.

A P P E N D I X I

LIST OF MEMBERS AND OBSERVERS
PARTICIPATING IN THE SESSION

<u>AUTRICHE</u>	M. Keller	Conseiller Ministériel au Ministère des Affaires Sociales.
<u>BELGIQUE</u>	M. A. Delpérée	Conseiller économique et social du Ministre du Travail et de la Prévoyance sociale.
	Mme. C. Gilon- Pichault	Service des Relations Inter- nationales au Ministère du Travail et de la Prévoyance sociale.
<u>DANEMARK</u>	M. P. Juhl- Christensen	Acting Under-Secretary Ministry of Social Affairs.
	M. J. Bonnesen	Chief of the International Relations Division, Ministry of Social Affairs.
<u>FRANCE</u>	M. J. Doublet	Conseiller d'Etat, Directeur Général de la Sécurité Sociale, Ministère du Travail et de la Sécurité Sociale.
	M. Deruelle	Secrétaire d'Ambassade, Ministère des Affaires Etrangères.
<u>REP. FED. D'ALLEMAGNE</u>	M. Geller	Directeur de Ministère au Ministère du Travail.
	Dr. G. Scheffler	Directeur de Ministère au Mini- stère de l'Intérieur.
	Dr. H. Ernst	Ministère du Travail

GRECE

M. A. Psaras Directeur Général du Ministère
de la Prévoyance Sociale.

M. N. Theodorou Chef de la Section d'Emploi au
Ministère du Travail.

IRLANDE

Mr. W.A. Honohan Assistant Secretary
Department of Social Welfare.

Mr. W. Kelly Assistant Principal Officer,
Department of Industry &
Commerce.

ITALIE

M. Carloni Inspecteur Général au Mini-
stère du Travail.

M. Barsotti Directeur de Division au
Ministère du Travail.

LUXEMBOURG

M. G. van Werveke Secrétaire Général du Mini-
stère du Travail et de la
Sécurité Sociale.

M. P. Grulms Secrétaire-Archiviste au
même ministère.

PAYS-BAS

M. T.M. Pellinkhof Chef du Service des Affaires
Internationales du Ministère
des Affaires Sociales et de
la Santé Publique.

M. J.J.M. Goldens Chef de Division au Bureau
de Travail, (Même ministère).

M. H.B. Eldering Attaché à la Division de la
Protection des Travailleurs,
(Même ministère).

<u>NORVEGE</u>	M. A. Kringlebotten	Secretary-General of the Ministry of Social Affairs.
	M. B. Ulsaker	Director in the Ministry of Labour and Municipal Affairs.
<u>SUEDE</u>	M. W. Björck	Ancien Chef de la Direction Générale du Trésor.
	M. E. Bexelius	Chef de la Direction Générale de la Prévoyance Sociale.
<u>TURQUIE</u>	Dr. Esad Sibay	Président du Conseil des Recherches au Ministère du Travail.
	M. N. Sari	Membre du Conseil de Recherches du Ministère du Travail.
<u>ROYAUME- UNI</u>	Mr. G.C. Veysey, C.E.	Under-Secretary Ministry of Labour and National Service.
	Mr. J.G. Robertson	Assistant-Secretary Ministry of Labour and National Service.
	<u>OBSERVATEURS</u>	
B.I.T.	M. P. P. Fano	Chef de la Division des Organisations Internationales.
O.E.C.E.	M. R. Card	Division de la Main d'Oeuvre.
U.E.O.	M. E. Jacchia	Chef de la Division Sociale.
O.N.U.	M. G. Palthey	Directeur adjoint du Bureau Européen des Nations Unies.

A P P E N D I X IIAGENDA ADOPTED BY THE COMMITTEE

1. Opening of the meeting by the Director of Research.
2. Election of chairman and vice-chairman.
3. Adoption of the Agenda.
4. Adoption of the Minutes of the Third Session.
5. Hearing of representatives of the International Confederation of Free Trade Unions and the International Federation of Christian Trade Unions concerning the European Social Charter. (Special meeting in accordance with the rules governing the consultative status).
6. European Social Charter:
 - (a) Re-examination, in the light of the comments made by certain delegations and governments, of the draft articles provisionally adopted at the Third Session.
 - (b) Examination of the replies of Governments to the second Questionnaire, and the corresponding draft articles prepared by the Secretariat.
 - (c) Plan of further work.
7. Employment of older workers.
8. New matters referred to the Social Committee by the Committee of Ministers, i.e.:
 - (a) Uniform regulations regarding security of employment.
 - (b) Standardisation of safety precautions in industry.
 - (c) Agricultural labour problems.

9. Request from the Catholic International Union for Social Service for consultative status with the Council of Europe.

10. Other business.

Under this heading, the Committee may examine the report of the Manpower Committee of the O.E.E.C. concerning visas.

11. Date and place of the next Session.

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A P P E N D I X I I I

SUMMARY OF THE PROCEEDINGS OF THE SPECIAL MEETING
CONCERNING THE SOCIAL CHARTER

The representative of the International Federation of Christian Trade Unions said that Resolution (56) 25 of the Committee of Ministers raised three principle questions which were referred to the Social Committee:

1. The contents of the Convention and the scope of the definite rights.
2. The procedure of the elaboration of the Convention.
3. The implementation of the Convention.

On these points both the Assembly and the Committee of Ministers had expressed views similar to those of his organization, namely that the Convention should contain binding provisions; that the workers should be associated with its preparation, and that it should be implemented on a tripartite basis.

With regard to the Convention itself, the International Federation of Christian Trade Unions held the view that it should (a) establish the basis and the great lines of a European social policy; (b) involve a progressive harmonisation of social legislation at the highest level, and (c) prove that European integration would not run counter to the interest of the workers.

The Convention should, therefore, not only contain declarations of principle. It should include binding provisions which would serve as a guide for national legislation. In harmony with the idea expressed in Resolution (56) 25 of the Committee of Ministers, the implementation should be by progressive stages, and collective agreements might in many cases be the best means of implementation.

In view of the recent events in Hungary, it would be of particular importance that the Convention should be binding and that it should stress such rights which had been violated in Eastern Europe.

Without entering into details with regard to the advantages or disadvantages of recognising subjective rights, the representative of the International Federation of Christian Trade Unions considered that the solution found in the draft Convention appended to Recommendation 104 (1956) of the Assembly was satisfactory. It consisted of a global recognition of the rights, followed by an enumeration of concrete measures of application. It was, he said a recognition of objective rights combined with a complete disregard of subjective rights which had led to the revolts in Berlin, Posnan and Budapest.

Nobody would pretend that the text appended to Recommendation 104 was perfect, and the IFCTU had criticised it. The IFCTU would have preferred the text originally submitted to the Assembly by the Committee on Social Questions (Doc. L03 of October 1955), but the present text was an improvement over Doc. 488, submitted to the Assembly in April 1956 (by the Committee on Social Questions and the Committee on Economic Questions together). One must admit that the present text constituted an improvement also in relation to the instruments of the ILO.

In conclusion of this part of his statement, the representative of the IFCTU requested the Social Committee to take as a basis for its work the draft text appended to Assembly Recommendation 104 (1956) and to collaborate closely with the trade union organisations.

With regard to the procedure for the elaboration of the Convention the speaker stressed the importance of the collaboration with the organised economic and social groups in Europe and said that this was in harmony with the views both of the Assembly and of the Committee of Ministers. Thus, the special meeting which had now been organised should be followed by a more permanent collaboration. A basis for this could be found in the Resolution of the Committee of Ministers. In fact, the Social Committee might regard all its meetings devoted to the elaboration of the Social Charter as "special meetings", thus rendering possible the presence of the experts of the trade union organisations.

In this connection the representative of the IFCTU proposed the convocation of a tripartite conference in the framework of the agreement between the Council of Europe and the ILO. This conference might either be convoked before or after the termination of the work of the Social Committee in this field. In the former case, which the speaker preferred, the Committee could submit to the conference certain definite points for opinion. In the latter case, the conference would

work on the basis of the text prepared by the Committee, but on the condition that the trade union organisations could be closely associated with the work of the latter.

The IFCTU was also in favour of the appointment of a special representative as proposed by the Assembly in Recommendation 104, but it would prefer a conference of Ministers of Social Affairs and the appointment of a political personality to follow up the work, on the lines followed in the case of the negotiations concerning the Common Market after the Messine Conference.

With regard to the implementation of the Charter, the representative of the IFCTU strongly stressed the need to associate representatives of the workers with this implementation. This idea had been favourably received by the Committee of Ministers. He referred to the "Social Chamber" envisaged in the draft Convention appended to Recommendation 104, which could be provisionally accepted by the IFCTU, although it would have preferred a European economic and social council. The Chamber might, however, thanks to its right of initiative develop into a more comprehensive organ, since it was impossible to solve social problems without studying also the economic questions.

Whatever solution were chosen (an economic and social council, a social chamber or perhaps a small tripartite committee), the representative of the IFCTU would make the following remarks:

1. Several intergovernmental organisations in Europe deal with the economic aspects of integration, but there is no organ dealing with the study and solution of the social problems involved.

2. There is no European organ where the workers have a satisfactory status.

3. On the national level the workers have a great influence on economic and social policy, and they desire a similar position on the European plane.

4. Since the ILO has not been in a position to create an appropriate regional organisation in Europe, it cannot be entrusted with the implementation of the Social Charter. This does not imply any prejudice towards the ILO and a form of collaboration with the latter might be found.

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The following questions of substance were then addressed to the representative of the IFCTU by members of the Committee:

The representative of the Federal Republic of Germany:

How should the terms "subjective rights" and "objective rights" be understood?

Reply: There are two extremes which should be avoided. One is that the State recognises a number of individual rights which cannot in fact be honoured because the corresponding measures of implementation are not taken. The other is that the State undertakes to provide a number of social measures, thus creating "objective rights" for the population as a whole, but fails to grant the citizens the opportunity of invoking and enforcing these rights individually. A proper balance must be found between these extremes.

The representative of Luxembourg:

What is the difference between a "Social Chamber" and an economic and social council?

Reply: The economic and social council as originally envisaged had a much wider competence than the Social Chamber. The former could, according to the plan, deal with all economic questions as well as with the social problems. It had also very definite powers in connection with the implementation of the Charter.

The representative of Italy:

What should be understood by a progressive harmonisation of social legislation at the highest level? Would it not lead to a uniform legislation?

Reply: The Charter would be useless if it were nothing but an inventory of existing social legislation. The Governments should accept higher standards as an aim to achieve. The gradual realisation of these standards would be tantamount to a harmonisation, but a uniform legislation was still in the distant future.

The representative of Turkey:

Does not social legislation depend on economic conditions and do the Governments not strive to improve social conditions within the limit of economic possibilities?

Reply: There will always in a given society be contradictory trends in social and economic development, corresponding to the interest of different social groups, and the Governments should side with the progressive forces.

The representative of the United Kingdom:

Given that social progress must depend on economic development, how can the Governments undertake binding obligations to attain higher social standards?

Reply: The compulsory standards are to be regarded as an aim. The Governments would not be immediately bound by these standards, but they would report periodically on the steps taken to attain them, explaining the reasons why they had not been able to realise these standards.

A P P E N D I X I V

Amendments proposed
to the drafts of Article 2 (Right to work) and
of Article 3 (Fair conditions of work)

Article 2

The Irish and United Kingdom delegates were in favour of a declaratory provision only.

The Danish and Norwegian delegates reserved their opinion as to whether the article should be of a declaratory or binding character until the other articles of the draft Charter had been examined.

The delegates of Belgium, France, Federal Republic of Germany, Greece, Italy, Luxembourg, Netherlands and Sweden stated that in principle and subject to the following remarks they were in favour of Alternative II:

Paragraph 2: The delegate of the Federal Republic of Germany proposed:

- (a) to delete the term "productive" from the phrase "high and stable level of productive employment";
- (b) to delete the rest of the paragraph following the words "high and stable level of employment".

This amendment was approved by the delegates of Austria, Belgium, Denmark, France, Greece, Italy, Luxembourg, Norway and the Netherlands.

Paragraph 3, sub-para. (i):

After a criticism by the United Kingdom delegate of the general implications of paragraph 3 the Belgian delegate proposed to clarify this paragraph by inserting, after the words "right to work" in sub-para. (i), the words "for nationals and for aliens entitled to equal treatment".

The delegate of Luxembourg agreed to this.

The delegate of the Netherlands stated that it was not necessary to make this addition here, since the question of equality of treatment between nationals and aliens would be dealt with elsewhere in the Charter.

The Italian delegate expressed the opinion that the Charter should not make any discrimination as between national and alien workers.

Paragraph 3. sub-para. (ii):

At the suggestion of the Danish, Irish, Norwegian and United Kingdom delegates it was decided to re-examine sub-paragraph (ii) taking into account the "closed-shop" problem.

Paragraph 3. sub-para. (iii):

The delegate of the Federal Republic of Germany proposed to delete the words "both general and specialised" from sub-paragraph (iii). The majority of the delegates agreed with this amendment.

Paragraph 3. sub-para. (iv):

The Belgian delegate proposed to reconsider the question of the proper context in which this provision should be inserted in the Charter.

ALTERNATIVE I

The British delegate, supported by the Austrian, Irish and Norwegian delegates, proposed to take into consideration a certain number of amendments suggested for Alternative II with a view to the final drafting of Alternative I.

In addition, the United Kingdom delegate considered it necessary in this draft, for the reasons stated in Doc. CE/Soc (56) 14, to substitute the words "assistance in training" for the words "adequate assistance in or opportunities for training", and to delete the reference to educational services. He also proposed the deletion of the third paragraph of this draft.

The Irish delegate drew attention to the draft text of Article 2 proposed by his Government in Doc. CE/Soc (56) 14, which reads as follows:

"To the end that everyone may exercise his right to earn his living by work which he freely accepts, the signatory Governments will endeavour to achieve and maintain a high and stable level of employment and will assist, by means suitable to the circumstances of their countries, in the realisation of the aim that all may have the opportunity of working in the occupation best suited to their capabilities and aptitudes".

Article 3

The delegates of Ireland, Sweden and the United Kingdom were in principle in favour of a declaratory provision but could not accept Alternative I as drafted in Doc. CE/Soc (56) 19.

The delegates of Austria and Norway were in principle in favour of Alternative I.

The Turkish delegate reserved his opinion.

The delegates of Belgium, Denmark, France, Federal Republic of Germany, Greece, Italy, Luxembourg and the Netherlands were in principle and subject to the following remarks in favour of Alternative II:

Article 3, introductory paragraph (unnumbered):

On a proposal of the Danish delegate, supported by the delegates of Belgium and the Federal Republic of Germany, it was decided to re-examine the wording of the clause "in so far as these measures are not put into effect etc" appearing in this paragraph, bearing in mind the wording of this clause in the ILO Conventions and the formula proposed by the German delegate, as follows: "in so far as these measures are not to be put into effect by collective conventions or in any other way appropriate to national practices and conditions".

Article 3, paragraph 1:

Several delegates proposed to delete the reference to protection of morals during work.

The Italian and Netherlands' delegates proposed to make the provisions of this paragraph more specific, especially as regards dangerous machines, tools and substances.

Article 3, paragraph 2:

As the delegates of Belgium, Denmark, Italy, Netherlands and Sweden objected to the inclusion of a fixed total of working hours in a text of a compulsory nature, it was decided to re-examine this paragraph especially the part coming after the words "the aim being ..." as well as regards the gradual implementation of the Convention postulated in this paragraph.

The delegates of Denmark and Sweden also objected to the inclusion of a reference to wages.

Article 3, paragraph 3:

The Netherlands' and Swedish delegates proposed that the question of additional holidays should be reconsidered.

The Netherlands' delegate, however, thought that this provision might be included, provided that the following clause were added: "as prescribed by national legislation".

Article 3, paragraph 4:

The delegates of Denmark, Norway and Sweden proposed to delete the words "of at least 32 hours" at the end of this paragraph.

The Netherlands' delegate was not in favour of this proposal; he suggested national legislation might provide for exceptions in special cases.

Article 3, final paragraph (unnumbered):

The Italian delegate proposed to delete at the end of this paragraph the words "except with regard to weekly rest and annual holidays with pay".

The United Kingdom delegate stated that his Government would be unable to accept even a declaratory article which made reference to a particular number of hours of weekly work, or to a particular period of paid annual holiday or weekly rest. Nor did he consider it appropriate to provide for additional holidays in the case of certain occupations.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

Strasbourg, 31st July 1957

Confidential
 CMR(57)107
 Cr. Eng.

REPORT OF THE SOCIAL COMMITTEE

(Fifth Session)

1. The Social Committee held its Fifth Session at Strasbourg from July 15th to 19th, 1957. The list of members and observers participating in the Session is contained in Appendix I. The Agenda adopted by the Committee is set out in Appendix II.

2. The meeting was opened by the Director of Research of the Secretariat-General of the Council of Europe. He recalled that at this Session, representatives of the Social Committee would have a joint meeting with representatives of the Consultative Assembly for the purpose of discussing questions relating to the European Social Charter. Moreover, the International Confederation of Free Trade Unions, the International Federation of Christian Trade Unions and the International Organisation of Employers had, in accordance with a decision of the Ministers' Deputies, been invited to be represented at a Special Meeting to be held in connection with the Session. The Deputies had also authorised the transmission to these organisations of the draft texts adopted by the Working Group of the Social Committee in April 1957.

3. The Director of Research further pointed out that the present Session was of particular importance. The Committee had a double task before it: to prepare the Interim Report called for in Resolution (36) 25 of the Committee of Ministers and to proceed so far as possible with the regular work in

drafting the Social Charter. He suggested that in view of the preparation of the Interim Report, it might be desirable for the Committee to settle first of all the basic questions ~~of principle~~ relating to the nature and structure of the ~~Charter~~ and the provisions for its implementation. This could be done on the basis of certain proposals made by the delegations of the United Kingdom, the Federal Republic of Germany, and Belgium.

- 4. The Committee then elected Mr. G.O. VEYSIV, O.B. (United Kingdom) as Chairman and Dr. GELTER (Federal Republic of Germany) as Vice Chairman.

AGENDA ITEM 6: EUROPEAN SOCIAL CHARTER

12. The main documents before the Committee were the report of the Working Group, CE/Soc (57) 5; the note of the United Kingdom delegation concerning the general structure of the Charter, CE/Soc (57) 9, and the note of the Belgian delegation on the conditions for ratification of the Charter and on its implementation, CE/Soc (57) 8.

13. Under the United Kingdom proposal, the body of the Charter would consist of two Parts. The first Part would contain an enunciation in general terms of the rights to be recognised, combined with an undertaking by governments to accept as an aim of policy the attainment of conditions in which these rights could be fully enjoyed. The second Part would contain more precise obligations, but ratification would not necessarily depend upon the acceptance of such obligations.

14. Under the Belgian proposal, ratification of the Charter would depend upon the acceptance of a certain minimum of the obligations contained in the second Part. The Belgian note contained proposals also with regard to the system of supervised implementation.

15. The rapporteur of the Working Group, M. Delpérée, introduced the report of the Group. The main problem had been the nature and legal scope of the provisions of the Charter. The Working Group was already confronted with the above mentioned proposals put forward by the representatives of the United Kingdom and Belgium. Moreover, there was a proposal by the representative of the Federal Republic of Germany which was similar to the British proposal in that it would be left to the Governments to decide individually to what extent they would accept binding provisions. On the other hand, the delegations of Belgium and Italy insisted that the Charter must contain at least a minimum of binding obligations. The Working Group, lacking the competence to decide in this matter, adopted a pragmatic approach to the problem and drew up certain alternative texts which were governed either by the term "will endeavour" or by the term "undertake". The representative of the United Kingdom on the Working Group had held the view that even the former term implied a certain obligation.

16. Another problem with which the Working Group was faced, was the extent to which the right to choose one's occupation freely could be reconciled with the so-called "closed shop" practice. The clause used in paragraph 3 of the Article on the Right to Work contained in Appendix IV to the Working Group's report is based on a proposal of the I.L.O. which had been requested to look into the problem.

17. A third problem of a more general nature was concerned with the extent to which the possibility of implementation of the Social Charter by means of collective agreements would solve the problems of those States where certain important labour problems were solved directly by negotiations between the labour market partners. What ~~responsibility~~, if any, would still rest upon the Governments? The I.L.O., to which had been submitted the question of the responsibility of Governments in cases where international labour conventions are implemented through collective agreements, had in its reply drawn the attention of the Committee to the following three situations that might arise:

- (a) The collective agreement does not reach the level of the standards incorporated in the international Convention. In that case the Government would have to take supplementary measures;
- (b) The collective agreement is restricted to certain categories of workers only. Then, the Government would have to take similar measures to cover other workers;

- (c) The collective agreement is modified so as no longer to reach the level of the international Convention or it goes out of force after the international Convention has been ratified. In that case, the Government would either have to adopt the necessary measures or to denounce the international Convention.

18. The Committee then undertook a general discussion of principles. It appeared that while a minority of delegations would have preferred a charter of a declaratory form only, others were, to a varying extent in favour of the inclusion of binding provisions. All agreed, however, that it was important to draw up an instrument that could be ratified by the largest possible number of Member States, and that this could only be achieved through a compromise.

19. On this basis it was agreed to discuss first the structure, nature and legal scope of the Charter and to turn afterwards to the question of implementation. It was agreed also that the Charter should - in so far as the body of the instrument is concerned - be divided into two Parts on the lines of the draft prepared by the United Kingdom delegation (Doc. CE/Soc (57) 9). This did not imply that the Committee accepted the United Kingdom proposal which would leave the Governments free to accept or not to accept any binding provisions. Several delegations stressed that among the detailed provisions to be contained in the second Part, a certain number must be binding upon a ratifying Government, and that there must be effective rules of implementation. The Committee decided to take this as a basis for its discussion.

20. In this connection, the Netherlands delegation made a reference to the ratification system adopted in International Labour Convention No. 102 concerning Minimum Standards of Social Security. Here, it is possible to ratify by complying with a part only of the total number of obligations involved, but on a selective basis, so that at least one of the more important obligations are included. Subsequently, the ratification may be extended to cover other obligations.

21. The delegations of Belgium, Italy and Luxembourg stressed that it would have been in harmony with Resolution (56) 25 of the Committee of Ministers to make all the provisions of Part II binding for all the Parties.

22. The Irish delegation would have preferred to draw up the Charter proper in the form of a declaration of social philosophy to be made by all Governments and to include the more precise provisions in a Protocol.

23. During the general discussion the question was also raised as to what should be understood by the term "progressive implementation". It might mean that a Government, having first accepted some obligations, would subsequently accept others, on the understanding that once an obligation was accepted, the Government was bound to the full extent of what was laid down in the Charter. It might also mean that the Government would in principle be bound by all the obligations, but that it could strive towards the attainment of all those standards by progressive stages within each obligation. The Committee adopted the former understanding of the term.

24. The Committee then proceeded to a detailed examination of Doc. CE/Soc (57) 9, Parts I and II of which had been accepted as a basis of discussion. The delegation of the Federal Republic of Germany did not press its own proposal contained in Appendix VIII to Doc. CE/Soc (57) 5, since its principle had been incorporated in the proposal of the United Kingdom delegation.

PART I

25. Paragraph 1 was adopted, on the understanding, however, that since it was of a nature different from that of the other paragraphs, it should form an introduction to the rest of Part I, thus governing the other paragraphs. The present paragraph 2 would then become paragraph 1, etc.

26. Paragraph 2 was adopted, subject to the word "should" being replaced by the word "shall". During the discussion of this paragraph it was proposed to replace the word "opportunity" by the word "right", and it was further suggested that this right should be a right to "seek employment". It was also proposed to dissociate the right to work as such from the right to free choice of employment. However, none of these proposals was accepted.

27. Paragraphs 3, 4, 5 and 6 were adopted without change.

28. In connection with paragraph 5, a discussion arose as to the meaning of the word "wage". A suggestion was made to replace it by the word "remuneration", which is employed and defined in the International Labour Convention No. 100. It was agreed, however, that the term "wage" in English is sufficiently wide and should not give rise to difficulties of interpretation.

29. In connection with paragraph 6 it was suggested to add a reference to the right to strike. The majority felt, however, that in this part of the Charter, which contained general statements without conditions, it would be inappropriate to include the right to strike, and this right was included in Part II, subject to certain conditions.

30. Paragraph 7 was adopted, subject to the word "bargain" being replaced by the word "negotiate". This was in order to make it clear that the paragraph did not necessarily proclaim a right to arrive at the conclusion of collective agreements, since in certain countries there are groups, e.g. civil servants, who are not entitled to conclude collective agreements, although they may well through their organisations negotiate with the authorities concerning their conditions of work.

31. It was pointed out that the English and the French texts of paragraph 7 were not in harmony, since the French text used the words "conclure des conventions collectives".

All workers did not necessarily have this right, which might be limited to certain workers' organisations recognised as representative. The Italian delegation raised the question as to whether paragraph 7 would be compatible with Article 39 of the Italian Constitution. It was pointed out in this connection that in any case any Government might, in accordance with the introductory paragraph to Part I, take into account its own constitutional difficulties when striving to fulfil the conditions in which the rights described in Part I might be enjoyed. The question was not further pursued, since the Italian delegation accepted the English wording of paragraph 7, to which the French text would conform.

32. Paragraph 8 was changed to read as follows:

"Children and young persons have the right to a special protection against physical and moral hazards arising in their work"

In this connection the question arose as to what was the difference between "children" and "young persons". After a statement by the representative of the I.L.O. to the effect that the I.L.O. made a clear distinction between the two terms, since "children" covered those who were too young to be admitted to employment, it was decided to maintain both the terms in paragraph 8.

33. Paragraph 9 gave rise to a lengthy discussion, since some delegations, particularly those of the Scandinavian countries, were of the opinion that the paragraph should only refer to expectant or nursing mothers and not to all employed women. The women's organisations did not wish any special rules of protection relating to women in general. Other delegations felt that there were natural, physical differences between men and women which justified a special protection of the latter in their work.

34. The Italian delegation feared that if the paragraph was restricted to expectant and nursing mothers, granting to those categories a special protection in their work, it might be taken to mean that women might be forced to work even during pregnancy. It was pointed out, however, that the protection might very well take the form of a prohibition of work during a certain period.

35. Finally, paragraph 9 was adopted in the following form:

"Expectant or nursing mothers in employment and other employed women as appropriate have the right to a special protection in their work."

36. Paragraph 10 was adopted, subject to the words "The individual" being replaced by the word "Everyone", and the word "enable" being replaced by the word "help".

37. Paragraphs 11 and 12, dealing respectively with the right to social security and the right to assistance, had been left open in Doc. CE/Soc (57) 9. At the request of the Committee, the delegations of Italy and Luxembourg agreed to prepare draft texts. These texts are contained in Doc. CE/Soc/Misc (57) 2. Both include the extension of the rights in question also to migrant workers. The Committee felt that there should be no reference to migrant workers in these paragraphs, since the rights of migrants would be covered by other provisions in Part I.

38. Paragraph 11 was then adopted in the following form:

"All workers and their dependants shall have the right to social security."

39. The delegations of Denmark, Norway and Sweden made a reservation on this point. In their view, the right to social security should not be restricted to workers and their dependants. It should cover everyone.

40. Paragraph 12 was adopted in the following form, several delegations having stressed strongly that the right to assistance could not be restricted to workers:

"Everyone without adequate resources shall have the right to social and medical assistance."

41. Paragraph 13 was discussed at length. The Danish delegation suggested to delete the words "in so far as medical and educational conditions permit", since the duty of the Governments was precisely to see to it that these conditions w e r e satisfactory.

42. The German delegation agreed to this and would delete also the reference to reasonable possibilities of training and employment. Other delegations, particularly the Italian could not agree to this. It was necessary to take into account the situation in each country, which might render the enjoyment of the right in question practically impossible, e.g. because of permanent structural unemployment.

43. It was further pointed out that the French text of paragraph 13 was limited to those physically handicapped, whereas the English term "disabled persons" was of a wider scope. It appeared that the intention was to cover also those suffering from mental deficiencies. The representative of the I.L.O. explained that this was the case also with ILO Recommendation No. 88, which covered all disabled persons capable of rehabilitation (no reference being made to the limited possibilities of given countries to provide for opportunities of rehabilitation).

44. The outcome of the discussion was that paragraph 13 was adopted in the following form:

"Disabled persons have the right to rehabilitation and resettlement, whatever the origin and nature of their disability."

45. It was, however, agreed, at the request of the Italian delegation, to state in the report that with regard to this paragraph the Committee had introduced into the Charter a principle of a very general nature, it being understood that the right to training and to professional and social rehabilitation should in all cases be subject to the internal situation in each country and to the possibilities of obtaining employment.

46. Paragraph 14 was adopted in the following form:

"The family as a fundamental unit of society has the right to appropriate social and economic protection."

The words "Because of the importance of" were deleted, since in no other case the reason for the granting of a given right was stated. The Irish delegation wanted further to stress the importance of the family by referring to it as "the primary and fundamental unit group of society".

47. Paragraph 15 was adopted without change.

48. Paragraph 16 was compared to and adjusted to Article 10 of the European Convention on Establishment to which it was related. The Swedish delegation wondered whether the paragraph was necessary, in view of the fact that in Part II there was an article dealing with the right of access to employment abroad. The United Kingdom delegation would have preferred the omission of the paragraph, but in deference to the views of other delegations it would not press this point. It suggested, however, in order to bring the text closer to that of Article 10 of the Establishment Convention, to add the words "and provided there are no cogent economic and social reasons to the contrary".

49. In order further to bring the paragraph into harmony with the Establishment Convention, it was suggested that it should apply not only to wage earners but to all gainful occupations.

50. The Italian delegation felt that the provision was too wide and that it might be limited to the right to free access to employment abroad. This would bring the text in harmony with the Common Market Treaty on this point. The Luxembourg delegation agreed to this.

51. The question was further raised as to whether it was correct to speak of a "right" in this case, since the alien would in any case have to receive some kind of permission or authorisation in order to exercise a gainful occupation in another country. The word "opportunity" was proposed, but it was decided to maintain "right" which was the term usually employed throughout Part I.

52. Paragraph 16 was finally adopted in the following form:

"The nationals of any of the High Contracting Parties have the right to engage in any gainful occupation in the territory of any of the others, on a footing of equality with the nationals of the latter, subject only to restrictions based on considerations of security, public order and public health, or on cogent economic or social reasons."

53. Paragraph 17 was adopted without change.

54. The Italian delegation would have preferred a much more elaborate text which would provide expressly for equality of treatment with regard to wages, working conditions and social security. This latter point should also comprise totalisation of insurance periods and periods required for the opening of the right to insurance.

55. The Belgian delegation also felt that the text of paragraph 17 might be more complete, and it suggested the following wording, which to some extent follows the wording of Article 17 of the European Establishment Convention.

"Migrant workers have the right to enjoy treatment no less favourable than nationals with regard to wages, conditions of work, social security and social and medical assistance."

56. The German delegation considered that if the original text were to be changed on the lines suggested by the Belgian delegation, one might as well take over the whole of Article 17 of the European Establishment Convention, which referred to "any statutory regulation".

57. The Committee having adopted the paragraph without change, the Italian delegation reserved its position, stating that in its view the provision should have been worded as follows:

"Migrant workers have the right to enjoy treatment no less favourable than nationals, particularly with regard to wages, conditions of work, social security and social and medical assistance."

The Greek delegation stated that it agreed to this.

PART II

58. Before entering into the details of this Part, an exchange of views was held concerning the precise nature of the provisions which it contained. The representative of Sweden pointed out that some provisions were governed by the word "undertake", whereas under other provisions the Governments would simply endeavour to take certain measures. One might possibly split the Part in two, so that all the absolute and immediate obligations could be put together in one part of the Charter. This was a question of practical importance, since one could imagine that there would be in the Charter an article on the material conditions for ratification to the effect, say, that in order to ratify, a Government must undertake a prescribed number of the obligations embodied in Part II. The Government might then choose to comply with such provisions only that required it only to endeavour to do something.

59. It followed from the ensuing discussion that it would be preferable not to split the present Part II, but several delegations expressed the view that a certain number of real, immediate undertakings should be a condition for ratification. In order to form an opinion as to how many and what kind of undertakings might be required, it was, however, necessary to examine Part II in detail. The Committee accordingly proceeded to a discussion article by article.

The right to work:

60. Paragraph 1 :

Having rejected a proposal to the effect that this paragraph should be transferred to Part I since it did not contain a real undertaking, the Committee adopted the paragraph without change.

The Swedish delegation wanted it recorded in the report that in its opinion, Part II should only contain undertakings the implementation of which might be subject to control.

61. Paragraph 2 :

The question arose as to what was the meaning of the term "union security clause or practice". The representative of the I.L.O. explained this and reference was, moreover, made to the I.L.O. note contained in Appendix III to Doc. CE/Soc (57) 5 where it is stated that:

"The words 'any union security clause or practice' are employed because the 'closed shop' clause is but one of the various ways in which employment can be made subject to membership of a trade union."

In order to clarify the French text, it was decided that it should read: "... cette règle ne saurait être interprétée ni comme interdisant ni comme autorisant les clauses ...". The Charter would thus leave this question entirely open. The English text was sufficiently clear.

62. The delegations of Italy and the Netherlands made a reservation because in their view, the closed shop practice could not be admitted.

63. The United Kingdom delegation suggested that the word "choose" does not render correctly the meaning of the provision, since it implies not only a selection but also the fact of obtaining what one has selected. As an alternative term, "offer oneself" was suggested.

64. Having rejected this proposal as well as an amendment proposed by the Irish delegation, the Committee adopted the paragraph without change.

65. The Italian delegation made a reservation on the grounds that under Italian law an unemployed worker could not refuse work offered to him without losing his unemployment benefit and had thus not always a free choice. The French delegation associated itself with this reservation. Other delegations found it unnecessary to make a reservation on such grounds.

66. The Irish delegation also made a reservation. It could not accept the word "choose" because of its above mentioned implication.

67. Paragraphs 3 and 4 were adopted without change.

The right to just conditions of work:

68. In connection with the introductory paragraph to this Article a discussion arose concerning what would be the responsibility of a ratifying Government with regard to matters that were usually dealt with by collective agreements. It was suggested that in case it was intended that the Government should be responsible, one could delete the reference to collective agreements, etc.

69. The ensuing discussion revealed a sharp division of views among the delegations. Some emphasised that their Governments could not ratify the Charter if this implied even the slightest responsibility in fields which in their countries were left to the labour market partners to decide. Others, equally strongly stressed that the Governments must accept a residual responsibility even in such fields. Reference was made in this connection to the I.L.O. note referred to in paragraph 17 above. The text as proposed in Doc. CE/Soc (57) 9 would, however, exempt the governments from any such responsibility. It was pointed out also that a Government that had ratified a certain part of the Charter on the strength of provisions made in collective agreements and that subsequently found itself in a situation where these agreements did no longer satisfy the requirements of the Charter, might if provisions to that effect were part of the Charter, denounce the part of the Charter in question. The Committee agreed that the insertion in the Charter of provisions of that nature should be considered at a later stage.

70. Several alternative texts were proposed, and - in summing up the debate - the Chairman requested the Committee to indicate which of the following proposals it preferred:

(a) Proposal of the Austrian delegation:

"With a view to ensuring the effective exercise of this right, the High Contracting Parties will endeavour to foster the conclusion of agreements or other measures ensuring workers: etc." (Here follows the three individual paragraphs of this article.)

(b) Proposal of the Netherlands delegation:

Replace the words: "are not left under national schemes to agreements, etc." by the words: "are not put into effect under national schemes by agreements, etc."

(c) Proposal made by a member of the Committee in his private capacity, to the effect that the governments should accept an undertaking with regard to measures that were within their sphere of competence, and that they should accept to promote the adoption of the measures called for in the Article insofar as such measures were outside their competence.

(d) The text contained in Doc. CE/Soc (57) 9, which, at the proposal of the United Kingdom delegation, might be expressed in a positive way by employing the words, either alone or in addition to the text contained in Doc. CE/Soc (57) 9: "... insofar as such matters are regulated by law or regulations or are otherwise subject to control of administrative authorities."

71. It appeared that the Dutch proposal mentioned under (b) above met with the largest measure of approval. It was decided therefore to word the paragraph accordingly. The delegations of Austria, Denmark, the Federal Republic of Germany, Ireland, Sweden and the United Kingdom wished to record their reservation.

72. Paragraph 5 :

Certain delegations, including those of France and the Netherlands, felt that it should be explicitly stated in this paragraph that not only the working week but, correspondingly, also the weekly working hours should be progressively reduced. The paragraph was, however, adopted without change.

73. Paragraph 6 :

It was agreed to split this paragraph up into three parts as follows:

- (a) to provide for recognised public holidays with pay.⁽¹⁾
- (b) to provide for a minimum of two weeks' annual holiday with pay.
- (c) to provide for additional paid holidays for workers engaged in dangerous or unhealthy occupations as prescribed.

74. The Swedish delegation remarked that the question of payment on public holidays is a wage question and as such ought to be left to the labour market partners. The United Kingdom delegation pointed out that in the United Kingdom additional paid holidays were not necessarily granted in dangerous and unhealthy occupations. The Greek delegation made a reservation concerning the possibility of accepting an obligation regarding the question of payment on public holidays. With regard to annual holidays with pay it informed the Committee that the minimum annual holiday in Greece is shorter than envisaged in the draft.

75. Paragraph 7 was adopted without change.

The right to safe and healthy working conditions:

76. Paragraph 8 was adopted without change.

The right to a fair wage:

77. Paragraph 9 was adopted without change, the Committee having rejected a French proposal to word the last line as follows: "or, failing this, fixed by collective agreement or arbitration award"

78. Paragraph 10 was adopted, subject to the deletion of the word "any" at the end of the first line.

In connection with this paragraph, the German delegation drew attention to the need for exceptions from the rule in cases of emergency, etc. The Chairman said that the Committee might consider it necessary to introduce into the Charter a general clause of this nature, and the German delegation agreed.

(1) In the French text this should be "de jours fériés payés" and not "des jours etc."

79. Paragraph 11 and the closing paragraph were adopted without change. In connection with paragraph 11, however, the German delegation made a reservation to the effect that it should be worded: "... equal pay for equal work." It was, in its opinion, impossible to measure and compare the value of different types of work.

80. It was pointed out that in the text of this article prepared by the Working Group, the rights corresponding to paragraphs 10 and 11 were subject to real undertakings on the part of governments. The majority of the delegations were, however, in favour of maintaining the present text. The delegations of Belgium, France, Italy, Luxembourg and Turkey preferred a binding text and made a reservation to that effect.

Right to organise:

81. Paragraph (12):

A lengthy discussion arose on the right to organise. It was pointed out that the restrictions to which this right might be subject according to paragraph 12 were unnecessarily strict and went further than I.L.O. Convention No. 87, Article 8. Another point raised was whether restrictions might be imposed on the right to organise with respect to civil servants. This would be contrary to I.L.O. Convention No. 87.

82. It was agreed to adopt the text of paragraph 12, provided that the last phrase should be reworded so as to follow the lines of Article 9 (1) of I.L.O. Convention No. 87, it being understood that members of the administration of the State should not be exempt from the restrictions.

83. The delegations of Belgium, France and Italy made a reservation on this point, since in their view the restrictions should only affect members of the police and of the armed forces.

84. The French delegation would add the word "professional" before the words "economic and social" in the fourth line of paragraph 12 and replace the last phrase by the text of Article 9 (1) of I.L.O. Convention No. 87.

The right to bargain collectively:

85. It was agreed to turn paragraphs 13 to 15 inclusive into an undertaking. Paragraph 13 was then adopted without change.

86. Paragraph 14 was adopted in the following form:

"to promote the establishment and use of appropriate machinery for conciliation or arbitration for the settlement of labour disputes".

The French delegation had requested that the word "agreed" be replaced by the words "statutory and agreed." The reference to "Agreed" machinery was eventually deleted, but this was done on the understanding that the term appropriate is sufficiently wide to include all types of such machinery and the governments would thus not be obliged to establish any machinery.

87. Paragraph 15 was adopted in the following form:

"to encourage and promote joint consultation of workers and employers."

This would imply that the level on which such consultation should take place could be determined according to national law or practice.

88. Paragraph 16 :

Since in some countries civil servants do not have the right to strike, it was suggested to add words to this effect to the paragraph. This proposal was, however, withdrawn, on the understanding that the case was sufficiently covered by the reference to "national security or public interest".

89. The French delegation pointed out that under the present text, the right to strike was subject to an effort being made first to solve the conflict through conciliation or arbitration. The delegation wanted it to be made clear in the text that the right to strike was not so conditioned.

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90. It was agreed to word paragraph 16 , as follows:

"The right of workers and employers to collective action in cases of conflicts of interest, subject only to limitation prescribed by law for reasons of national security or public interest."

91. The Luxembourg delegation stated that it would have preferred the original text, and the Italian delegation made a reservation on the grounds that "lockout" was not recognised in Italy.

The right of children and young persons to protection:

92. After some discussion it was decided that the preamble to this article should be reworded in the same way as with regard to the article on just conditions of work. The delegations of the Federal Republic of Germany, Greece, Ireland and the United Kingdom made a reservation on this point. The Danish delegation could, in the circumstances, accept the original text.

93. Paragraphs 17 to 19 , inclusive and paragraphs 21 to 23 , inclusive, were adopted without change. Paragraph 20 was adopted in the following form:

"to provide that the working day of persons under 16 years of age shall be limited in accordance with, etc." (the rest was unchanged.)

94. Certain delegations could not accept the text of paragraph 17 , since school-leaving age in their countries was less than 15 years. The French delegation declared itself ready to accept the proposed text although school-leaving age is still fixed at 14 years in France. The Belgian delegation, supported by the delegations of Denmark and Norway, stated that the Social Charter should be an instrument of social policy and that in drawing it up it would be appropriate to go beyond the lowest standards existing in certain countries, in order to reflect the general trend towards the raising of these standards. The Charter should be a European document but also an instrument of social progress. The Austrian and Greek delegations suggested to fix the minimum age of admission to employment at 14 years, provided that the paragraph should reflect a trend to increase that age. The delegations of Ireland and the United Kingdom stated that their Governments would not be able to comply with any of the paragraphs dealing with matters left to settlement by collective agreements. In addition, the United Kingdom Government would not be able to comply with paragraph 18 . The Irish delegation stated that this applied also to the Irish Government. The Netherlands

delegation made a reservation concerning paragraph 23, since medical control in the Netherlands applied only to special dangerous or heavy occupations.

Protection of women:

95. It was agreed that the preamble to this article should be reworded in the same way as in the previously mentioned cases of the same nature, in other words so as to make it clear that a residual responsibility will in any case rest on the government even if the matter is normally dealt with by collective agreement. Certain delegations made reservations on this point.

96. Paragraphs 24 and 26 were adopted without change. The Danish delegation, without opposing this decision, pointed out that Denmark could not comply with paragraph 24. In connection with paragraph 26 the Italian delegation made a reservation to the effect that time off for nursing should either be paid or covered by social security. This was in harmony with I.L.O. Convention No. 103 (Maternity Protection).

97. Paragraph 25 was adopted as follows:

"to prohibit dismissal from employment during or on account of maternity absence".

98. The United Kingdom delegation stated that with the preamble in such a form as adopted by the Committee, the United Kingdom Government could not comply with paragraphs 25 or 26, but only with paragraph 24.

99. The Irish delegation proposed to include, after the present paragraph 26, the following new paragraph:

"to prohibit the employment of women on night work in specified employments or on specified work underground, or on certain processes as may be prescribed by national laws as unsuitable for women."

The delegations of Greece, Italy, Luxembourg, the Netherlands and Turkey declared themselves in favour of such a clause. Others considered it to be too wide and contrary to the views of women's organisations. It was agreed to refer the clause to the Working Group for further study.

Right to vocational guidance:

100. Paragraphs 27 and 28 were adopted without change. The delegations of Belgium, Denmark, the Federal Republic of Germany, France, Luxembourg and the Netherlands declared that they would have preferred this article to be in a binding form.

Right to vocational training:

101. It was agreed that this article should have a binding form. The delegations of Greece, Ireland, Italy, Norway, Turkey and the United Kingdom stated, however, that they were in favour of maintaining the text as proposed.

102. Paragraphs 29 to 31, inclusive, were adopted without change. Paragraphs 32 to 35, inclusive, were merged into a single paragraph, without any change of substance.

103. The United Kingdom delegation stated that its Government could not comply with the provisions contained in the original paragraphs 32, 34, and 35.

104. Due to lack of time, the Committee interrupted the detailed examination of Doc. CE/Soc (57) 9 at this point. The texts adopted are included in Appendix IV to the present report.

Ratification and implementation of the Charter

105. In order to give some orientation to the Working Group, the Committee then undertook an exchange of views concerning material conditions for ratification of the Charter and procedure of implementation. It based this discussion on the Third Party of the United Kingdom draft Charter (CE/Soc (57) 9) and the Belgian Note - CE/Soc (57) 8.

106. The Belgian delegation explained its proposal, which was more far-reaching than that of the United Kingdom. Under the former, the ratifying governments must accept a certain minimum number of binding obligations. The Belgian delegation considered that its proposal was in harmony with the wish of the Consultative Assembly as well as of the Trade Union Federations. It had been suggested at the joint meeting with the representatives of the Assembly that there might be 7 or 8 binding obligations for each ratifying government, including 4 or 5 that would be binding for all Parties to the Charter.

107. The Italian delegation stated, with reference to the comparison made in Doc. CE/Soc (57) 8 between ratification of the Charter and ratification of the International Labour Convention (102) on Minimum standards of Social Security, that the two cases were quite different. One could not single out certain rights which need not be binding. In Part II of the Charter all the provisions should be binding. In Part III (on implementation) it should be stated that some of the provisions of Part II must be binding upon all ratifying States. At regular intervals, such as every five years, a competent organ (Committee of Ministers) should examine the possibility of increasing the number of provisions binding upon all Parties. Thus, a development would take place towards a completely binding instrument, and this amounted to a progressive implementation.

108. In addition to these two proposals, there was the United Kingdom proposal, under which it would be left to each ratifying government to decide to what extent it would undertake binding obligations.

109. The delegations of the Federal Republic of Germany, Greece, Luxembourg, the Netherlands, Norway and Sweden favoured some system under which a certain minimum number of binding obligations would have to be undertaken. The German delegation could accept a minimum number of obligations to be binding upon all Parties and an additional number of binding obligations to be left to the choice of each Party.

110. The question also arose as to what should be understood by obligation or provision in this connection. It might mean a whole group of obligations like, e.g. all those relating to the protection of children and young persons, or it might be limited to one of the sub-provisions in such a group. It was important to avoid a situation where a State could ratify the Charter on the strength of compliance with a prescribed minimum number of obligations without any real importance. On the other hand, it would clearly be inconvenient to require compliance with whole groups of obligations, since this might prevent ratification on the part of governments that could comply with a number of obligations within a group, but not with all. In any case, the number of the obligations that would be binding, would depend upon what "basic unit" was chosen. If this unit were the sub-provision the number of obligations must obviously be much higher than if the groups of provisions were used as unit. It was further pointed out by the delegations of Ireland and the United Kingdom that of course Part I of the Charter was an integral part of the instrument and signatories should be considered as bound by it. In order not to exclude from ratification States that could accept only Part I, the Swedish delegation suggested a ratification by stages, the first stage covering only Part I.

111. Most delegations agreed that some form of supervised implementation was necessary in order to make the Charter an efficient instrument. It was also the consensus of opinion that such implementation must be based on a system of reports from governments. Under the Belgian proposal these reports should be examined first by European experts selected from among the members of the I.L.O. Committee of Experts on Application of Conventions and then by a tripartite committee which again should report to the Assembly and the Committee of Ministers.

112. The German delegation raised the question whether it was possible to have recourse to the I.L.O. experts on the Application of Conventions and Recommendations. These highly qualified experts are already overburdened. It might for this reason be desirable to appoint a group of independent experts within the framework of the Council of Europe. The reports might be examined first by this group. Instead of establishing a new organ (tripartite committee), the experts could report to the Social Committee itself, which again would report to the Committee of Ministers. The interests of the organisations of workers and employers might be secured by a procedure under which such organisations on the national plane were given an opportunity to comment upon the national reports. Moreover, the Social Committee might hear the views of representatives of the international organisations. As regards the Assembly, it would certainly be consulted by the Committee of Ministers.

113. The Norwegian delegation suggested, in order to simplify the system, that the Social Committee, when dealing with the reports, could be limited to one representative of each country, and that reports should be submitted only every second year.

114. The Swedish delegation stressed the importance of avoiding any overlapping. Thus, many points in the Charter would be covered by reports that the governments had to submit to the I.L.O. In such cases, duplicates could be sent to the Council of Europe.

115. The Belgian delegation explained that the main advantage of linking the implementation machinery to that of the I.L.O. was to maintain unity of judgement in international matters of identical nature. In any case it was absolutely necessary that the reports from the governments should be examined by independent experts.

116. The Netherlands delegation agreed in principle with the Belgian proposal, but two control instances was too much and it should be possible to combine them, so that the I.L.O. experts also formed part of the envisaged tripartite committee.

117. The Danish delegation expressed doubts as to whether it should be left to the Social Committee to supervise the implementation of a Charter involving obligations for the governments, and raised the question as to how the workers' and employers' representatives on a tripartite committee should be selected. They could not simply be appointed by Ministers. There must, as in the I.L.O. be some system to make sure that they really represent free organisations.

118. It was decided to transmit the above remarks and proposals concerning ratification and implementation to the Working Group for consideration and preparation of draft provisions. The Luxembourg delegation, moreover, suggested that governments might give their opinions on this in writing to the Working Group, but this proposal was not approved.

Future working programme concerning the social charter:

119. It was agreed to instruct the Secretariat to submit as soon as possible to all members of the Committee individually the texts adopted at this Session. Each member would be requested to examine these texts in the light of national legislation and practice and to ascertain to what extent the texts could be accepted as binding obligations by his country. He would further be requested briefly to indicate the reasons why other obligations could not be accepted. The replies should be in the hands of the Secretariat by 20th October 1957, and would then be compiled and distributed.

120. In order to fulfil the task entrusted to the Committee within the end of the year it was considered necessary that the Working Group that had met in April 1957 should hold a new meeting, which should take place from 7th to 11th October 1957. The Working Group should examine the following questions:

- (i) Right to social security and assistance, see Doc.CE/Soc (56) 19, Part II and Doc.CE/Soc/Misc (57) 3,4 and 5;
- (ii) The rights dealt with in Doc.CE/Soc (57) 12 (health, standard of living, social services);
- (iii) The Irish proposal mentioned in paragraph 100 above;
- (iv) Preamble;
- (v) Final clauses. Draft texts should be prepared by the Legal Department of the Secretariat-General.
- (vi) Ratification and implementation;
- (vii) Draft texts to complete Part I if additions to Part II render this necessary.

The delegations that had formed the Working Group in April, 1957, undertook to meet again.

The next Session of the full Committee could then take place from 25th to 29th November 1957.

121. The Committee decided to undertake further consultations with the three organisations referred to in paragraph 2 above. For this purpose a special meeting could be held on 25th November 1957. The texts adopted by the Committee at the present session and contained in Appendix IV to the Report should be transmitted to these organisations.

122. The representatives of the Assembly who participated in the joint meeting referred to in paragraphs 5 to 8 above, expressed the wish that the mixed group should meet once more before the adoption of the definite draft text of the Charter. The Social Committee agreed to this and suggested that such meeting could be held at the beginning of the next Session, provided that the Committee of Ministers authorises it.

Interim Report to the Committee of Ministers:

123. The Committee had before it the draft Interim Report prepared by the Working Group, Doc.CE/Soc (57) 5, Appendix IX, and Doc.CE/Soc (57) 15, which contained a draft outline of the interim report prepared by the Secretariat in the light of the latest developments. It was agreed that the Interim Report should be short and limited to important principles. So far as possible it should set out agreed conclusions and not individual delegations' points of view.

A P P E N D I X IList of members and observers
participating in the sessionAUSTRIA

M. Keller

Conseiller Ministériel au
Ministère des Affaires
SocialesBELGIUM

M. A. Delpérée

Conseiller économique et
social du Ministre du
Travail et de la Prévoyance
sociale.Mme C. Gilon-
PichaultService des Relations Inter -
nationales au Ministère
du Travail et de la
Prévoyance sociale.DENMARKM. P. Juhl-
ChristensenChief of Division.
Ministry of Social Affairs.

M. J. Bonnosen

Chief of the International
Relations Division,
Ministry of Social Affairs.FRANCE

Mlle Legrand

Administrateur civil au
Secrétariat d'Etat au
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Sociale.

M. A. Philbert

Administrateur civil au
Secrétariat d'Etat au
Travail et à la Sécurité
Sociale.FED. REP. OF
GERMANY

M. Geller

Directeur de Ministère au
Ministère du Travail.

Dr. G. Schoffler

Directeur de Ministère au
Ministère de l'Intérieur.

FED. REP. OF
GERMANY

Dr. H. Ernst Conseiller,
Ministère du Travail

GREECE

M. A. Psaras Directeur Général de
Ministère de la
Prévoyance sociale.

M. A. Triantafylou Directeur au Ministère
du Travail.

IRELAND

Mr. W.A. Honohan Assistant Secretary,
Department of Social
Welfare.

Mr. W. Kelly Assistant Principal
Officer, Department
of Industry & Commerce.

ITALY

M. Carloni Inspecteur Général au
Ministère du Travail.

M. Barsotti Directeur de Division
au Ministère du Travail.

LUXEMBOURG

M. G. van Werveke Secrétaire Général du
Ministère du Travail et de
la Sécurité sociale.

M. F. Grulms Secrétaire-Archiviste
au même ministère.

NETHERLANDS

M. T.M. Pellinkhof Chef du Service des
Affaires Internationales
du Ministère des Affaires
Sociales et de la Santé
Publique.

M. J.J.M. Geldens Chef de Division au
Bureau de Travail,
(Même ministère)

M. H.B. Eldering Attaché à la Division
de la Protection des
Travailleurs, (Même
ministère).

be nothing short of misleading and it was not at all clear why the European States could not accept, within the framework of the Council of Europe, something which they had accepted for more than thirty years, with undeniable success, within the framework of the International Labour Organisation.

These two essential requirements, namely the compulsory nature of the Charter and tripartite implementation were, M. Kulakowski said, the key to the attitude of the I.F.C.T.U. The Federation categorically rejected any European Social Charter not conceived as a binding Convention and not providing for tripartite implementation. If the governmental Social Committee did not believe that it could submit such a draft Charter to the Committee of Ministers, then the Social Committee could only be asked to convey to the Committee of Ministers the view of the International Federation of Christian Trade Unions that it was undesirable to have any other kind of Charter.

M. Kulakowski then proceeded to consider the text communicated by the I.F.C.T.U. and stated that he would first of all like to comment on the subsidiary responsibility of the State to ensure the standards laid down in collective agreements. This responsibility, which was a normal outcome of the rôle of the State at both national and international level, should be assumed. This view appeared, moreover, to be that held by the International Labour Office, as shown in a document in which it gave the reasons for its attitude.

His second comment related to the reservations made by the representatives of certain Member States in respect of several provisions in the text. If, for example, they were to amend the texts in accordance with the reservations made by the representative of only one Member State, this would result in the virtual disappearance from the Charter of provisions such as those governing the free choice of employment, the fixing of a minimum period of holidays with pay, a special minimum age of admission to employment in dangerous and unhealthy occupations and various other measures protecting juvenile workers, as well as of the prohibition of dismissal from employment on grounds of maternity absence and the right of mothers nursing their infants to time off for this purpose. It might well be asked what useful purpose would be served by a European Social Charter deprived of all these stipulations and how some people could have possibly believed that the trade union organisations could ever agree to such a Charter!

It was, M. Kulakowski said, somewhat fallacious to proceed to examine the articles of the draft Charter without being aware of their true scope. A given text might, indeed, be excellent if it were considered as a compulsory measure and ridiculous if it amounted to a purely gratuitous statement.

In reply to a question by M. Delpérée concerning the legal scope of the provisions of the Charter, particularly those which would not be immediately compulsory, the I.F.C.T.U. representative, speaking personally, said that he was in agreement with a system of progressive implementation of the Charter, provided the latter took, in principle, the form of a convention which was binding upon the signatory States. This Convention might consist of two parts, one declaratory and the other compulsory, the latter providing for a choice of a minimum of provisions upon which ratification would depend. This minimum could be a minimum from the quantitative or numerical point of view, as well as a qualified minimum. The latter might include, for example, provisions relating to the right to work, the protection of juvenile workers and women, as well as the rights concerning occupational relations. By the same token, arrangements might be made to combine the system of a numerical minimum and that of a qualified minimum. Lastly, it must be pointed out that the minimum in question should relate to the general common social policy of the Member States, since the term Social Charter related, by its very nature, to the social field as a whole; otherwise, use of the term Social Charter would be misleading.

11. Everyone without adequate resources shall have the right to social and medical assistance.
12. Disabled persons have the right to rehabilitation and resettlement, whatever the origin and nature of their disability.
13. The family as a fundamental unit of society has the right to appropriate social and economic protection.
14. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.
15. The nationals of any of the High Contracting Parties have the right to engage in any gainful occupation in the territory of any of the others, on a footing of equality with the nationals of the latter, subject only to restrictions based on considerations of security, public order and public health, or on cogent economic or social reasons.
16. Migrant workers have the right to protection and assistance.

Second Part:

The right to work

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

- (1) to accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of employment;
- (2) to protect effectively the right of the worker freely to choose any available occupation, though this provision shall not be interpreted as prohibiting or authorising any union security clause or practice;
- (3) to establish or maintain free employment services;
- (4) to promote appropriate vocational guidance, training and rehabilitation.

and recognise:

- (12) the right of all workers to additional wages for work performed at the request of the employer in addition to normal working hours;
- (13) the right of men and women workers to equal pay for work of equal value.

The exercise of these rights may be realised by voluntary collective agreement, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

The right to organise

- (14) With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations and to join organisations for the protection of their economic and social interests, the High Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom, subject only to restrictions prescribed by law for reasons of national security or public interest or for the prevention of disorder or crime or for the protection of the rights and freedoms of others. The extent to which the guarantees provided for in this paragraph shall apply to the armed forces, the police and the administration of the State shall be determined by national laws or regulations.

The right to bargain collectively

With a view to the promotion of this right the High Contracting Parties undertake:

- (15) to promote, where necessary and appropriate, machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

(16) to promote the establishment and use of appropriate machinery for conciliation or arbitration for the settlement of labour disputes;

(17) to encourage and promote joint consultation of workers and employers;

and recognise:

(18) the right of workers and employers to collective action in cases of conflicts of interest, subject only to limitations prescribed by law for reasons of national security or public interest.

The right of children and young persons
to protection

With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not put into effect under national schemes by agreements between employers' and workers' organisations or are not normally carried out otherwise:

(19) to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

(20) to provide that a higher minimum age of admission to employment shall be fixed with regard to prescribed occupations regarded as dangerous or unhealthy;

(21) to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of their education;

(22) to provide that the working day of persons under 16 years of age shall be limited in accordance with the needs of their development and particularly with their need for vocational training;

(23) to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;

- (24) to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national law and regulations;
- (25) to provide that employed persons under 18 years of age shall be subject to regular medical control, with the exception of certain occupations provided for by national law and regulations.

The right of employed women to protection

With a view to ensuring the effective exercise of this right the High Contracting Parties undertake in so far as such measures are not put into effect under national schemes by agreement between employers' and workers' organisations or are not normally carried out otherwise:

- (26) to provide either by paid leave or by adequate social security benefits for women to take leave before and after childbirth up to a total of 12 weeks;
- (27) to prohibit dismissal from employment during or on account of maternity absence;
- (28) to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.

The right to vocational guidance

With a view to ensuring the effective exercise of this right the High Contracting Parties will endeavour:

- (29) to provide or promote assistance to individuals in solving problems related to occupational choice and progress with due regard for the individual's characteristics and their relation to occupational opportunity; such assistance to be available both to young persons, including school children, and to adults;

- (30) to encourage the full utilisation of the facilities provided, by appropriate measures such as reducing or abolishing any fees or charges.

The right to vocational training

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

- (31) to provide or promote, as necessary, the technical and vocational training of workers;
- (32) to provide or promote a system of apprenticeship;
- (33) to provide or promote, as necessary, special facilities for re-training of adult workers where this is necessary as a consequence, particularly, of technological developments or of dislocations of the employment market;
- (34) to encourage the full utilisation of the facilities provided, by appropriate measures such as:
- (a) reducing or abolishing any fees or charges;
 - (b) granting financial assistance in appropriate cases;
 - (c) including in the normal working hours time spent on supplementary training taken by the workman, at the request of his employer, during employment;
 - (d) ensuring, through adequate supervision, the efficiency of apprenticeship arrangements and the adequate protection of apprentices.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

Strasbourg, 20th December 1957

Confidential
CM (57) 176

Or. Eng.

Report of the Social Committee
submitting the draft European Social Charter

A

INTRODUCTION

1. In accordance with the directions of the Committee of Ministers, and particularly the instructions given in Resolution (56) 25 of the 15th December 1956, the Social Committee has devoted a number of its Sessions to the task assigned to it of preparing a European Social Charter. A draft of the Charter which it has drawn up is now submitted.
2. The Social Committee during its work on the drafting of the Charter has taken into account the draft appended to Recommendation 104 of the Consultative Assembly. It has also had the advantage of discussions with representatives of the Assembly.
3. The Committee has also brought into consultation European employers' and trade union organisations, representatives of which were invited to attend ad hoc meetings of the Committee in accordance with its Rules of Procedure applying to non-governmental organisations admitted to consultative status with the Council of Europe. Representatives of the International Confederation of Free Trade Unions, the International Federation of Christian Trade Unions which have been admitted to such status, and representatives of the International Organisation of Employers which has not so far applied for such status, accepted the invitation and expressed their views on a number of the provisions proposed for inclusion in the Charter.

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4. The Charter has been drawn up in five Parts. The first Part contains a statement of fundamental social rights. The second Part lays down definite and detailed provisions designed to ensure the effective exercise of these rights, including provisions to which effect may be given by means of collective agreements or other appropriate measures. The third Part provides for an undertaking by signatory States that they consider the first Part as a Declaration of the aims to be pursued by all appropriate means and that they will be bound by a minimum number of the provisions in the second Part. As all the provisions in the second Part cannot be accepted by all member States, the requirement to accept a minimum number as binding has been adopted with a view to ensuring the ratification of the Charter by as many States as possible. A provision by which ratifying States may from time to time accept additional provisions as binding upon them envisages the fuller implementation of the Charter by stages.

5. Provisions are contained in the fourth Part of the Charter for a two-stage procedure for supervising its implementation. Employers' and trade union organisations would be enabled to assist in such supervision, national organisations by having the opportunity of presenting comments on the periodical reports submitted by governments, and international organisations with consultative status by being invited to attend as observers in a consultative capacity at meetings of the sub-Committee proposed as part of the supervision machinery.

6. The final part of the Charter contains general and final provisions corresponding to those included in similar instruments. In this connection the Committee discussed the question whether the Charter should be ratified only by Member States of the Council of Europe or should be open to accession by States which are not members of the Council of Europe. The Social Committee felt that a decision on this question was one for the Committee of Ministers to take, and it has consequently not included a provision on this subject in the draft Charter.

7. The Social Committee was recently requested by the Committee of Ministers to draft a provision covering the right to education for possible inclusion in the Charter if so decided by the Committee of Ministers. The Social Committee has appended to the report on proceedings of the Sixth Session, which will be separately submitted, a draft provision on this subject for the consideration of the Committee of Ministers.

8. The draft Charter has not been adopted by the Social Committee without reservations on the part of some members of the Committee to particular provisions as indicated in the annexed document. One of them has a particularly important political aspect. A certain number of delegations consider that in ratifying the Charter Member States should accept a minimum number of rights binding on all parties, rights considered to be essential in the interests of European social integration. The draft Charter is now submitted in compliance with the instructions of the Committee of Ministers that it should be completed by the end of the current year. The Social Committee feels that it would be desirable for the Committee to give further consideration to the present text, with a view to considering whether any slight modifications of wording in some instances may make it more generally acceptable, and also with the object of reviewing the form and style of the draft with the assistance of the Legal Department of the Secretariat-General. If this is agreed, the Committee would propose to hold an early meeting for this purpose.

B

Draft Text of the European Social CharterPREAMBLE

The High Contracting Parties, Members of the Council of Europe,

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and of facilitating their economic and social progress, in particular by the maintenance and further realisation of human rights and fundamental freedoms,

Considering that in the European Convention on Human Rights and the Protocol thereto the Member States of the Council of Europe agreed to secure to their peoples the civil and political rights and freedoms therein specified;

Being resolved to make every effort in common to improve the standard of living and to promote the social well-being of their peoples;

Have agreed as follows:

PART I

The High Contracting Parties accept as an aim of policy to be pursued by all appropriate means both national and international in character the attainment of conditions in which the rights and principles set forth hereafter in this First Part may be effectively realised.

1. Everyone shall have the opportunity to earn his living in a freely accepted occupation.
2. All workers have the right to just conditions of work.

3. All workers have the right to safe and healthy working conditions.
4. All workers have the right to a fair wage sufficient for a decent standard of living for themselves and their families.
5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.
6. All workers and employers have the right to negotiate collectively.
7. Children and young persons have the right to a special protection against physical and moral hazards arising in their work.
8. Expectant or nursing mothers in employment and other employed women as appropriate have the right to a special protection in their work.
9. Everyone has the right to appropriate facilities for vocational guidance and training to help him to choose an occupation suited to his personal aptitude and to his interests.
10. Everyone has the right to benefit from all measures enabling him to enjoy the highest possible standard of health attainable.
11. All workers and their dependants shall have the right to social security.
12. Everyone without adequate resources shall have the right to social and medical assistance.
13. Disabled persons have the right to rehabilitation and resettlement, whatever the origin and nature of their disability.
14. The family as a fundamental unit of society has the right to appropriate social and economic protection.
15. Mothers and children, irrespective of marital status and family relations, have the right to appropriate social and economic protection.

16. The nationals of any of the High Contracting Parties have the right to engage in any gainful occupation in the territory of any of the others, on a footing of equality with the nationals of the latter, subject only to restrictions based on considerations of security, public interest and public health, or on cogent economic or social reasons.

17. Migrant workers have the right to protection and assistance.

PART II

I The right to work

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

- (1) to accept as one of their primary aims and responsibilities the achievement and maintenance of a high and stable level of employment;
- (2) to protect effectively the right of the worker freely to choose any available occupation, though this provision shall not be interpreted as prohibiting or authorising any union security clause or practice;
- (3) to establish or maintain free employment services;
- (4) to promote appropriate vocational guidance, training and rehabilitation.

II The right to just conditions of work

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

- (5) to provide for reasonable daily and weekly working hours, the working week to be progressively reduced, to the extent that the increase of productivity and other relevant factors permit;
- (6) to provide for recognised public holidays with pay;
- (7) to provide for a minimum of two weeks' annual holiday with pay;

- (8) to provide for additional paid holidays for workers engaged in dangerous or unhealthy occupations as prescribed;
- (9) to provide for a guaranteed weekly rest period.

III The right to safe and healthy working conditions

- (10) With a view to ensuring the effective exercise of this right the High Contracting Parties undertake to provide for adequate protection of life and health during work.

IV The right to a fair wage

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

- (11) to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreement or arbitration award;

and recognise:

- (12) the right of all workers to additional wages for work performed at the request of the employer in addition to normal working hours;
- (13) the right of men and women workers to equal pay for work of equal value.

The exercise of these rights may be realised by voluntary collective agreement, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

V The right to organise

- (14) With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations and to join organisations for the protection of their economic and social interests, the High Contracting Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom, subject only to restrictions prescribed by law for reasons of national security or public interest or for the prevention of disorder or crime or for the protection of the rights and freedoms of others. The extent to which the guarantees provided for in this paragraph shall apply to the armed forces, the police and the administration of the State shall be determined by national laws or regulations.

VI The right to bargain collectively

With a view to the promotion of this right the High Contracting Parties undertake:

- (15) to promote, where necessary and appropriate, machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;
- (16) to promote the establishment and use of appropriate machinery for conciliation or arbitration for the settlement of labour disputes;
- (17) to encourage and promote joint consultation of workers and employers;

and recognise:

- (18) the right of workers and employers to collective action in cases of conflicts of interest, subject only to limitations prescribed by law for reasons of national security or public interest.

VII The right of children and young persons to protection

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

- (19) to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

- (20) to provide that a higher minimum age of admission to employment shall be fixed with regard to prescribed occupations regarded as dangerous or unhealthy;
- (21) to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of their education;
- (22) to provide that the working day of persons under 16 years of age shall be limited in accordance with the needs of their development and particularly with their need for vocational training;
- (23) to provide that employed persons of under 18 years of age shall be entitled to not less than three weeks' annual holiday with pay;
- (24) to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national law and regulations;
- (25) to provide that employed persons under 18 years of age shall be subject to regular medical control, with the exception of certain occupations provided for by national law and regulations.

VIII The right of employed women to protection

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

- (26) to provide either by paid leave or by adequate social security benefits for women to take leave before and after childbirth up to a total of at least 12 weeks;
- (27) to prohibit dismissal from employment during or on account of maternity absence;
- (28) to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose.
- (29) to take action to regulate the employment of women workers on night work in industrial employment and to prohibit their employment in underground mining or as appropriate on other work which is unsuitable for them.

IX The right to vocational guidance

With a view to ensuring the effective exercise of this right the High Contracting Parties will endeavour:

- (30) to provide or promote assistance to individuals in solving problems related to occupational choice and progress with due regard for the individual's characteristics and their relation to occupational opportunity; such assistance to be available both to young persons, including school children, and to adults;
- (31) to encourage the full utilisation of the facilities provided, by appropriate measures such as reducing or abolishing any fees or charges.

X The right to vocational training

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

- (32) to provide or promote, as necessary, the technical and vocational training of workers;
- (33) to provide or promote a system of apprenticeship;
- (34) to provide or promote, as necessary, special facilities for re-training of adult workers where this is necessary as a consequence, particularly, of technological developments or of dislocations of the employment market;
- (35) to encourage the full utilisation of the facilities provided, by appropriate measures such as:
 - (a) reducing or abolishing any fees or charges;
 - (b) granting financial assistance in appropriate cases;
 - (c) including in the normal working hours time spent on supplementary training taken by the workman, at the request of his employer, during employment;
 - (d) ensuring, through adequate supervision, the efficiency of apprenticeship arrangements and the adequate protection of apprentices.

XI Right to protection of Health

With a view to ensuring the effective exercise of this right, the High Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

- (36) to remove as far as possible the causes of ill-health;
- (37) to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;
- (38) to prevent as far as possible epidemic, endemic and other diseases.

XII Right to Social Security

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

- (39) to establish or maintain a system of social security;
- (40) to maintain the social security system at a satisfactory minimum level at least equal to that required for ratification of the European Code of Social Security;
- (41) to endeavour to raise progressively the system of social security to a higher level;
- (42) to take steps, by the conclusion of appropriate bilateral and multilateral agreements, and subject to the conditions laid down in such agreements, to ensure:
 - equal treatment with all nationals of each of the Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may be obliged to undertake between the territories of the Contracting Parties;
 - the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the High Contracting Parties;

XIII Right to social and medical assistance

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

- (43) to ensure that every person, who is without adequate resources and who is unable to secure such resources on his own or from other sources in particular by benefits under a social security scheme, be granted the necessary means of subsistence and in case of sickness, the care necessitated by his condition;
- (44) to provide that everyone may receive by appropriate services such advice and personal help as may be required to prevent, to remove, or to alleviate want;
- (45) to ensure that persons receiving public assistance shall not for that reason, suffer from a diminution of their political or social rights;
- (46) to apply the provisions referred to in the preceding paragraphs on an equal footing to nationals of other High Contracting Parties legally present in their territories in accordance with their obligations under the European Convention on Social and Medical Assistance.

XIV The right of the disabled to rehabilitation and resettlement

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

- (47) to take adequate measures for the provision of training facilities, including specialised institutions where necessary;
- (48) to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment, and measures to encourage employers to admit disabled persons to employment.

XV The right of the family to social and economic protection

- (49) The High Contracting Parties, recognising the importance of the family as a fundamental unit of society, will endeavour to ensure the economic and social protection of family life.

XVI The right of mothers and children to social and economic protection

- (50) With a view to ensuring the effective exercise of this right the High Contracting Parties will take all appropriate and necessary measures for the protection of mothers and children, including the establishment or maintenance of appropriate institutions for the purpose.

XVII The right to engage in employment in other member countries

With a view to promoting the effective exercise of this right the High Contracting Parties:

- (51) recognise the right of their nationals to leave the country to engage in gainful activity in the territories of the other High Contracting Parties subject only to limitations prescribed by law for reasons of national security or public interest;

and will endeavour:

- (52) to apply existing regulations in a spirit of liberality;
- (53) to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;
- (54) to liberalise, individually or collectively, regulations governing the employment of foreign workers;

XVIII The right of migrant workers to protection
and assistance

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

- (55) to maintain or to satisfy themselves that there is maintained adequate and free services to assist migrants, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;
- (56) to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of migrants, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;
- (57) to secure for migrants lawfully within their territories, in so far as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than of their own nationals in respect of the following matters:
 - (i) remuneration and other employment and working conditions;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
- (58) to secure for migrants lawfully within their territories treatment not less favourable than of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;
- (59) to secure for migrants lawfully within their territories treatment not less favourable than of their own nationals, with regard to legal proceedings relating to matters referred to in this Chapter;

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- (60) to secure that migrants lawfully within their territories are not expelled unless they endanger national security or offend against public interest or morality;
- (61) to permit, within legal limits, the transfer of such parts of the earnings and savings of the migrant as he may desire;
- (62) to extend the protection and assistance provided for in this Chapter also to self-employed migrants in so far as such measures apply to this category.

PART III

- (1) Each of the High Contracting Parties undertakes:
 - (a) to consider the first Part of this Charter as a declaration of the aims which it will pursue by all appropriate means, as stated in the introductory paragraph of that Part;
 - (b) to consider itself bound by not less than 10 of the Chapters or by not less than 45 of the numbered paragraphs of the second Part of this Charter to be selected by it. The Chapters or paragraphs selected shall be notified to the Secretary-General of the Council of Europe not later than the time when the instrument of ratification of the High Contracting Party concerned is deposited.
- (2) Any High Contracting Party may, at a later date, declare by notification to the Secretary-General that it considers itself bound by any Chapters or any numbered paragraphs of the second Part of the Charter which it has not already accepted under the terms of the preceding paragraph. Such undertakings subsequently given shall be deemed to be an integral part of the ratification and shall have the same effect as from the date of the notification.
- (3) The Secretary-General shall communicate to all the other High Contracting Parties any notification which he shall have received pursuant to this Part of the Charter.

PART IV

Article (A)

The High Contracting Parties undertake to send to the Secretary-General of the Council of Europe a report at two-yearly intervals, in a form to be determined by the Committee of Ministers, concerning the provisions of the second Part of the Charter which they have accepted.

Article (B)

The High Contracting Parties shall send to the Secretary-General of the Council of Europe, at appropriate intervals as requested by the Committee of Ministers, reports relating to the provisions of the second Part of the Charter which they did not accept at the time of their ratification or in a subsequent notification. The Committee of Ministers shall determine from time to time, on which provisions such reports shall be requested and the form of the reports to be provided.

Article (C)

(1) Each High Contracting Party shall communicate copies of its reports referred to in Articles A and B to its national organisations which are members of the international organisations of employers and trade unions in consultative status to the Council of Europe.

(2) The High Contracting Party shall forward to the Secretary-General of the Council of Europe any comments on the said reports received from these national organisations, if so requested by them.

Article (D)

The reports sent to the Secretary-General of the Council of Europe under Articles A and B shall be examined by a Committee of Experts, who shall have also before them any comments forwarded to the Secretary-General under paragraph 2 of Article C.

Article (E)

(1) The Committee of Experts shall consist of not more than seven members appointed by the Committee of Ministers from a list of independent experts of the highest integrity, and of recognised competence in social and international questions, nominated by the High Contracting Parties.

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(2) The members of the Committee shall be appointed for a period of six years. They may be re-appointed. However, of the members first appointed, the terms of two members shall expire at the end of four years.

(3) The members whose terms are to expire at the end of the initial period of four years, shall be chosen by lot by the Committee of Ministers immediately after the first appointment has been made.

(4) A member of the Committee of Experts appointed to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article (F)

The International Labour Organisation shall be invited to nominate a representative to participate in a consultative capacity in the deliberations of the Committee of Experts.

Article (G)

(1) The reports and conclusions of the Committee of Experts shall be submitted for examination to a Sub-committee of the Governmental Social Committee of the Council of Europe. This Sub-committee shall be composed of one representative of each of the High Contracting Parties.

(2) Representatives of the international employers' and trade union organisations in consultative status with the Council of Europe shall be invited to be present as observers in a consultative capacity at the meetings of the Sub-committee.

(3) The Sub-committee shall present to the Committee of Ministers a report containing its conclusions and appending the report of the Committee of Experts.

Article (H)

The Committee of Ministers may, on the basis of the report of the Sub-committee, and after consultation with the Consultative Assembly, make to each High Contracting Party any necessary recommendations.

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PART VArticle (a)

1. In time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. Any High Contracting Party which has availed itself of this right of derogation shall within a reasonable lapse of time keep the Secretary-General of the Council of Europe fully informed of the measures taken and of the reasons therefor. It shall likewise inform the Secretary-General when such measures have ceased to operate and the provisions of the Charter which it has accepted are again being fully executed. The Secretary-General shall in turn inform the other High Contracting Parties accordingly.

Article (b)

The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations except such as are prescribed by law and are compatible with the nature of these rights and principles or are necessary in a democratic society for the protection of the rights and freedoms of others and for the protection of public interest, national security, public health, or morals.

Article (c)

The restrictions permitted under this Charter to the rights and obligations set forth herein shall not be applied for any purpose other than that for which they have been prescribed.

Article (d)

The provisions of this Charter shall not prejudice the provisions of domestic law or of any bilateral or multilateral conventions or agreements which are already in force, or may come into force, under which more favourable treatment would be accorded to the persons protected.

Article (e)

(1) In Member States where the provisions of paragraphs 5, 6, 7, 8, 9, 22 and 23 of Part II of this Charter are matters normally left to agreements between employers' and workers' organisations or are normally carried out otherwise than by law, the undertakings of those paragraphs may be given and compliance with them shall be treated as effective if their provisions are applied to the great majority of workers through such agreements or other means.

(2) In Member States where these provisions are normally the subject of legislation, the undertakings concerned may likewise be given and compliance with them shall be treated as effective if the provisions are applied to the great majority of workers by law.

Article (f)

1. This Charter shall apply to the metropolitan territory of each High Contracting Party. Each High Contracting Party may, at the time of signature or of the deposit of its instrument of ratification, specify, by declaration addressed to the Secretary-General of the Council of Europe, the territory which shall be considered to be its metropolitan territory for this purpose.

2. Any High Contracting Party may at the time of ratification of this Charter or at any time thereafter, declare by notification addressed to the Secretary-General of the Council of Europe, that the Charter shall extend in whole or in part to a non-metropolitan territory or territories specified in the said declaration for whose international relations it is responsible. It shall specify in the declaration of the Chapters or paragraphs of the second Part of the Charter which it accepts as binding in respect of the territories named in the declaration.

3. The Charter shall extend to the territory or territories named in the aforesaid declaration as from the thirtieth day after the date on which the Secretary-General of the Council of Europe shall have received notification of such declaration.

4. In the said territories the provisions of this Charter shall be applied with due regard to local requirements.

5. The Secretary-General shall communicate to the other High Contracting Parties any declaration transmitted to him in accordance with the present Article.

Article (g)

Any Signatory Government may propose amendments to this Charter in a communication addressed to the Secretary-General of the Council of Europe. The Secretary-General shall transmit to the other Signatory Governments any amendments so proposed, which shall then be considered by the Committee of Ministers and submitted to the Consultative Assembly for opinion. Any amendments approved by the Committee of Ministers shall enter into force as soon as all the High Contracting Parties have informed the Secretary-General of their acceptance.

Article (h)

1. This Charter shall be open for signature by the Members of the Council of Europe. It shall be ratified. Instruments of ratification shall be deposited with the Secretary-General of the Council of Europe.

2. This Charter shall come into force as from the thirtieth day after the date of deposit of the fifth instrument of ratification.

3. In respect of any Signatory ratifying subsequently, the Charter shall come into force as from the thirtieth day after the date of deposit of its instrument of ratification.

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

Article (i)

1. A High Contracting Party may denounce this Charter only at the end of a period of five years from the date on which the Charter entered into force, or at the end of any successive period of two years, and in each case after giving six months notice to the Secretary-General of the Council of Europe, who shall inform the other Parties accordingly. Such denunciation shall not affect the validity of the Charter in respect of the other High Contracting Parties provided that at all times there are not less than five such Contracting Parties.

2. A High Contracting Party may on the terms specified in the preceding paragraph, denounce any of the Chapters or paragraphs of the second part of the Charter which it has accepted, provided that the number of Chapters or paragraphs binding upon that Party shall at all times not be less than 10 or 45 respectively.

3. Any High Contracting Party may denounce the present Charter or any of the chapters or paragraphs of the second Part of the Charter, on the terms specified in the first paragraph of this article, in respect of any territory to which the said Charter is applicable by virtue of a declaration made in accordance with Article (d), paragraph 2.

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

In witness whereof, the undersigned, being duly authorised thereto, have signed this Charter.

Done at

thisday of 19..., in English and French, both texts being equally authoritative, in a single copy which shall be deposited within the archives of the Council of Europe. The Secretary-General shall transmit certified copies to each of the Signatories.

C.

A P P E N D I X

PART II:

Paragraph 41:

In the event of the adoption of a Protocol to the European Code of Social Security, the higher level of social security referred to in paragraph 41 of Part II of the Charter shall be at least equal to that required for ratification of the Protocol.

Paragraph 42:

The words "and subject to the conditions laid down in such agreements" in the introduction to paragraph 42 of Part II of the Charter are taken to imply inter alia that with regard to benefits of a non-contributory character, a High Contracting Party may require the completion of a prescribed period of residence before granting such benefits to nationals of other High Contracting Parties.

PART V:

Article (b):

(i) The term "law" as employed in Article (b) of Part V of the Charter shall be interpreted in a wide sense, so as to include all provisions having the force of law.

(ii) The plenary decisions which the Norwegian Parliament, on the basis of constitutional provisions, takes in budgetary matters shall be considered to be covered by the term "law" as employed in Article (b) of Part V of the Charter.

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

Strasbourg, 30th December, 1957

Confidential
 CM (57) 176
 Part D.

DRAFT EUROPEAN SOCIAL CHARTER

LIST OF RESERVATIONS (1)

PART I

Paragraph 7

1. The Delegation of the United Kingdom declared that this paragraph is not acceptable to the United Kingdom as it stands. The United Kingdom Delegation have suggested that a distinction should be drawn between children and young persons, and that the provision relating to children might be strengthened, since there is far greater need for the strict supervision of the employment of children.

Paragraph 11

2. The Delegations of Denmark, Norway and Sweden made a reservation on this point. In their view, the right to social security should not be restricted to workers and their dependants. It should cover everyone.

(Doc. CM (57) 107, para. 39).

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(1) Since the draft Social Charter as adopted by the Social Committee does not include the right to education, the reservations made concerning the draft provisions concerning that right are not reproduced in the present list.

Paragraph 16

3. The Delegations of Greece and Italy reserved their position. In their view, this provision should have been worded as follows:

"Migrant workers have the right to enjoy treatment not less favourable than nationals, particularly with regard to wages, conditions of work, social security and social and medical assistance."

(See Doc. CM (57) 107, para. 57).

4. The Delegation of the United Kingdom declared that this paragraph is unacceptable to the United Kingdom as it stands. The United Kingdom Delegation say that the existence of a right (unqualified by the grant of permission) to engage in a gainful occupation in another country seems open to question, and they suggest that the paragraph should be re-worded to take account of this point.

PART II

The right to work:

5. In connection with paragraph 2, the Delegation of Italy made a reservation because in their view the closed shop practice could not be admitted.
(Doc. CM (57) 107, para. 62).
6. On the same paragraph, the Delegations of France and Italy and the Netherlands made a reservation on the grounds that under the legislation of their countries an unemployed worker could not refuse work offered to him without losing his unemployment benefit and had thus not always a free choice. (Doc. CM (57) 107, para. 65).

Moreover, the Netherlands Delegation felt that the granting of a full and unlimited right freely to choose any available occupation is not desirable, i.e. because it may affect the industrial peace. Consequently the national legislation contains some provisions which do not seem to be in line with the granting of such an unlimited right.

The right to just conditions of work:

7. In connection with paragraph 6 the Delegation of Greece made a reservation concerning the possibility of accepting an obligation regarding payment on public holidays. (Doc. CM (57) 107, para. 74).

The right to a fair wage:

8. In connection with paragraphs 12 and 13, the Delegations of Belgium, France, Italy, Luxembourg and Turkey made a reservation to the effect that these provisions should be of a binding nature (Doc. CM (57) 107, para. 80).

The right to organise:

9. The Delegations of Belgium, France and Italy made a reservation to paragraph 14 since, in their view, the restrictions to the guarantees provided in this paragraph should only affect members of the police and of the armed forces and not members of the administration. (Doc. CM (57) 107, para. 85).

The right to bargain collectively:

10. On paragraph 18, the Delegation of Italy made a reservation on the grounds that "lockout" was not recognised in Italy. (Doc. CM (57) 107, para. 91).

The right of children and young persons to protection:

11. On paragraph 25 the Delegation of the Netherlands made a reservation because they felt that a regular medical control of young workers, notwithstanding the nature of the work, is not necessary and not practical. The regular medical control should in their view be limited to certain occupations regarded as dangerous or unhealthy, provided for by national law and regulations.

The right of employed women to protection:

12. On paragraph 28 the Delegation of Italy made a reservation to the effect that time off for nursing should either be paid or covered by social security in harmony with International Labour Convention No. 103. (Doc. CM (57) 107, para. 96).
13. On paragraph 29, the Delegations of Belgium and Norway made a reservation because they were in principle opposed to special protective measures for women workers other than expectant and nursing mothers. (Doc. CE/Sec (57) 30).

The right to vocational guidance:

14. The Delegation of Belgium made a reservation to the effect that this chapter should be of a binding nature. (Doc. CM (57) 107, para. 100).

The right to protection of health:

15. The Delegation of Sweden made a reservation to the effect that the provisions in this Chapter should not be in the form of an undertaking since their implementation could not be effectively controlled. (Doc. CE/Sec (57) 30).

The right to social security:

16. The Delegation of France made a reservation on paragraph 40 to the effect that ratification of the European Code of Social Security should be required. (Doc. CE/Sec (57) 30).
17. The Delegation of Italy made a reservation on paragraph 42 on the grounds that the paragraph did not provide a sufficient safeguard for the social security rights of migrants. (Doc. CE/Sec (57) 30).

PART III

18. The Delegations of Belgium, France, Italy and Luxembourg made a reservation to Part III on the grounds that in their view a minimum number of obligations common to all Contracting Parties should have been provided for.

PART IV

Article D:

19. The Delegation of Sweden made a reservation to the effect that in its view the Committee of Experts provided for in that Article was unnecessary. (Doc. CE/Soc (57) 30).

PART V

Article (i), paragraphs 2 and 3:

20. The Delegations of Belgium and France made a reservation to the effect that partial denunciation of the Charter should not be admitted. (Doc. CE/Soc (57) 30).

CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

Strasbourg, 10th February 1958

Confidential
CM (58) 18

Or. Eng.

COMMITTEE OF MINISTERS

REPORT OF THE SOCIAL COMMITTEE

(Proceedings of the Sixth Session)

1. The Social Committee held its Sixth Session at Strasbourg from November 25th to 29th, 1957. The list of members and observers participating in the Session is contained in Appendix I. The Agenda adopted by the Committee is set out in Appendix II.

2. The meeting was opened by the Director of Research of the Secretariat-General of the Council of Europe. He recalled that the main item on the Agenda was the completion of the draft European Social Charter, to which both the Committee of Ministers and the Consultative Assembly attached great importance. He stressed the rôle that an instrument of this nature could play, particularly on the background of present day trends in economic and political development. He then briefly mentioned the points that were still outstanding in the preparation of the draft. Among them was the drawing up of provisions for the implementation of the Charter - provisions of particular importance, since the real value of the instrument would to a large extent depend upon the efficiency of the system of implementation. In this connection the Director of Research referred to Resolution (56) 25, by which the Committee of Ministers, among others, instructed the Social Committee to consider measures for the implementation of the Social Charter such as would enable employers' and trade union organisations to assist in the supervision of the implementation.

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3. The Director of Research informed the Committee of the discussion to which its last Report had given rise in the Committee of Ministers and mentioned that views had been expressed to the effect that the standards of the European Social Charter should never be lower than those embodied in international instruments on the world-wide plane, such as particularly in the international labour conventions.

4. The Committee then re-elected Mr. G. C. VEYSEY, C.B. (United Kingdom) as Chairman and Dr. GELLER (Federal Republic of Germany) as Vice-Chairman.

AGENDA ITEM 6: EUROPEAN SOCIAL CHARTER

7. The main documents before the Committee were the second report of the Working Group, CE/Soc (57) 13 Final; a complete draft text of the Charter, based on earlier decisions of the Committee and on proposals of the Working Group, CE/Soc (57) 19; a Note by the United Kingdom Delegation concerning the implementation of the Charter through collective agreements, CE/Soc (57) 20; a Note by the Secretariat on the right to education, CE/Soc (57) 23, and a paper setting out the views of delegations as to the acceptability of certain draft provisions of the Charter so far adopted, CE/Soc (57) 24 with two Addenda.

At the proposal of the Chairman, the Committee adopted a detailed plan of work that would enable it to complete the drafting within the time at its disposal. According to this, it was agreed to turn first to Doc. CE/Soc (57) 19 and, on this basis, to complete the provisions of substance that had not hitherto been definitely adopted by the full Committee. (1)

The right to protection of health

8. The Delegation of the Federal Republic of Germany having withdrawn a proposal for an amendment to this Chapter, the original text was adopted, subject to minor changes of form.

9. The Delegation of Sweden made a reservation (2) against the binding form of the provisions of this Chapter, since, in its view, only provisions the implementation of which could be effectively controlled should be binding.

10. At the proposal of the Delegation of France it was agreed to point out in the Report that the text of this Chapter was based on a draft prepared in consultation with the Committee of Experts on Public Health.

The right to social security

11. At the Fifth Session of the Social Committee, the Delegations of Belgium and Italy had put forward draft texts of this Chapter, contained respectively in Docs. CE/Soc (57) Misc. 3 and 4. Subsequently, the Netherlands Government had expressed a preference for the Italian draft and suggested that this question be referred to the Committee of Experts on Social Security. However, since that Committee was not to meet before the end of 1957, the proposal was changed so as to request the other Governments to give their representatives on the Social Committee itself the necessary instructions with regard to the choice of text. As the Committee now found itself faced with only one text, emanating from the Working Group, this proposal was withdrawn.

(1) The complete text of the draft Social Charter as adopted by the Committee is not appended to the present report. It has been submitted to the Committee of Ministers as a separate document, CM (57) 176.

(2) It should be noted that all reservations made in the course of the preparation of the draft Charter have been included in a list attached to the text and submitted to the Committee of Ministers together with the latter.

12. Paragraph 37 of CE/Soc (57) 19 was adopted.
13. Paragraph 38 gave rise to considerable discussion. The Delegation of France found it insufficient to require compliance with the conditions for ratification of the European Code of Social Security. A State could then accept para. 38 without ratifying the Code, and it would thus not be subject to the control of implementation provided for in the latter.
14. It was also proposed by the Delegation of France, supported by the Delegations of Belgium and Italy that para. 38 should enumerate the different branches of social security covered by the European Code. Other Delegations were of the opinion that this would go too far, since it could be taken to mean that in order to accept para. 38, a State must have a social security scheme which reaches the level of the European Code within all the branches of the latter.
15. The Chairman pointed out that the views mentioned above had already been expressed and discussed within the Working Group, and that the text now before the Committee represented a compromise reached by the Group. The Delegation of Norway added that para. 38 must be seen in connection with para. 39. The idea was that in order to accept the former, a State must be in a position to ratify the European Code, whereas the latter provides for a further development towards the level of the envisaged Protocol to the Code.
16. It was agreed to adopt the following text which strengthens the paragraph somewhat and thus goes some way to meet the view of the minority:
- "to maintain the social security system at a satisfactory level at least equal to that required for ratification of the European Code of Social Security".
17. The Delegation of France made a reservation to the effect that ratification of the European Code should be required.
18. Paragraph 39 was also discussed at length. Some Delegations found it difficult to include in the Charter a reference to the Protocol to the European Code of Social Security. It involved, among others, the same problem that arose in connection with the original text of para. 38, namely whether the reference to the Protocol meant that the standards of the latter must have been reached in all the branches of social security, or whether it would be sufficient to fulfil the conditions for ratification.

19. In this connection, the Delegation of Italy recalled that the draft Code and the draft Protocol did not have the same standing, since the Committee of Ministers had definitely instructed the experts to draw up the Code, but it had only requested them to consider the desirability of preparing a Protocol. Italy could not accept a reference to the Protocol.

20. Some other Delegations preferred to maintain the reference, and the Delegation of Belgium in particular insisted that if some mention of the Protocol was not made, it could not accept the paragraph. This would, moreover, lead to a confusing situation in which one might speak of three different European levels of social security, namely that of the Code; the (undefined) level of the Charter, and that of the Protocol. The Belgian Delegation was, however, ready to accept a solution under which the reference to the Protocol was made in a Annex to the Charter.

21. Paragraph 39 was then adopted in the following form:

"to endeavour to raise progressively the system of social security to a higher level" -

it being understood that the Annex would make it clear that if the Protocol were adopted, the level in question should be at least equal to that required for ratification of the Protocol.

22. Paragraph 40 again led to an extensive exchange of views. Some Delegations, including particularly those of the Scandinavian countries could not accept a provision for equality of treatment between the nationals of the Contracting Parties in the social security field without conditions. In this connection reference was made to the European Interim Agreements on Social Security, where such conditions are defined. It was also pointed out that the last sub-paragraph of para. 40, seen in the context of the whole paragraph, might lead to a situation in which aliens would be in a more favourable position than nationals with regard to payment of benefits abroad.

23. The Delegation of Denmark also drew attention to the wording of the second sub-para. of paragraph 40, which, in connection with the opening, maintenance and recovery of rights, speaks of the accumulation of insurance or employment periods. In order to take into account all the different social security systems, reference should also be made to residence periods.

24. The Delegation of Italy strongly maintained the view that the Charter should provide for full equality of treatment. The European Interim Agreements constitute a temporary arrangement which should be replaced by a more complete and far-reaching instrument for the protection of migrants' social security rights, such as the Convention to be established in the framework of the European Coal and Steel Community.

25. The Delegation of Ireland suggested that in order to maintain the principles of para. 40 and yet meet the views of those countries that could not fully apply these principles, one might reword the opening phrase of the paragraph so as to make it clear that the agreements referred to there might be subject to certain conditions.

26. After a long discussion which showed that while some Delegations could accept the principles of para. 40 only with limitations arising out of national legislation, other Delegations saw the aim of the Charter precisely in going beyond such limitations, the Delegation of Denmark was requested to prepare a new draft text as the basis of a compromise. This proposal, contained in Doc. CE/Soc (57) Misc. 8, was adopted, subject to minor amendments.

27. It was agreed in this connection to include in the Annex to the Charter a statement explaining that the words "and subject to the conditions laid down in such agreements" imply, inter alia, that with regard to non-contributory benefits, a State may require the completion of a prescribed residence period before granting such benefits to aliens.

28. The Delegation of Italy made a reservation on the grounds that the text adopted did not provide a sufficient guarantee for the social security rights of migrants. The Delegation had proposed an amendment to para. 40, contained in Doc. CE/Soc (57) Misc. 9.

The right to social and medical assistance

29. Paragraphs 41 to 43, inclusive, were adopted without change of substance. Para. 43, which is intended to safeguard the political and social rights of persons receiving public assistance, had originally been placed in square brackets because it had given rise to some difficulty in the Working Group. The Delegation of Denmark now stated that, although this provision did not correspond entirely to Danish law, no reservation would be made.

30. Paragraph 44 was adopted, subject to an amendment tending to ensure that the obligations arising out of this paragraph would be in accordance with the obligations flowing from ratification of the European Convention on Social and Medical Assistance.

The right of the disabled to rehabilitation
and prostheses

31. This Chapter was adopted without change.

The right of the family to social and economic
protection

32. The Delegation of the Federal Republic of Germany, considering the importance of this Chapter, had proposed in Doc. CE/Soc (57) Misc. 6, to elaborate it in some detail, indicating clearly the positive measures that would be involved. This proposal is set out in Appendix IV. There was, however, a majority in favour of the original text. It was pointed out that some of the measures proposed by the German Delegation were linked up with demographic considerations that would vary from country to country. Moreover, the enumeration of certain specific measures might have the disadvantage that it could be understood as exhaustive, thus excluding other measures. In these circumstances the German Delegation withdrew its proposal, and the Chapter was adopted without change.

The right of mothers and children to social
and economic protection

33. The Delegation of the Federal Republic of Germany having withdrawn a proposal for amendment contained in Doc. CE/Soc (57) Misc. 7 (see Appendix IV), the Chapter was adopted without change.

The right to engage in employment in
other member countries

34. It was agreed that paragraph 52 should be made the initial paragraph, coming immediately after the introductory phrase and being reworded so as to contain a recognition of the right of nationals to leave the country to engage in gainful employment in other member countries. The introductory phrase was reworded accordingly, so that the term "will endeavour" relates only to the original paragraphs 49-51 inclusive, which were adopted.

35. It was pointed out that because of this change one might get the impression that the provisions of paragraphs 49-51 related only to regulations and formalities concerning the right to leave the country. They do, however, relate to regulations and formalities concerning the admission of foreign workers, and this should be made clear in the final checking of the text which the Committee intends to undertake at its next Session.

The right of migrant workers to protection
and assistance

36. Paragraphs 53 to 59 inclusive, were adopted with such changes of form as would make the text correspond more closely to the similar provisions of International Labour Convention No. 97. Moreover, para. 55, which deals with equality of treatment in certain fields, was transformed into an undertaking by deletion of the words "to endeavour".

37. The Delegations of Belgium, France, Luxembourg and the Netherlands, without making any formal reservation, wanted it to be stated in the Report that in their view the provision for equality of treatment could not apply to accommodation.

Protection of women workers

38. The draft text in Doc. CE/Sec (57) 19 contained a paragraph (29) under this heading. It had been drafted by the Working Group, following a proposal made by the Delegation of Ireland at the Fifth Session of the Committee, but the Committee itself had not yet adopted it.

39. Certain delegations were in principle against the inclusion in the Charter of special protective measures for women workers other than expectant and nursing mothers. They stressed that women's organisations in their countries did not want such measures.

40. Paragraph 29 was adopted, subject to the following amendments: In line 3, the word "specified" should be replaced by "industrial". Line 4 should read: "in underground mining or as appropriate on other". It was moreover decided to attach this paragraph to the Chapter entitled: The right of employed women to protection.

41. The Delegations of Belgium and Norway made a reservation on the grounds mentioned in para. 39 above.

The right to education

42. At the request of the Committee of Ministers the Committee then proceeded to draft provisions covering the right to education, so as to provide the Ministers with a basis for a decision as to whether or not provisions of this nature should be included in the Charter. The Committee had before it a preliminary draft prepared by the Secretariat and contained in Doc. CE/Soc (57) 23. It read as follows:

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

1. undertake to make primary education compulsory and free;
2. will take the necessary steps:
 - (a) to make secondary education, in its different forms, including technical and professional training, available to everyone at least up to the age of 18 years and to make it increasingly free;
 - (b) to do everything possible to ensure a basic education for those persons who have not received or have not completed their primary education;
 - (c) to make university and other higher education accessible to all who are capable of benefiting by it;
3. will respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

43. Paragraph 1 was adopted without change.

44. Paragraph 2, however, gave rise to considerable discussion. The Delegation of Italy considered that sub-para. (a) which deals with secondary education was both too wide and too restrictive. It was too wide because it would make secondary education available to everyone up to the age of 18 years. It was necessary to take into account the aptitude for such education. On the other hand the sub-paragraph was too restrictive in the description of the right. It was not sufficient to make education as such free. There were many other aspects to be considered, such as the development of sufficient facilities for education, transport facilities, instruction material, etc.

45. Some Delegations agreed that it was necessary to cover these aspects of the problem by an appropriate text, while others thought that they were implicit in the term "available" as employed in this sub-paragraph. Obviously, secondary education was not "available" in the true sense of the word if those who wanted to profit from it found the way barred by all sorts of obstacles.

46. The Delegation of France proposed to delete the reference to technical and professional training, and this was agreed on the condition that it be made clear that the provision related to all forms of secondary education.

47. -Some Delegations objected against the age limit of 16 years. It made the provision too rigid and did not fit the various national systems. Others considered this age limit necessary.

48. It was decided to delete sub-para. (b) which dealt with basic education for those who had not received or completed their primary education. This provision was considered unnecessary in countries where primary education was free and compulsory.

49. Sub-para. (c) was adopted in an amended form.

50. Paragraph 3 was deleted because this point is already covered by the European Convention on Human Rights. It was, however, decided to add another paragraph to ensure the full utilisation of the facilities provided for in paragraphs 1 and 2. The whole of the Chapter on education was thus adopted as set out in Appendix V to this Report.

51. The Delegation of the Federal Republic of Germany made a reservation against the inclusion in the Charter of provisions concerning education because in the Federal Republic this matter was outside the competence of the Federal Government.

52. The Delegations of Belgium and France made a reservation against the omission of the age limit of 13 years in respect of secondary education.

53. The same Delegations also made a reservation on the grounds that para. 3 did not to a sufficient degree guarantee an increasingly free secondary education.

The right to adequate facilities for leisure

54. The Secretariat then suggested including in the Charter provisions for adequate facilities for leisure time activities. The proposed text read as follows:

"The High Contracting Parties recognise the necessity of providing the individual with proper guidance with regard to the use of leisure time as well as with ample opportunities for spare-time activities conducive to his physical, cultural and moral development. They will endeavour, in collaboration with local authorities and private organisations to provide or promote the provision of adequate facilities for this purpose."

55. However, the Committee decided not to include any such provision in the Charter.

PART I (OUTSTANDING QUESTIONS) AND PREAMBLE

56. The Committee then settled a few outstanding points in Part I. Thus, it was decided to delete the clause which appeared in square brackets in the introductory paragraph to Part I in Doc. CE/Soc (57) 19. This was done on the understanding that the principles on which this clause was based should be embodied in a separate article in Part V of the Charter. The Preamble was adopted without change.

PART III

57. Agreement was quickly reached on the principle that a State which desired to ratify the Charter must undertake to consider Part I as a declaration of aims which shall be pursued by all appropriate means, and also to consider itself bound by a certain minimum number of the provisions contained in Part II. This minimum could either be a given number of Chapters or a given number of paragraphs. It was, however, pointed out by the Delegation of the Netherlands that the former alternative might have the drawback that a State might be prevented from accepting a whole Chapter because it contained one or more paragraphs that were unacceptable to that State.

58. The main discussion turned around the question as to whether or not the Charter should provide for a certain minimum number of provisions that should be binding upon all the Parties.

59. The Delegations of Belgium, France and Italy were particularly strongly in favour of establishing a common minimum of obligations. This was in their view implied in the very nature of the Social Charter, and it would also prevent Governments from basing their ratification of the Charter upon acceptance of the least onerous provisions only. It was true that under I.L.O. Convention No. 102 on Minimum Standards of Social Security (and under the draft European Code), Governments could select the obligations which they wished to undertake, but those obligations were at least all of the same basic nature since they were all in the field of social security. This did not apply to the Charter. Moreover, the obligations of the Charter were not all of the same legal nature, since in some cases, the Governments had to accept real undertakings, whereas in other cases they would only endeavour to take certain measures or recognise certain rights.

60. The Delegations that were against the idea of a common minimum argued that if such a minimum were established, it must obviously comprise some of the most important provisions of the Charter, but the informal inquiry which the Committee had made with regard to the acceptability of various provisions showed how difficult it would be to establish such a minimum which could be accepted by all. Thus some States that might otherwise have ratified the Charter could be prevented from doing so. It was, however, the wish of all Delegations to create an instrument that could be widely accepted. The danger that Governments might select mainly provisions of relatively small importance was not so great if the minimum number was fixed at a high level, and even the provisions under which Governments would only endeavour to take certain measures implied to some extent an obligation.

61. The Delegations of Denmark, Luxembourg, the Netherlands and Sweden while in principle in favour of a common minimum of obligations, would also accept the other solution, which already constituted a compromise, since originally some Delegations had proposed that the whole of Part II should be binding, while in the view of others, Governments should be free to select certain provisions without having to attain a given minimum number. The Delegation of Denmark had made an effort to define what might be included in a possible common minimum and had suggested that it should comprise the following Chapters: the right to work; the right to organise; the right to bargain collectively; the right to vocational guidance, and the right to vocational training.

62. Agreement on a common minimum could, however, not be reached, and the Committee adopted Part III without changes of substance.

63. The Delegations of Belgium, France, Italy and Luxembourg made a reservation on this point.

64. The Committee then discussed how the minimum to be selected individually by each Government should be defined and at which level it should be fixed. It was decided first to define the minimum as a given number of Chapters or paragraphs rather than as a given fraction of the total.

65. The Delegation of Denmark proposed not to fix the actual numbers at this stage. The Committee had before it a table (Doc. CE/Soc (57) 25) indicating roughly what the possibilities of acceptance of various provisions were according to statements made by some Delegations and contained in Doc. CE/Soc (57) 24. The enquiry had however not covered all the provisions, nor had all Delegations expressed their views. The table gave therefore only a partial impression of the possibilities. The Danish Delegation proposed to submit the question to the Committee of Ministers and take it up again at the next Session.

66. The Committee decided, however, to proceed immediately to the fixing of the numbers. A quick enquiry among the Delegations gave the following results, which, however, is

no way would be committing their respective Governments:

<u>Country:</u>	Number of acceptable Chapters (out of 18)	Number of acceptable paragraphs (out of 62)
Austria		54
Belgium.....	15	56
Denmark	15	54
Fed. Rep. of Germany..	17	56
France (would accept the minimum adopted)		
Greece		45
Ireland	13	45
Italy	15	55
Luxembourg	18	55
Netherlands	12	47
Norway	14	51
Sweden	15	51
Turkey		34
United Kingdom	11	45

67. The Committee then fixed the figures at 10 Chapters and 45 numbered paragraphs.

PART IV

68. Article A was adopted without change. The question arose as to whether the reports from Governments on the implementation of the Social Charter might wholly or partly coincide with the reports that Governments were obliged to submit to the I.L.O. concerning the application of certain International Labour Conventions. Some Delegations thought that the reports under the Charter would probably be of a more general nature and that it might be confusing to submit the reports designed to cover the International Labour Conventions.

69. The Delegation of Sweden pointed out that it was necessary to avoid any duplication of the work of national administrative services in this field, and that it must be sufficient for Governments, where appropriate under Article A of the Charter to reproduce in whole or in part the reports submitted to the I.L.O.

70. Article B was adopted without change.

71. Article C was adopted without change. The question arose as to whether it was necessary to provide that the national organisations to which the Governments should communicate copies of their reports must be members of the international organisations of employers and trade unions that had consultative status with the Council of Europe. It was pointed out, however, that this clause would be useful in order to avoid difficulties in certain countries, and the Swedish Delegation, that had raised the question, did not insist.

The Delegation of Sweden also considered that since the reports of the Governments should be communicated to the organisations in question, the views of the latter should always be forwarded together with the reports, and not only if the organisations requested it. It was then explained that the Working Group had discussed this carefully, and that the proposed text was a compromise, since some Delegations originally held the view that the Governments should be free to communicate or not to communicate their reports to the organisations. Moreover, the comments of the latter might be of a purely formal nature, and the organisations might not even always want them to be forwarded.

72. Article D gave rise to a discussion as to whether t w o stages were really necessary for the examination of the reports on implementation. Certain Delegations were not convinced of the need for the Committee of Experts provided for in Article D, but the majority considered such a committee of independent experts necessary. Article D was then adopted without change.

73. The Delegation of Sweden, however, made a reservation on this point.

74. Article E was adopted without change. It was explained that the number of seven members of the Committee of Experts had been chosen in order to assure a reasonable geographic representation.

75. Article F was adopted without change.

76. Article G, paras. (1) and (3) were adopted without change. A discussion arose, however, over para. (2). The Delegation of Sweden did not agree that the representatives of international employers' and trade union organisations should have a right to be heard. The word "shall" in the first line of this paragraph should therefore, in its view, be replaced by "may".

77. The Delegation of Belgium, supported by others, could not accept this. The Belgian Delegation had originally been in favour of a tripartite organ to examine the reports and conclusions referred to in Article G, but it could agree to the present text, provided that the representatives of the organisations in question could participate in the meetings of the body provided for there in a consultative capacity, in accordance with a proposal made by the Delegation of Italy.

78. The Chairman stated that the intention of the Working Group had been that the representatives of the organisations should only be heard at special meetings like those already organised by the Social Committee for that purpose. Now, it was proposed to go further and let these representatives attend the whole meetings of the body in question and participate in the discussion.

79. This latter procedure was nevertheless supported by several Delegations, and the paragraph was then adopted in the following form:

"Representatives of the international employers' and trade union organisations in consultative status with the Council of Europe shall be invited to be present as observers in a consultative capacity at the meetings of the Sub-committee."

80. The Delegation of Sweden, without making a formal reservation, wanted it stated in the Report that it did not agree to this.

81. Article H was adopted without change.

PART V.

82. Article (a) was adopted without change.

83. New article:

As mentioned in paragraph 56 above, the Committee decided to delete the clause which originally appeared in square brackets in the introductory paragraph to Part I of the Charter, on the understanding that a similar clause should be included in a separate article in Part V. The Committee now had before it a draft text, prepared by the Legal Department of the Secretariat, Doc. CE/Soc (57)

Misc. 11.

84. Certain Delegations would have preferred a simpler text, such as for example the one that is included in Article 29, para. 2 of the Universal Declaration of Human Rights.

85. A discussion arose in connection with the proper understanding of the term "prescribed by law". It was agreed that this should be interpreted in a wide sense, so as to include all provisions having the force of law. At the request of the Delegation of Norway, it was further agreed that the term should also be taken to cover the plenary decisions which the Norwegian Parliament takes in budgetary matters on the basis of constitutional provisions.

86. The proposed text was then adopted, (1) subject to minor drafting changes and on the understanding that the interpretations referred to in paragraph 85 above should be included in the Annex to the Charter.

87. It was also agreed to declare in the Report that this text could not be taken to provide any basis for exceptions or limitations intended generally to exclude aliens from the rights embodied in the Charter.

88. Articles (b) and (c) were adopted without change.

89. Article (d):

In connection with this Article, the Delegation of Greece proposed to add the following to paragraph 2:

"The Charter shall apply to the non-metropolitan European territories of all member countries which have accepted the Charter, to the same extent and on the same terms as it applies to the metropolitan territory, having due regard to the delays entailed by the necessary constitutional and administrative formalities."

(1) See Doc. CM (57) 176 where this text has become Article a (b) of Part V of the Charter.

90. This would make a distinction between non-metropolitan territories outside and inside Europe. In respect of the latter, the Charter would apply automatically, whereas in respect of the former, the Governments would be free to apply it or not to apply it. It was pointed out that non-metropolitan territories have their own internal administration which is competent in such matters as those with which the Charter deals. They must therefore decide for themselves whether or not they wish the Charter to apply.

91. The Greek Delegation then withdrew the proposal, it being understood that reference should be made in the Report both of the proposal itself and to the fact that it was supported by the Delegation of Italy.

92. The Delegation of the Netherlands pointed out that since the Charter included the right to engage in employment in other member countries, its application to non-metropolitan territories might be so interpreted as to give the workers of these territories the right to engage in employment in the territories of the Contracting Parties. In the Common Market Treaty there was a special provision (Article 135) saying that the free circulation of workers of overseas countries and territories in the territories of the Member States shall be governed by subsequent conventions which shall require unanimity among the Member States.

93. It was agreed to explain in the Report that under the appropriate provisions of the Charter, the Governments were not obliged to admit foreign workers to any of their territories.

94. Article (d) was then adopted without change, except that the words "or accession" which appeared in brackets in para. 1 were deleted, see under Article (g) below.

95. Article (e) was adopted without change. It was made clear that the amendments to the Charter mentioned in that Article must be accepted by all the Contracting Parties before they could enter into force.

96. Article (f) was adopted without change.

97. Article (g):

This Article would authorise the Committee of Ministers to invite any State not Member of the Council of Europe to accede to the Charter once the latter had entered into force. The Delegation of France proposed to delete the Article because, if the Charter were to be an "open" convention, third party States might invoke the "most favoured nation clause". The European Convention on Establishment was a closed convention, and the same should apply to the Charter.

98. The Delegation of Italy pointed out that the inclusion of Article (g) raised a number of problems, some of which were of a procedural nature, while others were political. The proposed text did not state whether a decision of the Committee of Ministers to invite non-Member States to accede to the Charter must be unanimous or could be taken, e.g., by two-thirds majority. Nor did it appear from the text precisely what obligations an acceding State would undertake. Under Article (g) the Charter would come into force in respect of an acceding State immediately upon deposit of its instrument of accession, whereas for a Signatory, it would only enter into force as from the thirtieth day after the date of the deposit of its instrument of ratification. This difference was not justified.

With regard to the substance of the question, the Italian Delegation considered that it might be useful to provide for an extension of the Charter to non-Member States. Many of the provisions of the Charter applied to all persons without regard to nationality. In order to obtain some degree of reciprocity, therefore, it would be an advantage to have the Charter applied also by non-Member States. But many difficulties would arise. Should, for example, the non-Member States be represented on the various organs that would control the application of the Charter, including the Committee of Ministers itself? The Italian Delegation stressed the political nature of this problem and proposed to submit it to the Committee of Ministers.

99. The Head of the Legal Department of the Secretariat said that the Committee might express its view as to whether it would be useful to make the Charter open. The material consequences would not be great, since the Committee of Ministers would certainly apply a provision like Article (g) with considerable caution. It was true that the inclusion of the accession clause might render it more likely that third party States would invoke the most favoured nation clause, but only an international court would be competent to decide whether or not this would be justified. With regard to the European Establishment Convention, the question of accession (and of the most favoured nation clause) played a much greater rôle than in respect of the Charter, since the latter already applied to all persons, except for the provisions concerning access to employment abroad, and these provisions did not oblige Governments to admit migrants.

It was true that acceding States would be entitled to be represented on the bodies that would control the application of the Charter, although an exception must probably be made in respect of the Committee of Ministers.

The Head of the Legal Department then proposed certain drafting changes which might be made in case Article (g) were included.

100. The Committee felt that a decision whether the Charter should be limited to Member States or open to accession by others involved political considerations beyond their competence and was one for the Committee of Ministers to take. The Committee accordingly decided to delete the Article, but to draw the attention of the Committee of Ministers to the question. As a consequence, the reference to accession in Article (d) was also deleted.

101. Article (h) gave rise to a discussion of the desirability or the disadvantage of rendering possible a partial denunciation of the Charter. It was explained that a clause similar to Article (h), para. 2 existed in the draft European Code of Social Security, but not in the European Convention on Human Rights.

102. The Delegations of Belgium, France, Italy and Luxembourg were strongly against the inclusion of such a clause. They argued that in ratifying the Charter, the Governments could themselves select those provisions by which they would consider themselves bound, and moreover, the new Article referred to in para. 83 above made it possible to them to apply certain restrictions and limitations. If there were no possibility of partial denunciation, a State that found itself in a situation where it was the only one not to have accepted a certain provision of the Charter, would be under a strong moral pressure to accept it, but this would not be the case if the State in question knew that the provision might at any time be denounced by some other State. The case of the European Social Security Code could not be invoked, since the need for flexibility was much greater in the social security field, which was in full evolution.

103. Other Delegations found it very undesirable that a State which for some reason could no longer fulfil some of the provisions of the Charter, or even one such provision, would have to denounce the whole instrument. No Government would lightly denounce a part of the Charter, so there was no reason to fear that this right might be abused, but in some cases this procedure might be necessary.

104. The Delegation of Ireland proposed to maintain the principle of Article (h), para. 2, but to add words to that effect in Part III of the Charter. This Part provides that a Government having ratified the Charter may subsequently extend its ratification to cover provisions not originally accepted. One might envisage that the opposite procedure would also be possible, provided that the minimum number of obligations was respected.

105. In connection with para. 1 of Article (h), the Delegation of Italy also raised the question why the Charter must go out of force if less than five Parties remain bound by it. One might well imagine that four Parties or less might remain bound.

106. The question was then raised whether para. 4 of the Article should be maintained in view of the fact that the provision for accession by non-Member States had been deleted. It reads as follows:

"Any H.C.P. which ceases to be a Member of the Council of Europe shall also cease to be a Party to this Charter."

It was pointed out that such a provision exists also in the European Convention on Human Rights, which is a closed instrument. It was decided to maintain the paragraph but to draw the attention of the Committee of Ministers to this question in connection with the cognate point mentioned in para. 100.

Non-discrimination clause

107. The Secretariat drew the attention of the Committee to the following clause which is included in the draft Charter appended to Recommendation 104 (1956) of the Assembly:

"The H.C.P. are opposed to all forms of discrimination on grounds of sex, race, colour, language, religion, property, nationality, national or social origin, or political or other opinion."

It was decided not to include such a clause, but to mention the question in the Report.

Implementation of the Charter through
collective agreements or other means

108. The Committee had discussed this question at length at its Fifth Session and had provisionally adopted the following formula, which appeared in the introductory paragraphs of the Chapters on the right to just conditions of work; the right of children and young persons to protection, and the right of employed women to protection:

"With a view to ensuring the effective exercise of this right the H.C.P. undertake in so far as such measures are not put into effect under national schemes by agreement between employers' and workers' organisations or are normally carried out otherwise:"

It was clear that this formula implied a residual responsibility for the Governments in case the collective agreements or other means did not cover all workers or otherwise fell short of the standards of the Charter. On the other hand, several Governments could not, under their national practice, undertake such a residual responsibility in these fields, and they would thus not be in a position to accept these provisions of the Charter.

109. The Committee therefore made a new effort to find a formula that would be acceptable to all. The Delegations of the Netherlands and the United Kingdom had made proposals to this effect. The latter were included in Doc. CE/Sec (57) 20. The former were not circulated in the form of a numbered document.

The idea of the United Kingdom proposal was that a Government should be enabled to give an undertaking concerning provisions which must be implemented through collective agreements, and compliance with these provisions should be regarded as effective, if the provisions were widely observed through such agreements.

The Dutch proposal, which was based on that of the United Kingdom, was to the effect that a distinction should be made between provisions which could be implemented through collective agreements and provisions, particularly of a protective nature, that were of public order. The Charter should thus clearly indicate which of the provisions in question would fall in each of these categories.

110. After some discussion, the Committee accepted the principle embodied in the United Kingdom proposal. The Delegation of Sweden, however, wanted it mentioned in the Report that it was against the principle of ratification on the strength of collective agreements, since the implementation of such provisions could not be effectively controlled.

111. The Committee then proceeded to select the provisions of the Charter to which this principle should be applied, as suggested by the Delegation of the Netherlands. It was agreed to make reference to paras. 5, 6, 7, 8, 9, 22 and 23 of Part II.

112. The Delegation of Denmark proposed to include also paras. 12 and 13 of Part II. This was not accepted, on the grounds that the United Kingdom proposal was intended to cover provisions implying undertakings on the part of the Governments, and paras. 12 and 13 involved only a recognition of certain rights.

113. After some discussion of what should be understood by the term "widely observed" as used in the United Kingdom proposal, it was agreed to replace this by the term "applied to the great majority of workers". In this connection, the Delegation of Belgium, supported by the Delegation of France, suggested adding a provision to the effect that the Governments should in any case attempt to exercise some influence on the labour market partners in order to have the provisions of the Charter complied with. The employers' and workers' organisations should be informed of the Charter and encouraged to follow it. This was, however, not accepted.

114. The Delegation of Norway pointed out that there were matters that in some countries were dealt with by collective agreements and in others by law. Such laws need not necessarily cover all workers, and it should therefore be sufficient to fulfil the obligations under the Charter that such provisions were applied to the great majority of workers by law. The Committee agreed to this and adopted a text accordingly, see Doc. CM (57) 175 (Article (c) of Part V.)

Report to the Committee of Ministers

115. The Committee decided to submit the text of the draft Charter with the Annex and the list of reservations made by certain Delegations to the Committee of Ministers under cover of a special Report which would draw the attention of the Ministers to points of particular importance. A draft of such a Report, prepared by the Chairman - Doc. CE/Soc (57) 29 - was adopted, subject to certain amendments. It has been included in Doc. CM (57) 176 as Part A.

116. The Delegation of Austria suggested that the special Report to the Committee of Ministers should draw attention to the following additional points:

(i) The need for a decision concerning the convocation of a tripartite conference in collaboration with the I.L.O. and possibly the O.E.E.C..

(ii) The view expressed by the international trade union federations that the Social Charter should be brought in line with certain international labour conventions. The Charter might contain a provision to the effect that the Parties to it should ratify the Conventions and apply the Recommendations of the I.L.O. as soon as possible if they had not already done so.

117. The Committee considered that it would be too late to take up these questions now, but they might be included in the Agenda of the next Session.

Documentation to Representatives of the
Assembly and to non-governmental organisations

118. It was decided that the Representatives of the Assembly who had been elected to take part in the Joint Meeting referred to in para. 6 above might receive Docs. CE/Soc (57) 19 and 30 and CM (57) 107. These papers should be sent to them informally and confidentially for their personal information.

The organisations that had been represented at the Ad Hoc Meeting referred to in para. 5 above might receive the text of the draft Charter including the Annex, but not the list of reservations.

A P P E N D I X IList of members and observers
participating in the session

<u>AUSTRIA</u>	M. Keller	Conseiller Ministériel au Ministère des Affaires Sociales.
<u>BELGIUM</u>	M. A. Delpérée	Conseiller économique et social du Ministre du Travail et de la Prévoyance sociale.
	Mme. C. Gilon- Pichault	Service des Relations Inter- nationales au Ministère du Travail et de la Prévoyance sociale.
<u>DENMARK</u>	M. P. Juhl- Christensen	Chief of Division, Ministry of Social Affairs.
	M. J. Bonnesen	Chief of the International Relations Division, Ministry of Social Affairs.
<u>FRANCE</u>	M. J. Doublet	Conseiller d'Etat Directeur Général de la Sécurité Sociale, Ministère du Travail et de la Sécurité Sociale.
	M. Ribas	Maître des Requêtes au Conseil d'Etat, Conseiller du Ministre du Travail et de la Sécurité Sociale.
	M. P. Bernusset	Secrétaire des Affaires Etrangères.
<u>FEDERAL REPUBLIC OF GERMANY</u>	M. Geller	Directeur au Ministère du Travail.
	M. Spahn	Conseiller au Ministère de l'Intérieur.
	Dr. H. Ernst	Conseiller, Ministère du Travail.

GREECE

- M. A. Psaras Directeur Général du
Ministère de la
Prévoyance sociale.
- M. A. Triantafylou Directeur au Ministère
du Travail.

IRELAND

- Mr. W. A. Honchan Assistant Secretary,
Department of Social
Welfare.
- Mr. W. Kelly Assistant Principal
Officer, Department
of Industry & Commerce.

ITALY

- M. Carloni Inspecteur Général au
Ministère du Travail
- M. G. Sperduti Professeur de droit
international à l'Uni-
versité de Pisa
- M. Marinelli Conseiller au Ministère
du Travail

LUXEMBOURG

- M. G. van Werveke Secrétaire Général du
Ministère du Travail
et de la Sécurité sociale.
- M. R. Bertrand Rédacteur au même
Ministère.

NETHERLANDS

- M. T.M. Pellinkhof Chef du Service des
Affaires Internationales
du Ministère des Affaires
Sociales et de la Santé
Publique.
- M. J. J. M. Geldens Chef de Division au
Bureau de Travail,
(même Ministère).
- M. H. B. Eldering Attaché à la Division de
la Protection des
Travailleurs, (même
Ministère).

<u>NORWAY</u>	M. A. Kringlebotten	Secretary-General of the Ministry of Social Affairs.
	M. B. Ulsaker	Director in the Ministry of Labour and Municipal Affairs.
<u>SWEDEN</u>	M. W. Björck	Ancien Chef de la Direction Générale du Trésor.
	M. E. Bexelius	Chef de la Direction Générale de la Prévoyance sociale.
<u>TURKEY</u>	Dr. Esad Sibay	Président du Conseil des Recherches au Ministère du Travail.
	M. N. Sari	Membre du Conseil de Recherches du Ministère du Travail.
<u>UNITED KINGDOM</u>	Mr. G. C. Veysey, C.B.	Under-Secretary, Ministry of Labour and National Service.
	Mr. C. A. Larsen	Principal, Ministry of Labour and National Service.
	<u>OBSERVERS</u>	
I.L.O.	M. P. Fano	Chef de la Division des Organisations Inter- nationales.

A P P E N D I X I IAGENDA ADOPTED BY THE COMMITTEE

1. Opening of the meeting.
2. Election of the Chairman and Vice-Chairman.
3. Adoption of the Agenda.
4. Exchange of views concerning the consultation with workers' and employers' organisations with regard to the European Social Charter.
5. Exchange of views concerning the joint meeting between representatives of the Social Committee and Representatives of the Consultative Assembly.
6. European Social Charter:
 - (a) Examination of the Report of the Working Group and the complete draft text of the Charter.
 - (b) Examination of the draft text concerning the right to education.
 - (c) Examination of the extent to which Governments may be willing to accept the draft Charter as binding.
7. Other business:
 - (a) Oral report concerning the extension of the Convention concluded by the Brussels Treaty Powers on 17th April 1950 (Exchange of Student Employees).
 - (b) Future programme of work.
8. Date and place of next session.

A P P E N D I X III

SUMMARY OF THE PROCEEDINGS OF THE SPECIAL
MEETING TO HEAR THE REPRESENTATIVES OF
EMPLOYERS' AND WORKERS' ORGANISATIONS

1. The Committee first heard the Representatives of the International Organisation of Employers, M. Pierre Waline (President) and M. A. G. Fennema (Vice-President).

M. Waline made the following statement on behalf of the European members of the International Organisation of Employers:

The following observations relate to the most recent of the documents communicated to us, i.e. the texts adopted by the Social Committee at its Fifth Session (July 1957), which, if we understand correctly, replace the draft Articles previously prepared by a Working Group of that Committee.

We do not know whether the title of this document (Appendix IV) means that it embodies only part of the present draft Charter. Our comments might also have been different if we had been acquainted with the report of the Working Group, which accompanied the text drafted by the latter.

With these reservations, and pending the receipt of certain clarifications or additional information, we feel called upon, in connection with Appendix IV, to make a number of general remarks which we shall illustrate with examples from the text, though these comments on the contemplated provisions are not given as expressing our exhaustive or final opinion. (1)

(1) We were unable to consult our members on the documents sent to us on 15th November, which we received after the present memorandum was prepared.

1. We appreciate the generous intention which, for several years past, has inspired the Council of Europe in its attempts to prepare a European Social Charter. We also approve many of the principles or wishes enumerated in the draft submitted to us. Many of them, with our members' agreement, have already been incorporated in national or international conventions or domestic legislation.

We venture, however, to express some doubt as to the advisability of adding yet another text to those already existing in the same field. We need only mention in this respect the Preamble to the Constitution of the International Labour Organisation, supplemented by the Philadelphia Declaration and the Declaration of Human Rights prepared by the United Nations.

As we shall show later, there is a danger that in the drafting, in order to avoid repetition, alternative versions may be adopted, which may give rise to some confusion, or an attempt may be made to insert more detailed provisions, which may be out of place in a solemn declaration intended to have lasting value.

2. Since the Council of Europe began to study the preparation of the Charter, certain new facts have changed (or are in process of changing) the relations between a number of the Member States. We are thinking in particular of the Treaty establishing the Common Market and the negotiations for a Free Trade Area. Such measures of economic rapprochement or integration will probably include clauses on the alignment of social legislation. Should not a clearer view of this development be awaited before a European Social Charter is finally drafted?

3. Not only in a desire for originality, but also for reasons of equity, the Charter should, in our opinion, mention duties as well as rights, at least in regard to certain points.

Perhaps this might not have been necessary a few decades ago, when the condition of the workers demanded unilateral protective action, in which, incidentally, industrialists of West European countries were the prime movers, just as much as trade unionists, sociologists and politicians, all inspired by the same ideal of social justice. Today no one would dare dispute that the condition of the wage-earners has considerably improved, whether by collective agreements or by national legislation capped by I.L.O. Conventions and Recommendations. The rights of the workers, in most member countries of the Council of Europe, are amply established and recognised.

On the other hand, events are tending increasingly to stress the legal and moral obligations which are the natural counterpart of some of these rights. Freedom of association, for example, should not mean only the right freely to join any trade union of one's choice, but also the obligation to respect anyone else's right not to join a union, if such is his freely-expressed desire, without being victimised as regards opportunities of employment. Similarly, a collective agreement is not merely a list of rights or advantages granted to wage-earners: it also comprises an undertaking by the wage-earners, who are parties to the contract through the medium of the signatories, to respect the rules and conditions of work therein laid down throughout the period stipulated by the convention.

In Western Europe the trade union organisations have, in general, acquired considerable power and stability, and collective bargaining on working conditions is consequently becoming the rule, in matters affecting working conditions. We therefore feel that a proclamation of the essential principles governing labour/management relations should deal with the duties as well as the rights of both sides.

The drafters of the text before us have, we consider, somewhat overdone the use of the word "right", which returns like a refrain in each paragraph of the Preamble and in the title of each of the following series of paragraphs - whereas what is meant is frequently not a right in the strict sense, but simply a principle of somewhat vague content and no practical bearing. (Examples: "right to safe and healthy working conditions"; "right to vocational guidance"; "right to vocational training"...).

4. While appreciating the difficulties doubtless encountered by the authors of the draft in trying to give form and substance to such declarations of principle, we are obliged to note that they have been unable to avoid now the Scylla of imprecision and now the Charybdis of excessive detail.

We feel, for example, that we should draw attention to the tenor of paragraph 18, which recognises "the right of workers and employers to collective action in cases of conflicts of interest, subject only to limitations prescribed by law for reasons of national security or public interest". What is meant by "collective action"? Does it refer to all types of strike or lock-out? This is in any case a weighty problem, on which not even the International Labour Organisation, for nearly forty years, has yet ventured to adopt any text. Is it hoped that it will thus be settled in a few vague words?

Conversely, would it be really appropriate to include in a "European Social Charter" the rules listed in the chapter on just conditions of work (such as additional paid holidays for workers engaged in dangerous or unhealthy occupations), or in those dealing with the right of children, young persons and women to protection (which include a number of rules borrowed from various international labour conventions, some of them made even more far-reaching)?

Failing any indication of the Social Committee's real intentions, it may be wondered if it wishes the Charter to be sufficient unto itself (in which case a great deal of further detail would be necessary), or whether, on the contrary, it intends that, like the preamble to Part XIII of the Versailles Treaty, it shall list only the guiding principles (which would mean the exclusion of many details appearing in the text).

5. We do not know how far the "undertaking" to be entered into by the High Contracting Parties on a large number of points should be interpreted as a strict obligation, possibly accompanied by controls and sanctions. We should greatly appreciate some enlightenment in this respect.

In any event many of our members, having a long and satisfactory experience of free collective bargaining, consider that some paragraphs in the draft would entail a serious threat of State intervention in relations between trade organisations. Indeed, to the extent that the State would "undertake" - using the term found in the draft - to adopt measures or apply conditions of work which, on its territory, are traditionally a matter for collective agreements, it would have to bring to bear on the negotiators of such agreements a pressure which they must reject a priori.

We are not aware if the Committee have considered this question and we therefore venture to bring it to their attention.

6. Finally, we have difficulty in imagining, with the information now at our disposal, how certain rules to be listed in the Charter would be compatible with those formulated elsewhere in labour conventions or treaties ratified or adopted by the same States. On a question such as equal wages for men and women various formulae are already embodied in several texts. We consider it essential to avoid multiplying divergencies of this kind, which are productive of misunderstandings and disputes.

Such are the main observations which, in response to the Council's wishes, we have set forth without further delay. We shall be most interested in any additional information which it is prepared to give us, especially on the points we have mentioned, and we remain at the Council's disposal to inform it, in the light of such new information, of the opinion of the European members of our organisation.

Pierre WALINE

A. G. FENNEMA

The Representative of Denmark stated that he could find no provision in the draft Social Charter that would be contrary to the provisions of the Common Market Treaty relating to social security or the free movement of workers. The Charter might become a supplement to the provisions of the Treaty.

The CHAIRMAN asked the representatives of the I.O.E. whether in their view the preparation of the Charter should be postponed pending the establishment of the Common Market and the Free Trade Area.

M. WALINE replied that there was no contradiction between the Common Market Treaty and the Charter but it might seem unfortunate that the Council of Europe should have proceeded to the preparation of the Charter in parallel with the negotiations of the Six relating to the Treaty. The entry into force of the Treaty would give some experience as to the working of the social provisions which it contains. The establishment of the Social Charter may lead to a multiplicity of texts of the same nature that may be differently worded and thus lead to confusion.

The Representative of the Federal Republic of Germany remarked that it was not for the Social Committee to decide whether or not this was the appropriate moment to draw up the Social Charter, since it was bound by its mandate to do so. Although the representatives of the I.O.E. had not yet had the opportunity to examine the whole of the draft Charter, they would be aware of the fact that some provisions implied real undertakings on the part of the Governments, while others only implied that the latter would endeavour to take certain measures. Did the representatives of the I.O.E. consider that the Charter should contain some provisions of a binding nature, or did they prefer a wholly declaratory instrument?

M. WALINE referred to the practice of the I.L.O. according to which only texts that were absolutely precise could take the form of binding conventions. Otherwise, the form of a Recommendation would be appropriate.

M. FENNEMA added that the Charter seemed to contain a mixture of statements of principle and detailed provisions. In view of the fact that some measure of social harmonisation will be brought about as a consequence of the Common Market Treaty, it might be preferable to confine the Social Charter to declarations of principle.

• The Representative of Belgium referred to the fear expressed by M. Waline that the adoption of different texts might lead to confusion. One must take into account, however, that while in the Common Market Treaty the social provisions appeared only as a necessary corollary to measures of an economic nature, the Social Charter was an independent social instrument. There would, in his view, be no confusion or overlapping. He further raised the question as to whether, in the view of the I.O.E., the envisaged Treaty on the Free Trade Area should contain social provisions similar to those embodied in the Common Market Treaty. If the Treaty on the Free Trade Area were not to contain such provisions, there could be no overlapping. The Representative of Belgium then referred to the draft provisions concerning the implementation of the Charter, which would, according to the mandate of the Social Committee, associate employers' and workers' organisations with the control of the implementation. Could the representatives of the I.O.E. express any opinion on that point?

M. WALINE replied that he would like to consult his colleagues on the question as to whether the Treaty on the Free Trade Area should, in their view, contain social provisions, and also with regard to their opinion on the rôle to be played by employers' organisations in the implementation of the Social Charter.

It was agreed that the I.O.E. should be given the opportunity, on the basis of an examination of the entire draft text of the Charter, to give its views at a later stage.

II. The Committee then heard the Representative of the Regional European Organisation of the International Confederation of Free Trade Unions, M. Schevenels.

M. SCHEVENELS expressed his apologies that the I.C.F.T.U. had been unable to act upon the invitations previously sent to it by the Social Committee. Having constantly participated in the work of the various Committees of the Consultative Assembly engaged in drafting a European Social Charter, the I.C.F.T.U. had already submitted a number of observations to which it seemed unnecessary to revert. Moreover, since the Trade Union representatives had not taken part in the work at the second stage, i.e. in the governmental Social Committee, it would be preferable to fill that gap by calling

a European tripartite conference, as requested by the I.C.F.T.U. in letters to the President of the Assembly in October 1956 and 1957. As the purpose of the Social Charter was to protect those who needed protection, it seemed reasonable that the persons immediately concerned should be consulted before any such Convention was concluded.

Turning to the text submitted to him for consideration (CE/Sec (57) 19), M. Schevenels made the following observations:

Preamble and Part I of the Draft: the general aims should conform to those envisaged in the Preamble to the I.L.O. Constitution. It was not clear what was meant by paragraph 16, referring to the right to engage in gainful occupation, which after all also applied to employers. It was doubtful whether that was in fact a measure of social protection.

Part II, paragraph 13: The principle here was sound, but he wondered whether the wording might not lead to ambiguity. It would be preferable to express the principle in the form of a general provision relating to discrimination. In the same context there arose the question of the promotion of workers either on seniority or on merit.

Paragraphs 15 and 11: The position of these two paragraphs should be reversed.

Paragraphs 19 and 21: - In proposing the merger of these two paragraphs, the I.C.F.T.U. was advocating the prohibition of any work for children below the school leaving age and in any event below fifteen years old, except in special cases governed by legislation or public regulations.

Paragraph 26: Maternity leave might be extended from twelve to fourteen weeks, of which eight would be after confinement.

Paragraph 27: This provision came close to the concept of leave without pay. The wording of the French text verged on the tautological.

Paragraph 29: This was a matter which should be more strictly controlled. The I.C.F.T.U. was unanimous in prohibiting that type of work in principle and was in favour of regulations in specified employment. The

women's organisations affiliated to I.C.F.T.U. agreed with that attitude.

Paragraph 34: The word "dislocations" should be amended to read "necessary re-organisation".

Paragraph 35(c): The words "at the request of his employer" should be omitted.

Paragraph 36: The I.C.F.T.U. would like this provision to contain special protection for the health of workers.

In general, the I.C.F.T.U. objected to the use of the term "Exercise of a right". It preferred the expression "in order to ensure this right" (the same remark applied to para. 37).

Paragraph 52: Since here the primary concern was always authorisation by the immigration country, this paragraph might lead to misunderstanding.

Paragraph 55: The term "undertake to endeavour" was perhaps unfortunate. It would be preferable to say "undertake to secure". On the other hand, to guarantee accommodation was perhaps going a little too far.

Part III: The choice of a specified minimum number of obligations appeared somewhat unfortunate in a document styled a "Charter". Since the figures which would replace the "X" and "Y" were still unknown, the I.C.F.T.U. would refrain from further criticism for the present.

Part IV:- Article (C): Copies of the reports should preferably be submitted to the European organisations, as part of the task of co-ordination incumbent upon these organisations.

Article (D): Trade Union representatives on the Committee of Experts would be useful, so that the Unions might be able to understand the reasons underlying the Committee's decisions. If necessary, their representative might attend in an advisory capacity.

Part V:- Article (B): The words "immediately upon" should be amended to read "as from the thirtieth day after" in conformity with Article (F), paragraph 2.

Article (H), (paragraph 4): The time-limits for the operation of this paragraph should be specified.

Continuing with criticisms of a general nature, M. Schevenels stressed the need to submit the draft Charter to a European tripartite conference. Since the Council of Europe was responsible for the Charter, such conference should be convened by the Council with the technical assistance of I.L.O.. Co-operation between the Council of Europe and I.L.O. should be on the same lines as that between the latter and O.E.E.C.. It was O.E.E.C. that took the decisions, while using the I.L.O. in the capacity of an expert. Apart from the Social Charter, the tripartite conference could also examine the draft European Code of Social Security. Lastly, the I.C.F.T.U. emphasised the economic aspects of trade union consultation. In the project for a Social Charter appearing in Assembly Recommendation 104, those aspects had not been sufficiently taken into account.

The CHAIRMAN thanked M. Schevenels for his observations and invited members of the Committee to ask him any questions.

Mme. GILON pointed out to M. Schevenels that a new development was taking shape in regard to the protection of women workers, particularly within the I.L.O., where conventions on the subject were becoming increasingly flexible. Prohibitions had become very much fewer and regulations were becoming increasingly rarer.

M. SCHEVENELS said that he had been referring only to night work in industry. Admittedly, many other forms of night work were frequently inevitable. That did not prevent the I.C.F.T.U. from holding on to its point of view. Night work for women must be avoided wherever possible.

M. CARLONI criticised the observations presented on the question of accommodation for migrant workers. A distinction should be drawn between (1) accommodation which met the minimum standard at reasonable prices and (2) the encouragement of workers to become home-owners. Point (1) was the more important.

M. SCHEVENELS pointed out that foreign workers were sometimes offered better accommodation than national workers.

In reply to a question by M. van WERVEKE, he explained the attitude of I.C.F.T.U. towards the conciliation and arbitration question, for which provision was made in Part II (para. 15) of the draft Charter. Briefly, the I.C.F.T.U. refused to submit ab initio to a system of compulsory arbitration.

M. van WERVEKE said that that system should be carefully distinguished from cases where there were conciliation tribunals to which the parties were obliged to have recourse, since the awards of such tribunals were not mandatory.

M. SCHEVENELS thought that the text of paragraph 16 was not explicit enough; it allowed of both interpretations.

Replying to M. DELPEREE, he said that the I.C.F.T.U. opposed the reference to civil servants in the last sentence of paragraph 14. The Confederation also regretted that there was no express mention of the right to strike, though it was understood that the exercise of that right might be linked with carefully graded conditions, for instance with regard to doctors, customs officers and so forth.

III. The Committee then heard M. KULAKOWSKI, Representative of the International Federation of Christian Trade Unions.

M. KULAKOWSKI said that the I.F.C.T.U. regretted the procedure for consultation laid down by the Social Committee. It would have preferred an opportunity for direct co-operation with the Committee's discussions, as had been the case in the Assembly Committees.

As a preliminary question, he asked whether the Social Charter had not ceased to be topical, now that the Treaty establishing the European Economic Community had been concluded. The Charter unquestionably took on a fresh interest, however, in the light of the establishment of the European Free Trade Area.

In that connection, however, the Social Charter would not fulfil its aims unless it were a common undertaking to pursue an overall social policy. The I.C.F.T.U. therefore regretted that the Social Committee's draft did not include a number of common undertakings to be entered into by all participating States: indeed, almost all the rights envisaged in the draft lent themselves to such an under-

taking. Some provisions in the draft would, moreover, become meaningless unless accepted by all the contracting parties. The I.C.F.T.U. had submitted a memorandum on the subject to the Social Committee.

The I.C.F.T.U. had the following detailed comments to make:

Part II

Paragraph 29: While agreeing with this provision, the I.C.F.T.U. wished to emphasise its importance.

Paragraphs 38 and 39: Holding that the draft European Code of Social Security contained no satisfactory standards, the I.C.F.T.U. would have preferred paragraph 39 to include a reference to the draft Protocol appended to that Code.

In the paragraphs relating to the protection of migrant workers, a reference to political refugees should be inserted, on the lines of the I.L.O. Conventions and the European Interim Agreements on Social Security.

Part III

Part I could hardly be interpreted otherwise than as a simple declaration of aims. It might therefore be wondered why it was necessary to return to that part in para. 1 (a) of Part III. The I.C.F.T.U. also made express reservations concerning the system of a numerical minimum of undertakings stipulated in Part III, which should be replaced by a system with a common specified minimum.

Part IV

Article (E): While supporting the idea of an expert committee independent of governments, the I.C.F.T.U. would like to see a more precise definition of the experts' qualifications from the social and economic standpoint. The I.C.F.T.U. would also like to be closely associated with the bodies in question. Such association should be organic in form, at least so far as the Sub-committee provided for in Article (G) was concerned.

Article (G): The I.C.F.T.U. wished to make express reservations on the composition of the Sub-committee, more especially as the members of the latter, being senior civil servants entrusted with implementing national social policy, would be judges in their own cause. That disadvantage could be overcome by associating representatives of both sides of industry with the Sub-committee, thus investing it with a tripartite composition similar to I.L.O. bodies which were responsible for putting labour conventions into effect.

That result should be carefully distinguished from another question raised in relation to the draft Charter, namely, whether it should be submitted to a tripartite regional conference before final adoption. Such a conference, which the I.C.F.T.U. supported, could also usefully pronounce on the draft Code of Social Security and its Protocol.

The I.C.F.T.U. had just considered that question at a meeting of its European Committee, and considered that consultation with the national employers' and workers' associations was essential. Some formula for co-operation between the Council of Europe and I.L.O. could probably be found.

The CHAIRMAN, after thanking M. Kulakowski for his comments, gave the floor to members of the Committee desirous of asking questions.

M. DELPEREE asked whether it was the view of the I.C.F.T.U. that the Social Charter would be likely to solve the social problems raised by the Free Trade Area.

M. KULAKOWSKI replied that the I.C.F.T.U. had just addressed a memorandum to O.E.E.C. on that subject. He thought the Social Charter was a very useful basis for examining and defining the social impact of the Free Trade Area.

M. CARLONI asked whether, in the opinion of the I.C.F.T.U., the tripartite conference should be held solely within the framework and in accordance with the practice of the I.L.O. or whether other principles should apply.

M. KULAKOWSKI replied that that was rather a matter for the I.L.O. representative. He himself, however, regarded such a conference as an ad hoc conference, implying an understanding between the Council of Europe and the I.L.O..

In reply to the CHAIRMAN he said that in the I.C.F.T.U. view the draft Charter prepared by the Social Committee should be subjected to widespread discussion, particularly by those whom it most closely affected, although the decisions of the proposed conference should bind neither the Council of Europe nor the I.L.O., in whose eyes the conference's task would be merely one of consultation, for which no satisfactory opportunity had been found during the Social Committee's work.

In reply to M. van WERVEKE, he said that the conference should take place before ministerial and governmental views on the Social Charter were expressed.

M. GELLIER drew the attention of M. Kulakowski to the composition of the Sub-committee charged with implementing the Charter. Were there no possibilities other than that advocated by M. Kulakowski?

M. KULAKOWSKI replied that the usual I.L.O. practices could be adhered to, particularly the machinery for the implementation of its Labour Conventions, which was similar in nature to that in the Social Charter. On the one hand, it provided for a committee of independent experts and on the other hand for a committee on a tripartite basis; both bodies worked within the I.L.O. framework. Similarly, the Trade Union representatives should be associated, not with the Committee of Experts, but with the other of the two bodies for which provision was made in Part IV of the draft Charter. There would be a choice between two methods: (1) participation on a basis of parity, i.e. one-third for each of the groups (governments, employers' associations and trade unions), and (2) the I.L.O. formula: two-fourths for the governments and one-fourth for each of the two sides of industry.

In reply to Mme. GILON, he said that copies of the reports, as stipulated in Article (C), para. 2, of Part IV, should be sent to the national organisations. At that stage, intervention by the international Confederations did not yet appear to be called for.

The CHAIRMAN thanked M. Kulakowski for his statements and declared the ad hoc Session of the Social Committee closed.

A P P E N D I X I V

PROPOSALS MADE BY THE DELEGATION OF THE FEDERAL
REPUBLIC OF GERMANY CONCERNING THE RIGHT
OF THE FAMILY AND OF MOTHERS AND CHILDREN
TO SOCIAL AND ECONOMIC PROTECTION

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

Paragraph (47) to be formulated as follows:

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

- (a) to take economic measures facilitating the founding of homes;
- (b) to grant special protection to families with children, especially to families with many children, by taking into account the size of the family when assessing direct personal rates and taxes or public utility tariffs;
- (c) to promote the building of houses for owner-occupancy and of flats, which are suitable for families, as well as the family recreation;
- (d) to restrict the right of the parents to the care for and education of their children only to the extent required by the interest of the child and only in accordance with legal provisions;
- (e) to assist dependants as designated by national legislation in the recovery of maintenance."

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

Paragraph (48) to be formulated as follows:

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

- (a) to promote measures enabling mothers to devote sufficient time to their family duties;
- (b) to encourage and promote the provision of recreation facilities for mothers;
- (c) to grant special protection to homeless children and to foster children;
- (d) to establish appropriate services for juvenile delinquents as well as for children in social and moral danger;
- (e) to ensure that every minor is provided with a guardian, and that guardianship is regulated by law;
- (f) to take appropriate measures protecting the interests of minors in case of adoption;
- (g) to protect juveniles against dangerous influences in the public."

A P P E N D I X V

TEXT ADOPTED BY THE COMMITTEE CONCERNING
THE RIGHT TO EDUCATION (1)

The right to education:

It was decided to submit to the Committee of Ministers the following draft texts relating to this right: (2)

In Part I:

"Everyone has the right to education."

In Part II:

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

- (1) undertake to make primary education compulsory and free;
- (2) will take the necessary steps:
 - (a) to make secondary education in all its forms generally available to those with aptitude for it; (3)

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- (1) The Committee was requested by the Committee of Ministers to prepare such a text as a basis for a decision as to whether or not the right to education should be included in the Social Charter.
 - (2) The Delegation of the Fed. Rep. of Germany made a reservation against the inclusion of such a text. In the Federal Republic education is a matter decided upon by the "Länder", and it is thus outside the competence of the Federal Government.
 - (3) The Delegations of Belgium and France made a reservation on this point. In their view the provision should stipulate that secondary education should be made available at least up to the age of 18 years.

- (b) to make university and other higher education accessible to all on the basis of merit;
- (3) to encourage the full utilisation of the facilities provided by appropriate measures such as:
 - (a) reducing or abolishing any fees or charges;
 - (b) granting financial assistance in appropriate cases. (I)

(1) The Delegations of Belgium and France made a reservation concerning this paragraph because in their view it did not to a sufficient degree guarantee an increasingly free secondary education.

SECOND PART

DOCUMENTS CONCERNING THE ORGANISATION OF A TRIPARTITE CONFERENCE

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

Strasbourg, 6th June 1957.

Confidential.

CM (57) 74

Or. Fr.

SOCIAL CHARTER

Organisation of a tripartite conference

(Letter from the Netherlands Delegation)

Strasbourg, 13th May 1957.

Sir,

I am directed to ask you to place on the agenda for the next session of the Ministers' Deputies the question of holding a European Tripartite Conference during the year 1958 to consider the European Social Charter the drafting of which, according to paragraph 3 of Resolution (56) 25 of the Committee of Ministers, is to be completed by 31st December 1957 at the latest.

Such a Conference might be arranged by the International Labour Organisation at the invitation of the Committee of Ministers of the Council of Europe.

I have recently learnt that the I.L.O. would be grateful, should the Committee of Ministers decide to extend such an invitation, if this could be done before the end of next June so that preparatory arrangements may be made in good time.

Mr. Dunstan Curtis,
Acting Secretary-General,
Council of Europe,
STRASBOURG.

./.

I should be grateful if you would kindly bring the foregoing to the notice of the Member Governments of the Council of Europe.

I am, Sir,

Your obedient Servant,

(signed) M.Z.N. WITTEVEEN

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Strasbourg, 26th September 1957.

Restricted

AS/Per (9) 2.

CONSULTATIVE ASSEMBLY

STANDING COMMITTEE

I. L e t t e r

from the Chairman of the Social Committee
relating to the European Tripartite Conference

Strasbourg, 16th July 1957

Sir,

On Friday, 5th July the Standing Committee discussed the possibility of convening a tripartite conference together with I.L.O., for the purpose of examining the European Social Charter and reviewing the general activities of the Council of Europe in the social field.

I feel that I should inform you of my thoughts on this matter.

It is true that the Committee of Ministers, by its Resolution (56) 25, of 15th December 1954, instructed the governmental Social Committee to direct its work towards the establishment of a European Social Charter, in consultation with the employers' and trade union organisations.

It is also true that the Consultative Assembly, by its Resolution 69 of 7th July 1955 embodying a reply to the Fourth I.L.O. Report, expressed the desire that the draft European

Monsieur Fernand DEHOUSSE,
President of the Consultative Assembly,
Council of Europe,
55, Avenue Kléber,
PARIS.

Social Charter, before its final adoption, should be submitted to a regional tripartite conference for its opinion.

I consider, however, that it is of the highest importance to recall that the Assembly, in its reply to the Second Supplementary Report of the Committee of Ministers (Doc. 111, 10th December 1951), raised certain objections to the Agreement between the Committee of Ministers of the Council of Europe and the I.L.O. These objections related in particular to the procedure for convening and organising tripartite conferences, as set forth in Article 3 of that Agreement.

Paragraphs 2, 3 and 4 of this Article read as follows:

"2. Whenever the Committee of Ministers of the Council of Europe deems it necessary to hold a European regional meeting of a tripartite character to deal with matters of interests to the Council of Europe which are within the sphere of action of the International Labour Organisation, it shall propose to the Governing Body of the International Labour Office, in accordance with Article 2 of this Agreement, that the latter convene such a meeting.

3. The International Labour Organisation will invite the Committee of Ministers to appoint a representative of the Council of Europe to participate in meetings of the Governing Body at which the arrangements for and reports of European regional meetings of a tripartite character, as mentioned in the preceding paragraph, are discussed.

4. The International Labour Organisation will invite the Committee of Ministers to appoint a representative of the Council of Europe to attend European regional meetings of a tripartite character convened on the initiative of the International Labour Organisation itself."

Thus the Governing Body of I.L.O. is alone responsible for convening and organising regional tripartite conferences the holding of which therefore depends upon its good will. The participation of the Council of Europe in such conferences and its powers of decision in the matter are in no way guaranteed.

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It is therefore not surprising that, in its reply to the Second Supplementary Report of the Committee of Ministers already mentioned (Doc. 111, 10th December 1951), the Assembly after protesting at the conclusion of the Agreement between the Council of Europe and I.L.O. without the Assembly having been consulted, expressly states that it is opposed to the procedure for convening and organising regional tripartite meetings set forth in Article 3 of the said Agreement.

Now, although the Agreement should, in the Assembly's opinion, have been substantially revised at the time of its conclusion (1951), the need for such revision has meanwhile become even more imperative since a number of Eastern States, including the U.S.S.R., have now joined the International Labour Organisation.

It is inadmissible, in my view, that the preparation and holding of a conference to examine a European Social Charter and the entire policy of the Council of Europe in the social field should be entirely in the hands of an organisation whose Governing Body includes representatives of East European countries, more especially the U.S.S.R.

You will doubtless recall that this suggestion of a tripartite conference gave rise to discussion and criticism in the Consultative Assembly. Admittedly, the I.L.O. is entirely in favour of drafting a Charter, but, for various reasons which it would take too long to go into here, it is not at all enthusiastic about setting up either an Economic and Social Council - as envisaged in the Social Committee's draft - or a European Social Chamber, as advocated by the Political Committee.

The Consultative Assembly, as a potential European Parliament, would be taking a very serious step, in my opinion, if it delegated so large a part of its responsibility as the implementation of the Charter to an organisation which is not solely European though I have the highest regard for the I.L.O., whose technical assistance on social matters seems to me indispensable.

In conclusion, I therefore feel that before the expediency of calling a tripartite conference is even discussed the Agreement between the Council of Europe and I.L.O. must be revised with a view to establishing co-operation between the two organisations on a basis which would grant them equal rights in all matters concerning the calling of regional tripartite meetings and their agenda.

The political and technical problems involved in the revision of the Agreement and the convening of a regional tripartite conference are of such magnitude that the Council of Europe should make a most careful study of every factor entering into the establishment of close and enduring co-operation between the two organisations.

For reasons implied in the foregoing, this study should also bear upon the practical implementation of the Social Charter.

I should be very grateful if you would kindly bring the above considerations to the knowledge of the Committee of Ministers.

You will surely agree, Sir, that the problems I refer to must be solved before a tripartite conference is called.

I remain, Sir,

Your obedient Servant,

Henri HEYMAN
Chairman of the Social
Committee of the Assembly.

II. COMMENTS BY THE OFFICE OF THE CLERK ¹
 on the letter from the Chairman
 of the Social Committee of the Assembly
 concerning a European Tripartite Conference

The Assembly, on 7th July 1955, in its Resolution 69 adopted in reply to the fourth Report of I.L.O. (2nd Part, para.(a)) suggested "submitting for an Opinion the Draft European Social Charter which is shortly to be drawn by the Council of Europe" to a Tripartite Regional Conference. The Ministers' delegates will examine that question during their next meeting which will start on 23rd September.

On the other hand, M. Heyman, Chairman of the Social Committee of the Assembly, in a letter of 16th July addressed to the President of the Assembly, has severe criticisms to make of the terms of Article 3 of the Agreement between the Council of Europe and the International Labour Organisation and he requests that the Article be amended before any meeting of a European tripartite Conference.

To put in motion the procedure for amending the Agreement - just when everyone has accepted the principle of a European tripartite Conference - would seriously compromise the chances of holding one in 1958. M. Heyman himself, who is strongly in favour of holding the Conference in co-operation with I.L.O., would certainly not wish this to happen.

Under these circumstances the Office of the Clerk submits to the Bureau the following suggestions which might be used as basis of negotiations between the Council of Europe and I.L.O.

Convocation

The Governing Body of I.L.O. would call a tripartite Labour Conference limited to the fifteen Member States of the Council of Europe, stating that the Conference was being held at the request

1. These comments were examined by the Bureau of the Assembly on 10th September 1957.

of the Council of Europe (without specific reference to Article 3 of the Agreement).

Composition of the Conference

There would be fifteen tripartite national delegations. In addition there would be a Council of Europe delegation, a delegation from the Governing Body of I.L.O., an O.E.E.C. delegation and delegations from European countries invited as observers. These would have the right to speak but not to vote. The Council of Europe delegation might consist of three members: a representative of the Assembly appointed by the Social Committee, a representative of the Committee of Ministers and a representative of the Secretariat-General.

Settling of Agenda

The agenda would be drawn up by agreement between I.L.O. and the Council of Europe. It would include consideration of the Council of Europe's draft European Social Charter.

Length of Conference

The Conference would last for two weeks. At the opening ceremony statements would be made by the Chairman of the Governing Body of I.L.O., the Chairman of the Committee of Ministers, the President of the Consultative Assembly and the Chairman of the O.E.E.C. Council.

Secretariat and meeting place

The Director General of I.L.O. would be responsible for material arrangements, assisted by the Secretaries General of the Council of Europe and of O.E.E.C.

If the Conference were held at Strasbourg, the additional cost would be borne by the Council of Europe. In order to reduce such expenditure to a minimum, the Secretary-General of the Council of Europe would place as many as possible of the Council of Europe staff at the disposal of the Director General.

Conclusions of the Conference

The conclusions of the Conference would be transmitted to the Council of Europe and O.E.E.C. by the Governing Body of the I.L.O.

As all these questions will be discussed by the Ministers' Deputies at their next meeting, it would be desirable that the Bureau should express its point of view in due time.

III. L e t t e r

from the Chairman of the Social Committee
on the foregoing comments by the Office of the Clerk

Brussels, 3rd September, 1957.

Sir,

I have duly received the comments of the Office of the Clerk of the Assembly on the convocation of a European Tripartite Conference, which you kindly transmitted to me. I personally am in broad agreement with the suggestions put forward, which might serve as a basis for the Council of Europe and the International Labour Organisation.

I feel, however, that they call for the following observations:

- 1) with regard to the composition of the Conference, it is stated: "The Council of Europe delegation might consist of three members: a representative of the Assembly appointed by the Social Committee, a representative of the Committee of Ministers and a representative of the Secretariat-General".

I would suggest that the Social Committee should be represented by three members instead of one, so that the three schools of thought in the Committee may have a voice.

- 2) Further on appears the following comment: "If the Conference were held at Strasbourg the additional cost would be borne by the Council of Europe." I agree on

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several grounds that the Conference should be held at Strasbourg, one being that it was the Council of Europe which first studied the question and prepared the Charter.

- 3) I consider that the conclusions of the Conference should be submitted to the Council of Europe Assembly for approval after being examined by the appropriate committees, particularly the Social Committee.
- 4) Lastly, it is my opinion that the holding of a tripartite conference in 1958 should not prevent consideration of the amendments to be introduced in Article 3 of the Agreement between the Council of Europe and the International Labour Organisation.

I remain, Sir,

Your obedient Servant,

H. HEYMAN

IV. L e t t e r

of the President of the Assembly
on the conclusions reached by the Bureau
concerning the European Tripartite Conference

Paris, 10th September, 1957.

Sir,

I have the honour to acknowledge receipt of your letter of 3rd September.

I am grateful to you for commenting as I requested on the note prepared by the Office of the Clerk concerning the European Tripartite Conference (Doc. AS/Bur (9) 6).

I submitted your observations to the Bureau of the Assembly which met in Paris today.

The Bureau was in full and unanimous agreement with your first and second suggestions. It shares your view that the Tripartite Conference should be held at the Seat of the Council of Europe.

With regard to your third suggestion, the Bureau considers that the Social Committee may at any time examine the conclusions of the Conference and prepare a report thereon for the Assembly.

The Bureau expressed no particular views on your fourth suggestion. It realises, however, that the problem is a delicate one and that allowance should be made for the political difficulties which the I.L.O. may encounter in solving it.

Mr. Curtis, Acting Secretary-General, has been instructed to bring the Bureau's attitude on these points to the attention of the Ministers' Deputies, who will be meeting at Strasbourg from 23rd September next.

I remain, Sir,

Your obedient Servant,

Fernand DEHOUSSE

Monsieur Henri Heyman,
Chairman of the Social Committee of
the Consultative Assembly,
Apostelstraat 13,
Sint-Niklaas-Waas (Belgium)

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

COMMITTEE OF MINISTERS

Strasbourg, 15th November, 1957.

Confidential
CM (57) 155

EUROPEAN SOCIAL CHARTER CONVOCATION OF A EUROPEAN TRIPARTITE CONFERENCE

Memorandum by the Secretariat General

(previous document on the same subject: CM(57)115)

The Secretary-general, in accordance with the instructions given to him at the 52nd meeting of the Deputies, addressed a letter to the Director-General of the I.L.O. asking for additional information on the organisation of a Tripartite Conference. This letter and the I.L.O.'s reply of 5th November, 1957 are reproduced in Appendices 1 and 2 of the present memorandum. In the light of this exchange of letters and estimates received on the cost of holding a Tripartite Conference, it is now possible to give the following details which seem to cover also certain of the points raised by the Belgian Representative at the 52nd meeting of the Deputies (see Appendix 3):

1. The Governing Body of I.L.O. will not take any action in the matter before it has received a formal request from the Committee of Ministers. It has, however, already agreed in principle to give sympathetic consideration to such a request. The Governing Body is holding its next meeting in March 1958.

2. It would be the Committee of Ministers alone who requested the Governing Body to convene a Tripartite Conference as stated in paragraph 2 of Article 3 of the Agreement with the I.L.O. The Governing Body of the latter, when issuing the convocations, would mention in these that the Conference was held at the request of the Committee of Ministers. If the O.E.E.C. wished to join the Conference as a participating organisation, their wish should be mentioned in the Committee of Ministers' request after agreement with the Council of O.E.E.C.

3. Under the agreement it is the I.L.O. which organises the conference and the agenda is, in consequence, settled by the Governing Body. As it has been stated in document CM (57) 115, page 4, it is however certain that the Governing Body would include in the agenda any questions requested by the Council of Europe and/or the O.E.E.C. As for other items which the I.L.O. may wish to include there will be consultations among the participating organisations.

4. European organisations not participating in the organisation of the conference could be invited to attend as observers (see Appendix 2, paragraph 4).

5. Comparative estimates of the cost of holding a conference either in Geneva or Strasbourg have been elaborated by the I.L.O. The out-of-pocket expenses for a conference in Geneva would be \$9,300 and for Strasbourg \$19,000. If a conference were convened to meet in Geneva the I.L.O. would probably be prepared to defray all of the out-of-pocket expenses. In the event of a conference taking place in Strasbourg these expenses should be shared in equal proportions by the participating organisations (see paragraph 5 of Appendix 2).

6. As it appears from paragraph 6 of Appendix 2, the I.L.O. would be able to accommodate the conference also in the month of November 1958. Considering the progress made until now by the Social Committee in the drafting of the Social Charter and the forecasts for its submitting a final text, it seems today that November 1958 would be a more appropriate date for a conference than next Spring.

A P P E N D I X I

Letter from the Deputy Secretary-General
of the Council of Europe
to the Director General of the I.L.O.

Strasbourg, 31st October 1957

Sir,

By its Resolution (56) 25, the Committee of Ministers of the Council of Europe instructed its Social Committee to draft an European Social Charter taking into account the draft appended to the Recommendation 104 of the Consultative Assembly. The Social Committee was to complete the drafting of the Social Charter by 31st December, 1957.

As the I.L.O. has been represented by an observer at all deliberations of the Social Committee dealing with the European Social Charter you are of course fully informed about the progress made. The Social Committee has at the present stage adopted a number of technical articles. It has also held a general exchange of views concerning the parts of the Charter which will deal with the question of ratification and implementation. The Committee expects to be able to present a draft of the Social Charter by the end of the year.

The question has arisen as to what further steps should be taken for the establishment of the final text. An instrument like the Social Charter will directly interest and affect wide social groups (particularly workers and employers) as well as certain international organisations and particularly the I.L.O. It would therefore seem to be a suitable subject for discussion at a European regional conference of a tripartite character, to be convened in accordance with the provisions of Article 3, paragraph 2, of the Agreement between the Council of Europe and the I.L.O.

Mr. David A. MORSE
Director-General
International Labour Organisation
GENEVA

The possible convocation of such a conference was given preliminary consideration by the Ministers' Deputies at their recent meeting held in Strasbourg from 23rd September to 1st October. The Deputies had before them certain suggestions concerning its organisation. After an exchange of views of a general character they decided to re-examine the question at their next meeting which will be held in mid-November and they hope at that time to be able to decide whether a request should be sent from the Committee of Ministers to the Governing Body of I.L.O. in accordance with Article 3, paragraph 2, of the Agreement between the two Organisations.

They have instructed me to approach you in the meantime in order to obtain additional information on the following points:

(1) There is a general feeling that if a European Tripartite Conference were to be convened, the O.E.E.C. should be closely associated with it.

In that connection I would be grateful if you would inform me whether the agenda of the conference would be settled by agreement between the two, and eventually between the three, organisations concerned.

(2) Would the rules of procedure of such a conference permit the presence of observers of other international organisations, e.g. E.C.S.C. and W.E.U.?

(3) The International Organisations Division of I.L.O. has sent us, by letter of 25th September 1957 (ref. No. F 4-58-1(B)-8), comparative estimates of the cost of holding a conference either in Geneva or Strasbourg. The conclusions of these preliminary estimates are that out-of-pocket expenses for a conference in Geneva would be \$9,300 and for Strasbourg \$19,000. Would you be kind enough to let me know whether, in your view, these expenses would in either case be borne by the I.L.O. alone or whether they would be shared, and in what proportions, with the other participating organisation(s).

(4) At the Deputies' meeting some delegations were inclined to think that if a conference were to be held, the month of November 1958 would be the most suitable.

I would be grateful if you would inform me whether this would be possible having regard to the I.L.O. calendar.

I should be happy if I could inform the Deputies of your answers to these questions at their next meeting on 14th November.

I have the honour to be,

Sir,

Your obedient Servant,

Dunstan CURTIS
Deputy Secretary-General.

A P P E N D I X II

Letter from the Assistant Director-General of the I.L.O.
to the Deputy Secretary-General of the Council of Europe

INTERNATIONAL LABOUR OFFICE,
Geneva.

5th November, 1957

Ref. No.: IGO 04-1020

Sir,

Thank you for your letter of 31st October, 1957, concerning the information requested by the Ministers' Deputies regarding the possibility of convening a European tripartite conference - in accordance with Article 3, paragraph 2, of the Agreement between the I.L.O. and the Council of Europe - to consider the proposed European Social Charter.

2. I am instructed by the Director-General to advise you that he would regard the proposed European Social Charter as a very suitable subject for discussion by a tripartite conference of this kind, and in this connection the Director-General would like you to convey to the Ministers' Deputies the following information regarding the points raised at their last meeting.

3. The Director-General concurs with the suggestion that if the European tripartite conference were to be convened, the O.E.E.C. should be closely associated with it. As you are aware, the Director-General has had already some preliminary exploratory discussions with the Secretary-General of the O.E.E.C. regarding this question.

4. There would be no reason for excluding from the conference observers from other European organisations, such as the European Coal and Steel Community and the Western European Union, and from the European Economic Community and EURATOM if, at the time of the convocation of the conference, these two organisations have been fully constituted.

5. You have enquired whether the expenses of the conference would be borne by the I.L.O. alone or whether they would be shared, and in what proportions, with the other participating organisation(s). The Director-General has authorised me to say that in the event of the conference being convened to meet in Geneva he would be prepared to recommend to the Governing Body that the International Labour Organisation should defray all of the out-of-pocket expenses. In the event of the conference meeting outside Geneva he would consider that the out-of-pocket expenses should be shared in equal proportions by the participating organisations.

6. I note that the view has been expressed by certain of the Ministers' Deputies that, having regard to the progress made to date in the preparation of the European Social Charter, the most suitable time for holding the conference would be in November, 1958. The I.L.O. would be able to accommodate the conference in the course of that month.

7. As you are aware, the Governing Body has already agreed in principle to give sympathetic consideration to a request from the Committee of Ministers for the convocation by the I.L.O., in accordance with the Agreement between our two organisations, of a European tripartite conference composed of representatives from countries members both of the I.L.O. and of the Council of Europe, with a view to discussing the European Social Charter. The Director-General has since had further exploratory consultations with the Officers of the Governing Body in regard to this matter and would be prepared to put to the Governing Body his views as expressed above regarding the arrangements which should be made for this conference. You will readily realise, however, that action by the Governing Body on this matter will depend on a formal request from the Committee of Ministers.

I have the honour to be,
Sir,
Your obedient Servant:

(Signed) C.W. JENKS,
Assistant Director-General.

A P P E N D I X 3EUROPEAN SOCIAL CHARTER

Tripartite Conference

Comments made by the Representative of Belgium
at the 52nd meeting of the Ministers' Deputies

Belgium is in favour of the idea of holding a tripartite conference to which the draft European Social Charter would be submitted.

The Belgian delegation considers that the Agenda of the tripartite conference should be drawn up jointly by I.L.O., O.E.E.C. and the Council of Europe, before the conference is actually convened.

The question as to which organisations are to be invited to the conference will depend on the items included in the Agenda.

Observers from E.C.S.C., W.E.U. and the Common Market should be invited to the conference.

The duration of the conference will depend on the Agenda. The Director-General of I.L.O. would act as the General Secretary of the conference. The three organisations jointly would act as Secretariat.

The conference would be held preferably in Strasbourg. Another meeting place might be chosen if it proved cheaper than Strasbourg.