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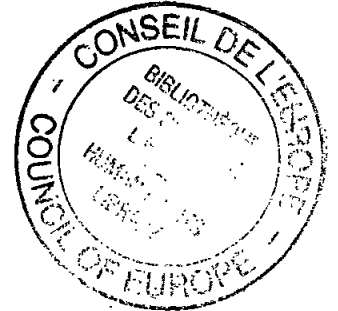
Bil.

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

Travaux préparatoires de l'article 63  
de la Convention européenne des Droits de l'Homme

Preparatory work on Article 63  
of the European Convention on Human Rights

(document d'information rédigé par le greffe)  
(information document prepared by the registry)



### Abréviations:

- T.P. = Recueil des travaux préparatoires (Nijhoff, La Haye, 1975, 1976 et 1977) (1)  
Rec. = Recueil des travaux préparatoires (Doc. H (61) 4)  
C.R. = Compte rendu des débats de l'Assemblée consultative  
Doc. Ass. = Documents de séance de l'Assemblée consultative  
Or. fr. Or. angl. = Texte original rédigé en français ou en anglais, selon le cas

### Abbreviations:

- TP = Collected edition of the "travaux préparatoires" (Nijhoff, The Hague, 1975, 1976 and 1977 (1))  
Coll. ed. = Collected edition of the "travaux préparatoires" (Doc. H (61) 4)  
Rep. = Reports of the debates of the Consultative Assembly  
Ass. Doc. = Working papers of the Consultative Assembly  
Or. Eng. Or. fr. = Document originally drafted in English or French, as the case may be.

- (1) Ce recueil (imprimé), dont il n'existe encore que les quatre premiers volumes, couvre une période s'achevant le 28 août 1950 (deuxième session de l'Assemblée consultative).
- (1) This edition (printed), of which as yet only four volumes have been published, covers a period ending on 28 August 1950 (second session of the Consultative Assembly).

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11-11

I. PRESENT TEXT

Article 63 of the European Convention on Human Rights is worded as follows:

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

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

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

4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organisations or groups of individuals in accordance with Article 25 of the present Convention."

II. UNIVERSAL DECLARATION OF HUMAN RIGHTS (1)

On 10 December 1948, the General Assembly of the United Nations Organisation proclaimed the Universal Declaration of Human Rights

"as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction".

Furthermore, according to Article 2 (2), paragraph 2, of the Declaration,

"no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty" (3).

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- ./.
- (1) Quoted here because the Council of Europe's Consultative Assembly was considerably influenced by the Declaration's provisions when drafting its Recommendation No. 38 of 8 September 1949 (see § IV-8 on p. 6 below).
  - (2) General non-discrimination clause. The first paragraph of Article 2 corresponds to Article 14 of the European Convention.
  - (3) This paragraph was added in accordance with a United Kingdom amendment under which was deleted a former Article 3 reading as follows: "The rights set forth in this Declaration apply equally to all inhabitants of Trust and Non-Self Governing Territories." When voting article by article took place, paragraph 2 of Article 2 was adopted by 36 votes to nil, with 8 abstentions (see United Nations Yearbook on Human Rights, 1948, p. 465).

III. DRAFT EUROPEAN CONVENTION ON HUMAN RIGHTS SUBMITTED BY THE EUROPEAN MOVEMENT TO THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE IN JULY 1949 (1)

Article 1

"Every State a party to this Convention shall guarantee to all persons within its territory (2) the following rights:..."

Article 2

"Every State a party to this Convention undertakes faithfully to respect the fundamental principles of political democracy, and, in particular, within its metropolitan territory (3):

- (a) To hold at reasonable intervals free elections by universal suffrage and secret ballot, so that governmental action and legislation may accord with the expressed will of the people.
- (b) To take no action which will interfere with the right of political criticism and the right to organize a political opposition."

(TP, I, pp; 296 and 298; or Doc. INF/5/E/R, pp. 6 and 7)

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- (1) Quoted here because the Consultative Assembly was considerably influenced by this draft when drawing up its Recommendation No. 38 (see e.g. TP, I, pp. 48 and 50, re Rep., 1949, II, p. 410).
  - (2) Unrevised draft: "within its metropolitan territory" (translation by the registry from the French Doc. INF/5/F - original English Doc. INF/5/E not available).
  - (3) Unrevised draft: the words "within its metropolitan territory" did not appear (in the French Doc. INF/5/F - original English Doc. INF/5/E not available).

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

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

"...

4) Does the Committee consider that Member States should also bind themselves to respect in all good faith the fundamental principles of democracy with special reference to homeland territory:

- a) to hold elections at reasonable intervals, with free universal suffrage and secret ballot, in order to ensure that Government action and legislation are in fact an expression of the will of the people?
- b) not to hinder by any means the right of criticism and the right to organise a political opposition?

..."

(TP, I, p. 160; or Doc. A 14 - or. Fr)

2. Legal Committee - Minutes of the sitting on 27 August 1949

"...

... a motion was submitted to the Committee:

'to ensure, by means of a collective guarantee, the effective enjoyment by persons within the territories of a member State of the principal human rights referred to in the Universal Declaration of Human Rights adopted by the United Nations.' (M. Teitgen)

The motion was agreed to by 19 votes to 0.

..."

(TP, p. 166; or Doc. A 107)

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(1) Hereinafter referred to as the "Legal Committee", according to its present title. At the close of the general debate on 19 August 1949, the Consultative Assembly referred the question of human rights to the Legal Committee (see TP, I, p. 154; or Rep., 1949, II, p. 468).

(2) Mr. Teitgen had been appointed rapporteur.

3. Legal Committee - Proposals presented by Mr. Teitgen, Rapporteur, on 29 August 1949

"I. The Convention and the procedure to be determined by the Committee later will guarantee to all persons residing within the metropolitan territory of a member State the fundamental rights and freedoms enumerated below:

...

II. The Convention will include an undertaking by Member States to respect the fundamental principles of democracy in all good faith, and, in particular, within their metropolitan territory:

A) to hold at reasonable intervals free elections, by universal suffrage and secret ballot so that governmental action and legislation may accord with the expressed will of the people.

B) to take no action which will interfere with the right of criticism or the right to organise a political opposition.

..."

(TP, I, pp; 166 and 168; or Doc. A 116 - or. Fr.)

4. Legal Committee - Minutes of the sitting on 29 August 1949

"...

Resolved that the draft proposals prepared by Mr. Teitgen of the list of freedoms and fundamental rights guaranteed to every person domiciled in the metropolitan territory of every Member State be considered (The Chairman).

..."

(TP, I, pp. 170 and 172; or Doc. A 142)

5. Legal Committee - Minutes of the sitting on 30 August 1949

"...

Resolved, that the draft proposals prepared by Mr. Teitgen of the list of freedoms and fundamental rights guaranteed to every person domiciled in the metropolitan territory of every Member State again be considered (The Chairman).

...

Paragraph 2

Motion made that

'The Convention shall include an undertaking by Member States to respect in all good faith the fundamental principles of democracy and, in particular, as far as their metropolitan territory is concerned:

- a) to hold elections at reasonable intervals on a basis of the universal free and secret franchise, in order to assure that governmental action and legislation is in accord with the expression of the popular will,
- b) not to hinder by any arbitrary measure, the right of criticism and the right to organise a political opposition.'

...

Moved that the original text be agreed to with an amendment in the French text (Mr. Pernot) (1).

The Committee divided Ayes 15, Noes 1, Abstention 1.

..."

(TP, I, pp. 174, 176 and 178; or Doc. A 167, pp. 2 and 3-4, - or. Fr.)

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

"...

Motion made to leave out 'Metropolitan' from paragraph 1 of Mr. Teitgen's draft proposals (Mr. Lannung). The Committee divided Ayes 13, Noes 4, Abstentions 2. Resolved to leave out 'domiciled' and insert 'resident' (Lord Layton) (2).

..."

(TP, I, p. 182; or Doc. A 199)

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

(i) Rights and freedoms to be guaranteed

"...

17. As regards the question of whether or not the rights set out in Article 2 of the draft Resolution should be guaranteed by each State, not only to all persons residing within its metropolitan territory but also to all persons residing within its overseas territories or in its colonial possessions, the majority of the Committee replied in the affirmative. Certain reservations were made on this point by some members of the Committee, who were not able to appreciate exactly the difficulties which this solution might raise...

..."

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(1) See the French text for the amendment proposed.

(2) For Mr. Teitgen's draft proposals, see § IV-3 above on the preceding page.

(ii) Draft Recommendation (1)Article 2

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

..."

Article 3

"The Convention shall include an undertaking by Member States to respect the fundamental principles of democracy in all good faith, and in particular, as regards their metropolitan territory

1) to hold at reasonable intervals free elections, by universal suffrage and secret ballot, so that governmental action and legislation may accord with the expressed will of the people;

2) to take no action which will interfere with the right of criticism and the right to organise a political opposition."

(TP, I, pp; 224, 228 and 230; or Ass. Doc., 1949, No. 77, pp. 201-202, 204 and 205 - or. Fr. See also the draft report, TP, I, pp. 202, 206 and 209; or Doc. A 290, pp. 7, 10 and 11)

8. Recommendation No. 38 of 8 September 1949

The problem of the territorial scope of Articles 2 and 3 of the Legal Committee's draft recommendation did not give rise to any particular discussion in the Consultative Assembly. The Assembly adopted in its Recommendation No. 38 the provisions quoted above in the preceding paragraph (§ IV-7 (ii)), with however certain stylistic modifications to the English translation of Article 3 not relevant to the question of territorial scope.

(TP, II, p. 276; Ass. Doc. 1949, No. 108, pp. 261 and 262)

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- (1) Draft report: although the original French text was identical, the English translation of the provisions quoted differed somewhat.

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

1. Report of the United Nations Commission on Human Rights on its 5th session (Lake Success, May-June 1949) (1)

Preliminary draft of the International Covenant on Human Rights

Article 25 of the draft, which was intended to lay down the territorial scope of the Covenant, was left blank. The Commission decided by 7 votes to 4, with 2 abstentions, to submit the following texts to governments:

"I. Texts contained in the report of the third session of the Commission (E/800)

(The Drafting Committee voted in favour of the first of the following texts.)

/A State party to the Covenant may at the same time of its accession thereto or at any time thereafter by notification addressed to the Secretary-General of the United Nations declare that this Covenant shall extend to any of the territories for the international relations of which it is responsible, and the Covenant shall extend to the territories named in the notification as from the thirtieth day after the date of receipt by the Secretary-General of the United Nations of the notification. The Contracting States undertake, with respect to those territories on behalf of which they do not accede to this Covenant at the time of their accession, to seek the consent at the earliest possible moment of the governments of such territories and to accede forthwith on behalf of and in respect of each such territory, if and when its consent has been obtained.7

Text proposed by the representative of the Union of Soviet Socialist Republics.

/The conditions of the present Covenant shall extend or be applicable both to the metropolitan territory which is signatory to the present Covenant, as well as to all the other territories (non-self-governing, trust, and colonial territories) which are being administered or governed by the metropolitan Power in question.7

II. Texts before the Commission at its fifth session

1. Text proposed by the representative of the United States of America

/Any State may, at the time of signature or the deposit of its instrument of ratification or accession or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that

(1) Quoted here because the Committee of Ministers of the Council of Europe when appointing a "Committee of Experts on Human Rights" (November 1949), expressly requested it to pay due attention "to the progress which (had) been achieved in this matter by the competent organs of the United Nations" (TP, II, p. 296; or Ass. Doc., 1949, No. 116, para. 6, pp. 288-289).

this Covenant shall extend to all or any of the territories for the international relations of which it is responsible. This Covenant shall extend to the territory or territories named in the notification from the date of receipt by the Secretary-General of the United Nations of this notification.

Each State party to this Covenant undertakes to take as soon as possible the necessary steps in order to extend the application of this Covenant to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.<sup>7</sup>

2. Text proposed by the representative of the Union of Soviet Socialist Republics

(If the Commission adopts in full the wording of Article 25 proposed by the Drafting Committee (E/800) or a similar wording, redraft the first line to read:

"A State party to this Covenant shall ..."

If the Commission adopts the text for Article 25 proposed by the representative of the Soviet Union (E/800), the above amendment will disappear.)

3. Text proposed by the representative of the Philippines

The provisions of the present Covenant shall extend or be applicable to a signatory metropolitan State as well as to all the territories, be they non-self-governing, trust, or colonial territories, which are being administered or governed by such metropolitan State.<sup>7</sup>

(Doc. E/1371, pp. 26-27)

2. Comments of the Government of the United Kingdom on the draft International Covenant on Human Rights (1)

"Articles 24 (2) and 25

a) His Majesty's Government will support the inclusion in the Covenant of Articles intended to make suitable provision for the particular constitutional circumstances of Federal States or of Metropolitan States with dependent overseas territories.

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- (1) These comments (received by the UN Secretary General on 4 January 1950) were transmitted for information to the Committee of Experts of the Council of Europe.
- (2) This Article (left blank like Article 25) was intended to govern the situation of States with a federal system.

b) In this connexion, His Majesty's Government has noted with interest the decision of the Social Commission at its fourth session (E/CN.5/SR.76, pp. 3-7 and E/1359, page 22) that it was not competent to decide questions of international law such as are raised by these two articles and to refer consideration of the article to a higher body. His Majesty's Government consider that the Social Commission has established a useful precedent by this decision and suggest that the Human Rights Commission follow the same procedure and to refer these two articles to the Economic and Social Council, which should in its turn refer them to the Sixth Committee of the General Assembly.

c) There is one further comment which His Majesty's Government in the United Kingdom feel obliged to make in this connexion. The constitutional circumstances which oblige them to press for the inclusion in many international agreements of a Colonial Application Article have been explained by United Kingdom delegates on many occasions in many different bodies of the United Nations. His Majesty's Government feel bound to point out that these constitutional considerations apply with all their force to the Covenant on Human Rights. If therefore the Covenant, as finally drawn up, has no such article, His Majesty's Government will have no option but to oppose it."

(TP, III, p. 166; or Doc. A 770, p. 8 [Council of Europe reference]; or Doc. E/CN 4/353/Add. 2 [UN reference] (1) - Or. Eng./

3. Amendment proposed by Mr. de la Vallée-Poussin (Belgium) (6 February 1950)

"Draft Convention of the Consultative Assembly (Doc. 108)

Article 6 (2)

The rules given above shall be applied within the overseas territories, in conformity with local needs and the standard of civilization of the native population, which may not yet have been able to reach the conditions necessary for the practice of democratic freedom."

(TP., III, p. 210; or Doc. A 803 - Or. Fr.)

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- (1) Concerns the French text only.
- (2) General clause of limitation (recognition and respect for the rights and freedoms of others - just requirements of public morality, order and security in a democratic society) (see TP, II, p. 278; or Ass. Doc., 1949, No. 108, p. 262).

4. "Model colonial application Article" (undated) (1)

"(a) Any State may at the time of signature, or ratification of, or accession to, the present Agreement or at any time thereafter, by notification given to ... declare that the present Agreement shall extend to any of the territories for the international relations of which it is responsible, and the Agreement shall from the date of the receipt of the notification, extend to the territories named therein (2).

(b) A State which has made a declaration under paragraph a) hereof extending the present Agreement may at any time thereafter by notification given to ... declare that the Agreement shall cease to extend to any territory named in the notification, and the Agreement shall, from the date of the receipt of the notification, cease to extend to such territory."

(TP, III, pp. 210 and 212; or Doc. A. 804 - Or. Eng.)

5. Draft text of the first section of a draft Convention based on the work of the Consultative Assembly (7 February 1950)Article 4

"The High Contracting Parties undertake further, as regards their metropolitan territory:

- (1) to hold free elections at reasonable intervals, by universal suffrage and secret ballot, under conditions calculated to ensure that the government and the legislature represent the people;
- (2) to take no action which shall interfere with the right of criticism and the right to organise a political opposition."

Article 8 § (d)

"The rules stated above shall be applied in overseas territories in the light of local exigencies."

(TP, III, p. 224; or Doc. A 809, pp. 5-6 and 8 - or. Fr.)

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- (1) The document does not indicate who is the author of this text.
  - (2) Cf. the American proposal cited above at §V-1 on pp. 7-8.

6. Preliminary draft Convention (15 February 1950)

Article 1

"The High Contracting Parties undertake to accord to any person within their jurisdiction the rights set out in Article 2 of this Convention, subject to the conditions given below." (1)

Article 3

"The High Contracting Parties furthermore undertake, as regards their metropolitan territory:

....provision similar to Article 4 quoted in preceding paragraph7."

Article 7 § d)

"In the overseas territories the provisions of this Convention shall be applicable with due regard, however, to local necessities."

Article 42

"This Convention shall only apply to territories of the High Contracting Parties possessing jurisdiction within the fields covered by the present Convention when the consent of the appropriate authorities of these territories has been obtained. The High Contracting Parties responsible for these territories shall, if necessary, take steps to obtain this consent."

(TP, III, pp. 236, 238 and 246; or Doc. A 833, pp. 2, 4, 5 and 13-14 - Or. Fr.)

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- (1) Henceforth Article 1 no longer contained an express reference to "the territory" of the Parties; Article 1 of the 'draft text' cited in the preceding paragraph had also contained the words "within their jurisdiction" (see Doc. Cour (77) 9, "travaux préparatoires" of Article 1).

7. Preliminary draft report of the Committee of Experts to the Committee of Ministers (24 February 1950)

(a) Commentary on Article 7

"Article 7 (new)

(1) This article is new, and consists of four provisions of a more special nature relating to the limitations to which the fundamental rights may be subject.

...

(5) Under paragraph (d) the signatory States are permitted to give due regard to special conditions which may exist in certain overseas territories. It is felt that the state of civilization of certain overseas territories does not permit the application of fundamental rights under the same conditions as for European territories. The States concerned have, however, to perform the task of bringing civilization to their overseas territories, a task of which the aim is precisely that of making the human rights applicable to these territories."

(b) Commentary on Article 42

"Article 42 (new)

This article contains the so-called Colonial clause. It was introduced in order to make provision for the autonomous powers enjoyed by certain overseas territories, in this matter."

(TP, III, pp. 266 and 276; or Doc. CM/WP 1 (50) 1, pp. 13, 14 and 22)

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

1. New text suggested for Sections II, III and IV (7 March 1950)

Article 42: identical to the text of Article 42 of the Experts' earlier preliminary draft Convention (§V-6 above on p. 11) (1)

(TP, III, p. 302; or Doc. CM/WP 1 (50) 4, p. 8 - Or. Fr.)

2. Preliminary draft Convention (9 March 1950)

(a) Article 3 of Alternative B (2): identical to the text of Article 3 of the Experts' earlier preliminary draft Convention (see §V-6 on p. 11 above).

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(1) Except that in the English version the final sentence of the new text's Article 42 constituted a new sub-paragraph.

(2) Alternative B was based on the system of a simple enumeration of the rights and freedoms set forth; Alternative A on that of a precise definition (see TP, III, pp. 252-258; or Doc. CM/WP 1 (50) 1, pp. 5-8).

(b) Article 7 § (d) of Alternative B (1)

"The provisions of this Convention shall be applied in the overseas territories (2) with due regard, however, to local requirements."

(c) Article 52/48: identical to the "new text" referred to in the preceding paragraph and to Article 42 of the Experts' earlier preliminary draft Convention (see § V-6 on p. 11 above).

(TP, III, pp. 322, 324 and 334; or Doc. CM/WP 1 (50) 14, pp. 9, 11 and 23)

3. Draft Convention (3)

Articles 3 and 7 § (d) of Alternatives A and A/2 (4), and Article 47/51: respectively identical to the Articles 3, 7 § (d) and 52/48 referred to in the preceding paragraph.

(TP, IV, pp. 54 and 76; or Doc. CM/WP 1 (50) 15, Appendix, pp. 2, 3 and 21)

4. Report of the Committee of Experts to the Committee of Ministers (dated 16 March 1950)(a) Commentary on Article 7 of Alternatives A and A/2 (5)"Article 7 (new)

1) This Article is new, and consists of four provisions of a more special nature relating to the limitations to which the fundamental rights may be subject.

...

5) Under paragraph (d) the signatory States are permitted to give due regard to special conditions which may exist in certain overseas territories. It is felt that the state of civilisation of these territories does not always permit the application of fundamental rights under the same conditions as for European territories, a task of which the aim is precisely that of making the human rights applicable to these territories."

(b) Commentary on Article 47/51"Article 47/51 (6)

This Article was introduced to make provision for the political autonomy accorded to certain overseas territories."

(TP, IV, pp. 26, 28, 30 and 46; or Doc. CM/WP 1 (50) 15, pp. 18, 19-20 and 34)

- ./.
- (1) Compare with Article 7 § (d) of the Experts' earlier preliminary draft Convention (§ V-6 on p. 11 above). Changes are underlined or indicated in footnote.
  - (2) Slight change in the word order.
  - (3) Appended to the report mentioned in the paragraph immediately following.
  - (4) Based on the system of a simple enumeration of the rights and freedoms.
  - (5) Compare with the commentary from the experts' preliminary draft report (§ V-7 (a) at p. 12 above). The changes have been underlined.
  - (6) Compare with the commentary from the experts' preliminary draft report (§ V-7 (b) at p. 12 above). The changes have not been indicated.

VII. CONFERENCE OF SENIOR OFFICIALS ON HUMAN RIGHTS (Strasbourg, 8-17 June 1950)1. Minutes of the afternoon sitting on 12 June 1950

"...

Mr. Muuls (Belgium) referred to Article 7 § (d) in alternative A and asked that it should also be included in alternative B.

Mr. Chaumont (France) said that this was not the traditional colonial clause, which was rather to be found in Article 47/51.

..." (1)

(TP, IV, p. 172; or unreferenced document)

2. Proposal submitted by the United Kingdom delegation (13 June 1950)"Draft Colonial Application Clause

1. Any State may at the time of accession or at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the present Convention shall extend to all or any of the territories for which it has international responsibility.

2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe." (2)

(TP, IV, pp. 180 and 182; or Doc. CM/WP 4 (50) 8 - or. Engl.)

3. Proposal submitted by the Swedish delegation (15 June 1950)

In a proposal dealing with Sections IV and V of the draft Convention, the Swedish delegation simply referred back to Article 47/51 of the draft prepared by the Committee of Experts (see § VI-3 on p. 13 above).

(TP, IV, p. 192; or Doc. CM/WP 4 (50) 10, p. 3 - or. Fr.)

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- (1) The proceedings of this conference were, with very few exceptions, recorded only in French. The English translation quoted here was prepared for the purposes of the printed edition of the travaux préparatoires.
- (2) Compare with the first sentence of the text retained by the Drafting Committee working on the draft International Covenant at the third session of the United Nations Commission on Human Rights (see § V -1 at p. 7 above).

4. First draft Convention of the Conference of Senior Officials  
(15 June 1950)

This draft offered two alternatives of the "colonial clause":

Article 60A: identical to the proposal submitted by the United Kingdom delegation (quoted above at § VII-2 on p. 14 ).

Article 60B

"1. The provisions of this Convention shall be applied in the overseas territories with due regard, however, to local requirements (1).

2. This Convention shall only apply to territories of the High Contracting Parties possessing jurisdiction within the fields covered by the present Convention when the consent of the appropriate authorities of these territories has been obtained (2).

3. The High Contracting Parties responsible for these territories shall, if necessary, take steps to obtain this consent (3)."

(TP, IV, p. 238; or Doc. CM/WP 4 (50) 16, Appendix, pp. 18-19)

5. Second draft Convention of the Conference of Senior Officials  
(19 June 1950) (4):

Articles 59A and 59B (alternatives): respectively identical to Articles 60A and 60B of the first draft referred to in the preceding paragraph, except that in the English the closing words of Article 59A § 1 read "the territories for whose international relations it is responsible" instead of "the territories for which it has international responsibility".

(TP, IV, pp. 292 and 294; or Doc. CM/WP 4 (50) 19, Appendix, pp. 18-19)

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- (1) Identical to Article 7 § (d) of Alternatives A and A/2 in the draft Convention adopted by the Committee of Experts (see § VI-3 on p. 13above).
- (2) Identical to the first sentence of Article 47/51 of the draft Convention adopted by the Committee of Experts (see § VI-3 on p. 13 above).
- (3) Identical to the second sentence of Article 47/51 of the draft Convention adopted by the Committee of Experts (see § VI-3 on p.13above).
- (4) Appended to the report mentioned in the paragraph immediately following.

6. Report of the Conference of Senior Officials to the Committee of Ministers  
(19 June 1950)

"COMMENTARY ON THE SINGLE TEXT OF THE CONVENTION PROPOSED BY THE CONFERENCE"

...

Articles 59 (A) and (B)

Article 59 (A) contains the so-called colonial clause proposed by the United Kingdom delegate, whilst Article 59 (B) is a reproduction of the colonial clause proposed by the Committee of Experts.

The United Kingdom delegate declared that for constitutional reasons his Government could not accept Alternative B.

Against this, the Italian delegate insisted that Alternative B be accepted. In particular, he pointed out that, with regard to any Convention for the protection of Human Rights, the benefits of this Convention should extend as far as possible to all the inhabitants of overseas territories; this was the aim of Alternative B.

The United Kingdom delegate considered that this was also the aim of Alternative A.

Confronted by these differences of opinion, and seeing that the majority of delegates had not received any instructions on this point, the Conference took no decision on the question.

However, while reserving the position of their Governments, the Danish and Swedish delegates stated that they were in principle in favour of Alternative A for the reason that, if for constitutional reasons the United Kingdom was opposed to Alternative B, there would be no hope of obtaining the United Kingdom's adherence to the Convention if Alternative B was insisted upon.

The Netherlands delegate stated that he was not opposed to paragraphs 1 and 2 of Alternative B, but that he could not accept paragraph 3.

The Belgian and French delegates stated that in principle they were in favour of Alternative B, but expressly reserved the position of their Governments.

The Norwegian delegate stated that he could accept either Alternative, but reserved the position of his Government."

(TP, IV, p. 270; or Doc. CM/WP 4 (50) 19, p. 22).

7. Comments by the United Kingdom delegation on the report of the Conference of Senior Officials and the text of the draft Convention (document undated)

"Sixth paragraph of the comment on Article 59

This paragraph correctly states the attitude of the Swedish delegate, but the Danish delegate objected to alternative B on a number of grounds, including the ground that paragraph (1) of Alternative B was far too vague and would leave other High Contracting Parties in doubt how far the Convention had in fact been applied in overseas territories." (1)

(Doc. A 1690, p. 2 - or. Eng.) (2)

VIII. MEETING OF THE LEGAL COMMITTEE OF THE CONSULTATIVE ASSEMBLY (Strasbourg, 23-24 June 1950) (3)

1. Minutes of the afternoon meeting on 24 June 1950

"...

- i) Continuation of the general discussion on the reports by the Committee of Legal Experts and by the Conference of Senior Government Officials

... /various members/ spoke ... on the questions raised by Mr. LANNUNG (4), namely

- ...

- the importance of modifying the passage in the Convention relating to the colonial clause (Articles 59 A and 59 B).

The Committee indicated its preference for Article 59 B subject to certain changes in the wording, and decided to make a note thereof in the draft letter addressed to the Chairman of the Committee of Ministers.

...

- (iii) Draft letter from the Chairman of the Committee of Legal and Administrative Questions to the Chairman of the Committee of Ministers

...

The Committee adopted unanimously the draft letter (attached) in which were embodied the various amendments drawn up by Mr. ROLIN (5) which take into account the comments made by various members of the Committee during discussions.

...."

(Coll. ed., III, pp. 696, 697 and 698; or Doc. AS/JA (50) PV 3, pp. 2 & 4)

- (1) Concerns only the French text.  
 (2) This document appears neither in the original, confidential edition of the travaux préparatoires (i.e. Coll.ed.) nor in the four volumes so far published in the printed edition (i.e. TP).  
 (3) At its fourth session (Paris, 3 June 1950), the Committee of Ministers had agreed that the Assembly's Legal Committee should examine the report and draft Convention of the Conference of Senior Officials (see TP, IV, pp. 96 and 98; or Doc. Committee of Ministers, 4th session, pp. 8, 34 and 44).  
 (4) Danish.

2. Draft letter to the Chairman of the Committee of Ministers - Addition proposed by Mr. Rolin (24 June 1950)

"SECTION VI (Articles 59 A/59 B)

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

(Coll. ed., III, p. 701; or Doc. AS/JA (50) 6 - or. Fr.)

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

This letter contained a passage identical to Mr. Rolin's proposed addition quoted in the preceding paragraph.

(Coll. ed., III, p. 706; or Doc. CM (50) 29, p. 5; cf. also Doc. AS (2) 6, pp. 533-534)

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

1. Official report of the meeting held on 3 August 1950

"Mr. SCHUMAN (France) .... pointed out, however, that the draft before the Committee included certain alternatives (for example in Article 59) on which the Ministers should take a decision. ....

...

... it was agreed that ... a Committee of Governmental Experts would meet at 2.30 p.m. the following day in order to revise the text, having regard to the proposals received and the documentation already available.

..."

(Coll. ed., III, pp. 717 and 718; or Doc. Committee of Ministers, 5th session, pp. 26 and 28)

2. Meeting of the Sub-Committee on Human Rights (4 August 1950)(a) Amendments proposed by the Irish delegation

"...

IV. The Irish Government also considers that full consideration should be given to the views and suggestions contained in the letter from Mr. David Maxwell-Fyfe which was addressed to the Committee of Ministers on behalf of the Legal and Administrative Committee of the Assembly (1). For its part the Irish Government in the main endorses these views and suggestions."

(b) Amendments proposed by the Belgian delegation - revised text

"...

## 2. Article 59 to be worded as follows:

'1. This Convention shall extend to any or all of the territories for whose international relations a High Contracting Party is responsible if, at the time of its accession or subsequently, the High Contracting Party declares by a notification addressed to the Secretary-General of the Council of Europe that the Convention shall extend to the said territory or territories.

2. The Convention shall extend to the territory or territories specified in the notification as from the thirtieth day after the date of receipt of the notification by the Secretary-General of the Council of Europe (2).

3. The provisions of the Convention shall be applied in the territories mentioned in the first paragraph of this article with due regard to local requirements (3)."

(Coll. ed., III, p. 722; or Doc. CM 1 (50) 3 rev. - or. Fr.)

(c) Amendments proposed by the Netherlands delegation

"...

5. Article 59 A contains the usual colonial clause which as such is acceptable. It would seem that Article 59 B, apart from constitutional difficulties, would raise problems of interpretation."

(Coll. ed., III, p. 724; or Doc. CM 1 (50) 5, p. 2)

- 
- (1) See § VIII-3 on p.18 above.
- (2) Cf. paragraph 2 of the British proposal (quoted above at § VII-2 on p. 14) and of Article 59 A of the Senior Officials' second draft (§VII-5 on p. 15 above).
- (3) The original text of the amendment read: "... be applied in the overseas territories with due regard ..." (Coll. ed., III, p. 722; or Doc. CM 1 (50) 3 - or. Fr.). Cf. paragraph 1 of Article 59 B of the Senior Officials' second draft (§VII-5 on p. 15 above).

(d) Amendments proposed by the United Kingdom delegation

"...

Article 59

H.M. Government could not accept Article 59 B of this Article as given on page 18 of the text of the draft Convention circulated as the Appendix to the Report of the Conference of Officials (CM/WP 4 (50) 19 Annex).

..." (1)

(Coll. ed., III, p. 727; or Doc. CM 1 (50) 6, p. 3 - or. Eng.).

3. Draft Convention adopted by the Sub-Committee on Human Rights (dated 7 August 1950)

Article 62 (intended "colonial clause"): left blank.

(Coll. ed., III, p. 751; or Doc. CM (50) 52, p. 19)

4. Report to the Committee of Ministers by the Sub-Committee on Human Rights - final version (dated 6 August 1950)

"Provisions of the Draft Convention on Protection of Human Rights and Fundamental Freedoms about which the Ministers' advisers have not been able to reach agreement.

...

- (1) The British delegation also proposed, in the event that the Convention included a denunciation clause, to add a further paragraph to Article 59 as follows:

"A State which has made a declaration under paragraph 1 above may at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the Convention shall cease to extend to any territory named in the notification. The Convention shall cease to extend to such territory as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe."

(Coll. ed., III, p. 727; or Doc. CM 1 (50) 6, p. 4 - or. Eng.) (Cf. Article 65 § 4 of the present Convention.)

## III. COLONIAL CLAUSE (Article 62)

No agreement having been reached by the Sub-Committee of Advisers on this problem, the three following alternatives are submitted to the Committee of Ministers.

Article 62 A (1)

- '(1) Any State may at the time of its ratification or (2) accession or at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.
- (2) The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe.
- (3) Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of those territories to which the Convention extends that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organisations or groups of individuals, in accordance with Article 25 of the present Convention (3) (4).'

Article 62 B (5)

- '(1) The provisions of this Convention shall be applied in the overseas territories with due regard, however, to local requirements.
- (2) This Convention shall only apply to territories of the High Contracting Parties possessing jurisdiction within the fields covered by the present Convention when the consent of the appropriate authorities of these territories has been obtained.
- (3) The High Contracting Parties responsible for these territories shall, if necessary, take steps to obtain this consent.'

./.

- (1) Compare with Article 59 A of the Senior Officials' second draft (see § VII-5 on p. 15 above) and the British proposal (quoted above as § VII-2 on p. 14). The changes made are underlined or indicated in footnote.
- (2) First version of the report: this change did not occur (see Coll. ed., III, p. 756; or Doc. CM 1 (50) 11).
- (3) This paragraph is entirely new (cf. the present § 4 of Article 63).
- (4) First version of the report: the words "in accordance with Article 25 of the present Convention" did not appear (see Coll. ed., III, p. 756; or Doc. CM 1 (50) 11).
- (5) Identical to Article 59 B of the Senior Officials' second draft (§ VII-5 on p. 15 above).

Article 62C (1)

- '(1) The present Convention shall extend to all or any of the territories for the international relations of which a High Contracting Party is responsible if the High Contracting Party concerned, at the time of its ratification or (2) accession or at any time thereafter (3), declares by a notification addressed to the Secretary-General of the Council of Europe that the Convention shall extend to such territory or territories.
- (2) The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the (4) receipt of this notification by the Secretary-General of the Council of Europe.
- (3) In the territories mentioned in paragraph (1) of the present Article the provisions of the Convention shall be applied with due regard, however, to local requirements (5).'

If alternative 62A is accepted the UK Delegation proposes the addition to Article 64 (6) of a 4th paragraph as follows:

- '(4) The Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 62 (7).'"

(Coll. ed., III, pp. 758 and 760-761; or Doc. CM (50) 53, pp. 1 and 3-4)

5. Meeting held on 7 August 1950(a) Minutes of the meeting3. Colonial Clause

Mr. DAVIES (United Kingdom) proposed the adoption of the first alternative text submitted to the Committee with the addition of the first paragraph of the second alternative text. This was adopted unanimously.

..."

(Coll. ed., III, p. 767; or Doc. Committee of Ministers, 5th session, p.16)

- (1) Compare with the Belgian proposal quoted above at § IX-2 (b) on p. 19. The alterations made are underlined or indicated in footnote. Comparison with the French text opposite will show that certain alterations are merely questions of translation.
- (2) First version of the report: the words "its ratification or" did not appear (see Coll. ed., III, p. 756; or Doc. CM 1 (50) 11).
- (3) Belgian proposal: the corresponding phrase came after the word "if".
- (4) Belgian proposal: contained the words "date of".
- (5) Belgian proposal: word order slightly different.
- (6) This Article corresponded to the present Article 65 (denunciation clause).
- (7) Cf. the present § 4 of Article 65 and footnote (1) above on p. 20.

(b) Official report of the meeting

"...

Article 62 - Colonial Clause

The CHAIRMAN (1) stated that three texts were before the Committee representing three different points of view expressed by the Ministers' Advisers which they were unable to reconcile.

Mr. DAVIES (United Kingdom) stated that his Government had strong reasons for preferring the first of these three alternatives for constitutional reasons. They were not constitutionally able to accept international commitments on behalf of many of the British Colonies without first consulting and obtaining the agreement of the Colonial Governments. Therefore, they preferred a text which would permit the United Kingdom to ratify the agreement at once and to deposit subsequent ratifications on behalf of the Colonies when their agreement had been obtained. If the text of the Convention made its provisions apply automatically to the Colonies, then the United Kingdom could not ratify until it had consulted all the Colonial Governments which would be affected, and, if any of them rejected the Convention, the United Kingdom would be prevented from ratifying at all. However, he was prepared to agree to the inclusion of the first paragraph of the second alternative in addition to the text of the first alternative, since he understood that this would be more acceptable to some of his colleagues.

Mr. van ZEELAND (Belgium) was prepared to accept the British proposal in a spirit of compromise. ....

M. STIKKER (Netherlands) stated that his Government had similar problems to those of the British Government and that he therefore supported the British proposal.

The Committee adopted unanimously the following text:

'Article 62

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

./.

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(1) Mr. Sean MacBride (Ireland).

2. The Convention shall extend to the territory or territories named in the notification as from the thirtiety day after the receipt of this notification by the Secretary-General of the Council of Europe.
3. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of those territories to which the Convention extends that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organisations or groups of individuals, in accordance with Article 25 of the present Convention.
4. The provisions of this Convention shall be applied in the overseas territories with due regard, however, to local requirements." (1)

(Coll. ed., III, pp. 772-773; or Doc. Committee of Ministers, 5th session, pp. 68 and 70)

6. Draft Convention adopted by the Committee of Ministers and submitted by it to the Consultative Assembly (7 August 1950)

Article 63: identical to the text reproduced at the close of the preceding paragraph, except that the order of paragraphs 3 and 4 was inverted.

(Coll. ed., III, pp. 788 and 798; or Doc. A 1937 and Ass. Doc., 1950, II, No. 11, p. 617)

./.

- (1) The first three paragraphs reproduce exactly the terms of Article 62 A in the Sub-Committee's report, the fourth paragraph the terms of the first paragraph of Article 62 B (see § IX-4 on p. 21 above).

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

1. Plenary sitting on 14 August 1950

(a) Mr. Lannung (Denmark):

"...

I should like now to say a few words in connection with the colonial clause, Article 63. Contrary to the wishes of our Committee, that clause has been recast in a considerably less liberal form than we asked for in Committee, and a still less liberal form than the proposal of the Assembly. I should, for many reasons, much prefer a more liberal draft. I do not know as much about colonial questions as many other Representatives here, but through work, for instance, in the Colonial Committee of the United Nations, the Fourth Main Committee, and the Special Committee on Transmission of Information from non-self-governing territories, as the Representative from my country from the very beginning, I know enough of colonial questions to realise that we are here treading on very delicate ground.

The application of a colonial clause in the year 1950 presents, among other things, invaluable opportunities for Communist propaganda. Such a clause which aims at excluding colonial territories from the protection of Human Rights will inevitably provide a weapon which can be used with considerable success against the Council of Europe and the Western Democracies, first and foremost in their overseas territories, but also in all ex-colonial territories in Asia, Africa and South America.

We know that from the United Nations. That weapon will be used with all the greater success the less liberal the clause the less liberally it is applied.

Therefore, it is important primarily to avoid colonial Clauses and, secondly, to have them as liberal as possible and to make every effort not to restrict the application of the provisions of the Convention except in cases of emergency. Otherwise, we shall simply be supplying material - and very useful material - for Communist propaganda, and that is far from being our task.

..."

(Coll. Ed., IV, p. 835; or Rep., 1950, II, p. 336)

(b) Mr. Persico (Italy)(translation):

"...

My second comment relates to Mr. Lannung's remarks on colonial questions.

Article 63 is of a permissive nature, since the Convention enables any State to declare that this Convention shall extend to all or any of the territories for whose international relations it is responsible.

It seems to me that this Article should be mandatory rather than permissive.

I therefore propose that the words : 'any State may' should be replaced by : 'all States shall'.

In this respect I would like to point out that Italy has already had occasion to implement this principle.

In the text of the Trusteeship Agreement on Somaliland, approved by the United Nations, there is an Article 9, the provisions of which are somewhat as follows :

'The authority responsible for the administration shall guarantee to all the inhabitants of the territory full civil rights, as well as such political rights as are compatible with the social, economic and cultural progress of the inhabitants, and development towards a representative democratic regime such as may take due account of traditional institutions. The following specially should be guaranteed :

- 1) The maintenance of their personal status and rights of inheritance, due account being taken of development in that sphere;
- 2) The sanctity of individual liberty ... etc.'

Article 10, incidentally, contains a really remarkable provision to the effect that :

'The authority responsible for the administration shall consider the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10th December 1948, as the ideal towards which to aspire in the territory.'

As you can see, we have already agreed to extend all the rights specified in the Universal Declaration of Human Rights to the natives of Somaliland, which means that these are more favoured than the Italians themselves since there is no such clause yet laid down in our Constitution.

..."

(Coll. Ed., IV, p. 841; or Rep, 1950, II, p. 348)

2. Plenary sitting on 16 August 1950

Mr. Silvanre (France)(translation):

"Mr. President, our eminent colleagues, M. Lannung and Persico, in the course of their speeches, for which I may perhaps be allowed to congratulate them, rightly criticized the provision set forth in Article 63 of the Draft Convention for the Protection of Human Rights and Fundamental Freedoms.

As they pointed out, the text submitted to us provides for a simple option on the part of signatory States of declaring that the Convention shall apply to all their territories for which they are internationally responsible. This results in the possible exclusion of overseas countries from the protecting Convention.

It is all the more easy for us to take exception to such provisions because the Constitution of the French Republic grants the same rights and freedoms to all citizens of the French Union, and places them upon an entirely equal footing; but to consider the matter from the higher level of general principles, we desire to point out to the Assembly how strangely out of place such a provision appears in a Convention of this kind.

M. Persico pointed out that the Declaration of Human Rights drawn up by the United Nations Organization contained no such restrictive clause and held up the ideal, on the contrary, of a Universal Declaration of Human Rights. M. Lannung, on the other hand, has pointed out the serious danger of such a provision, and the ammunition it would provide for those who desired to indulge in a certain type of propaganda in our territories overseas. The Assembly must also consider the position in which it would be placing our French Representatives by inserting in a draft Convention a clause repugnant to our Constitution.

For our part, we cannot accept that the European ideal of Human Rights should not be a universal one. Any such discrepancy appears to us contrary to that very European ideal and to the traditions of European humanism. The Declaration of Rights of 1789 had such a resounding effect in the world, because, I believe, of its universal character, and because, at a time when slavery still prevailed, it succeeded in enunciating principles that are immortal.

We therefore believe that those who have set themselves the task of building Europe must proclaim similar principles, and, as our colleague M. Edouard Bonnefous said the other day : 'In order to build Europe, we must defend a certain conception of humanity.'

(Coll. Ed., IV, p. 851; or Rep., 1950, II, p. 500)

3. Legal Committee (1) - Sittings held from 17 - 23 August 1950

- a) Amendment proposed by Mr. Persico (Italy) (document dated 16 August 1950)

"Article 63

Paragraph 1, line 1, leave out 'may' and insert 'must'."

(Coll. Ed., IV, p. 873; or Doc. AS/JA (2) 5)

- b) Amendment proposed by Mr. Rolin (Belgium)  
(23 August 1950)

"a) Delete paragraph 4 of Article 63; and

- b) Add a paragraph 3 to Article 64 (2) with the following wording:

'Any State may also, at the time of its signature of this Convention or the deposit of its instrument of ratification or accession, make a declaration, in accordance with the procedure laid down under Article 25 of this Convention, restricting for all or any of the territories to which the Convention is applied the competence of the Commission to take cognizance of the petitions of persons, non-governmental organisations, or groups of individuals.'" (3)

(Coll. Ed., IV, p. 892; or Doc. AS/JA (2) 19 - or. Fr.)

- c) Minutes of the sitting on 23 August 1950

" ...

Amendment to Article 63 of the Draft Convention proposed by Mr. Persico

Mr. Persico withdrew his amendment.

...

Amendments to Articles 63 and 64 of the Draft Convention proposed by M. Rolin

The Committee deliberated.

- 
- (1) At the close of the debate on the morning of 16 August 1950, the Consultative Assembly referred the Committee of Ministers' draft Convention to the Legal Committee for consideration and report (Coll. Ed., IV, p. 871 bis; or Rep., 1950, II, p. 542).
- (2) Reservations clause.
- (3) This proposal was intended to harmonise paragraph 4 of Article 63 with the new system contemplated by the Committee as regards recognition of the right of individual petition (see Coll. Ed., IV, pp. 904-905 and 908-909; or Ass. Doc., 1950, III, no. 93, pp. 982-3 and 986; cf. also Coll. Ed., IV, p. 957; or Ass. Doc., 1950, III, No. 104, p. 1037),

The Committee approved the amendments unanimously.

... "

(Coll. Ed., IV, pp. 891 and 892; or Doc. AS/JA (2) PV 7 - or. Eng.)

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

a) Text of the report

" ...

EXPLANATORY MEMORANDUM

10. Consequential amendments to Articles 63 and 64

As a result of the modification made to Article 25, it is necessary to amend Articles 63 and 64 as shown in the Recommendation (1).

DRAFT RECOMMENDATION

...

Paragraph VI

(identical to the text quoted in sub-paragraph b) of the preceding paragraph.)"

(Coll. Ed., IV, pp. 905 and 909; or Ass. Doc., 1950, III, no. 93, pp. 984 and 987)

b) Amendment proposed by Mr. Senghor (France)

"Paragraph VI: Leave out Article 63."

(Coll. Ed., IV, p. 909; or Ass. Doc., 1950, III, no. 93, amendment no. 1, p. 988)

5. Plenary sitting on 25 August 1950

a) Mr. Mitchison (United Kingdom):

" ...

... I knew that the draft (2) in its limited form would have been adhered to by my Government and would have been applied to the colonies of my country, so far as that could be done by my Government. Of course, in many cases there are questions of independent decision by the Colonies which would have made their assent essential.

..."

(Coll. Ed., IV, p. 919; or Rep., 1950, III, p. 898)

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(1) Concerns only the French text.

(2) That is, the draft Convention adopted by the Committee of Ministers.

b) Mr. Rolin (Belgium)(translation):

" ...

... We have not declared, in a completely general way, urbi et orbi, that free elections should be held : we have made it clear that this provision (1) was valid for the home countries only, while maintaining that the principle of political freedom should in our opinion have universal application. Thus, even in countries under the control of our several States, where the degree of civilisation does not reasonably permit the holding of elections with free and universal suffrage, secret ballot, etc., it is essential that, in the administration of law and order, we should accord satisfaction to this need, to this natural right of man not to be commanded by a power which he feels to be arbitrary and imposed upon him solely by force.

...

(B) Finally, we find ourselves faced with a difficulty this afternoon which will no doubt again be brought up before us, that which results from the extension of the Declaration to the populations of non-European countries which find themselves under the control of European Governments.

The Committee of Ministers, taking an initiative in a way which might, I think, be open to question, thought it right to substitute for the right to make reservations, which we had introduced in the previous draft, the necessity for individual declarations on behalf of the different States, so that the applicability of the Convention might be extended to non-metropolitan territories under the control of the High Contracting Parties.

I appreciate very clearly how distressing, and even at first sight shocking, this method of de jure discrimination will be for some of our colleagues. That is why I think I may express the wish, in the name of several colleagues, that the Governments may use in the most liberal fashion the option-extending clause laid down under Article 63.

Let us hope that, inspired by the declarations of the trusteeship agreements which several of them have already signed, they will recognise the necessity for distinguishing between civil rights whose enjoyment ought to be capable of recognition without any distinction for the benefit of the totality of the individuals within the jurisdiction of our States, and the political rights in question. These would have to be, no doubt, the object of widely differing conditions of application, according to the degree of evolution of the different territories, from the installation or the maintenance in power, of certain traditional tribal chiefs, to the possibility of establishing a type of

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(1) Mr. Rolin was arguing in favour of the re-insertion in the Committee of Ministers' draft of an Article on political freedom (cf. the present Article 3 of Protocol No. 1 and Coll. Ed., IV, pp. 904 and 908, or Ass. Doc., 1950, III, no. 93, pp. 982 and 986; cf. also Article 3 quoted above at § V - 6 on p. 11).

universal suffrage similar to that with which we are familiar at home, passing through the stage of the reservation of the right to vote for those elements of the population that have already attained a certain degree of civilisation.

... "

(Coll. Ed., IV, pp. 925-926; or Rep., 1950, III, pp. 910 and 912)

c) The President (1)(translation):

"The next Amendment relates to Article 63. The Committee proposes to delete paragraph 4 of this Article and to replace it by a new paragraph in Article 64. M. Senghor, however, has tabled a more radical Amendment, which proposes the elimination of Article 63 altogether. I think that we should begin with the discussion on M. Senghor's Amendment.

I call M. Senghor."

(Coll. Ed., IV, p. 938; or Rep., 1950, III, p. 938)

d) Mr. Senghor (France)(translation):

"Mr. President, if I have tabled an Amendment for the deletion of Article 63, it is for the same reasons as those put forward here by several speakers, for example MM. Lannung, Persico and Sylvandre.

Article 63 enables Member States to discriminate between territories under their jurisdiction, or, more precisely, to exclude one or several of their territories from the Convention for the Protection of Human Rights and Fundamental Freedoms.

I should like first of all to point out that this Article 63 runs counter to the general principles of the Declaration of Human Rights and particularly to Article 14 which condemns all discrimination, as also to Article 1 which states that 'the High Contracting Parties shall secure to each person within their jurisdiction the rights and freedoms defined in Section 1 of this Convention'(2).

In effect, Article 63 appears to be a rather clumsy way of excluding overseas territories from the Convention. It therefore appears to me to be an echo of the Colonial Pact. That is the legal reason for my Amendment.

The moral reason which inspires me is more important. In adopting Article 63 the Assembly would transform the European Declaration of Human Rights into the Declaration of European Human Rights. This would be to deny the same rights to other men. This would mean betraying the spirit of European Civilisation which - as Valéry has written - made man 'the measure of all things'.

./.

(1) Mr. Spaak (Belgium).

(2) Concerns only the French text.

Let the Assembly beware! The United Nations Declaration contains no restrictive clause. Our Article 14 simply reproduces its Article 2, but at the end of Article 2 of the United Nations Declaration occur the lines which the experts of our Committee of Ministers set aside: 'Furthermore, no distinction shall be made on the basis on the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.'(1)

Now, that is quite clear and explicit. And, if my memory is correct, there is no such discrimination either contained in the Declaration of American States signed at Bogota. But I can hear the experts, speaking in the name of realism, prophesying all sorts of catastrophes if we delete this Article 63. A century and a half ago, in 1789, there were also experts in France. They prophesied that to extend Human Rights to slaves would mean giving the Colonies the signal for revolt. They, the realists of those times, were mistaken, and it was the dictator - Napoleon - who caused France to lose Haiti, the finest of its colonies, in trying to re-establish slavery.

I have also, Mr. President, practical reasons for my Amendment. In what way would you have us - who believe in Europe and in Eurafrika - henceforth oppose Communist propaganda at home? Article 63 will certainly be useless. It must be recognised that, in spite of its complete scorn of freedom, the strength of communism is to be found in its defence of equality and its continual condemnation of racial discrimination.

Today, Africa cleaves more to the ideal of equality than to that of independence. As Count Keyserling once said, it is the Continent where sensitiveness and honour are paramount.

There, Article 63 would be regarded as an affront to the dignity of the overseas peoples.

Europe has allowed Eurasia's hour of destiny to pass. That is why, to-day, for reasons which I am aware are not always valid Asia is intent on differentiating itself from Europe when it does not actually oppose her with armed force. Will our Assembly fail to grasp the opportunity of achieving Eurafrika? Will it wait until there is a repetition in Africa of the events in Korea and of the events in Malaya or Indo-China?

Among the letters which I have received recently from numerous European federalists, the one which moved me most came from one of my former instructors at the Sorbonne. M. Jean Bayet - the man in question - has recommended to me a nephew of his, a young teacher who is leaving for the University Institute of Dakar for geographical and cultural research in darkest Africa. At the same time my old instructor begged me to champion here the ideals

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(1) See § II above on p. 1.

which we hold in common. And what I mean by these ideals is the conception of man that he taught me in days gone by; they also include that humanity from overseas which he learnt from his foreign students. If I had not received that letter I might not perhaps have spoken. But I did not wish to forget what I learnt from my former master at the Sorbonne, for to-day, in voting for Article 63, I should be false to his teaching and I should be betraying not only Africa but Europe as well. That is why, on behalf of Europe itself, and on behalf of the European ideal, I ask you to reject this Article 63. As for myself, if it were to be adopted I could not vote for this Declaration."

(Coll. Ed., IV, pp. 938-939; or Rep, 1950, III, pp. 938 and 940)

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

"I am sure that after the eloquent speech we have heard from M. Senghor, he need not be afraid that we shall not give full consideration to the points he has made. However, as is my duty, I want to put the views of the Committee, which I myself share. We want this draft Convention to be put into operation by all the States represented in this Assembly and every Article to be made a working Article and put into effect. It is not to be, as someone has said about an earlier matter, a facade of words behind which nations conceal their different deeds.

It is in that spirit that my colleagues and I, irrespective of nation and party, looked at this problem. M. Senghor rightly referred to the Declaration of the United Nations and to the fact that no difference was made in that Declaration. I yield to no one in my respect for that Declaration as an admirable statement of principles, but it was not drawn up with the intention that it should be binding and legally enforceable on the States that accepted it.

Therefore, its contents must be judged by different standards from those by which we judge the proposed Convention which we hope will be made binding on our countries.

The second point which I ask M. Senghor to remember is that the different countries have different systems of colonial administration. I believe now that all these systems are inspired by the same high aims, namely, the advance of the colonial peoples and the improvement of their physical and spiritual surroundings; but every system, whether it be a trusteeship or not, must consist of different stages, including for example, the stage of paramountcy, where the organisation is under native chieftainship.

I should have thought, without discussing details, that a flat application - without any divergencies allowing for the different stages of development of colonial territories - of the Articles of the Convention would cause difficulty in many places and would impede the advancement and improvement of colonial administration. In my country, those matters are outside party controversy and all of us try to make more improvements every day.

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(1) Rapporteur and Chairmen of the Legal Committee.

M. Senghor then made a point about propaganda. I ask him to observe what Paragraph 1 of Article 63 reads:

'Any State may at the time of its ratification or accession or at any time thereafter declare by notification ... that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.'

There is no bar to an extension of the Convention to all territories, but, as my friend M. Rolin said this morning, it would be the duty and the wish of all of us in this Assembly to make that extension as wide as possible at the earliest date. I do not like the in terrorem argument at any time. M. Senghor knows - and the Assembly knows from my previous Report (1) - that we have approached the Committee of Ministers before on this point. It has been fully considered, and the Committee reached this conclusion.

Here is a subject on which there is deep feeling, but at the same time here is a provision to which complete and universal effect may be given if we work sufficiently hard in our own Parliaments. I ask the Assembly not to jeopardize the Convention as a whole by pressing matters which may seem superficially attractive but which may cause great difficulty to those whose life-work is the improvement of the position of the peoples in our territories abroad. I ask the Assembly to enable us to bring that work to a successful conclusion as soon as possible."

(Coll. Ed., IV, p. 940; or Rep, 1950, III, p. 942)

f) Mr. Silvandre (France)(translation):

"In reply to the distinguished Chairman of the Committee may I say that I was not under the impression that the removal of this Article could influence the final ratification of the draft Convention for the Protection of Human Rights. On the contrary, it seems to me that the maintenance of such a provision would only lead to difficulties. These difficulties have been pointed out more than once by different speakers, including the Representative from Turkey (2). On the other hand, I see no difficulty in the removal of the Article, as requested by M. Senghor in his Amendment.

In his statement this morning, M. Rolin made an allusion to native customs. We distrust this pretext, so often put forward, of respect for our customs; it has so often been used as a reason for refusing to promulgate certain edicts or for banning certain freedoms.

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- (1) See Sir David's letter of June 1950 to the Chairman of the Committee of Ministers (mentioned above at § VIII - 3 on p. 18).
- (2) Mr. Silvandre was perhaps referring to Mr. Pamukoglu (Turkey) who, on 25 August 1950, had stated (translation): "It seems that there is a certain tendency towards discrimination in regard to the enjoyment recognised in the draft Convention..." (Coll. Ed., IV, p. 922; or Rep, 1950, III, p. 904).

For instance, as regards the reference to the maintenance of traditional chiefs we would, if necessary, have agreed to the provisions in paragraph 3 of Article 63 in another form of wording. In effect, paragraph 3 says that 'the provisions of this Convention shall be applied in the overseas territories with due regard, however, to local requirements'. We would have agreed to 'with due regard to local customs', but the words 'local requirements' could cover 'political requirements'. The Assembly would be well advised to delete not only the last paragraph of Article 63 but also the whole of this Article.

To promote the European idea, as has been said, is to proclaim a certain moral and political idea. As M. Rolin has said, it is to put into operation the regime of the collective protection of Human Rights, and if we wish to build this European idea on solid foundations, we must have the enthusiastic support of which there was mention this morning, a genuine support not only from Europe but from the extensions of Europe, especially the overseas peoples."

(Coll. Ed., IV, pp. 940-941; or Rep, 1950, III, pp. 942 and 944)

g) The vote on the amendments

(i) Mr. Senghor's proposed amendment to delete the whole of Article 63 (see § X - 4b) on p. 29 above) was carried by 46 votes to 37.

(ii) The Legal Committee's proposed amendment to add a paragraph 3 to Article 64 (see § X - 4a) on p. 29 above) was carried by 85 votes to 6, with 11 abstentions.

(Coll. Ed., IV, p. 941; or Rep, 1950, III, p. 944)

h) Mr. Struye (Belgium) (translation):

" ...

I was struck, when we voted on Article 63, by the method whereby we adopt Resolutions, which seems to me both illogical and dangerous.

I shall not come back to the subject of Article 63 itself and I congratulate M. Senghor on his success. But the prompt adoption of this text involves the risk of making it difficult for certain Governments to adopt the Report as a whole.

..."

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

6. Recommendation No. 24 of 25 August 1950

On the conclusion of the debate, the draft Recommendation of the Legal Committee, as amended, was put to the vote. It was adopted unanimously, by 111 votes out of 111 persons voting. The new

paragraph 3 added to Article 64 of the Committee of Ministers' draft (see § X - 5g)(ii) on p. 35 above) - numbered Article 66 § 8 in the Recommendation - constituted, together with paragraph 4 of Article 65(1) - numbered Article 67 § 4 in the Recommendation, the only provision dealing specifically with non-metropolitan territories.

(Coll. Ed., IV, pp. 943, 946 and 966; or Rep., 1950, III, p. 948, and Ass. Doc., 1950, III, No. 104, pp. 1044 and 1045)

XI. DOCUMENTS PREPARED BY THE SECRETARIAT GENERAL (September - October 1950)

1. Explanatory note by the Secretariat General on the Assembly's Recommendation No. 24 (5 September 1950)

" ...

VII. COLONIAL CLAUSE

On a proposal by the French representative, Mr. Senghor, the Assembly voted, by 46 votes to 37, to delete Article 63 of the Committee of Ministers' draft.

No proposal of this nature had been submitted by the Committee on Legal and Administrative Questions which had, in fact, approved the text of Article 63 of the Committee of Ministers' draft.

VIII. ADDITION OF A THIRD PARAGRAPH TO ARTICLE 64 OF THE COMMITTEE OF MINISTERS' DRAFT

This proposal follows automatically from the adoption of the new text of Article 25 proposed by the Assembly.

This proposal was adopted by 85 votes to 6, with 11 abstentions.

... "

(Coll. Ed., IV, pp. 972-973; or Doc. CM (50) 57, p. 4 - or. Fr.)

2. Text of the draft amended by the Consultative Assembly including notes on the Articles not yet approved by the Committee of and the adoption of which is urged by the Consultative Assembly (document undated)

" ...

Article 65

(text of the present Article 62 of the Convention)

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- (1) By a curious oversight the Assembly had left standing this paragraph which provided that "the Convention may be denounced in accordance with the provisions of the preceding paragraphs in respect of any territory to which it has been declared to extend under the terms of Article 63" (Coll. Ed., IV, p. 966; or Ass. Doc., 1950, III, No. 104, p. 1045; see also § IX - 4 in fine and footnote (7) above on p. 22).

[In the draft Convention approved by the Committee of Ministers on Article worded as follows came after the above Article:

(text of Article 63 of the Committee of Ministers' draft - see § IX - 6 above on p. 24)

The Assembly proposed that this Article be deleted.]

Article 66

(text of Article 64 of the Committee of Ministers' draft as amended by the Consultative Assembly - see §§ IX - 6 and X - 5 g)(ii) above on pp. 24 and 35).

[Paragraph 3 of the above Article was not included in the draft approved by the Committee of Ministers.

See, however, paragraph 4 of the Article included in the Committee of Ministers' draft as mentioned above at the end of Article 65.]

Article 67

(text of Article 65 of the Committee of Ministers' draft, that is the denunciation clause)

[... Note: this last paragraph (1), maintained by the Assembly, has no further raison d'être after the proposed suppression of Article 63 of the draft Convention approved by the Committee of Ministers.]

..."

(Coll. Ed., IV, pp. 992-994/995; or Doc. A 2838, pp. 19-21)

3. Drafting changes proposed by the Secretariat General (document undated)

" ...

1 b) Article 66

...

Paragraph 4 of Article 66 (2), relating to accession, to be deleted. As a consequence of this, the references to accession in paragraphs (3) 21, 63 and 64 to be deleted (4).

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- (1) That is, paragraph 4; see footnote (1) on the preceding page.  
 (2) The signature and ratification clause.  
 (3) Should presumably read "Articles" instead of "paragraphs".  
 (4) Concerns only the French text.

...

5. Article 63

As the phrase 'territories for whose international relations it is responsible' has been used in the first paragraph, the words 'such territories' have been substituted for 'overseas territories' in paragraph 3 .

In the fourth paragraph the words 'the territories to which the declaration relates' have been substituted for the words 'those territories to which the Convention extends', for the purposes of greater clarity."

(Coll. Ed., IV, pp. 997 and 999; or Doc. A 2520, pp. 1 and 3)

XII. SIXTH SESSION OF THE COMMITTEE OF MINISTERS (Rome, 3 and 4 November 1950)1. Meeting of the Committee of Legal Experts (3 November 1950)a) Report of the Committee

The Committee noted that there was not unanimous agreement on accepting certain paragraphs on the Assembly's Recommendation for revision of the Convention, including the two proposals concerning non-metropolitan territories (see §§ X - 5 g) and X - 6 on pp. 35 and 36 above). The Committee examined the text of the Convention for a last time and made a number of formal corrections or corrections of translation.

(Coll. Ed., IV, p. 1010; or Doc. CM/Adj. (50) 3 rev, §§ 5 and 6)

Thus, Article 63 of the draft adopted by the Committee of Ministers in August 1950 (see § IX - 6 on p. 24 above) was re-inserted in the Convention (1), subject to the following slight amendments (indicated by underlining and/or in footnote).

"Article 63

- (1) Any State may at the time of its ratification (2) or at any time thereafter declare by notification addressed to the Secretary-General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.
- (2) The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe.

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- (1) The paragraph 3 that the Assembly had recommended adding to Article 64 in replacement of paragraph 4 of Article 63 was likewise rejected (see Coll. ed., V, p. 1053; or Doc. CM (50) 90, p. 3).
  - (2) Omission of "or accession"; this amendment followed logically from the deletion of the accession clause that had previously figured in Article 66 (see Coll. ed., III, p. 799; or Ass. Doc., 1950, II, No. 11, p. 619).

- (3) The provisions of this Convention shall be applied in such (1) territories with due regard, however, to local requirements.
- (4) Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates (2) that it accepts the competence of the Commission to receive petitions from individuals, non-governmental organisations or groups of individuals (3) in accordance with Article 25 of the present Convention."(4)

b) Note of Mr. Robertson (5) (document dated 14 November 1950)

"It may be useful to note for our records three points arising out of the text of the Convention on Human Rights which were raised by the legal experts in Rome on the day before the Convention was signed. These were the following:

...

3. Extension of the Jurisdiction of the Court to Colonial Territories

Another question discussed by the Committee of Legal Experts in Rome was the following: if a State declares that it accepts the jurisdiction of the Court in accordance with Article 46, and subsequently declares that the Convention shall extend to one of its colonial territories in accordance with Article 63, does the jurisdiction of the Court then automatically apply to the colonial territory in question?

On the one hand, it may be argued that as soon as the declaration has been made under Article 46 accepting the jurisdiction of the Court, then the jurisdiction applies 'in all matters concerning the interpretation and application of the present Convention'. Once a later declaration has been made under Article 63 extending the Convention to the colonial territories concerned, the meaning of the words 'all matters concerning the interpretation of the present Convention' is automatically extended to include the colonial territory.

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- (1) Instead of "in the overseas territories".
- (2) Instead of "of those territories to which the Convention extends".
- (3) Omission of a comma.
- (4) These amendments, with the exception of the very last, had been suggested by the Secretariat General (see § XI - 3 on pp. 37-38 above).
- (5) A member of the Council of Europe Secretariat.

On the other hand, the argument can be made that if the jurisdiction of the Court does not apply to the metropolitan territories without an express declaration, similarly it cannot apply to colonial territories without an express declaration and that any declaration extending the Convention to colonial territories under Article 63(1) only refers to those provisions of the Convention which do not require an express declaration before they enter into force. This argument is strengthened by the fact that Article 63(4) makes provision for separate declarations extending to colonial territories the competence of the Commission to receive individual petitions. If separate declarations are required to extend to colonial territories the competence of the Commission, then it would seem to follow that separate declarations are required to extend to colonial territories the competence of the Court.

From this line of argument the British and French legal experts concluded that an additional paragraph was required to the effect that express declarations might be made extending to colonial territories the jurisdiction of the Court. If such a paragraph were included in the Convention, it would be clear that the jurisdiction of the Court would not apply to colonial territories in the absence of such an express declaration. The British and French legal experts believed that such a paragraph had been omitted by oversight, and that its inclusion was necessary to clarify the position. Nevertheless, they did not press for its inclusion in Rome in order not to raise contentious issues at the last moment, having regard particularly to the very contentious history of Article 63.

All the legal experts were agreed on the existence of an ambiguity which it was desirable to clarify if possible. Again, a paragraph might be included in the Protocol to the Convention, if one is concluded."

(Coll. ed., IV, pp. 1013-1014/1015; or Doc. A 47.671, pp. 4-5 - or. Eng.)

2. Signature of the Convention (4 November 1950)

Article 63: the final version adopted by the Legal Experts on 3 November 1950 (quoted in subparagraph a) of the preceding paragraph) was sanctioned the following day by the signature of the Convention.