M. ODYAK (*Turkey*) (Translation). — The Report on Cultural and Scientific Questions is, on the whole, satisfactory, but one point which, to my mind, is essential in the educational world, is lacking and that is the standardisation of teaching programmes.

The fate of Europe depends on generations yet unborn. If we want Europe to be rebuilt on a solid foundation so that it may be the guardian of peace and democracy, we must make an effort to educate our children according to the same principles and having the same ideas in view.

Having said this, I shall vote in favour of the Report which has been submitted.

M. JACINI (*Italy*) (Translation). — Mr. President, I hope I may venture to express my astonishment at the reservations made by Mr. de Valera, who contributed so directly and so very effectively to our work.

We were always agreed on the different alterations to be made in M. Larock's Report, and M. Larock himself entirely agreed with our objections. I can see no reason why we should now be of a different opinion. I think I correctly interpret the feelings of the Chairman of our Committee, M. Casati, who is absent at the moment, when I say that, apart from the natural differences of opinion held by each member of the Committee, the Committee adopted M. Larock's conclusions in their entirety. Consequently, I see no reason why it should be refused an approval which should in the nature of things be taken for granted.

THE PRESIDENT (Translation). — Explanations of vote must not give rise to a Debate.

M. DÜSÜNSEL (*Turkey*) (Translation). — At the moment when we are accomplishing a work of unification, I should like to express a wish.

In 1928, my country, Turkey, took a great step forward by accepting Latin characters and radically reforming its spelling.

I have a feeling that by unifying the spelling of European languages, we should take a great step forward towards unification. For this reason, I am going to ask the Committee on Cultural Questions and the most eminent European intellectuals to study this question. An unified spelling could do much for humanity.

THE PRESIDENT (Translation). — I shall ask for a vote by nominal roll call on the conclusions of the Report of the Committee on Cultural Questions.

The vote by nominal roll call took place, beginning with M. Pernot.

THE PRESIDENT (Translation). — The result of the vote is as follows: the Report has been adopted by 89 votes, with 2 abstentions.

Vote on the Report of the Committee on Rules of Procedure and Privileges

THE PRESIDENT (Translation). — We shall now have a vote by nominal roll call on the Report submitted by M. Van Cauwelaert.

The vote by nominal roll call took place, beginning with M. Pernot.

THE PRESIDENT (Translation). — The Report has been adopted by 89 votes with 1 abstention.

I call upon Mr. Callaghan.

Mr. CALLAGHAN (*United Kingdom*). — I want to address the Assembly for few moments, because it was the wish to our Committee that we should express our thanks to our Chairman, M. Dominedo, and to the two Rapporteurs, M. de Felice and M. Van Cauwelaert, for their work. I think that I have been asked to do this because I was the most unruly and turbulent member of the Committee, and I apologise to them all. I wish to say that I am very glad indeed that our efforts have been so successful.

THE PRESIDENT (Translation). — The members of the Assembly associate themselves with you, Mr. Callaghan, in the thanks which you have addressed to the members of the Assembly.

Committee on Legal and Administrative Questions

(Presentation of a Report)

THE PRESIDENT (Translation). — We now come to the urgent Debate on Report No. 77.

I call upon M. Teitgen, Rapporteur of the Committee on Legal and Administrative Questions.

M. TEITGEN (*France*) (Translation). — Mr. President, Article 1 of the Statute of the Council of Europe reads as follows:

"The aim of the Council is to achieve a greater unity between its Members, for the purpose of

M. Teitgen (cont.)

safeguarding and realising the ideals and principles which are their common heritage."

And Article 3 of the same Statute continues:

"Every Member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of Human Rights and fudamental freedoms."

Is that, Mr. President, but a hope, a theoretical affirmation, a pretty sort of phrase, which cannot in reality be achieved?

Like the Assembly, the Committee on Legal and Administrative Questions did not think so. It unanimously affirmed the importance of setting in motion, inside Europe, the respect by States of rights and fundamental freedoms, as well as the general principles of democracy, by a system of collective guarantees.

In order to deal with the matter with which you entrusted it, the Committee had to settle in due order two fundamental questions. First, to submit to you a list of the freedoms which should be guaranteed, and secondly, to submit to you Proposals for machinery for establishing a collective guarantee of these freedoms.

I hope during this brief statement to set out the essential questions and to convince the Assembly that these questions, if they are fundamental, may be stated quite simply and are fairly easy to resolve, and that it is, therefore, desirable that the Assembly should not pass over the problem which is before it.

The Committee on Legal and Administrative Questions had first to draw up a list of freedoms which are to be guaranteed. It considered that, for the moment, it is preferable to limit the collective guarantee to those rights and essential freedoms which are practised, after long usage and experience, in all the democratic countries. While they are the first triumph of democratic regimes, they are also the necessary condition under which they operate.

Certainly, professional freedoms and social rights, which have themselves an intrinsic value, must also, in the future, be defined and protected. Everyone will, however, understand that it is necessary to begin at the beginning and to guarantee political democracy in the European Union and then to co-ordinate our economies, before undertaking the generalisation of social democracy.

Hence, in approaching the general problem of the definition of rights and freedoms which are to be protected—a problem which the Committee of Ministers itself presented to the Assembly in their letter of 14th August 1949—the Committee considered that it was preferable, in defining the freedoms to be protected, to make use as far as possible of the "Declaration of Human Rights" approved by the General Assembly of the United Nations.

In this way, the Committee wished to demonstrate first of all its respect for the technical value and the moral authority of this document of world wide importance, and also to avoid making a distinction between European and World order.

Thus, after having studied this Universal Declaration of Human Rights approved by the United Nations, the Committee selected from this Declaration those rights and fundamental freedoms which appeared to it to warrant an international guarantee at the present time. In order to define them in the Resolution which is submitted to you, the Committee has based itself on the corresponding Articles of the United Nations Declaration.

It has always been understood that in making use of such and such an Article of the United Nations' Declaration, with a view to defining this or that freedom, the Resolution adopted did not relate to all the provisions of the Article in question, but only to those attempting to define the nature of the particular freedom referred to in this Resolution.

In order to make myself better understood, I will quote an example from one Article. The United Nations' Declaration guarantees the right of marriage, the right to marry and to found a family. It then adds, in a further provision of the same Article, that it asks States also to guarantee equal rights during marriage and at its dissolution.

In mentioning the particular Article, we have used only that part of the paragraph of the Article which affirms the right to marry and to found a family; but not the subsequent provisions of the Article concerning equal rights after marriage, since we only guarantee the right to marry.

It is with these provisos that the Committee has drawn up the list of rights and freedoms which are to be covered by the collective guarantee. This list appears in Article 2 of the draft Resolution which is submitted to you.

Here are the rights and freedoms included in this list; security of person; exemption from slavery and servitude; freedom from arbitrary arrest, detention, exile and other measures; freedom from arbitrary interference in private and family life, to home and correspondence; freedom of thought, conscience and religion; freedom of opinion and expression of opinion; freedom of

M. Teitgen (cont.)

assembly; freedom of association; freedom to unite in trade unions; the right to marry and found a family; the right of parents to have a prior right regarding the kind of education to be given to their children, and, finally, the right to own property.

Who does not appreciate that these rights are fundamental, essential rights, and that there is no State which can, if it abuses them, claim to respect natural law and the fundamental principle of human dignity? Is there any State which can, by violating these rights and fundamental freedoms, claim that its country enjoys a democratic regime?

Furthermore, if these remarks apply, to the list as a whole, I must say that some of the rights mentioned in it gave rise to discussion in our Committee.

There were first of all those rights which I shall call "family rights." I might explain that by this I mean those rights which we had in mind when we refer in paragraph (4) of Article 2, to "freedom from all arbitrary interference in private and family life;" and also those which we mentioned in paragraph (10) where we ask for protection of "the right to marry and found a family;" and finally those which we define in paragraph (11) where we speak of "the right of parents to have prior right regarding the kind of education to be given to their children."

No one in the Committee, I hasten to add, has denied the vital importance of these family rights. Some have said that they would prefer to see the guarantee confined for the moment to essential civic freedoms, to those which are the necessary conditions for the functioning of democratic institutions, and that it would be better for the time being to exclude all other freedoms and all other fundamental rights which would include, in spite of their importance, family rights.

The Committee recalled the time in the recent past when, in some countries, certain people were denied the right to marry on account of race or religious convictions. It also recalled the legislation, under which some countries suffered during cruel years, which subordinated the child to the benefit of the State.

On account of these memories, the majority of the Committee considered it desirable to include these fundamental rights in the list of guaranteed freedoms. It considered that the father of a family cannot be an independent citizen, cannot feel free within his own country, if he is menaced in his own home and if, every day, the State steals from him his soul, or the conscience of his children.

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

This, therefore, is the list of guaranteed freedoms. Having drawn it up, the Committee included, in Article 3 of its draft Resolution, a Rule which appeared to be fundamental. This states that the Convention, which is to be drawn up, shall include an undertaking by Member States to respect the fundamental principles of democracy in all good faith, and in particular, an undertaking regarding their metropolitan territory: first to hold free election with universal suffrage and secret ballot at reasonable intervals, so as to ensure that Government action and legislation is in fact an expression of the will of the people; secondly, to take no arbitary action which will interfere with the right of criticism and the right to organise a political opposition.

This, then, is what the Committee suggests to the Assembly should be guaranteed: a list of rights and fundamental freedoms, without which personal independence and a dignified way of life cannot be ensured; the fundamental principles of a democratic regime, that is, the obligation on the part of the Government to consult the nation and to govern with its support, and that all Gov-

M. Teitgen (cont.)

ernments be forbidden to interfere with free criticism and the natural and fundamental rights of opposition.

Having drawn up the list of rights and freedoms to be guaranteed, it was necessary to lay down the conditions in which each of these guaranteed freedoms should be exercised within the territory of each individual country.

The problem is quite simple; we are affirming the principle of a European guarantee of, for instance, freedom of association. This guarantee will determine in detail the principles under which, in every country, associations will be formed. It will determine the means by which they will operate; it will define their civil status and right of inheritance; it will set out the circumstances under which an association may be dissolved.

It is not enough to state principles and to define freedoms; it is necessary to envisage further legislation for their execution and protection.

There were two possible systems, which the Committee studied at length. The first can be summarised as follows: it is not enough for the Council of Europe to draw up a list of the fundamental of rights and freedoms to be guaranteed. It is necessary to devise general legislation for each freedom, through international codification of all the methods and conditions in which this particular freedom is exercised in each country.

Thus, with regard to laws about the press, the principle of the freedom of the press can be guaranteed, but it is necessary first to make a European Law on the press which, being valid in all countries and being incorporated in the legislative code of each, would act as a cast-iron guarantee that this particular freedom would be protected.

If we adopted this policy it would mean the indefinite postponement of our aim. Because, if it were necessary, in guaranteeing protection against arbitrary arrest, to unify the codes of penal procedure; in guaranteeing the freedom of the press to unify the laws on the press; in guaranteeing freedom for trade unions, to unify the legislation on trade unions and incorporate all these laws into a European code, it would be necessary to hand the task on to the next generation. It is sometimes unwise to ask too much; that is the best means of achieving nothing.

Furthermore, such detailed codification of legislation regarding guaranteed freedoms; such a European codification is probably impossible to achieve and it is better to say so at once.

Those who were in favour of a preliminary codification based themselves on the rules of logic; this is an argument which we may yet hear in the course of our Debate. They pointed out that before establishing an international organisation, a Commission, or a Court, which would protect the guaranted freedoms, it is first necessary to make the law which will be applied by this international organisation.

Before authorising an international European Court to intervene in guaranteeing freedoms or fundamental rights, it is necessary first to make the law, the law which this Court will be responsible for applying. In consequence, it is necessary first to draw up European legislation on guaranteed freedoms, before affirming the principle of guarantee and establishing a Court.

Life does not always follow the rules of logic; that is the reply which must be made to those who are in favour of this solution. Codification can no more be improvised than can an internal code. One cannot say, one fine morning, with any chance of success: "we will now make a code of European freedoms". In France the Emperor Napoleon did draw up some codes, but these codes were in effect but a formulation of three hundred years of custom and jurisprudence. All that is to be found in our Napoleonic codes was already part of the written jurisprudence and customs of France before the Revolution. The Napoleonic code was simply an ordered transcription of all that had already been confirmed by courts, jurisprudence, experience, custom and popular consent.

It is the same in the international field. It is impossible to improvise international codification. One cannot first draw up the code and then establish the Court. Experience shows that the Court comes first. For the Court deals with cases; it progressively establishes a jurisprudence. Confidence is inspired according to the value of this jurisprudence. In order to develop this jurisprudence, the Court must, day after day, examine the law which it administers, following the practice and custom of the countries which it represents. And then, a long time afterwards, codification may be achieved; this will define and chrystallise the results acquired by judicial experience.

It is possible to quote many examples. The problem has already arisen. When, at the beginning of this century, there was talk of the creation of an international prize court, there were those individuals and States which said: "Before making an international prize court, we must codify the law of the seas."

M. Teitgen (cont.)

A codification was attempted, but, since they tried to draw up this codification before having established a jurisprudence by prior experience, they were not able to achieve a codification acceptable to the countries in question. Everything was abandoned, including the court.

From that a rose the solution which has been adopted by our Committee. It confirms the traditional principle, which is also a fundamental international public right, according to which each country has the right to organise, within its own territory, the methods of execution and the day to day conditions for the operation of the guaranteed rights and freedoms.

Thus an international Convention shall establish and give a general definition of a list of guaranteed freedoms. Each country shall, through its own legislation, determine the conditions in which these guaranteed liberties shall be exercised within its territory, and, in defining the practical conditions for the operation of these guaranteed liberties, each country shall have a very wide freedom of action.

But—and this is the essential point—the international collective guarantee will have, as its purpose, to ensure that no State shall in fact aim at suppressing the guaranteed freedoms, by means of minor measures which, while made with the pretext of organising the exercise of these freedoms on its territory, or of safeguarding the letter of the law, have the opposite effect. That is the reason for Articles 5, 6 and 7 of the draft Resolution submitted to you.

After having affirmed the principle, which I stated earlier, that each State has the right to determine within its own territory the practical means for the exercise of the guaranteed liberties, I shall show you what I mean by a humorous example. Freedom of circulation being guaranteed, France will continue to have a Highway Code which lays down that cars must be driven on the right of the road, and England will still have a Highway Code which lays down that cars must be driven on the left of the road. It does not matter whether in France one drives on the right or the left, provided that in practice one can circulate freely in England and in France.

Thus, each country will maintain the right to determine the means by which the guaranteed freedoms are exercised within its territory, but —and this is Article 5 of the draft Resolution— its legislation, in defining the measures for the achievment of these freedoms, cannot make any distinction based on race, colour, sex, language, religion, political or other opinion, national or social origin, affiliation to a national minority, fortune or birth.

Any national legislation which, under pretext of organising freedom, makes any such discrimination, falls within the scope of the international guarantee.

Furthermore, Article 6, which is of capital importance lays down a further rule: "Each country shall have the right to determine the means whereby the guaranteed freedoms shall be exercised, but the conditions, limitations and restrictions which it has to place upon each of these freedoms shall be directed only to ensuring the rights and freedoms of others, and to satisfy the rightful demands of morality, law and security in a democratic society."

This is a fundamental principle. It is legitimate and necessary to limit, sometimes even to restrain, individual freedoms, to allow everyone the peaceful exercise of their freedom and to ensure the maintenance of morality, of the general well-being, of the common good and of public need. When the State defines, organises, regulates and limits freedoms for such reasons, in the interest of, and for the better insurance of, the general well-being, it is only fulfilling its duty.

That is permissible; that is legitimate.

But when it intervenes to suppress, to restrain and to limit these freedoms for, this time, reasons of state; to protect itself according to the political tendency which it represents, against an opposition which it considers dangerous; to destroy fundamental freedoms which it ought to make itself responsible for co-ordinating and guaranteeing, then it is against public interest if it intervenes. Then the laws which it passes are contrary to the principle of the international guarantee.

Finally, we come to the third principle, which is incorporated in Article 7. This is that the object of the collective guarantee shall be to ensure that the laws passed by each State to secure within its territory the exercise of these guaranteed freedoms, shall be in conformity with the general principles of law as recognised by civilised nations, principles which are referred to in Article 38 of Statute of the Permanent Court of Justice.

Here a certain explanation is perhaps necessary. Article 38 of the Statute of the Permanent Court of International Justice lays down—and it is a fundamental rule of our present international law—: "The Court shall apply *a*) international conventions, *b*) international customs, *c*) the general principles of law recognised by civilised nations." It is with these that we are concerned.

M. Teitgen (cont.)

We state that organised international protection shall have as its aim, among other things, to ensure that internal laws on guaranteed freedoms are in conformity with the fundamental principles of law recognised by civilised nations.

What are these principles? They are laid down in much doctrinal work and by a jurisprudence which is their authority.

These are the principles and legal rules which, since they are formulated and sanctioned by the internal law of all civilised nations at any given moment, can therefore be regarded as constituting a principle of general common law, applicable throughout the whole of international society.

From the moment when judicial law, English law, Swedish law, French law, Norwegian law, American law, lay down a sanction, or an identical or similar rule, it is possible to say that it forms part of the common heritage of civilised nations, and to deduce that, in each internal law, it is the expression of a principle valid for the whole of international society.

It is by reference to these principles of law, recognised by civilised nations, that the Statute of the Court of Justice is valid. These are the principles which the international guarantee, that is to be established, could apply when there is the question of verifying the validity of internal legislation with regard to respect for the guaranteed rights and freedoms.

It would be easy to show here that the Military Tribunal of Nuremberg has, on several occasions, applied some of these principles of law recognised by civilised nations.

These then, Mr. President, are the guaranteed freedoms and the manner in which they will be guaranteed; the right of each State to organise within its own territory their day to day exercise, but with the obligation that they should be subject to the provisions of Articles 5, 6 and 7 of our draft Resolution which I have just mentioned. This means no discrimination of any sort; no limitations of freedom for reasons of State, but only for specified reasons of public interest, and the conformity of this internal legislation with the general principles recognised by civilised nations.

Having formulated these solutions, the Committee then proceeded to examine the second question before it, namely: how can the international protection operate?

It is not enough to draw up a list of guaranteed freedoms and to say in what manner they shall be guaranteed; it is necessary to say how they are to be guaranteed.

Three methods were possible. The first was to extend to every national of the Member States of the Council of Europe the right to petition the Council of Europe itself.

A Belgian, a Frenchman, a Swede, a Norwegian, a Greek or a Turk, who claimed to be the victim in his State of an abuse of power regarding one of the guaranteed freedoms, might address a petition to the Council of Europe.

The Committee unanimously agreed that it was not possible to adopt this solution and that the right of petition was ineffective. Already the nationals of our States can submit a complaint to the Council of Europe. After all, petitions of this sort do not involve anyone. The authority which receives them is not compelled to examine them or to follow them up in any way whatsoever.

It was obvious that to limit the proposed guarantee to this simple right of petition to the Council of Europe would mean evading a solution of the problem.

The second solution consisted in conferring this guarantee on a Commission attached to the Council of Europe, composed of eminent personalities, completely impartial and independent of the States—a Commission which would have exercised the following powers.

The Commission in question would receive complaints; it would subject them to a preliminary investigation. It could reject complaints which were fantastic or obviously ill-founded; it could institute an enquiry into the complaints submitted; it could make an attempt at conciliation and if, after these methods of preliminary investigation, enquiry and conciliation had not achieved the required just and equitable solution, it could publish a declaration setting out the facts and making known the recommendations which it had addressed to the accused State.

Those in favour of this system stated, and will certainly state, that in their opinion this should be sufficient to ensure the collective protection of the guaranteed freedoms. They point out that the moral authority of this Commission would be considerable and that the publication of its Recommendations, or the statement of fact which it had drawn up, would be sufficient to exercise such a moral pressure on the State that the latter would be forced to submit to its findings.

Furthermore, if it did not submit to them, the Council of Europe and the Assembly of the Council of Europe and the Assembly of the Council of Europe could add their influence to that of

M. Teitgen (cont.)

the Commission to force the State to submit, by all the means at their disposal.

This is the second system.

There is yet a third; that of legal control. Under this system, the final decision would rest with a Court, which in judging the complaint would examine it in the light of legal rules and of judicial procedure, and would give a legal verdict.

Which of these solutions is proposed by the Committee?

As I told you earlier on, it ruled out the simple right of petition addressed to the Council of Europe.

After a long discussion, it also ruled out the system of guarantees operating only by means of a Commission set up within the Council of Europe.

It decided in favour of a system of legal control in two stages.

The machinery to give it effect would include first of all a Commission, similar to that of which I spoke earlier, and to which the authors of the second system preferred to limit themselves; a Commission set up within the Council of Europe, composed of independent and completely impartial personalities, thus offering full guarantees of competence and morality, which would receive the complaints.

This Commission would investigate the complaints; would then proceed, if it were necessary, to an enquiry, and then attempt conciliation. If this was not successful, it would refer the case —if it was considered necessary—to a Court. It is then that the second part of the procedure would come into operation.

The Commission would have set aside all complaints which it considered to be irreceivable and obviously ill-founded, and would investigate the serious complaints. If it did not, by its own means, manage to solve the case, it would transmit the dossier to a Court which, acting as a court of second instance, would pronounce judgment according to judicial procedure.

The Committee had first to decide on the principle of this judicial control. Having dealt with this question, it was necessary to settle another problem; what should be the nature of the Court —since the Committee wished to have a Court— which would have competence to deal with such cases?

The answer which was to be given to this last question, presupposed that the previous question had been decided. That, Mr. President, is the important question—who can bring a case before the Court.

If it was decided that the Court, in the event of a violation of guaranteed rights and freedoms by a State, could only take cognizance of the case if it were presented by another State, which alone could bring a complaint before the international authority, it would then be possible to decide to give competence in such cases to the Permanent Court of International Justice. If a State alone could put into operation the machinery of the guarantee, the Permanent International Court could be made responsible for this guarantee.

If, on the other hand, the right to bring a case were given to the injured person, to the victim, whether this were a person or a corporate body; if the Court were authorised to take cognizance of this complaint made by the victim personally, it would be necessary to create a Court different from that at The Hague, since The Hague Court is only competent to deal with disputes between two States.

It was therefore necessary for the Committee, before deciding which Court should be responsible, to settle this preliminary question.

After long discussion and only by a majority vote, the Committee decided that the machinery for the collective protection of the guaranteed freedoms could be put into operation on the complaint of the victim; that the victim, whether an individual, a society or association, could bring the case directly to the Commission without first referring it to one of the States for action.

The Commission would undertake an investigation of the complaints with the representatives of the victim and of the incriminated State; it would then proceed with an enquiry, attempt conciliation, and, if this conciliation was not successful, should transmit the case to the Court, which would thus find itself dealing with a complaint emanating from an individual.

Since such was the opinion of the Committee, it was obviously immediately necessary to create a European Court of Human Rights, since in the circumstances it was not possible to consider only the Permanent Court of International Justice, about which I spoke earlier.

The Committee therefore recognised that the machinery of guarantee could be put in operation on the complaint of an individual, and decided on the creation of a European Court of Justice. In the opinion of several members of the Committee, there was yet another argument in favour of the creation of this European Court. This was as follows: the European Court will apply the

M. Teitgen (cont.)

Conventions which the Members of the Council of Europe will sign with one another, to guarantee reciprocally and to give a reciprocal guarantee to their nationals of the fundamental rights and freedoms which are part of their common heritage. Would it be possible that disputes between the Member States of the Council of Europe, in relation to the execution or the application of a Convention of the Council of Europe itself, might be brought before the Permanent Court of International Justice?

As you know, this latter is composed of judges of every nationality, belonging to countries whose political structure, ideals, and morality are different from those which constitute our common heritage. Several members of the Committee thought that the European States, when it was a question of disputes regarding their conception of freedom and the validity of their internal laws in relation to guaranteed freedoms, would hesitate to submit these disputes to a Court composed of judges who are nationals of countries outside the European Union and sometimes nationals of countries whose general policy or, more exactly, general spirit, are opposed to current European ideals.

The Committee therefore decided in favour of the creation of a European Court which, after the Commission, should be responsible for ensuring respect for the guaranteed rights and freedoms. Anxious, however, not to set European legal order in opposition to world order, the Committee decided to submit to you, in its Resolution, an Article 20 which lays down that the Member States, signatories of the Convention, may, if they prefer, and if the dispute is only between themselves, Members of the Council of Europe, submit this dispute to the Permanent Court of International Justice in accordance with their reciprocal agreements, rather than to the European Court. This may only be done on condition that the two States are agreed on this procedure and that it will be technically possible to submit the dispute to the Court. It was thus that the Committee settled the fundamental problem.

We have added that the Commission, which is responsible in the first place for the procedure of guarantee, could not deal with a complaint by the victim until the plaintiff has exhausted all other means of redress within a State. This goes without saying. Long international practice has defined the meaning of this expression as covering only ordinary means of redress, to the exclusion, for instance, of a request for retrial of the case.

The Committee on Legal and Administrative Questions proposes that the guarantee exercised either by the Commission or, later, by the jurisdiction of the European Court of Human Rights, shall extend to all violations of the obligations defined in the Convention, whether they are the result of legislative, executive or judicial acts. But in this connection, and especially as regards judicial acts, the Committee takes care to point out that the Court will not in any way operate as a Supreme Court of Appeal having jurisdiction to review any errors of law or of fact which are alleged against a national Court. The argument that such a right would lie within the competence which we are supposed to be granting to this European Court is without foundation; for in Committee no one ever put forward this view. The Court will have power to impugn judicial decisions given by a State only in cases where these decisions have been made in disregard of the fundamental rights defined in Article 2 of our draft Resolution, which is based on Articles 9, 10 and 11 of the United Nations Declaration. It is very simple and very clear. It means that if a national tribunal, whether the Supreme Court of France, England or Italy was to err and to deliver a judgment or pronounce a decision containing an error of fact or of law, there would not be any reason, on this account, for bringing the case before the European Court. The latter is not responsible for seeing that the judges of any country apply justly the national laws of that country.

A decision or a judgment can only be submitted to the international Court when there has been a travesty of justice or a verdict given in disregard of all fundamental individual rights, of all elementary guarantees of procedure, as we have set them out in Article 2; this pseudo-judgment, this false decision of justice could then be brought before the European Court as a violation of the rights of the ordinary men by the tribunals and as a parody of justice. But it would not be quite so similar in the case of a decision given by a regular tribunal, which simply contained an error of fact or of law.

I think it is necessary to point this out to you.

What we are proposing to you at the moment is the result of hard work carried out conscientiously and in great detail. It is not a complete and detailed draft of an international Convention, which merely remains to be signed. Our Resolutions are submitted to you Article by Article, in order to facilitate the Debate, but they only con-

M. Teitgen (cont.)

tain general principles and Recommendations to be made to the various States. It is for these latter, when they negotiate the Convention, which will apply these Recommendations, to establish all the subsidiary rules of procedure. It is for them to enter into the details of legal technique. Being sure of your agreement on this point, we had to adhere to the essential principles sanctified through the centuries, and to the general structure of this collective guarantee of the freedoms of Europe. We had no other aim. If you are good enough to approve our efforts, this collective guarantee will bring a greater feeling of moral security to the nationals of this sore-tried and exhausted Europe, this Europe which has sometimes lost hope.

First of all, to every one of these thousands of European men and women will come a feeling of security, a feeling that their rights and freedoms, which they have acquired after so many centuries of effort and pain, after so much sorrow and suffering, of riotous wars and revolutions, after so much blood and tears, will now be guaranteed, against all arbitrary action on the part of their own Governments, by those European authorities in whom, in advance, they have placed so touching a confidence, and which should sometimes inspire us with confidence ourselves.

This international European guarantee will give us also a protection against a possible return of those aggressions, made for reasons of State.

Many of our colleagues have pointed out that our countries are democratic and are deeply impregnated with a sense of freedom; they believe in morality and in a natural law. We are protected from such attempts and ordeals. Why is it necessary to build such a system?

Other countries, great, beautiful and noble countries, were also subject to a sense of ethics and morality and civilisation. And then one day evil fell upon them. They suffered the ordeal. All our countries might be liable one day to suffer severe constraint for reasons of State. Perhaps our system of guarantee will protect us from that peril.

Speaking personally, I should like to add that it will also perhaps guard us from a rebirth of Fascist and Nazi totalitarianism. Other countries will come to join us; the doors are wide open and we are ready to receive them.

If some of us sometimes raise certain questions, it is not indeed from hate nor reproach of the unhappy peoples of those countries, but from anxiety. We ask ourselves if they are sufficiently sure of themselves, sufficiently armed so that, if one day misfortune should once more overwhelm us, they will be able to resist.

An honest man does not become a gangster in twenty-four hours. When an honest man suddenly does something very wicked, it means that he has long been corrupted by evil.

In thought and conscience he succumbed to temptation. He had become familiar with the misdeed which he was going to commit. He slowly descended the steps of the ladder. One day evil carried him off and he became a blackguard.

Democracies do not become Nazi countries in one day. Evil progresses cunningly, with a minority operating, as it were, to remove the levers of control. One by one freedoms are suppressed, in one sphere after another. Public opinion and the entire national conscience are asphyxiated. And then, when everything is in order, the "Führer" is installed and the evolution continues even to the oven of the crematorium.

It is necessary to intervene before it is too late. A conscience must exist somewhere which will sound the alarm to the minds of a nation menaced by this progressive corruption, to warm them of the peril and to show them that they are progressing down a long road which leads far, sometimes even to Buchenwald or Dachau.

An international Court, within the Council of Europe, and a system of supervision and guarantees could be the conscience of which we all have need, and of which other countries have perhaps a special need.

Of the arguments which are presented against us, two are very serious. Some say to us: "you are going to establish a European order which, by the very fact of its existence and its solidarity, is opposed to the world order of which we dream, of which many of us—especially all Europeans—continue to dream."

We do not wish to bring the European order into conflict with the world order, but, while awaiting the establishment of a just and durable world order, we would at least like to have a just and durable European order.

It has also been pointed out to us that we must pay attention to State sovereignty, and that we must not give a European Court competence to supervise the international legislation, or the executive or judicial acts of the Governments of Europe. It is claimed that this would be a derogation of national sovereignty.

May I be allowed to say that sovereignty can be regarded from two sides. One side of the medal is very beautiful and even very great. The

M. Teitgen (cont.)

other side sometimes means, and this is especially the case to-day, isolation and misery. War also means isolation and misery.

Finally, when we wish to guarantee and protect the freedoms of Europe, it does not mean diminishing the sovereignty of one State in relation to another State, or giving predominence to one State over another. It is a question of limiting State sovereignty on behalf of the law, and for that purpose all restrictions are permitted.

THE PRESIDENT (Translation). — We have decided not to begin the Debate on M. Teitgen's Report before ten o'clock to-morrow morning. I would remind you that the time-limit for the submission of Amendments expires at six o'clock to-day.

We must begin our Sitting at ten o'clock precisely, because the Debate on this important Report, which we must bring to a satisfactory conclusion, will be long and perhaps difficult.

Decision on the Agenda

THE PRESIDENT (Translation). — M. Longchambon's Report on the creation of a European Patents' Office, submitted on behalf of the Committee on Economic Questions, has been circulated.

M. Azara's Report on the creation of a common European nationality, submitted on behalf of the Committee on Legal and Administrative Questions, will also be circulated shortly.

We will have to take a decision to-morrow on these two questions and if necessary, discuss them as a matter of urgency. That is why I suggest that they should appear at the head of the Agenda of the next Sitting.

Has anyone any objections?

It is then agreed.

So at 10 o'clock to-morrow, Thursday 8th September 1949, there will be the first public Sitting to discuss this Agenda.

The Sitting is adjourned.

The Sitting was adjourned at 5.20 p.m.