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CONSEIL DE L'EUROPE

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Institutional reform of the Council of Europe

Communication
Secretary General

1. PART I - Historical Summary

Many proposals have been made over the last eight years for the institutional reform of the Council of Europe. A few of them have been accepted and put into practice, though the great majority have not. It is proposed here to summarise the principal proposals made in the past and the action taken on them.

1.1. A. The period 1949-1951

As originally drafted, the Statute placed the Assembly in a position of complete subordination to the Committee of Ministers. At its first Session in 1949, the Assembly reacted strongly against this state of affairs and claimed a greater degree of independence and authority. As a result of a number of recommendations made in 1949 and 1950, the Committee of Ministers agreed to certain changes, which were, in 1951, incorporated in amendments to t h e Statute or Resolutions of the Committee of Ministers known as " Statutory Texts ". The more important changes proposed by the Assembly were not, however, accepted.

In the following cases the Committee of Ministers substantially agreed to the Assembly's proposals :

1. Agenda of the Assembly (Article 23)

Originally the Assembly's agenda had to be approved by the Committee of Ministers. The Assembly is now master of its own agenda.

2. Appointment of Representatives (Article 25)

Originally Representatives were appointed by Member Governments. Now they are elected by the national Parliaments or appointed in such manner as the Parliaments decide.

3. Appearance of Ministers in the Assembly (Article 27)

As the result of a proposal by the President of the Assembly that Ministers other than the Ministers for Foreign Affairs should be able to participate in the Assembly's debates, the Committee of Ministers agreed to amend Article 27 of the Statute so as to make this possible (Doc. 18, paras 11 and 12).

4. Convocation of Extraordinary Sessions (Article 34)

The Assembly now has an equal right with the Committee of Ministers to propose the convocation of Extraordinary Sessions.

5. Admission of new Members (Article 4)

The Committee of Ministers has agreed to consult the Assembly before issuing invitations to new Members.

6. Technical Services of European Intergovernmental Organisations

In Recommendations 16 and 17 (1950), the Assembly asked that the experts of other European organisations should be put at its disposal. By a series of agreements and other arrangements, the Assembly is now able to call on the technical assistance of both European and' international organisations, though the procedure for consulting 0. E. E. C. is unduly complicated.

In the following cases the Committee of Ministers took action which gave partial satisfaction to the Assembly.

7. Powers of the Committee of Ministers (Article 15)

Under the Statute, the Committee of Ministers only has power to make recommendations to Governments. In Recommendation 10 (1950), the Assembly proposed that Article 15 of the Statute should be amended so as to empower the Committee of Ministers to take binding decisions. The Committee of Ministers, in a Statutory Resolution, agreed t h a t in certain cases their conclusions might take the form of Conventions which would be submitted to all Members for ratification, with the undertaking that the question of ratification would be examined by the competent authorities within one year—-or in exceptional cases eighteen months—thereafter. (Doc. 18, para. 21, B).

8. Reference back to the Assembly of Recommendations not approved by the Committee of Ministers

In Recommendation 15 (1950), the Assembly proposed that in all cases where its recommendations were not completely acceptable, the Committee of Ministers should refer them back to the Assembly for further consideration. In general, the Committee of Ministers agreed to do so, (Doc. 18, para. 18), but in practice this decision has been rarely implemented.

9. Relations with International Organisations

In Recommendations 21, 22 and 23 (1950), the Assembly proposed that preparatory conferences should be held within the framework of the Council of Europe to discuss questions on the agenda of the larger international organisations, that appropriate questions be referred to the Assembly for its Opinion in advance, and that the Committee of Ministers should report to the Assembly on progress towards closer unity made in other European organisations. The Committee of Ministers adopted a Statutory Text on Relations with International Organisations (Doc. 18, para. 21, D); in the event, as the result of a series of agreements and other arrangements, the Assembly is kept informed about the work of other international and European organisations.

10. The conclusion of Partial Agreements

In Recommendation 3 (1950), the Assembly proposed that the Committee of Ministers might conclude agreements in which it would not be necessary for all Members to participate. The Committee of Ministers adopted a Statutory Resolution on the conclusion of partial agreements (Doc. 60, para. 6), which makes this possible, but only after a unanimous decision of the Committee in each case.

11. Creation of Specialised Authorities

After the launching of the Schuman Plan in the spring of 1950, the Assembly proposed, in Recommendation 1 (1950), that Specialised Authorities should be instituted within the framework of the Council of Europe with special competence in the political, economic, social, legal and cultural fields and t h a t these Authorities should be open to accession by all Members, though only some Members might initially wish to participate.

The Committee of Ministers adopted a Statutory Text on Specialised Authorities in May 1951 (Doc. 18, para. 4), which provided t h a t the Council of Europe or Member States might take the initiative in setting up Specialised Authorities and laid down certain principles for bringing them into relationship with the Council of Europe. In fact, however, no Specialised Authorities have been set up " within the framework of the Council of Europe " as originally envisaged by the Assem- My."

12. Permanent Representatives of Members at the Seat of the Council

The Committee of Ministers, in May 1951, invited Member Governments to consider the possibility of appointing Permanent Representatives at Strasbourg (Doc. 18, para. 17). In fact, only seven Member Governments have given effect to this proposal.

13. Written Questions

As envisaged in Rule 48 of the Rules of Procedure of the Assembly, the Committee of Ministers has instituted a procedure for answering Written Questions (Doc. 18, para. 19)

14. Joint Committee

As the result of informal discussions held in 1949 and 1950, the Committee of Ministers adopted in 1951 a Statutory Text on the constitution of the Joint Committee (Doc. 18, para. 21, C). This provides that the Joint Committee is " the organ of co-ordination of the Council of Europe ". It has the function of examining problems which are common to the Committee and the Assembly, of making proposals for the agenda of both bodies and of giving practical effect to the Recommendations of the other two organs. It is supposed to meet before and after the sessions of the Committee of Ministers and of the Assembly.

In the following cases the Committee of Ministers did not give effect to the Assembly's proposals :

15. Creation of Ministerial posts for European Affairs

In Recommendation 9 (1950), the Assembly recommended that each Member should appoint a Minister, Secretary, or Under- Secretary of State for European Affairs. The Committee of Ministers transmitted this Recommendation to the Governments (Doc. 18, para. 16), but virtually no action has been taken on it.

16. Transmission of Recommendations to Parliaments

In Recommendation 14 (1950), it was proposed that the Committee of Ministers, by a majority vote, should invite the Governments to submit, to their national Parliaments, Recommendations or Conventions proposed by the Assembly. The Committee of Ministers took no action on this proposal.

17. Merger of the Council of Europe and 0. E. E. C.

In Recommendation 18 (1950), the Assembly recommended that a single Council should be set up to replace the Council of 0. E. E. C. and the Committee of Ministers of the Council of Europe. Similar proposals were made in Recommendations 25 (1952) and 46 (1953) but have not been accepted by the Committee of Ministers.

18. Incorporation into the Council of Europe of certain organs of the Brussels Treaty Organisation

This was proposed in Recommendation 19 (1950) but not accepted by the Committee of Ministers.

1.2. B. The Mackay and La Malfa Proposals

More general and far-reaching proposals were put forward in 1950 by Mr. Mackay and M. La Malfa.

Mr. Mackay produced a " Draft Protocol for the Amendment of the Statute of the Council of E u r o p e " in November 1950[1]. Its Preamble stated that the aims and functions of the Council of Europe should be enlarged so as to include those of the Brussels Treaty Organisation and 0. E. E. C, whose administrative organs should be transferred to the Council; moreover, executive authority and legislative power should be granted to the Council of Europe, which should be converted into a European political authority with a Parliament of two houses. These principles were to be given effect by twenty-eight articles, which repeated many of the earlier political Recommendations of the Assembly and provided, in addition, that legislative powers should be conferred on the Committee of Ministers and the Consultative Assembly (the name of the latter being changed to " Legislative Assembly ") and executive powers vested in an Executive Council which would be elected by the Assembly and responsible before both the Assembly and the Committee of Ministers. The Assembly and the Committee of Ministers, acting unanimously, would have power to pass European Acts, which, when adopted, would be binding in all Member States. In other words, the rule of unanimity would be retained in the Committee of Ministers, but Bills approved both by the Assembly and the Ministers would have binding force and prevail over any domestic laws which might be in conflict with them. Moreover, the Executive Council would consist of Councillors who would be heads of executive departments and therefore able to exercise the powers which it was intended to confer on them by the passage of European Acts.

At the same time as the Mackay Protocol the Assembly was also seized, in November 1950, of the La Malfa Proposals which were presented by a group of Italian Representatives and sought to develop the consultative functions of the Assembly. Their basic idea was that the Governments had, by ratifying the Statute, created a Consultative Assembly, and it was therefore up to them to consult it; M. La Malfa and his friends therefore sought to make it a statutory duty of each Member State to inform the Committee of Ministers of " any project or proposal with European implications " which it might adopt, so that the Committee might transmit it to the

1. This is to be found in Appendix II to Recommendation 54 of November 1950. A revised and expanded version was produced a year later in Recommendation 23 of December 1951.

Assembly for its opinion. Tlie Assembly would thus be in a position to express its views, for the guidance of the Governments, on all proposals of a European character before they were put into effect as a result of intergovernmental negotiation [2]

After a thorough study of the Mackay and La Malfa proposals, the Assembly adopted in December 1951 its Recommendation 23, to which was appended a draft new Statute for the Council of Europe which the Assembly asked the Ministers to accept. This draft contained the greater part of the reforms proposed by Mr. Mackay and M. La Malfa. But it did not meet with the agreement of the Committee of Ministers. In March 1952, the Committee of Ministers was seized of the Eden Plan for establishing close links between the Council of Europe and the Coal and Steel Community, and thereafter it was this plan rather t h a n the Mackay and La Malfa proposals which occupied the attention both of the Ministei's and of the Assembly when they considered the institutional reform of the Council.

1.3. C. The period 1954-1956

In May 1954, the Committee of Ministers transmitted to the Assembly its Special Message transmitting the Programme of Work of the Council of Europe (Doc. 238). This contained certain observations on the role and functions of the two organs of the Council. It led the Assembly to make further proposals on the same subjects —in its Opinion 13/14 of July 1955—a number of which reproduced some of its earlier ideas of 1950. Thereafter, the Committee of Ministers replied to this Opinion in two further documents (Doc. 421 of October 1955 and Doc. 481 of April 1956), and several discussions were held in the Joint Committee. There are listed below the main proposals of the Assembly made in the course of these various exchanges and the action taken thereon by the Committee of Ministers.

1. That Member Governments should, as a standing procedure, consult the Assembly in advance on European proposals within the Council's mandate (Opinion 13/14, paragraph 11 (1)).

The Committee of Ministers replied t h a t there could be no obligation to consult t h e Assembly, but they agreed that the Assembly should be informed of any plans of a European character as soon as Governments had reached preliminary agreement (Doc. 481).

2. That other European ministerial organs (0. E. E. C, the Ministerial Committee on Agriculture, the European Conference of Ministers of Transport) should consult the Assembly on specific questions, in addition to submitting annual reports (Opinion 13/14, paragraph 16).

The Committee of Ministers replied t h a t they had forwarded this request to 0 . E. E. C , the Ministers of Transport and the Ministers of Agriculture (Doc. 481).

3. That the Assembly should be consulted in advance on European questions to be discussed at meetings of world organisations (Opinion 13/14, para. 18).

The Committee of Ministers replied t h a t Resolution (54) 16 provided the necessary machinery for consultation between European delegations accredited to world organisations (Doc. 481).

4. That the Committee of Ministers should request the opinion of the Assembly on specific issues having political interest, t h a t it should provide the Assembly with the necessary documentary material; that Ministers should take part in the political debates; t h a t the Committee of Ministers should discuss the political resolutions of the Assembly; t h a t questions of a general European political nature should be discussed in the Council of Europe and not only in N. A. T. 0. (Opinion 13/14, para. 21).

The Committee of Ministers replied that they hoped that Ministers would attend and join in the debates. They expressed willingness to submit concrete political problems to the Assembly, but pointed out that t h e Assembly could discuss any problem it wished. They undertook to discuss the political resolutions of the Assembly, as in the past (Doc. 481).

5. That the President of the Assembly and/or the Chairmen and Rapporteurs of competent committees should be allowed to explain Assembly recommendations before the Committee of Ministers (Opinion 13/14, para. 23).

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2. The La Malfa proposals are to be found with the Mackay Protocol in Appendix II to Recommendation 54, Texts Adopted, 1950.

The Committee of Ministers agreed t h a t the Ministers' Deputies should be authorised to hear the Chairman and Rapporteur of any Assembly committee (Doc. 481). No mention was made as to whether the Committee of Ministers itself might hear Chairmen and Rapporteurs.

6. That the procedure for concluding partial agreements should be simplified by abolishing the necessity of a preliminary vote requiring unanimity and that this procedure should be used more often (Opinion 13/14, para. 35).

The Committee of Ministers replied t h a t they did not propose to resort to the procedure of partial agreements except in cases where an agreement among all their members proved impossible (Doc. 481). In other words, they rejected the proposal that the procedure should be modified.

7. That Member States should, where appropriate, implement unilaterally the Recommendations of the Assembly (Opinion 13/14, para. 27).

The Committee of Ministers did not reply.

8. That the Committee of Ministers should meet every fortnight and that all Member States should appoint Permanent Representatives at Strasbourg (Opinion 13/14, paras. 37 and 38).

The Committee of Ministers rejected the first proposal; as regards the second, they said t h a t a minority of the Governments were opposed to sending their Permanent Representatives to Strasbourg (Doc. 481).

9. That each Member State should appoint an Under-Secretary of State or a junior Minister for European Affairs (Opinion 13/14, para. 40).

The Committee of Ministers rejected this proposal.

10. That the Secretary-General of the Council of Europe should be the Chairman of the Committee of Ministers (Opinion 13/14, para. 39).

The Committee of Ministers rejected this proposal.

11. That the Secretariat-General be recognised as an organ of the Council of Europe, as is t h e case in t h e United Nations (Opinion 13/14, para. 39).

The Committee of Ministers did not reply.

12. That the Ministers' Deputies should keep the Assembly informed of the reasons for their decisions and of the progress of their work in the case of questions on which no decision had been reached (Opinion 13/14, para. 26).

The Committee of Ministers replied t h a t they would inform the Assembly as often as possible of the reasons why they have been unable to accept one of its recommendations (Doc. 481).

13. That the setting up of joint working parties between Assembly committees and committees of experts should be a standing procedure and that, in addition, Chairmen and Rapporteurs of Assembly committees should be able to be heard by committees of governmental experts (Opinion 13/14, para. 26).

The Committee of Ministers said they had authorised contact in certain cases between Assembly Representatives and governmental experts. They refused to allow the Chairmen and Rapporteurs of Assembly committees to appear before committees of experts.

2. PART II - Powers of the Committee of Ministers

Under the terms of the Statute, the Assembly is the deliberative organ of the Council and the Committee of Ministers its executive organ. Even though the Committee of Ministers has the right to initiate proposals of a European character, under Article 15 of the Statute, it has very rarely done so. Nearly all questions considered in the Council of Europe originate in the Assembly; the normal procedure is thus that the Assembly proposes and the Committee of Ministers disposes. The key to the effectiveness of the Council is therefore in t h e action and t h e powers of the Committee of Ministers.

In this respect, the Council of Europe is in a very much less-favoured position than the two other European organisations with which it has the closest affinity, O. E. E. C. and W. E. U.

2.1. Organisation for European Economic Co-operation

Under Article 13 of the OEEC Convention, " The Organisation may take decisions for implementation by Members ". (The French text is even clearer : L'Organisation peut prendre des decisions que les memores exécuteront.) In other words, the Council of 0. E. E. C. (from which, under Article 15, all decisions derive) has the power to take decisions which are binding on Members. This contrasts strongly with the position in the Council of Europe, where the Committee of Ministers may only make recommendations to Member Governments, which they are free to accept or reject as they think fit. It is common knowledge t h a t many recommendations of the Committee of Ministers have remained a dead letter and that many of the Conventions concluded under the auspices of the Council are inadequately ratified.

The importance of the powers of the Council of 0. E. E. C. is apparent from the nature of some of its decisions. These include decisions which have progressively established higher percentages of the trade of Member States which should be liberalised; the adoption of the Code of Liberalisation, which is a detailed instrument (comparable to an international treaty) on the rules to be followed in the Liberalisation of Trade; the decision to set up the European Productivity Agency; and the creation of the Ministerial Committee on Agriculture and Food. These last two decisions are also comparable to the conclusion of international conventions and have created within the framework of 0. E. E. C. new organs of European co-operation dealing with productivity and agriculture. This is precisely the kind of action which the Assembly wished the Committee of Ministers to take when it adopted recommendations about the creation of Specialised Authorities—recommendations which, however, remain unfulfilled in the framework of the Council of Europe.

Another important aspect of the powers of the Council of 0. E. E. C. is that, under the terms of Article 14 of the Convention, Members may declare themselves not to be interested in a particular question and thus abstain from a decision—which shall, never theless, be binding for the other Members. This is comparable to the procedure known as " partial agreements" in the Council of Europe, but is very much simpler, since the abstaining Member may simply indicate his intention to abstain, without obtaining the unanimous approval of all the other Members, as is required in the Committee of Ministers.

There is one respect, however, in which t h e procedure of t h e Council of O. E. E. C. is less satisfactory than t h a t of the Committee of Ministers. In 0 . E. E. C , all decisions require unanimity. In the Committee of Ministers, this is necessary for recommendations to Governments, but many decisions (such as the setting up of expert committees; the adoption of the Budget, etc.) may be taken by a twothirds majority. This power of majority decision should not be abandoned.

2.2. Western European Union

Article IV of the first Protocol to the Brussels Treaty of September 1954 confers on t h e Council the power " to consider matters concerning the execution of this Treaty and of i ts Protocols and their Annexes " . It continues: " The Council should decide by unanimous vote questions for which no other voting procedure has been made or may be created. " In fact, the subsequent Protocols give it power to take many decisions by majority vote. By Protocol No. 2, the limits set to the armed forces of the Members shall not be increased except by unanimous agreement; but the United Kingdom agrees not to withdraw its forces stationed on the Continent (except in the event of an acute overseas emergency) against the wishes of the majority. Protocol No. 3 provides that the list of prohibited weapons may be amended by the Council of W. E. U. by a two-thirds majority and Protocol No. 4 stipulates that the Council may act by simple majority in matters submitted to i t by t h e Agency for the Control of Armaments. It is thus apparent t h a t the Council of W. E. U. has extensive powers t o take binding decisions by majority vote.

2.3. Procedure in the Ministerial organs

Differences in procedure of the three ministerial organs are also apparent, to the disadvantage of the Council of Europe.

The Council of O. E. E. C. can meet with the same powers either at ministerial or at Government official level. In fact, it normally meets at ministerial level about once a quarter and at official level once a week. All Members have Permanent Delegations resident in Paris, usually headed by an Ambassador and with a considerable staff (sometimes with between twelve and twenty members).

The Council of W. E. U. likewise meets at official level, usually once a week, when the Ministers are replaced by the Ambassadors in London and by an Under-Secretary from the Foreign Office, who also, of course, have considerable staffs to assist them. On such occasions the Secretary-General takes the Chair.

By contrast, the Committee of Ministers of the Council of Europe meets normally twice a year and the Ministers' Deputies about eight times a year, though usually for longer periods. Only seven countries have Permanent Representatives in Strasbourg, who are mostly single individuals with no or, at most, one assistant.