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The Council of Europe and its observer states - the current situation and a way forward

Report
Committee on Political Affairs and Democracy
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Summary

The report provides an analysis of the situation of observer states and parliaments with regard to the Council of Europe's standards. It concludes that the current framework based on Statutory Resolution (93) 26 contains no formal commitments by observers and foresees no monitoring procedures applicable to them.

However, assuming that observer states are established democracies which share the Council of Europe's ideals and values, the report suggests that observers be included, subject to their agreement, in the framework of regular Assembly debates on the state of human rights and democracy.

The report further suggests a revision of Statutory Resolution (93) 26 for any future applications for observer status in such a way that specific standards, formal commitments and a monitoring process would be foreseen.

Finally, the report suggests a series of measures, both at the intergovernmental and the parliamentary levels, which would create conditions for an enhanced co-operation with observers on the basis of broader possibilities and strengthened commitments to common values.

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A. Draft resolution

1. The observer states' relationship with the Committee of Ministers dates back to 1970 and with the Parliamentary Assembly to 1957. The relationship takes three forms:

1.1. Observer status with the Council of Europe granted prior to any formal arrangements;

1.2. Observer status with the Council of Europe as set out in Statutory Resolution (93) 26 adopted by the Committee of Ministers in 1993;

1.3. Observer status with the Parliamentary Assembly (currently under Rule 60 of its Rules of Procedure).

2. Only one state (the Holy See) acquired observer status with the Council of Europe prior to any formal arrangements. The status was agreed in 1970 without any undertaking as to the Council of Europe's ideals and values being requested or made.

3. Four states have acquired observer status with the Council of Europe under the terms set out in Statutory Resolution (93) 26: the United States of America (December 1995), Canada (April 1996), Japan (November 1996), and Mexico (December 1999).

4. The parliaments of three states have acquired parliamentary observer status with the Assembly. The Israeli Knesset was granted observer status on an *ad hoc* basis in 1957, before the Assembly officially introduced it in 1961. The Parliaments of Canada (since 1997) and Mexico (since 1999) were granted it in accordance with Rule 60 of the Rules of Procedure of the Assembly. It is important to note that Canada's and Mexico's parliamentary observer status is based on Statutory Resolution (93) 26.

5. Statutory Resolution (93) 26 was intended to create an institutional framework for increased co-operation between the Council of Europe and non-member states sharing the Organisation's ideals and values. It responded, *inter alia*, to the interest expressed by some non-member states in contributing to the stabilisation in the new democracies in central and eastern Europe. The Resolution provides that any state willing to accept the principles of democracy, the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and wishing to co-operate with the Council of Europe may be granted observer status with the Organisation.

6. The existing framework as established by the Statutory Resolution contains no formal commitments and foresees no monitoring procedures. Observers are not legally bound by specific Council of Europe standards as enshrined in its Statute and core conventions and as upheld by various monitoring mechanisms. This situation is a source of misunderstanding between the Council of Europe and some observers on what the precise commitments of the latter are.

7. In this context, the Assembly recalls that the Committee of Ministers' resolutions granting observer status to the United States, Canada, Japan and Mexico, clearly state that those states share the ideals and values of the Council of Europe. The Assembly expressed similar views in its statutory Opinions on each request.

8. Furthermore, it can be argued that the granting of observer status to the four states under Statutory Resolution (93) 26 is recognition by the Council of Europe of a political commitment by Observers to comply in law with, to respect in practice, and to promote, universal principles of democracy, human rights and the rule of law.

9. On this basis, the Assembly believes that it would be appropriate and helpful to include observer states in the framework of its regular debates on the state of democracy and human rights, provided that the Observers concerned wish it, are willing to co-operate in preparing reports and are given the possibility to participate in those debates.

10. The Holy See is not covered by the Statutory Resolution and was not required to give any undertakings. Its lack of democratic institutions and its position on certain human rights matters makes it a special case. The status quo should be accepted.

11. The observer status of the Israeli Knesset with the Assembly was granted before the adoption of Statutory Resolution (93) 26 and has therefore no formal links to its general requirements. In addition, the State of Israel has never requested to be granted observer status with the Council of Europe under the Statutory Resolution. However, the Assembly considers that Israel, as a democratic state, should also be included in the debate on the state of human rights and democracy on the same conditions as mentioned in paragraph 9 above.

12. The Assembly believes the current situation where the granting of observer status entails no formal commitments needs revision before any new applications for observer status may be considered. One approach would be to attach to the general criteria set out in the Statutory Resolution a clearly defined set of standards to which a state seeking observer status would commit itself to comply.

13. If this approach were to be adopted, states already enjoying observer status could be invited to undertake, on a voluntary basis, to comply with a mutually agreed set of standards. If this course of action were to be taken, it would be important to accept that unwillingness to do so would be a perfectly acceptable response.

14. The Assembly considers that the existing institutional and organisational framework at intergovernmental level offers adequate possibilities for as large an involvement in the Organisation's activities as observer states may wish and are ready to make.

15. The Assembly encourages observer states to show political will in supporting the Council of Europe and to fully use the potential of their status.

16. The Assembly greatly appreciates the contribution of the parliamentary observers to the political debate both in plenary sessions and in committees. It encourages the parliamentary observer delegations to be better integrated into the political process in the Assembly, and is ready to discuss with them further steps to that effect.

17. The Assembly is also aware of the parliamentary observers' wish to be better heard in the Assembly, and to have more influence on its work. It is willing to take steps to facilitate this.

18. The Assembly welcomes the fact that a parliamentary delegation from the Japanese Diet attends one Part-Session per year in the framework of the enlarged debate on the Organisation for Economic Co-operation and Development (OECD) activities, despite having no formal relationship with the Assembly. It would be ready to explore a closer parliamentary relationship.

19. The Assembly regrets the lack of parliamentary involvement by the United States of America in its activities and wishes to take steps to establish a close working relationship with members of the United States Congress.

20. The Council of Europe's conventions are among its most important contributions to the development of democracy, human rights and the rule of law. Although some of them are only for signature by member states, most are open to non-member states as well.

21. The Assembly believes that observer states should be encouraged to sign and ratify such conventions as confirmation of their commitment to the ideals and values of the Council of Europe.

22. The fact that the observer states are not signatories to Council of Europe conventions should not deter this Assembly, the Committee of Ministers, or other Council of Europe bodies, from raising with observer states issues which are deemed to be fundamental.

23. The Assembly appreciates the support, including some substantial voluntary financial contributions, that observer states provide to Council of Europe programmes that seek to strengthen democratic institutions, to promote the rule of law and the respect of human rights in central and eastern Europe, especially in the Balkans.

24. The Assembly believes that co-operation between the Council of Europe and observer states should extend beyond governmental and parliamentary levels, and involve political parties.

25. The Assembly therefore invites all observer states to:

25.1. make full use of the opportunities provided by involvement with the Council of Europe as a forum for sharing experiences and best practices, a framework for seeking common answers to challenges that both the member and the observer states are facing, as well as a standard-setting body, particularly in the fields of democracy, the rule of law, human rights, and in other areas of Council of Europe activities if individual states so wish;

25.2. participate more actively in the work of the Committee of Ministers and its subsidiary bodies, and in all other Council of Europe bodies and mechanisms open for their participation, including the Forum for the Future of Democracy;

25.3. sign and ratify those Council of Europe conventions which are open to non-member states, and to contribute to the development of new instruments;

25.4. support the Council of Europe in various international fora on issues related to its core activities.

26. The Assembly resolves to invite observer states and parliaments to agree to be included in the framework of regular Assembly debates on the state of human rights and democracy.

27. The Assembly invites all parliamentary observers to integrate more effectively into the work and political processes in the Assembly, and in particular to:

27.1. fully participate in meetings and other activities of the political groups in accordance with their political affiliation;

27.2. regularly participate in the work of the Assembly's committees and sub-committees;

27.3. bring to the attention of the Assembly and of its committees issues of particular interest or importance, and to initiate, through appropriate arrangements, motions for resolutions and recommendations;

27.4. participate in the Forum for the Future of Democracy;

27.5. strengthen co-operation and exchanges of views between them during plenary sessions and to establish a mechanism and structure for facilitating this.

28. The Assembly invites the Political Affairs Committee (through its External Relations sub-committee) to:

28.1. arrange regular exchanges with parliamentary observer delegations both individually and collectively;

28.2. take responsibility for developing the involvement in all aspects of the Assembly's work of parliamentary observer delegations both individually and collectively;

28.3. regularly and frequently inform the Assembly on the state of the relationships with parliamentary observer delegations both individually and collectively.

29. The Assembly recommends to all its committees to show maximum flexibility when dealing with issues of special significance for parliamentary observer delegations, for example by encouraging them to present position papers and complementary information memoranda.

30. The Assembly instructs the Bureau to:

30.1. subject to an agreement by observers, include them in the framework of regular Assembly debates on the state of human rights and democracy, to establish the modalities for the participation of observers' representatives in the preparation of reports and in the debates;

30.2. examine the possibility of extending provisions of special Rules that govern the enlarged Assembly debates on the activities of the Organisation for Economic Co-operation and Development (OECD), with modifications as may be necessary, to other debates of special interest to observers;

30.3. examine the possibility for members of parliamentary observer delegations to take part in election observation missions organised by the Assembly;

30.4. examine the possibility of allocating time during part-sessions for parliamentary observers to present a report or initiate a debate should they wish to do so;

30.5. delay granting parliamentary observer status to any more parliaments until all the issues raised in this resolution have been resolved;

30.6. consider reclassifying existing parliamentary observers in line with any reclassification agreed by the Committee of Ministers;

30.7. prepare, on the basis of the Rules of Procedure of the Assembly and taking into account best practices, guidelines on the participation of parliamentary observer delegations in the work of the Assembly, including in the Standing Committee and in the committee meetings, and to ensure that these guidelines are applied uniformly.

B. Draft recommendation

1. The Assembly refers to Resolution … (2008) on "The Council of Europe and its observer states: the current situation and a way forward".

2. The Assembly invites the Committee of Ministers to:

2.1. present an annual report to the Assembly on the involvement of observer states in all aspects of the Council of Europe's work;

2.2. consider amending Statutory Resolution (93) 26 for any future applications for observer status in such a way that specific standards, formal commitments and a monitoring process would be foreseen;

2.3. explore with existing observer states their readiness to subscribe voluntarily to any changes made to the Statutory Resolution;

2.4. consider clarifying the differing status of observer states by introducing new designations for existing observer states without altering in any way their status, in order to distinguish:

2.4.1. the observer state which obtained a status prior to any formal arrangements;

2.4.2. the observer states which were granted observer status under Statutory Resolution (93) 26;

2.4.3. observer states which could be granted that status following a possible revision of Statutory Resolution (93) 26 as recommended in paragraph 2.2. above, or would agree to subscribe to specific commitments as mentioned in paragraph 2.3. above;

2.5. delay granting observer status to any more states until all the issues raised in this recommendation have been addressed.

3. The Assembly recommends to the Committee of Ministers to invite observer states to take part in the Forum for the Future of Democracy.

C. Explanatory memorandum, by Mr David Wilshire

1. Introduction

1. On 30 June 2005, a motion on "Compliance of observer countries with the values of the Council of Europe" was tabled with the Assembly. It was referred to the Political Affairs Committee for report on 1 September 2005. In November 2006, the committee modified the title of the report to "Compliance by observer countries with the standards of the Council of Europe".

2. I was appointed as rapporteur on 14 March 2006, following the resignation of my predecessor, Mr Mihkelson.

3. In April and June 2006, I held informal conversations with parliamentarians from observer countries, which made it clear that the wording of the motion, if taken in a narrow sense, caused them concern. Believing that observer status is meant to be a framework for positive co-operation and added value, I suggested to the committee that it broaden the scope of the report.

4. Once the committee had approved my proposal at its meeting in November 2006, I contacted representatives of the observer countries once again in a more formal manner, in order to discuss the issues raised in the motion on a new basis.

5. To date, I have had meetings with parliamentarians from Japan, Canada, Mexico and Israel. The Canadian delegation made a written contribution to the report; the Mexican delegation has also offered to make one, which is yet to come.

6. On the governmental side, I met Mr Ryûichi Shoji, Consul General in Strasbourg and Permanent Observer of Japan, Mrs Laurette Glasgow, Ambassador of Canada in Brussels, in her capacity as Permanent Observer of Canada to the Council of Europe, and Mrs Ana Rocío Arizmendi, Deputy Permanent Observer of Mexico to the Council of Europe.

7. Unfortunately, I have not been able to arrange a meeting with the United States Ambassador in Paris who acts as the United States Permanent Observer to the Council of Europe. The United States Embassy in Paris promised a written response to my questions with regard to the United States attitude towards the Council of Europe. It has not yet been received.

8. My contacts with observers show that there is a fundamental disagreement between the Council of Europe and the observers about what are the observers' obligations arising from their status. This difference of opinion is controversial and fundamental, and needs to be resolved by agreement so as to avoid any misunderstanding in future. Furthermore, I came to the conclusion that in the current framework, which contains no formal specific commitments by observers, there is no legal ground to talk about compliance by observers with the standards of the Council of Europe. I therefore suggested a new title for the report, "The Council of Europe and its observer states: the current situation and a way forward", which the committee approved at its meeting on 13 November 2007.

9. I also think that the lack of involvement by parliamentarians from the United States and the limited involvement by parliamentarians from Japan in their countries' co-operation with the Council of Europe weakens the potential for mutual benefit. I am therefore disappointed that the Bureau refused the request that I visit Japan and the United States of America to explore possibilities for improving relations with those two countries.

2. General information on observer status

10. It is important to distinguish between observer status with the Council of Europe as a whole and national observer parliaments with the Parliamentary Assembly.

11. The observer status with the Council of Europe is based on Statutory Resolution (93) 26[1] of the Committee of Ministers adopted in 1993. Article I provides that "Any State willing to accept the principles of democracy, the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and wishing to co-operate with the Council of Europe may be granted by the Committee of Ministers, after consulting the Parliamentary Assembly, observer status with the Organisation."

1. See Appendix I.

12. In addition, the Committee of Ministers approved on 7 July 1999, the "criteria for the granting of the observer status".[2]However, there have been no new applications for the observer status since 1999, and in accordance with generally accepted principles, these new criteria should not be retroactively applied to those observers having received the status prior to the introduction of the new criteria.

13. Currently, five states enjoy observer status: the United States of America (since December 1995), Canada (since April 1996), Japan (since November 1996), Mexico (since December 1999) and the Holy See (granted the status in 1970, that is, before the statutory resolution).

14. Observer status with the Assembly is based on Rule 60 of the Assembly's Rules of Procedure: "The Assembly may, on the proposal of the Bureau, grant observer status to national parliaments of non-member states of the Council of Europe which meet the conditions set out in paragraph 1 of Statutory Resolution (93) 26 of the Committee of Ministers on observer status."

15. There are three observer parliaments: from Canada, Mexico and Israel (the latter was granted the status before the statutory resolution).

3. Criteria for assessment

16. Statutory Resolution (93) 26 does not contain any direct reference to the Council of Europe's specific standards which an observer state would commit itself to in order to comply. Instead, it refers to the will of the state concerned to accept the principles of democracy, the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. While being at the heart of the Council of Europe values, these principles are not the exclusive "property" of our Organisation, and representatives of observer states refer to them as being their own values. Additionally, it would be presumptuous of the Council of Europe to claim that its detailed interpretation of these principles is universally superior to all others.

17. On the other hand, specific Council of Europe standards are enshrined in a number of core conventions, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, which are only open for signature and ratification to member states.

18. Thus, we are faced with a dilemma. Do we consider the performance of the observer states on the basis of universal principles, or assess them against the Council of Europe's conventions – of which these states cannot become parties?

19. As rapporteur, I am strongly in favour of the former option. Moreover, my contacts with the observer representatives have shown that the latter would be wholly unacceptable to them.

20. More generally, while stressing the adherence of their states to the basic principles on which the Council of Europe is built, those observers do not seem to consider that their states are bound by any specific commitments or obligations arising from their observer status – as they were not required to agree to any when applying for observer status.

21. However, both the Parliamentary Assembly and the Committee of Ministers seem to consider that the observers are bound by formal obligations. Let me quote, as an example, the reply from the Committee of Ministers to Assembly Recommendation 1760 (2006) on the position of the Parliamentary Assembly as regards the Council of Europe member and observer states which have not abolished the death penalty.[3]"The chairperson will also draw attention to the obligation for observer states to meet the requirements of Statutory Resolution (93) 26, the additional criteria adopted by the Committee of Ministers on 7 July 1999, and relevant international legal standards."

22. Although I am not a lawyer, I suspect that the legal grounds for the above interpretation are not very strong. When a number of member states fail to comply with formal and written commitments they have signed upon accession to the Council of Europe, it is difficult to argue that observers must comply with norms which they did not sign. Therefore, a way has to be found to reconcile these two positions.

23. A clearly defined set of standards, which a state seeking observer status would commit itself to comply with, would make it possible to assess the compliance on a solid ground of concrete legal terms. I would recommend this approach in the case of new applications for observer status but I realise that this might create two types of observer state.

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2. See Appendix II.
3. See Doc. 11174, paragraph 4.

24. It would also be preferable if the existing observers could agree to commit themselves to comply with Council of Europe standards in more specific terms than those, too general, contained in Statutory Resolution (93) 26. I understand that convincing them to do so would be a hard task.

25. I believe that, until a clear and mutually acceptable solution is found, it would be unhelpful to try to assess the compliance by observer countries with the standards of the Council of Europe as suggested by the motion. Instead, it would make sense to carry out regular and structured reviews of their performances in the fields of democracy, the rule of law and respect of human rights and fundamental freedoms. This is the approach that I intend to take in this report. In future, by providing international comparisons, this could become a valuable contribution to the review of the state of human rights and democracy in Europe which the Assembly held for the first time in April 2007 and which is to develop into a regular exercise.

26. However, the fact that the observers are not signatories to key Council of Europe conventions should not prevent this Assembly, the Committee of Ministers, or other Council of Europe bodies, from continuing to question observer states and comment on matters that cause concern where there appears to be a disregard of principles which we in the Council of Europe believe to be fundamental.

4. Overview of democratic performance

4.1. Preliminary remarks

27. Firstly, I will intentionally limit myself to a brief overview of the functioning of democracy in observer states, and I would suggest leaving it to my colleague, the Rapporteur for Opinion of the Committee on Legal Affairs and Human Rights, to cover the issues of his committee's competence, such as the rule of law and the enjoyment by all persons within the state's jurisdiction of human rights and fundamental freedoms.

28. Secondly, the Holy See represents a special case. Without questioning the observer status which it enjoys, and fully recognising the important role it plays in international affairs, I believe that it cannot be assessed on the same basis as all the other observers because it simply does not have basic democratic institutions.

29. All four other states enjoying observer status with the Council of Europe, that is, the United States, Canada, Japan and Mexico, as well as Israel which only has an observer position in the Parliamentary Assembly, are fully-functioning representative democracies based on political pluralism, though presenting a variety of political systems and forms of government.

4.2. Background information

30. The United States is a constitutional republic with three levels of government (federal, state and local) and the classic separation of power between three branches. The legislative power belongs to the bicameral Congress composed of the Senate (100 senators) and the House of Representatives (435 representatives). The president, who is the head of state, also has executive power, which he exercises via the administration. The judiciary includes the Supreme Court and federal courts. Judges are appointed by the president and approved by the Senate.

31. United States citizens have universal suffrage from the age of 18 regardless of race, sex, or wealth, and both Houses of Congress are directly elected. Members of Congress are elected for a four-year term. The presidential election is indirect. Presidential electors who form the United States electoral college are selected on a state-by-state basis as determined by the laws of each state.

32. Though the United States has a well-established electoral system, the presidential elections in 2000 and 2004 showed its limits and undermined its credibility. In the 2000 election, which was one of the most controversial in the history of the country, the winning candidate, George W. Bush, received fewer popular votes than his competitor, Al Gore, but obtained more electors. In both 2000 and 2004 elections, a number of irregularities were reported, and doubts were expressed about whether the election was fair. The Parliamentary Assembly has never been invited to observe elections in the United States.

33. The political life in the country is dominated by two main parties, the Republicans and the Democrats, and the "winner takes all" principle of selection of presidential electors has in fact created a two-party system where third parties have little chance of winning an election.

34. Canada is a constitutional monarchy with Her Majesty Queen Elizabeth II, Queen of Canada, as head of state. It is a parliamentary democracy with a federal system of parliamentary government. The constitution divides the power between the federal and provincial governments. The Queen is represented by the governor general, who formally appoints the prime minister and his cabinet. Traditionally, the position of prime minister belongs to the current leader of the political party which can obtain the vote of confidence in the House of Commons.

35. The federal parliament consists of three components: the Sovereign and two chambers, the House of Commons (308 members directly elected by the people) and the Senate (105 members appointed on a regional basis by the governor general on the recommendation of the prime minister). General elections are at least held at least every five years. Members of the Senate serve until the age of 75.

36. The judiciary includes the Supreme Court of Canada, consisting of nine members appointed by the governor general on the advice of the prime minister, and three branches of jurisdiction: federal, provincial and military, with two or three levels of hierarchy.

37. The electoral system seems to function quite smoothly and I am not aware of any reports of irregularities or election fraud. To my knowledge, the Assembly has never observed elections in Canada.

38. Four political parties are currently represented in the House of Commons: the Conservative Party of Canada, the Liberal Party of Canada, the New Democratic Party and the Bloc Québécois and two in the Senate (the Conservative Party of Canada and the Liberal Party of Canada). In addition, several members of the House of Commons and the Senate sit as independents, and three senators sit as progressive conservatives. The political landscape includes a number of smaller parties which have had parliamentary representation in the past.

39. Japan is a constitutional monarchy. The emperor, who is the head of state, is defined by the constitution as “the symbol of the state and of the unity of the people”, but does not play an active role in day-to-day politics. Japan is a parliamentary democracy, where the executive power is held by the cabinet, the head of which is the prime minister appointed by the emperor after being designated by the parliament from its members. Most members of the cabinet, appointed by the prime minister, must also be members of the parliament.

40. The Japanese Parliament consists of the House of Representatives (480 seats, elected by popular vote for a four-year term), and the House of Councillors (242 seats elected by popular vote for a six-year term). The constitution requires that the legislation passed by the parliament be promulgated by the emperor, without, however, granting him the power to oppose it.

41. The judiciary is composed of the Supreme Court, the chief justice of which is appointed by the emperor as designated by the cabinet and 14 members of which are appointed by the cabinet, and two levels of lower courts.

42. The main political force in Japan, the Liberal Democratic Party, has been in power for most of the time since 1955. The second largest and main opposition party is the Democratic Party of Japan. Other major parties are the New Komeito Party, the Japanese Communist Party and the Social Democratic Party.

43. Mexico, whose official name is the United Mexican States, is a federal republic with three levels of government: the federal union, the state governments and the municipal governments.

44. At the federal level, the legislative power belongs to the bicameral Congress of the Union, composed of the Senate (128 seats elected by popular vote every six years) and of the Chamber of Deputies (500 seats elected by popular vote every three years).

45. The President of the United Mexican States is head of the state and government. The president is elected by popular vote for one non-renewable six-year term. He appoints the cabinet.

46. The Supreme Court of Justice is composed of 11 judges appointed by the Senate from lists presented by the president.

47. The three main political parties of Mexico are: the National Action Party, the Institutional Revolutionary Party and the Party of the Democratic Revolution. Five smaller parties currently have seats in the congress.

48. The Assembly observed the Mexican general election held in July 2006.

49. Israel is a parliamentary republic which does not have a constitution but a set of basic laws. The legislative power belongs to a unicameral parliament, the Knesset (120 seats elected by popular vote for a four-year term via a proportional representation voting system). The President of Israel, as the head of state, appoints the leader of the majority party to the position of prime minister who forms the cabinet. Its composition must be approved by a vote in the Knesset.

50. The judiciary is composed of the Supreme Court of Israel (currently 14 judges), as well as of lower (district and magistrate) courts. The judges of the Supreme Court are appointed by the President of Israel upon the nomination of "the Judges' Nominations Committee". The Nominations Committee is composed of nine members: three justices of the Supreme Court (including the president of the court among them), two ministers (one of them being the minister of justice), two members of the Knesset and two representatives of the Israel Bar Association.

51. Some 12 political parties are currently represented in the Knesset, and another 20 participated in the last parliamentary elections held in 2006 but did not pass the electoral threshold. The electoral system is considered to provide conditions for free and fair elections. The Assembly has not been invited to observe elections in Israel.

4.3. General assessment

52. The Committee of Ministers, when adopting resolutions granting observer status to the United States, Canada, Japan and Mexico, considered that those states "share the ideals and values of the Council of Europe". The Assembly expressed similar views in its statutory opinions on respective requests for observer status.

53. Even if the functioning of democratic institutions in these states may have a number of shortcomings, these do not challenge the fundamentally democratic character of Council of Europe observer states.

54. I therefore conclude that, with the exception of the Holy See, all other observers fulfil the condition of the Statutory Resolution (93) 26 as regards the acceptance of the principles of democracy.

55. Subject to the opinion of the Committee on Legal Affairs and Human Rights, I assume that the observers are also in compliance with the principles of the rule of law.

56. In contrast, the respect by some observers of human rights and fundamental freedoms as defined by the Council of Europe is a matter of controversy and concern. The Assembly has dealt with some specific problems in this field in its resolutions and recommendations.[4]The most controversial issue is undoubtedly the refusal, by the United States and Japan, to adhere to the Council of Europe's fundamental position on the death penalty. I look forward to a detailed contribution on this and other matters by the Rapporteur for Opinion of the Committee on Legal Affairs and Human Rights.

5. Co-operation with Council of Europe institutions

5.1. Committee of Ministers and its expert committees

57. Statutory Resolution (93) 26 offered the observers the possibility to follow activities of various Council of Europe committees of experts. Though with varying degree of involvement depending on particular interests, observers have been active in this practical form of inter-governmental co-operation, and have contributed to the elaboration of a number of Council of Europe conventions.

58. Since September 2006, the observers can also be represented at regular meetings of the Ministers' Deputies.

59. Representatives of the observer states are regularly invited to attend conferences of specialised ministers organised by the Council of Europe.

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4. For example, Resolution 1562 (2007) on secret detentions and illegal transfers of detainees involving Council of Europe member states: second report; Recommendation 1760 (2006) on the position of the Parliamentary Assembly as regards the Council of Europe member and observer states which have not abolished the death penalty; Resolution 1454 (2005) on disappearance and murder of a great number of women and girls in Mexico; and many more.

60. A number of Council of Europe intergovernmental activities receive voluntary financial support from observers. For instance, the Canadian voluntary contribution to Council of Europe programmes and projects amounted to more than €2.3 million in 2005-06, with special focus on judicial and prison reforms in the Balkans (Bosnia and Herzegovina and Serbia) and history teaching in South-East Europe. Japan has provided voluntary contributions to various projects, in particular in the Balkans and Moldova, which amount to more than €860 000. The United States is a major financial contributor to the activities of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL).

5.2. Parliamentary Assembly

61. Parliamentarians from the Council of Europe observers Canada and Mexico, as well as the observer delegation of the Israeli Knesset, are actively involved in co-operation at the parliamentary level. Their valuable contribution to the Assembly debates, as well as to the activities of the Assembly committees, is highly appreciated.

62. Delegations from the Japanese Parliament regularly take part in the annual enlarged debate on the activities of the OECD. These delegations also took part in the Assembly debates on the United Nations (2000) and on terrorism (2001). However, this once-a-year presence does not allow for a sustained dialogue with the Assembly, and remains confined to the problems of the world economy. Moreover, the composition of the visiting delegations changes from one year to another. For the dialogue to become more structured and meaningful, it would be suitable to encourage the Japanese Parliament to ensure a presence in Strasbourg at least twice a year, and to engage with committees.

63. As regards the United States Congress, according to my information, there have been no direct contacts at Assembly level in years, even if the United States Government's request for the observer status in 1995 was supported by leading members of the Congress. One exception was the Inter-parliamentary Forum on Transatlantic Dialogue organised by the Political Affairs Committee in 2004. Though the Congress may participate in the enlarged debate on OECD activities, it does not show an interest in using this opportunity, preferring to focus on the OSCE Parliamentary Assembly and the NATO Parliamentary Assembly, where they enjoy full member-ship. The Assembly should perhaps take a new initiative in this direction.

5.3. Other Council of Europe bodies

64. Observers actively co-operate with various Council of Europe partial or enlarged agreements. For instance, all Council of Europe and Assembly observers have observer status with the European Commission for Democracy through Law (Venice Commission), and have actively participated in various activities organised in this framework.

65. In addition, the Venice Commission was involved in the process of revising the Mexican Constitution.

66. The United States has full member status with the Group of States against Corruption (GRECO).

67. Canada has been following since 1991 the activities of the European Pharmacopoeia and the Partial Agreement in the Social and Public Health Field.

68. Japan is observer to the Co-operation Group for the Prevention of, Protection Against, and Organisation of Relief in Major Natural and Technological Disasters.

69. The Holy See is member of the Council of Europe Development Bank (since 1973) and of the European Centre for Global Interdependence and Solidarity (North-South Centre).

6. Participation in Council of Europe conventions

70. The Council of Europe legal instruments are undoubtedly among the best assets of our Organisation. There are some 200 conventions and additional protocols, of which 148 instruments are open for signature and ratification by non-European non-member states, though none are specifically designed for observer states. Only 40 instruments are exclusively open to the Council of Europe member states.

71. However, as shown by the following statistics, observer states seem rather reluctant to join the Council of Europe legal area.

72. The United States has signed five Council of Europe treaties and ratified three of them. Another 16 treaties are open for signature by the United States.

73. Canada has so far signed seven conventions, of which it has ratified two. It can sign 14 more conventions.

74. Japan is party to only one convention, and has signed another one, while there are 13 instruments open to this state.

75. Mexico has signed three conventions, of which two have entered into force. It has the right to sign seven treaties and has been invited to accede to three more acts.

76. The Holy See has signed eight conventions, six are in force and one denounced. It has the right to sign 22 conventions.

77. Israel has signed 10 conventions, eight are in force and one denounced. It has the right to accede to five treaties.

78. Moreover, the dynamics of observers' participation in the Council of Europe conventions have not increased since these countries obtained the status. These facts call for serious reflection, and I intend to raise them in my forthcoming contacts both with representatives of observers and the Council of Europe officials, so as to see what can be done to improve the attractiveness of our legal instruments for observers.

7. Evaluation and improving the functioning of observer status

7.1. Position of government representatives

79. In addition to my contacts with representatives of Canada, Japan and Mexico, I have received written contributions from two observers, Canada and Japan, on their countries' position with regard to the Council of Europe.

80. The Canadian contribution states that Canada fully shares the same basic values that form the core mandate of the Council of Europe: human rights, democracy and the rule of law. It is involved with the Council of Europe in fields such as health, justice, culture and social development. For Canada, the Council of Europe is a valuable partner on key policy issues and standards, and a forum for exchange of information in several fields on the latest developments and best practices with experts from like-minded countries. It also provides an opportunity to sensitise the development of legal instruments in Europe to Canadian realities.

81. The Japanese contribution also stresses that Japan shares fundamental values with the Council of Europe, such as human rights, democracy and the rule of law, and is interested in strengthening co-operation with the Organisation to promote these values. The Council of Europe provides a forum for dialogue and the sharing of information between Japan and Europe which contributes to harmonising approaches to common issues. Japan provides support to Council of Europe programmes through voluntary contributions. It also works in parallel with the Council of Europe in achieving common objectives, in particular, in the Western Balkans.

82. The Mexican representative has also underlined the importance for her country to be in dialogue and co-operation with an organisation based on the values and ideals that Mexico shares. The European experience is of particular interest for Mexico and can have a positive influence on its policies. One concrete example is the abolition of the death penalty in Mexico following the granting of observer status to the country.

83. Unfortunately, I have so far received no input from the United States and the Holy See.

7.2. Position of Parliamentary delegations

84. The Canadian parliamentary observer delegation is globally satisfied with their co-operation with the Assembly, even if some specific experiences may have been rather disappointing. The written contribution by the delegation raises the following specific points.

i. In general, greater expectations regarding the involvement of observer countries and delegations, including compliance with the standards of the Council of Europe, would have to be accompanied by the increased participatory rights of observers.

ii. Consideration could be given to extending the Rules of Procedure for enlarged Assembly debates on the activities of the OECD to other committee meetings and debates on issues of special interest for observers, or international organisations in which observer states are members. The annual meeting of the Committee on Economic Affairs and Development at the European Bank for Reconstruction and Development (EBRD) and the Assembly debate on the EBRD are mentioned as examples.

iii. Observers to the Assembly should be given the opportunity to participate more fully in studies, debates and votes, when these directly affect the interests of their country. For example, the Assembly could consider allowing observer delegates to propose revisions to draft reports, move and support amendments to draft resolutions and recommendations in committees and in the Assembly.

iv. It would be helpful to have clearer rules, and a more consistent and transparent interpretation of the rules by the secretariat, with regard to the participation of observer delegations in meetings of committees and in the Standing Committee. In this context, it may be helpful for the Assembly secretariat to provide committee secretariats and observers with written instructions that take into account the above comments and best practices in committees where observers have traditionally participated on a regular basis.

85. The Mexican parliamentary observer delegation appreciates the possibility of dialogue with European parliamentarians sharing the same values, but would like to have more opportunities to speak in the Assembly and to enrich the European debate by presenting a view from the outside. I have been promised a written contribution from this delegation and I am looking forward to receiving it.

86. The Israeli Knesset observer delegation attaches great importance to its participation in the Assembly debates and in committee meetings, which represent for it an essential channel of communication with Europe at the parliamentary level. Obviously, activities and discussions related to the situation in the Middle East, and in particular the Israeli-Palestinian conflict, are the issues to which the Israeli observers pay the most attention. However, they show interest in various other issues dealt with by the Assembly and would appreciate a wider and more diversified co-operation with its committees.

87. The Japanese parliamentary representatives positively assess their experience with the Assembly and have shown some interest in extending the dialogue beyond issues related to the economy. However, they seem to be worried that these discussions might be dominated by the fundamental difference of views between the Assembly and Japan on the issue of the death penalty. Moreover, the distance between Tokyo and Strasbourg makes it difficult for them to be more present in the Assembly.

8. Conclusions and proposals

88. Statutory Resolution (93) 26 creates an institutional framework for co-operation between the Council of Europe and non-member states sharing the Organisation's ideals and values. Though the degree of involvement by different observers in Council of Europe activities varies according to their interests, one can conclude that the relationship between the Organisation and observers has been globally positive and mutually beneficial.

89. However, the statutory resolution contains no formal commitments and foresees no monitoring procedures. Observers are not legally bound by specific Council of Europe standards as enshrined in its Statute and core conventions and as upheld by various monitoring mechanisms. This situation is a source of misunderstanding between the Council of Europe and some observers on what the precise commitments of the latter are.

90. Yet, with the exception of the Holy See, states enjoying observer status with the Council of Europe, and those whose parliaments have observer status with the Assembly, are democracies committed to human rights and the rule of law. It would therefore seem to be appropriate to include these states, subject to their agreement, in the framework of the Assembly reports on the state of human rights and democracy.

91. On the other hand, the current situation where the granting of observer status entails no formal commitments needs revision before any new applications for observer status may be considered. One approach would be to attach to the general criteria set out in the statutory resolution a clearly defined set of standards to which a state seeking observer status would commit itself to comply with. The states already enjoying observer status could be invited to undertake the same commitments on a voluntary basis. The draft recommendation contains specific proposals to this effect to the Committee of Ministers, including a call for the amendment of the statutory resolution, and for the introduction of different categories of observers according to the degree of their commitments.

92. All observer states should be encouraged to make full use of the opportunities provided by involvement with the Council of Europe as a forum for sharing experiences and best practices, a framework for seeking common answers to challenges that both the member and the observer states are facing, as well as a standard-setting body, particularly in the fields of democracy, the rule of law, human rights, and, if they so wish, in other areas of Council of Europe activities.

93. They should also be encouraged to participate more actively in the work of the Committee of Ministers and all other Council of Europe bodies and mechanisms open for their participation, including the Forum for the Future of Democracy, to sign and ratify those Council of Europe conventions which are open to non-member states, and to support the Council of Europe in various international fora.

94. At the parliamentary level, observers should integrate more effectively into the work and political processes in the Assembly, its committees and political groups. Committees should be invited to show more flexibility in dealing with issues of special sensitivity to observers. At the same time, rules on observers' participation in committees should be applied uniformly.

95. Conditions must be created for parliamentary observers to be better heard and to have more influence in the Assembly. To this effect, the Political Affairs Committee could serve as a day-to-day interface between observer delegations and the Assembly, and regularly inform it of the state of co-operation. Moreover, observer delegations should have an opportunity to present to the Assembly their views on this co-operation.

96. The overall goal of suggested changes, both at the intergovernmental and the parliamentary levels, is to create conditions for an enhanced co-operation with observers on the basis of broader possibilities and strengthened commitments to common values.

Appendix I

Statutory Resolution (93) 26 on observer status(adopted by the Committee of Ministers on 14 May 1993 at its 92nd Session)

This document is available on the Council of Europe Internet site.

Appendix II

Information Document CM/Inf(99)50 – 27 July 1999Criteria for the granting of observer status with the Council of Europe

This document is available on the Council of Europe Internet site.

Reporting committee: Political Affairs Committee. Reference to committee: Reference No. 3125 of 1 September 2005.

Draft resolution and draft recommendation unanimously adopted by the committee on 11 December 2007.

Members of the committee: Mr Abdülkadir Ateş (Chairperson), Mr Konstantin **Kosachev** (Vice-Chairperson), Mr Zsolt Németh (Vice-Chairperson), Mr Giorgi Bokeria (Vice-Chairman), Mr Miloš **Aligrudić**, Mr Claudio Azzolini, Mr Denis Badré, Mr Radu Mircea **Berceanu**, Mr Andris Bērzinš, Mr Alexandër **Biberaj**, Mrs Guðfinna Bjarnadóttir, Ms Raisa Bohatyryova, Mr Predrag Bošković, Mr Luc **Van den Brande**, Mr Lorenzo Cesa, Mr Mauro Chiaruzzi, Ms Elvira **Cortajarena**, Ms Anna **Čurdová**, Mr Rick Daems, Mr Dumitru Diacov, Mr Michel Dreyfus-Schmidt, Ms Josette **Durrieu**, Mr Frank Fahey, Mr Joan Albert Farré Santuré, Mr Pietro Fassino (alternate: Mr Pietro **Marcenaro**), Mr Per-Kristian Foss, Ms Doris Frommelt, Mr Jean-Charles Gardetto, Mr Charles Goerens, Mr Andreas **Gross**, Mr Davit **Harutiunyan**, Mr Serhiy Holovaty, Mr Joachim **Hörster**, Mrs Sinikka Hurskainen, Mr Tadeusz **Iwiński**, Mr Bakir Izetbegović, Mrs Corien W.A. Jonker, Ms Darja Lavtižar-Bebler, Mr Göran **Lindblad**, Mr Younal **Loutfi**, Mr Mikhail Margelov (alternate: Mr Victor **Kolesnikov**), Mr Tomasz Markowski, Mr Dick Marty, Mr Frano Matušić, Mr Murat Mercan, Mr Mircea Mereută, Mr Dragoljub Mićunović (alternate: Mr Željko **Ivanji**), Mr Jean-Claude **Mignon**, Ms Nadezhda Mikhailova, Mr Aydin Mirzazada, Mr João Bosco **Mota Amaral**, Ms Natalia Narochnitskaya, Mrs Miroslava **Němcová**, Mr Hryhoriy Nemyrya, Mr Fritz Neugebauer, Mrs Kristiina Ojuland, Mr Theodoros Pangalos, Mr Aristotelis Pavlidis, Mr Christos Pourgourides, Mr John Prescott (alternate: Mr John **Austin**), Mr Gabino **Puche**, Mr Lluís Maria de Puig, Mr Jeffrey Pullicino Orlando, Mr Andrea Rigoni, Lord **Russell-Johnston**, Mr Oliver Sambevski, Mr Ingo Schmitt, Ms Hanne **Severinsen**, Mr Samad Seyidov, Mr Leonid **Slutsky**, Mr Rainder Steenblock,

Mr Zoltán Szabó, Baroness Taylor of Bolton (alternate: Mr Denis **MacShane**), Mr Mehmet **Tekelioğlu**, Mr Mihai Tudose, Mr José Vera Jardim, Ms Birutė Vėsaitė, Mr Björn Von Sydow, Mr Harm Evert Waalkens, Mr David **Wilshire**, Mr Wolfgang Wodarg, Ms Gisela Wurm, Mr Boris Zala, Mr Krzysztof **Zaremba**.

Ex officio: MM. Mátyás Eörsi, Tiny Kox.

NB: The names of those members present at the meeting are printed in bold.

See 6th Sitting, 23 January 2008 (adoption of the draft resolution, as amended, and draft recommendation, as amended); and Resolution 1600 and Recommendation 1827.