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Alteration of the Statute with a view to achieving some effective and concrete definition of the Consultative function of the Assembly

Motion for a resolution

tabled by Mr Ugo LA MALFA and other members of the Assembly

Explanatory memorandum

It has been said often enough that this present Session of the Assembly in Strasbourg constituted the culminating point in the crisis as regards relations between the Assembly and the Committee of Ministers, which endangers the smooth working of the Council of Europe and even its future existence.

We must, however, be careful to remind ourselves that it would be useless and even wrong (this has already been brought out in the Assembly) to lay all the blame on the Committee of Ministers; it would be equally wrong to believe that this crisis into which the Council of Europe has been plunged is the manifestation of a total incapacity of European countries to set in motion a process of unification. The problem is perhaps more far-reaching and more complex than it would appear at first sight.

Admitting that the Committee of Ministers abstained from any action to facilitate the free exercise of the consultative powers of the Assembly, we must ask ourselves whether the latter, absorbed as it was by its efforts to obtain a power of decision, did not fail to take full advantage of the possibilities inherent in its consultative powers.

In truth the Assembly was created and had agreed to function on the basis of the Statute of Europe as a Consultative Assembly. It is now clear to all—both federalists and functionalists—that the consultative nature of the Assembly cannot remain unchanged in a Europe which is seriously aiming at uniting. From this point of view the discussions which took place in the Assembly regarding the creation of a supra-national political power are of the utmost importance, since the creation of such a power constitutes, as I see it, the ultimate purpose of the Assembly. But it is also of the greatest importance to consolidate *pari passu* the original statutory character of the Assembly, in other words its consultative function. And that has not been done.

The struggle between federalists and functionalists, the decline of the conception of total federation in favour of that of partial federation or of specialised authorities, which have received such close attention from the Assembly, are evidence of this deep interest, but they also emphasise the Assembly's internal divisions and its weakness in the face of the Committee of Ministers. The struggle which it had to wage in this matter was rendered more difficult by the fact that it presupposed from the start, as an accomplished fact, the introduction of substantial changes in the Statute of the Council of Europe and the immediate transition from the conception which inspired the Statute as it stands, to a new and more radical conception.

The second problem which is that of the definition and the consolidation of the consultative function of the Assembly, has been almost entirely ignored, or only touched upon, as if it were impossible by the exercise of this function to achieve any really important concrete results, or conditions capable of later development. It must be frankly admitted that this relative lack of interest is attributable to the fact that the Assembly has adopted a somewhat negative attitude towards the work carried out by European Governments in the O. E. C. E. within the Atlantic Treaty Organisations, and within other less important organs for the attainment of a common policy tending towards a European unity.



Unable to take any share in this work, as it has been, and somewhat sceptical with regard to it, the Assembly has had to concentrate on matters of principle, without taking any part in the accomplishment of the real progress which has undoubtedly been made with regard to the unifying of Europe. In this respect the comments made in Mr. Mackay's suggestions with regard to changes in the Statute are very significant.

Now, a debate on the aim and the scope of the consultative function of the Assembly would have been and might still be of great importance for the Assembly. For it would give rise to the discussion of a concrete and well-defined problem within the framework of the present Statute, of which the governments have to meet the obligations. In other words, without the Assembly being asked to neglect the problem of supra-national power, it should now put this question to the Committee of Ministers : What is the scope of the consultative function of the Assembly, and how should it exercise this function in regard to all the agreements and conventions of European interest which are concluded between the nations of the Council of Europe?

Quite apart from its demands with regard to the matter of supra-national power—a question which falls outside the framework of the existing Statute—the Assembly can indeed submit another claim to the Committee of Ministers, and to the Governments of Member States of the Council, based on the fact that the consultative function of the Assembly has not been defined, that is to say that it has not been given a place in the procedure for the elaboration of the conventions and undertakings of European interest signed by Governments of the Council of Europe.

But there is a great difference between the fact of asking the Committee of Ministers to change the content and spirit of the present Statute and that of asking the Committee of Ministers or the Governments to make possible the effective exercise of the consultative function attributed to the Assembly by the Statute. Although the Committee of Ministers was able to elude the first of these requests, it cannot do so with regard to the second. Now in order that there should be no doubt about the matter, we declare that we mean by the term "consultative function," in the first place and in accordance with current constitutional acceptance of the words, full political and technical discussion of plais and initiatives having a European bearing, and submitted by the nations of the Council of Europe to whatever body (whether O. E. E. C. or the organs of the Atlantic Treaty, etc.) and not the elaboration of independent and generic Recommendations by the Assembly, as provided for in Article 23 of the present Statute.

By rendering possible the exercise of the consultative function, the Assembly will be introduced both constitutionally and structurally into the procedure for the elaboration of the agreements or conventions with a European bearing, and will not be merely consulted with regard to matters which the Committee of Ministers is good enough to submit to it, or concerning which the Assembly offers its opinion, as is provided for by the present drafting of the Statute (Articles 22 and 23). The constitutional struggle that the Assembly could wage against the Committee of Ministers on a favourable terrain must have at its first object the remodelling of the present Statute in this respect, a re-modelling without which the Consultative Assembly—unlike the consultative organs operating within the various countries—runs a risk of being only an academy with no precise constitutional or well-defined function.

The character and scope of the re-modelling which the Assembly should request from the Committee of Ministers may be inferred from certain elementary observations on the way in which a number of European agreements have in fact been brought about.

The European Assembly was never constitutionally notified of the Schuman Plan and proposals and neither the statement made by M. Schuman to the Assembly, nor the ensuing discussion, give us any reason to consider that the Assembly has been informed of the question even in a consultative capacity. It was not sufficient for the Committee of Ministers to allow the Assembly to discuss the problem as an "act of grace" ; there should have been formal notification, that is the Schuman Plan should have been formally submitted to the President of the Assembly, so that the latter could be constitutionally notified. It may be objected that by the terms of the Statute the Committee of Ministers was not compelled to do any such thing. In that case a serious question arises concerning the present Statute.

If the Assembly is not formally called upon to exercise consultative functions in this sphere, what then is its competence, and what does the Statute mean when it speaks of consultative functions?

The same can be said of the European Payments Union : as this Agreement was signed by the Governments without any notification to this Assembly at any stage of its preparation, what, then, does this Consultative Assembly amount to?

In fact, if the Assembly wishes to give a serious and concrete meaning to its consultative functions, it should not allow undertakings of a European nature to be signed by the Governments of the Council of Europe without having expressed its formal opinion through the ritual formula :

" Opinion of the Strasbourg Assembly requested. "

This formula should appear on all Agreements or Conventions with European implications submitted for approval to the Parliaments or Governments of the Council of Europe, and its presence should be a condition of the approval of those Governments and Parliaments.

If the Committee of Ministers and the Governments of the Council of Europe were not to accept this constitutionally unanswerable interpretation of the Statute, then indeed the Assembly would have reached a crisis. But that would not be because they had wanted to go outside the existing constitutional framework, but because they had asked the Committee of Ministers and the Governments to give a constitutionally coherent application of the Statute in force, and particularly of Articles 22 and 23 in relation to Article 10.

This is not the place to emphasise the importance of going to the heart of the problems which are being discussed to-day by other European organisations, and of crystallising the function of the Assembly into responsible activity, comprising the right to conduct investigations and the right to made decisions. If the Assembly were to have before it all the projects and all the initiatives relating to joint action by the Member States of the Council of Europe, it would already have before it a serious and concrete task to cany out. In addition to asking for a coherent application of the Statute —by which the consultation of the Assembly on any matter of European interest would be mandatory, though not having executive force —it should ask the Committee of Ministers simply for the powei', on the one hand, to exercise this advisory faculty in every field, and on the other hand, for the right to take initiatives which would allow it to submit projects and agreements.

By the exercise of this advisory faculty and by the discussion of clearly defined projects, the Assembly might well build up valuable experience in relation to the problems of the unification of Europe, problems which might subsequently find their solution in the exercise of a more clearly-defined power than that at present allowed to the Assembly by its consultative function alone.

Substantially, leaving aside for the moment all other decisions, the sole request of the Assembly to the Committee of Ministers this Session ought to be for a constitutionally coherent definition of Articles 22 and 23 of the Statute, and an extension to the whole European field of the field of competence referred to in Article 1 of the Statute. From this clear definition of the consultative function there should follow the obligation for every country adhering to the Council of Europe to refer to the Committee of Ministers all initiatives and all projects of a European character which they are taking or which they are submitting to any of the international organisations. The Committee of Ministers must, after due discussion, transmit these plans to the Assembly with a request for its opinion.

If it were limited to this request, the decision of the Assembly, thus preceding all further action, could not fail to have a solemn character, could not fail to make very clear the mutual responsibilities of the Assembly and the Committee of Ministers, and could not fail to gain the sympathy of public opinion.

On the other hand a procedure by virtue of which the Assembly would be informed of all those projects of a European character submitted by any organisation whatsoever, would in itself resolve the problems involved in the relationship between the Council of Europe and O. E. E. C. or the organs of the Atlantic Pact, because only the countries of the Council of Europe would be constitutionally bound to be consulted in this way, without this prejudicing in any way the continuation of negotiations and investigation within those organisations which are outside of the Council of Europe.

We are of the opinion that in the present circumstances this method of stating the problem is the only one capable of rescuing the Council of Europe from a delicate situation.

Motion

The Assembly,

Considering that by the terms of Articles 22 and 23 of the Statute it is called on to give its views upon any matter within the aim of the Council of Europe;

Considering that, in accordance with generally accepted constitutional principles, all executive and legislative organs must ascertain the views of consultative organs set up to examine questions within the competence of the said organs;

Considering that the provisions of the Statute must be modified in such a way as to allow the effective application of the above constitutional principles to the working of the Council of Europe;

Considering finally that, in present circumstances, the concrete and effective exercise of the consultative function is, without prejudice to any other amendment of the Statute, a prior condition of the regular working of the Council of Europe as an institution;

Recommends

(i) that it shall be the statutory duty of each Member State of the Council of Europe to inform the Committee of Ministers of any project or proposal with European implications which it may adopt, even outside the Council of Europe, whether alone or with other States;

(ii) that the Committee of Ministers, after examining such projects, shall transmit them to the Assembly;

(iii) that the President of the Assembly shall be able, if the matter is urgent, to summon the Assembly for the discussion of any such projects submitted for opinion.

Signed (see overleaf)

Signed:

LA MALFA Ugo, Italy