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Establishment of a European Court of Justice and of a European Act for the peaceful settlement of disputes

Report¹

Committee on Legal Affairs and Human Rights

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1. 1952 - 4th Session - Second part



Draft Recommendation

The Assembly,

Having reconsidered its Recommendation 56 (1950) relating to the peaceful settlement of disputes and Recommendation 22 (1951) relating to the establishment of a single European Court of Justice,

Having taken into consideration among other relevant documents the Treaty instituting the European Coal and Steel Community, the Treaty providing for European Defence Community, the Convention on the relations between the Three Powers and the German Federal Republic and the Statute of the Arbitral Tribunal appended thereto, and the suggestions contained in the Preliminary Report submitted to the Committee on General Affairs and in the introductory Report of the Study Group of Jurists concerning the judicial organ of the future political community,

Recalling the arguments previously advanced to show the need for establishing a single European Court of Justice and for strengthening the reciprocal undertakings existing between the Members of the Council of Europe concerning the peaceful settlement of disputes,

Is of the opinion that the replacement by a Single Court of Justice of the judicial organs in existence of for which provision is made in the restricted Communities, would present the considerable advantage of giving an organic character to the association which is recognised as desirable between the fifteen European Powers and these communities,

Recommends to the Committee of Ministers that the preliminary proposals put forward by the Committee on Legal and Administrative Questions should be transmitted to the Committee of Governmental experts convened for next October.

Appendix APPENDIX

Proposals of the Committee on Legal and Administrative Questions on :

- a. A Statute for the European Court of Justice.
- b. A European Act for the peaceful settlement of disputes.

A. Proposals of the Committee on Legal and Administrative Questions on the :

STATUTE OF THE EUROPEAN COURT OF JUSTICE

It is proposed that the Statute of the European Court of Justice should incorporate the following essential provisions :

Jurisdiction and Power of the European Court of Justice

1. The European Court of Justice shall constitute the judicial organ of the Council of Europe.
2. The jurisdiction of the European Court shall include:
 - 2.1. All disputes in which at least one of the parties is a Member of the Council of Europe and which the parties have agreed to submit to the Court.
 - 2.2. All disputes between Members of the Council of Europe relating to questions for which the jurisdiction of the Court is compulsory under the terms of general or specific agreements, including the European Act for the Peaceful settlement of Disputes hereinafter mentioned. Powers of compulsory jurisdiction may not be conferred on the European Court of Justice by conventions concluded between States which are not all Members of the Council of Europe, except with the agreement of the Committee of Ministers. In such a case, the Committee of Ministers shall determine the procedure by which States which are not Members shall take part in the nomination of judges and shall fix the amount of their contribution to the expenses of the Court.
 - 2.3. All claims and complaints for which jurisdiction has been or shall have been conferred on it by restricted Communities of which at least three members are Members of the Council of Europe
 - 2.4. All disputes, claims or complaints for which jurisdiction has been conferred on the Court provided for in the Convention for the Protection of Human Rights and Fundamental Freedoms by virtue of that Convention, as soon as the said Convention has come into force and at least eight States signatory to that Convention shall have accepted the jurisdiction of the European Court.
3. The Court shall give an advisory opinion on any legal question submitted to it by the Consultative Assembly or the Committee of Ministers. The right to request the Court to give an advisory opinion on legal questions arising within the framework of their activity may also be accorded by the Committee of Ministers to those organs of restricted communities which wish to make such a request, provided that they have accepted the Court as their judicial organ.

Organisation of the European Court of Justice

4. The Court shall consist of twelve judges, not more than two of whom may be nationals of any one State. The number of judges may be increased by the Committee of Ministers, with the consent of the Consultative Assembly.
5. The members of the Court shall be elected by the Consultative Assembly, by a majority of votes cast, from a list of persons nominated by Members of the Council of Europe. Each Member may submit the names of three candidates, of whom at least two shall be its nationals.
6. The candidates must be persons of high moral character, who possess the qualifications required in their respective countries for appointment to high judicial office, or are jurisconsults of recognised competence in international law.
7. It is recommended that each Government, before making these nominations, should consult its highest Court of Justice, its legal faculties and schools of law, its national Academies and national sections of international Academies devoted to the study of law. A summary of the career and qualifications of the candidates shall accompany the nominations when they are transmitted to the Assembly.

8. The members of the Court shall be elected for six years and shall be eligible for re-election; provided, however, that of the judges elected at the first election, the terms of six judges shall expire at the end of two and the terms of six judges shall expire at the end of four years. The judges whose terms are to expire at the end of the above-mentioned initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

9. The members of the Court shall withdraw from office on the expiry of the judicial year in which they reach the age of seventy.

10. No member of the Court may exercise any political or administrative function or, except by special decision of the Committee of Ministers taken by a two-thirds majority, engage in any other occupation of a professional nature, whether remunerative or otherwise. In the event of jurisdiction being conferred on the Court to act as the judicial organ of a Restricted Community, the judges shall be prohibited from acquiring or retaining, directly or indirectly, during their term of office or a period of three years thereafter, any financial interest in the affairs with which any such Community may be concerned

11. Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

12. No member of the Court may participate in the decision of any case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity. If, for this or some other reason, a member of the Court considers that he should not participate in the hearing of any particular case, he shall so inform the President, who may also on his own initiative advise a member that he should not take part in a given case. Any doubt or disagreement on this point shall be settled by the decision of the Court.

Procedure of the European Court of Justice

13. The Court may establish from among its members chambers composed of three or five judges, provided that it deals in full Court with certain categories of cases considered as particularly important. Any State which is a party to a dispute, whether as plaintiff or defendant, shall be entitled to the inclusion of a judge of its own nationality in the Chamber dealing with the case. Such State may designate an ad hoc judge for this purpose, either because no national of his country is included in the Court, or because the judge of his nationality is not considered to have the special knowledge requisite for the case, and his replacement is for this reason considered desirable. In such cases, the number of judges shall not be increased, but the ad hoc judge shall replace one of the judges composing the Chamber hearing the case. The rules of the Court shall determine the conditions of his replacement. The same procedure shall be followed in cases of claims or complaints lodged by private individuals. When a dispute, claim or complaint concerning the working of a Restricted Community is brought before the Court, the Chamber shall include at least one judge is not a national of any of the Member States of that Community.

14. If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

B. Proposals of the Committee on Legal and Administrative Questions on a :

EUROPEAN ACT FOR THE PEACEFUL SETTLEMENT OF DISPUTES

It is proposed that the Committee of Ministers should establish, over the signature of its Chairman and of the Secretary-General, a European Act for the Peaceful Settlement of Disputes, open to the accession of Member States of the Council of Europe and drafted on the following lines.

1. Without prejudice to any wider commitments or different procedures already accepted by them under other Conventions, the Members acceding to the Act shall agree, on conditions of reciprocity, to submit any dispute arising between them either to the procedures stipulated as compulsory in the General Act for the Pacific Settlement of International Disputes, as revised by the Resolution of 28th April, 1949, of the General Assembly of the United Nations at New York (Chapters I, II, III and IV), or at least to the procedure laid down as compulsory in Chapters I, II and IV of the said Act.

2. In the case of legal disputes arising between Members of which one at least is not a signatory of the Statute of the International Court of Justice, that Court shall be replaced by the European Court of Justice, as the mandatory organ of judicial settlement. The same procedure shall be followed in the settlement of any dispute concerning the interpretation or the application of conventions concluded by all Members of the Council of Europe or open to acceptance by its Members and only by them.

3. The Act shall be concluded for a period of ten years, and shall be automatically renewed for a further period of ten years unless Contracting Parties denounce it at least twelve months before the expiry of the first period. It shall be deemed not to apply to disputes arising out of facts which occurred prior to the accession to the Act of Members parties to such disputes, nor to disputes concerning questions recognised as falling solely within the domestic jurisdiction of Members. There shall be no other reservation except with the consent of the majority of Members having acceded to the Act or eligible to accede to the Act.