Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Investment of the Council of Europe with legislation and executive powers

Motion for a resolution
tabled by Mr R.W.G. MACKAY and other members of the Assembly

Explanatory Memorandum

I. Aims

The Council of Europe exists as a piece of political machinery, and the task of the Assembly is to develop and extend this piece of machinery so as to secure an effective political and economic union in Europe and so as to create a European political authority with limited functions but real powers. If a Government of Europe is our objective, then the Council of Europe should be regarded as a political authority which is in its infancy, which should be allowed to develop until it becomes both an effective legislature and an effective executive. The proposals in this protocol have been worked out to secure that end. It is in four parts; the first dealing with the aims of the Council of Europe so as to enlarge them, the second deals with the Assembly, the third part deals with the Executive and the fourth with certain general matters.

II. Legislative Powers

Each country must accept that any future development of the Council must rest on the general acceptance that the Governments of the member states must have the final decision on any question which might arise at meetings of the Council. This involves the jurisdiction of the Council and decisions within its jurisdiction. In federal states, like the United States, the interpretation of the powers of Parliament lies with the Supreme Court. Any question of the interpretation of the Statute should rest with the Committee of Ministers. Furthermore, any decisions arrived at by the Assembly within their terms of reference must have the approval of the Committee of Ministers before they are effective. So far the relationship between these two bodies has not been well considered. The duty of the Assembly should be to formulate proposals for the better government of Europe. These proposals should be sent to the Committee of Ministers. Each member of the Committee should refer back any such proposals tohis own Government for their consideration and should even discuss them with his own Government before a decision is arrived at. Finally, after a reasonable time the Committee of Ministers should meet to consider the proposals, each individual member of the Committee being already properly instructed by his own Government. In this way the Assembly can develop into a Lower House of a European Parliament and the Committee of Ministers into an Upper House of a European Parliament but representative not of individual Europeans or individual States, but of the actual Governments of the member states.

On the assumption that the Committee of Ministers is to play the part outlined in the preceding paragraph, then the Assembly should have real authority to consider all matters of European concern. Defence is excluded from the scope of its discussions at the present time but nothing else. The Governments of Europe are not prepared to give up legislative powers to the Assembly in advance, nor is it suggested that they should. The proposal is that the Assembly should be entitled to work out legislation on matters of European importance for submission to the Committee of Ministers. It should be able to prepare, debate and approve a Bill or a Convention for a European bank, or a European currency or a European customs union. Once it has passed its legislation no executive action can be taken until the legislation has passed the Committee of

Ministers. Once, however, the legislation has been approved by the Committee of Ministers then a European law would exist and all questions within the scope of the legislation would thereafter be matters for the Council of Europe and not be matters for the individual states.

III. The Executive

A European executive should he created. The Assembly could elect twelve of its members who would over a period of years develop into a European Government. Each one could be in charge of a department although they would have no executive power. The Departments could cover such matters as (a) finance; (b) external trade; (c) inter-European trade; (d) industry; (e) agriculture and food; (f) labour and social services; (g) transport; (h) overseas territories; (i) culture; (f) legal questions.

The members of the executive in charge of each department could answer questions in the Assembly; could formulate proposals for the Assembly; and could with the approval of the Committee of Ministers co-ordinate and bring together the work now being done by many officials under 0. E. E. C. and the Brussels Treaty. The Committee of Ministers would have to vote a sum of money to cover the payment of this executive and the payment of their staffs; but they would not have any power, such as the Government of Great Britain or a Cabinet Minister has power, until specific legislation had been proposed in the Assembly and approved by it and by the Committee of Ministers. In this way gradually an executive authority for Europe could be brought into existence which would develop into a European Government, but both the initial stages and the development would be at all times subject to the approval of the Committee of Ministers.

IV. General Matters

Once legislation had been passed by the Assembly and approved by the Committee of Ministers it should be binding not only on the member states as such but on the peoples of the member states as well and this should result not from anything in the legislation itself, but automatically as a result of provisions in the Statute. In other words, any legislation of the Council of Europe would be a European Law binding on all the citizens of the member states of the Council. Here again it is right to point out that the Committee of Ministers would always have the final say as to whether any piece of legislation proposed by the Assembly should become Law or not. Once, however, they have given their approval then the matters covered by the legislation would become European matters which by virtue of the legislation had been transferred from the jurisdiction of the member states to the jurisdiction of the Council of Europe. This is another illustration of the way in which the legislative power of the Council of Europe need to be specified in advance but can be allowed to grow.

Finally, it would be necessary to provide against the unilateral withdrawal of any member state from the Council. At present member states can withdraw by giving notice. If the Council of Europe is to develop into the authority for a European Union, then members should not be able to withdraw just by giving notice. Wales and Scotland cannot withdraw from the union of Great Britain by giving notice; it would mean legislation of the British Parliament. Likewise, a state in the American union cannot withdraw without an amendment of the Constitution. The Statute of the Council of Europe therefore should be altered to provide that if any member state wishes to withdraw, it can only de so with the consent of two/thirds of the members of the Council by an alteration of the Statute. One cannot develop a political authority for Europe if members are not bound by the decisions which are made and if a member state had the right to withdraw it could avoid being bound by the decisions of the Council of Europe which were properly arrived at, by withdrawing from the Council.

The task of uniting the states of Western Europe with all the barriers, polititat and economic, that arise from differences of nationality, race and language, presents enormous difficulties. It does not follow that these difficulties cannot be overcome. If an authority is created which is political in character and which has legislative and executive power, then the authority will exist for the removal of the difficulties. Moreover, if the authority is left to grow there should be no reason why the statesmen of Western Europe cannot over a period of years develop the type of political authority best suited to the needs of the European peoples.

Draft Protocol

The Committee of Ministers of the Council of Europe recommends, and have caused their recommendations to be embodied in this Protocol, that the Statute of the Council be amended, to vest both Executive and Legislative authority and power in the Council of Europe :

PART I

Aims

CLAUSE I

Article I (a) of Chapter I of the Statute shall be omitted and the following paragraphs inserted in its place :

I (a) The aim of the Council of Europe is

1. To achieve a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;
2. To dedicate the economic resources of the member states and their powers of reconstruction to the common good and to the development of a common civilization based on the best attainable standards of living for all citizens;
3. To plan to integrate the industrial and agricultural production of the member states taken as a whole so as to provide sufficient food, raw materials and manufactures for the internal and external trade of the member states;
4. To use the raw materials, basic industries and essential services of the member states for the purposes herein set out and in such cases as may be appropriate under public ownership and public control;
5. To prevent by such economic and social re-organisation as may be necessary in any of the member states the exploitation for private gain of the labour of any citizen by any other citizen.

PART II

The Legislative Powers

CLAUSE II

All legislative powers herein granted shall be vested in the Council of Europe, which shall consist of the Committee of Ministers and the Consultative Assembly, hereinafter to be called the Legislative Assembly.

CLAUSE III

The Legislative Assembly shall debate matters • within its competence under the Statute and upon any matter within the aim and scope as defined in Chapter I of the Statute as amended or which is referred to it by the Committee of Ministers or presented by the Executive Council and shall make and present recommendations to the Committee of Ministers in the form of a Bill.

CLAUSE IV

In any Bill presented by the Legislative Assembly to the Committee of Ministers or by the Executive Council to the Legislative Assembly after the title there shall be written :

" Be it enacted by the Council of Europe, the Committee of Ministers and the Legislative Assembly of the Council as follows. "

CLAUSE V

Every Bill so presented shall be placed on the agenda of the Committee, who may, after debate, reject or receive the Bill. A resolution to receive or to pass a Bill shall require the unanimous vote of the representatives casting a vote, and of a majority of the representatives entitled to sit on the Committee.

CLAUSE VI

Any Bill which has been received by the Committee shall, before it be finally approved by them be submitted with or without amendment, at a date to be determined by the Committee to each member Government for its consideration.

The Bill shall after submission to each member be re-placed on the agenda of the Committee, and shall be debated by them not later than six months after the date of submission to each member.

Each Member Government shall at the expiry of the six months as aforesaid be deemed to have considered the Bill.

CLAUSE VII

Any Bill which has been re-placed on the agenda and re-considered by the Committee, shall, if different from the Bill as first presented to them by the Legislative Assembly, be returned to and placed upon the agenda of the Assembly.

The Legislative Assembly shall, with all due expedition debate and present the Bill with or without amendment or recommendation to the Committee.

CLAUSE VIII

The Committee shall than have absolute power to pass the Bill with or without amendment or reject the Bill.

CLAUSE IX

Any Bill passed by the Committee shall be signed by each approving member, sealed by the Great Seal of the Council of Europe, and upon a date so specified in the Bill become law, and thereafter it shall be styled : An Act of the Council of Europe.

CLAUSE X

It shall be within the competence of the Council of Europe to pass any Act to give effect to any matter within the aim and scope of Chapter I of the Statute as amended. Any Any Act may vest the sole and exclusive legislative and executive power or authority in the Council, and may enact that any member shall thereafter have no concurrent legislative or executive power or authority in that matter unless such power and authority be specifically provided for in the Act. Any Act shall state wheter the measures or provisions therein contained are to confer exclusive legislative or executive power or authority on the Council of Europe, or are to run concurrent with such laws of a member as may be held to cover the matter legislated upon.

CLAUSE XI

Any Act of the Council of Europe shall repeal the whole part or parts of any Statute Act or other provision of whatever nature forming part of the law of any member if such law were opposed to or were in conflict with any Act of the Council of Europe.

CLAUSE XII

Any Act of the Council of Europe shall upon the date specified in the Act, become in its entirety part of the law of each and every member and shal have legal and binding effect upon the members and upon all their subjects or other persons over whom they have jurisdiction or sway.

CLAUSE XIII

The Assembly shall meet in ordinary session at least twice a year, the atcs of which shall be determined by the Assembly and shall be of a minimum duration of 10 weeks in each session, butto avoid as far as possible overlapping with parliamentary sessions of members and with sessions of the General Assembly of the United Nations.

CLAUSE XIV

Each member shall each year at the first session of the Committee make solemn declaration and re-affirmation that any Act of the Council of Europe shall, on the date so specified in the Act, be embodied and remain embodied until repealed by an Act of the Council of Europe, in the law of the member, and that it shall be sincerely and faithfully put into effect, and that any sanction penalty fine forfeiture punishment or other measure whatsoever incurred and to be imposed in respect of any offence committed against any Act shall be conscientiously and truly administered.

PART III

The Executive

CLAUSE XV

The Legislative Assembly shall dissolve the Standing Committee of the Assembly, and shall elect an Executive Council. The Executive Authority shall be vested in the Executive Council which shall be responsible to the Legislative Assembly and Committee of Ministers.

CLAUSE XVI

The Executive Council shall consist of Councillors, and each Councillor shall be assigned to and shall become the head of a Department, namely :

a. Finance;

b. Customs and Excise;

c. Overseas Trade ;

d. Internal Trade;

e. Industry;

f. Agriculture and Food;

g. Labour and Social Services;

h. Transport;

i. Culture ;

j. Legal Questions.

The Legislative Assembly may increase or decrease the number of Departments and Councillors accordingly, but the Executive Council shall not exceed 15. The expenses of the Executive Council, the Councillors and their departments shall be a common expense within the meaning of Article 38 of the Staute.

CLAUSE XVII

Each Councillor shall be a member of the Legislative Assembly and shall be responsible for the creation and supervision of his Department and shall be responsible to give effect to any Act of the Council of Europe.

CLAUSE XVIII

Any Councillor shall have the right to present any measure in the form of a Bill to the Legislative Assembly the provisions of which shall have relation to the scope and sphere of his Department, and he shall de all such other things which lie within his power which are incidental or conducive to the attainment of the aims of Chapter I of the Statute as amended.

CLAUSE XIX

1. Each Councillor of the Executive Council shall take the oath in the manner and in the form as that of the Secretary-General as specified in Article 36 (e) of the Statute.

2. No Councillor shall hold any salaried office from any Government or of any national legislature or engage in any occupation incompatible with.his duties.

3. Each Councillor shall have the power to appoint the officials of his Department, but if the appointments relate to the creation of a new Department he shall consult the Secretary- General as to the number of officials and staff is to form the establishment of the new Department, and such establishment shall be approved by the Legislative Assembly and Committee of Ministers.

4. Any Councillor shall be entitled to attend any metting of the Committee of Ministers, unless the Committee direct otherwise, and shall attend if requested to de so by the Committee.

PART IV

General Matters

CLAUSE XX

Any member shall be entitled to lay before the Committee of Ministers any dispute or matter related to or arising from any Act of the Council of Europe, or any dispute or matter so arising between that member and any other member or members, and the Committee of Ministers shall be the sole arbiter in such dispute or matter, byt may at their complete discretion submit the question at issue to any duly constituted Court of International jurisdiction to obtain guidance in or determination of such question.

CLAUSE XXI

Article 7 of the Statute shall be expunged. A member who desire to withdraw its membership from the Council of Europe shall submit to the Committee of Ministers a proposal to amend the Statute to give effect to such withdrawal in the form of a Protocol. The Protocol shall come into force when it has been signed and ratified on behalf of a majority of the representatives entitled to sit on the Committee. Such withdrawal will take effect at the end of the financial year in which the Protocol has been approved if such approval is given during the first nine months of that financial year. If the approval is given in the first three months of the financial year, it shall take effect at the end of the next financial year.

CLAUSE XXII

The Committee of Ministers shall cause an official report to be printed and published of all debates and resolutions of the Committee and Assembly save that the Committee shall determine what information shall be published regarding the conclusions and discussions of a private meeting of the Committee.

CLAUSE XXIII

Each member of the Council of Europe shall be entitled to one representative on the Committee of Ministers, and each representative shall be entitled to vote. Representatives shall be styled a Minister of State for European Affairs and shall be of Cabinet rank. When the Minister so designated is unable to be present, or in inther circumstances when it may be desirable, an alternate may be nominated to act for him who shall be a member of his Government and of Cabinet rank.

CLAUSE XXIV

The Statute is amended by the provisions of this Protocol and if any part of the Statute is in conflict with any part of this Protocol, the Protocol shall prevail and the part of the Statute to the extent of the conflict is hereby repealed.

CLAUSE XXV

This Protocol shall only be binding on the member states if passed by a unanimous vote of the representatives on the Committee of Ministers casting a vote.

Signed (see overleaf)

Signed[1]*:*

MACKAY R.W.G., United Kingdom, SOC

1. SOC: Socialist Group