

# **Council of Europe law**

## **Towards a pan-European legal area**

Florence Benoît-Rohmer and Heinrich Klebes

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## Preface

By *Terry Davis*

*Secretary General of the Council of Europe*

This book, *Council of Europe law*, provides a clear and carefully considered picture of the means which the Council of Europe uses in pursuing its aim of bringing the democratic states of Europe together around a community of values, and particularly a community of law. It is the first comprehensive study of Council of Europe law, as it has developed from 1949, when the Organisation was founded, up to the present.

Subjects covered include the foundations of the Council's work, the instruments it uses to harmonise the law of its forty-six member States and its role in helping to build a common European legal area.

The authors are particularly well qualified to discuss these questions: Florence Benoit-Rohmer is a specialist in public law and President of Robert Schuman University in Strasbourg, and her profound grasp of the legal issues is usefully complemented by the practical knowledge and experience accumulated by Heinrich Klebes in his thirty-year career at the Council, where he served as Secretary to the Committee of Ministers and Clerk of the Parliamentary Assembly.

One of their merits is facing up squarely to the difficulties inherent in the Council's law-making process. They show that, far from being a weakness, most of these difficulties are symptomatic of the flexibility needed for the gradual building-up of legal standards that apply to all the member States.

Their descriptions of the way the Council operates in constructing a European *jus communis*, and of its achievements in this area, are not the only things that make the book interesting. It also looks at the numerous challenges – such as participation by non-member States in Council conventions, relations between the Council and the EU, and co-ordination of the Council's work with that of other international organisations – which call for a new approach to harmonising the law of member States.

This book appears at a time when these same challenges are being examined by the Council of Europe bodies responsible for preparing its Third Summit of Heads of State and Government, in May 2005. Apart from confirming, at the highest political level, that the central objective remains a Europe without dividing lines, based on commitment to the shared values of democracy, the rule of law and human rights, one of the Summit's aims will be to deepen the existing complementarity between the Council and the EU, ensuring that the EU's work takes due account of the Council's achievements and the possibilities it offers for pan-European standard-setting.

This will undoubtedly strengthen the political momentum in favour of EU accession to the European Convention on Human Rights in the near future – a step which will ensure that Europe gets a uniform system for the protection of fundamental human rights.

## Introduction

Much has already been written about the Council of Europe's role as a platform for pan-European co-operation, but its law-making function has never been comprehensively studied. It is true that Professor Karl Carstens, one of the Federal Republic of Germany's first permanent representatives to the Council, published a book on Council law<sup>1</sup> in 1956, but this came soon after the organisation had been founded, and concentrated on interpreting its statutory law in the light of the preparatory work on its Statute, which had been adopted in 1949. Unfortunately, the book was never translated into other languages, but it still remains a standard work. Professor Izdebski's more recent work, in Polish, also deserves to be mentioned.<sup>2</sup>

This is why a comprehensive study of Council of Europe law is needed today. Unlike EU law, Council law is not a full-scale legal system, since it cannot be regarded as independent of international law – but it forms a coherent whole, based on the Council's founding charter, or Statute. Of course, it has changed greatly in the years since the Council was founded, partly because the Council itself has expanded and taken in new members, and partly because its standard-setting machinery has evolved radically, as new conventions have been added to its legal armoury.

Today, it often takes years to draft, adopt and sign a convention, and the ten founder members' speed in adopting the Treaty of London, which approved the Council's Statute, seems astounding by comparison. But the ground had been prepared by Winston Churchill's memorable speech at the University of Zurich on 19 September 1946, and above all by the Hague Congress in 1948.<sup>3</sup> Churchill spoke of the need to "recreate the European fabric, or as much of it as we can, and provide it with a structure under which it can dwell in peace, safety and freedom", and went on:

We must build a kind of United States of Europe. ... If at first all the states of Europe are not willing or able to join a union we must nevertheless proceed to assemble and combine those who will and can. ... In this urgent work France and Germany must take the lead together. Great Britain, the British Commonwealth of Nations, mighty America – and, I trust, Soviet Russia, for then indeed all would be well – must be the friends and sponsors of the new Europe and must champion its right to live. Therefore I say to you 'Let Europe arise!'

Later, this speech was often misunderstood, though it still had considerable impact. In fact, the united Europe Churchill dreamed of was, for him and for

1. Carstens, K., *Das Recht des Europarats*, Berlin, Duncker und Humblot, 1956.

2. Izdebski, H., *Rada Europy*, Warsaw, Centrum Europejskie Uniwersytetu Warszawskiego, 1996.

3. See Bitsch, Marie-Thérèse (ed.), *Jalons pour une histoire du Conseil de l'Europe*, Bern, Peter Lang, 1997.

many leading British politicians, continental Europe, and neither Great Britain nor the former Soviet Union were part of it.

The Hague Congress, which met in May 1948, was chaired by Churchill and attended by close on 1 000 delegates, including the political elite of nineteen European states.<sup>4</sup> In a political resolution, it called for the setting up of a parliamentary assembly to examine “the legal and constitutional problems involved in establishing a union or federation”, the adoption of a human rights charter and the establishment of a supreme court “to defend the rights of the human person and the principles of liberty”. This was the first step, and the next was to formalise those principles in a convention. Some of the Congress participants felt that the human rights charter should be an integral part of the new organisation’s statute,<sup>5</sup> thus underlining its “constitutional” character. But the time was not ripe for this solution, which many states saw as threatening their sovereignty. This is why, unlike the Court of Justice of the European Communities (CJEC) and the International Court of Justice (ICJ), which are formally part of the organisations to which they belong, the European Court of Human Rights is not, strictly speaking, part of the Council of Europe, since the convention on which it is based is distinct from the Council’s Statute.

The Congress was already the scene of a clash between the all-out European federalists, led by France, and the others, led by Britain, who stopped short at intergovernmental co-operation. The split re-appeared when the Council of Europe’s Statute was being negotiated, and two rival conceptions emerged. On the one hand, France and Belgium wanted to base the new organisation on a genuinely parliamentary assembly with wide-ranging powers. On the other, Britain insisted on the powers of states, which were to be represented in the assembly by members bound by their governments’ instructions. Eventually, a compromise solution was agreed. The Assembly would consist of independent parliamentarians, but its function would be merely advisory. The main decision-making powers would lie with an intergovernmental Committee of Ministers. The organisation itself would have wide-ranging activities, but limited powers. This solution was embodied in the Treaty of London, which was signed at St James’s Palace in London on 5 May 1949 by ten states: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom.

The organisation established by the Statute<sup>6</sup> is thus an intergovernmental entity, in which states keep their sovereignty, but it still has some supra-

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4. The Hague Congress was not a diplomatic conference, but a meeting of various European movements. On the Congress and the establishment of the Council of Europe, see Bitsch, Marie-Thérèse, *op. cit.*

5. Kennedy, M. and O’Halpin, E., *Ireland and the Council of Europe – From Isolation towards Integration*, Strasbourg, Council of Europe Publishing, 2000, p. 34.

6. We are basing our analysis on the annotated version of the Statute prepared by the Secretariat of the Parliamentary Assembly, *Rules of Procedure of the Assembly and Statute of the Council of Europe* (2002). The Secretariat’s notes explain certain provisions or describe later developments. They are not an integral part of the Statute and so have no legal value. The Statute itself is contained in Appendix I.

national elements: a parliamentary assembly, where members of national delegations are not bound by their governments' instructions or policies; voting rules that allow certain decisions to be taken by a majority, although others have to be unanimous; and a supranational court of last appeal, although its jurisdiction is limited to human rights protection.

This book sets out to present an overall picture of the Council's law-making activity. It will necessarily be incomplete – indeed, the Council's conventions are so wide-ranging that nothing short of an encyclopaedia would really suffice to cover them exhaustively. We shall, however, be paying considerable attention to its “constitutional” law, that is, its statutory law in the broad sense. The Council is organised and operates on the basis of the 1949 Statute, but that text on its own provides a bare outline. “Statutory” resolutions adopted by the Committee of Ministers, the Council's practice and the declarations made by heads of state and government have all amplified the rules governing its institutional structures, their powers and the relations between them.

As an organisation for intergovernmental co-operation, the Council of Europe plays a major part in harmonising the national laws of European states, as its vast “legislative” output makes plain. So far, it has adopted some two hundred conventions, all of them international treaties within the meaning of the Vienna Convention on the Law of Treaties.<sup>7</sup> It is true that the effectiveness of some of them has been compromised, for example, when not enough states have signed or ratified them, or when multiple reservations or interpretative declarations have distorted their content. Some may also have inherent weaknesses, as where the wording is deliberately vague and states have plenty of room to interpret it, or where the parties insist on escape clauses. Nonetheless, the Council's extensive standard-setting work reflects its success on the legal plane.

Conventions are not the only instruments the Council uses to harmonise law, and the Committee of Ministers' recommendations to governments are sometimes considered more effective. Experience has also shown that discussion of national laws at the drafting stage is often enough to help harmonise them at European level.

Finally, Council of Europe law cannot be studied without considering its impact both on the Organisation's member States and on other European organisations. Thanks to the enlargement process launched immediately after the fall of the Communist dictatorships, the Council has succeeded in disseminating its values throughout Europe – proof that our war-torn continent has at last overcome its ideological divisions and recovered its unity. This has given the Council a genuinely pan-European dimension, and it now embodies the hope of a united greater Europe. But it also finds itself competing with other European organisations, some of them with markedly

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<sup>7</sup> We shall, however, be saying little about the most important of these, the European Convention on Human Rights, since the Council's “substantive” law is not really our concern here. In any case, the literature on the ECHR is abundant. The same applies to the European Social Charter.

greater resources. Today, it needs to assert its own special role in the building of Europe, while remaining open to co-operation with those other organisations, and particularly the EU, whose responsibilities and interests are increasingly coinciding with its own.

## **Part One**

### **The “constitutional” status of the Council of Europe**





Can the term “constitutional law” be applied to an organisation’s founding text and the other binding norms which are added to it later? The debate sparked by the EU Constitution is proof that the question remains a live one.<sup>8</sup> Of course, it could be argued that only states can have “constitutions”, and that a democratic constitution, as commonly understood, must be the work of a people.

It is certainly the link between constitutions and states that raises the most questions. Can societies today be organised politically only as states? Must any new organising matrix have the attributes of a sovereign state before its founding text can be called a constitution? Those who see constitutions as covenants concluded between citizens on the basis of shared values obviously find it hard to question the idea that constitutions and peoples are directly linked.

Where does the Council of Europe’s Statute stand in all of this? In fact, at the Council as currently organised, the Statute does not really qualify, in formal terms, as a constitution. It remains an international agreement and the Council, unlike the EU, has no citizenship that would generate a true body politic.

In practical terms, however, the Council’s statutory texts together establish political bodies and regulate relations between them. This suggests that the Statute itself can, like the founding charters of other international organisations, be regarded as internal constitutional law<sup>9</sup> – a view supported by its insistence on democratic values. The Council was, after all, the first international organisation to involve its member States’ peoples directly via a Parliamentary Assembly – which surely means that the Secretary General elected by that Assembly has a democratic mandate.

The Council’s 1949 Statute, and its other statutory texts, determine its internal constitutional law. Together, they define its aims, composition and organisation.

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8. See, for example, the special issue of *Cités*, “Les Constitutions possibles de l’Europe”, No. 13, 2003, and particularly Olivier Jouanjan’s study, “Ce que ‘donner une Constitution à l’Europe’ veut dire”, pp. 21ff.

9. See, in this connection, Monaco, Riccardo, “Le caractère constitutionnel des actes institutifs des organisations internationales”, *Mélanges offerts à Charles Rousseau*, Paris, Pedone, 1974, p. 1.



# Chapter 1

## The Council of Europe – Basics

In treaty law, preambles normally define the general purpose and specific aims of treaties. The Preamble to the Treaty of London, approving the Statute of the Council of Europe, is no exception, since it defines the Council's mission. The founding governments:

[...] Convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation;

Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy;

Believing that, for the maintenance and further realisation of these ideals and in the interests of economic and social progress, there is a need of a closer unity between all likeminded countries of Europe;

Considering that, to respond to this need and to the expressed aspirations of their peoples in this regard, it is necessary forthwith to create an organisation which will bring European states into closer association;

Have in consequence decided to set up a Council of Europe consisting of a committee of representatives of governments and of a consultative assembly, and have for this purpose adopted the following statute.

The Preamble's lyrical tone gives little inkling of the wheeling and dealing that went on between the founding states. Even the title "Council of Europe" was not a random choice, but reflected Britain's determination to limit the new organisation's influence from the outset. It was preferred to "European Union", the more loaded term proposed by Robert Schuman, then French Minister for Foreign Affairs. The compromises agreed by British and French diplomats can also be scented in vague terms like "closer union" and "closer association". While Britain saw the Council as a platform for intergovernmental co-operation and nothing more, France's ambition – admittedly longer-term – was to create the United States of Europe.

### Aim

The Council of Europe's *raison d'être* is set out in Article 1, paragraph *a* of its Statute:

The aim of the Council of Europe is 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.

The Council's aim is thus a double one: to unite its members more closely<sup>10</sup> for the purpose of safeguarding democratic ideals and principles, and to promote their economic and social development. For the authors of the Treaty of London, political and social democracy were inseparable – peace without economic and social progress was unthinkable.

The horrors of the Second World War had convinced many people that international co-operation was vitally needed to avert new conflicts and create conditions in which states could work fruitfully together. The Council of Europe's first task was thus to bring together those European states which shared democratic values, and were founded on the ideals of personal freedom, political liberty and the rule of law.

One has to look beyond the Preamble and Article 1 of the Statute to Article 3 (on membership conditions) for a definition of these principles, which are not only to be "safeguarded", but actually "realised". They are the rule of law and respect for human rights, to which pluralist democracy was subsequently added.<sup>11</sup> Recognition of those principles now accords with a general tendency to make international legitimacy depend on them, and gradually to replace the old concept of the sovereign state with a new one based on respect for democratic principles.

The Council of Europe thus became the symbol and embodiment – particularly during the Cold War – of Western Europe's collective commitment to liberal democracy. Enlargement later strengthened its role as the organisation dedicated to the defence and promotion of pluralist democracy throughout Europe. Indeed, it is often described as a "club for democracies" or "the home of democracy".

Under the Statute, the Council also has the task of promoting its member States' economic and social development. The aim here was to guarantee the political and material conditions that would reinforce their democratic, social and cultural cohesion. But this aim took second place to defending liberal democracy, as soon as organisations with a specifically economic brief, such as OECD and later the European Communities, came on the scene.

## **Responsibilities**

The Council of Europe's statutory remit is so vast that it might well have found itself almost totally responsible for all co-operation between its member States. Article 1 of the Statute stipulates that it is to pursue its aim

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10. As René Massigli, French representative at the ambassadorial conference, pointed out: "Italy had insisted on having a preamble which referred to the great principles on which western democracies were based and made European union the goal, but the Scandinavians found this too bold, and the British were anxious to reduce this impetuous vision to a totally vague aspiration towards 'closer union' between European peoples, which was not the same thing." See Massigli, René, *Une comédie des erreurs*, Paris, Plon, 1978, p. 166.

11. The draft revised version of the Statute proposed by the Assembly added "the principles of pluralist parliamentary democracy" to the membership conditions specified in Article 3.

“by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms”.

There were, however, certain areas where the Council's co-operative potential was limited. Economics, for example, was already the preserve of the European Organisation for Economic Co-operation (OEEC), which was founded in 1948, just a year before the Council, and became the Organisation for Economic Co-operation and Development (OECD) in 1961. The founding of the European Coal and Steel Community (ECSC), and later the European Economic Community (under the Treaty of Rome, 1957), narrowed the field even further.

On the other hand, human rights, legal co-operation, social affairs, and cultural and scientific co-operation soon became central parts of the Council's activity. So did local and regional government – chiefly reflected in the founding of the Standing Conference of Local and Regional Authorities, which became the Congress of Local and Regional Authorities of Europe in 1994, and is now regarded as the organisation's “third pillar”.<sup>12</sup>

### **Excluded – national defence**

Questions relating to national defence were the only ones explicitly excluded from the Council's brief (Article 1, paragraph *d.* of the Statute). The reason for this was that neutral states had no desire to join a military organisation, whereas the others, which belonged to a military alliance, wanted no interference with its powers. In fact, of the then member States, Austria, Ireland, Sweden and Switzerland were the only ones outside Nato.

Until the 1960s, the Parliamentary Assembly rarely touched, even remotely, on national or collective defence in its debates. When Winston Churchill, speaking as a member of the Assembly in August 1950, had proposed a European army, the Committee of Ministers had reacted sharply,<sup>13</sup> reminding the Assembly that this was a matter which it had no right to discuss. The Assembly responded by asking it to abrogate Article 1, paragraph *d.* of the Statute. This it refused to do – but it did suggest, in 1951, that defence issues might be covered when the Assembly discussed ways of securing peace “founded on justice and international co-operation”, thus taking the Preamble to the Statute as a basis for Council involvement in this area.<sup>14</sup>

It has since been agreed that the Assembly may discuss the “political aspects” of security and peace in Europe, provided that it steers clear of military issues in the strict sense. In any case, these soon became a matter for the Western

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12. See below, p. 75; Statutory Resolution 2000 (1) relating to the Congress of Local and Regional Authorities of Europe, see Appendix I. For a brief survey of the Council's activities, see “The Council of Europe, 800 million Europeans”, leaflet available from the Council's Infopoint.

13. See Recommendation 5 (1950) of the Consultative Assembly.

14. See also Committee of Ministers Resolution (53) 18.

European Union (WEU), a mutual defence pact, founded in 1955. The two organisations are in fact complementary in the field of defence, and member States send the same delegations to both their parliamentary assemblies.

### **Membership of other international organisations – non-interference**

The rule that “participation in the Council of Europe shall not affect the collaboration of its members in the work of the United Nations and of other international organisations or unions to which they are parties” (Article 1 *c* of the Statute) imposes a further restriction on the Council’s powers. It was strictly applied in the early years, when care was taken to ensure, for example, that Council meetings did not clash with those scheduled by other international organisations. Programmes today have expanded enormously, and the rule has become more flexible. The Council simply steers clear of questions on which other organisations are already working. Otherwise, it is committed to co-operating with them and putting its expertise at their – and Europe’s – disposal.

## **Resources**

### **Operational**

The Council of Europe’s tasks and aims may be vast, but its resources are relatively modest. This again reflects the compromise agreed in 1949 between continental Europe and Britain: generous aims to please the former, traditional means of intergovernmental co-operation to keep the latter happy. This compromise is embodied in the Statute, which falls far short of the federalists’ dream, and simply gives the Council the task of harmonising and co-ordinating national policies – which states still determine. The means of action assigned to it in Article 1, paragraph *b* are limited to “discussion of questions of common concern” and “agreements and common action”. As J.-L. Burban says, “although details have been adjusted to increase the Council of Europe’s resources, the initial compromise remains its fundamental law, preventing it from taking on a supranational character, like that of the European Communities”.<sup>15</sup>

Essentially, intergovernmental co-operation is effected through the many treaties concluded at the Council. These, however, are treaties in the traditional sense, and produce no effects in member States until they have signed and ratified them in accordance with their own constitutional rules.

Otherwise, the Committee of Ministers adopts recommendations to member States, while the Assembly votes numerous recommendations to the Committee of Ministers, as well as resolutions stating its views on matters of policy. However, none of these texts is binding on member States.

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15. Burban, J.-L., *Le Conseil de l’Europe*, Que Sais-Je? series, No. 885, 3rd edn, Paris, PUF, 1996, p. 18.

## **Financial**

Under Article 38 of the Statute, the Council's operating costs are covered in two ways:

- a.* Each member shall bear the expenses of its own representation in the Committee of Ministers and in the Consultative Assembly;
- b.* The expenses of the Secretariat and all other common expenses shall be shared between all members in such proportions as shall be determined by the Committee on the basis of the population of members ....

Resolution (94) 31 of 4 November 1994 indicates how the scale for member States' contributions to the Council's budgets is calculated.

Although the Statute provides that common expenses are shared on the basis of population, national product (per capita income) can sometimes be taken into account in assessing members' contributions to the budget. This is always open to renegotiation. In the 1980s, for example, Turkey requested that account be taken, not only of its population, but also of its GNP. A reduced contribution was negotiated on this basis, but Turkey lost two of its fourteen seats in the Assembly – and its quota of A-grade posts in the Council Secretariat was also reduced. In 2004, the Russian Federation also questioned its status as a major contributor but decided, on reflection, to retain it.

The “main contributors” (currently France, Germany, Italy, the United Kingdom and the Russian Federation) have the same number of seats in the Assembly, and contribute equally to the budget. The size of their financial contribution also determines the number of A-grade posts to which they are entitled. However, states have no say in appointments, and Council staff are recruited and promoted in accordance with normal procedures. These rules are inspired by the United Nations Charter.

The Council's budget is drawn up by the Secretary General and submitted to the Committee of Ministers for approval, in conditions determined by the Financial Regulations (Article 38, paragraph *d*).

## **Privileges and immunities**

The Council of Europe, member States' representatives and Council staff have the usual privileges and immunities, which are covered by Article 40 of the Statute. The 1949 General Agreement on the Privileges and Immunities of the Council of Europe and the 1952 Protocol (European Treaty Series (ETS) No. 10) spell them out in detail.<sup>16</sup> These privileges and immunities are intended to allow the organisation, and also member States' representatives and Council staff, to perform their duties in a fully independent manner.

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<sup>16</sup> See also Rule 64 of the Assembly's Rules of Procedure and Committee of Ministers Resolution (69) 29 on the privileges and immunities of international organisations. The latter provides an excellent overview.

The General Agreement states that the Council of Europe has legal personality and is therefore entitled to conclude contracts, acquire and dispose of immovable and movable property, and bring court proceedings. Its premises and buildings are inviolable. Its assets, income and other property are exempt from all direct taxation, and from all customs duties, prohibitions and import restrictions.

The Agreement also details the privileges and immunities enjoyed by members of the Committee of Ministers when exercising their functions and travelling to and from meetings. These are designed to preserve their independence and guarantee them total freedom of speech. Thus, they may not be arrested or imprisoned, their personal luggage may not be seized, and they may not be prosecuted for acts committed in the course of their duties. All their papers and documents are inviolable, and they have the right to use codes and to receive documents or letters by courier or in sealed bags.

Members of the Parliamentary Assembly enjoy similar guarantees. No administrative or other restrictions may be placed on their own or their substitutes' freedom of movement while travelling to or from Assembly sessions. Nor may they be searched, detained or prosecuted for opinions voiced or votes cast while exercising their functions.

Finally, judges in the European Court of Human Rights also enjoy diplomatic privileges and immunities (Article 1 of the Sixth Protocol to the General Agreement on the Privileges and Immunities of the Council of Europe, of 5 March 1996, ETS No. 162).

Council staff may not be prosecuted for acts performed in their official capacity (including things said or written), as long as they do not exceed their authority. They are also exempt from taxation on Council salaries and emoluments. However, staff immunity may be lifted by the Secretary General, whenever it threatens to obstruct the course of justice – and if doing so does not harm the interests of the Council.

The Secretary General and the Deputy Secretary General enjoy, for themselves, their spouses and their under-age children, the privileges, immunities, exemptions and facilities accorded to diplomatic envoys under international law.

## **Official and working languages**

Under Article 12 of the Statute, the Council's official languages are English and French – and nothing at present suggests that this will change. Admittedly, several attempts have been made to add more official languages (particularly German), but these have always failed. Clearly, the EU system, which gives official status to all the member States' languages, would be neither acceptable nor affordable at the Council, whose forty-six member States have some forty recognised national languages.

This does not mean, however, that other languages cannot be used at the Council. In addition to the two official languages, the Assembly has several "working" languages – German, Italian and Russian – which may be used



orally at sessions, and in committees when necessary. Interpretation is paid for from the Council’s budget. Other languages (such as Turkish, which is understood far beyond Turkey, and especially in Azerbaijan) may also be used, particularly in plenary debates – but the delegation concerned then pays the interpreters.<sup>17</sup>

## **Location**

Having triumphed over French opposition and got its own way on the Assembly’s function (advisory) and the appointment of delegations (method decided by governments),<sup>18</sup> Britain offered France a consolation prize by suggesting that the new organisation be based in France, at Strasbourg, and accepting a French diplomat, Jacques Camille Paris, as its first Secretary General.

Strasbourg was also a richly symbolic choice. Occupied by Germany during the war, the city was now set to embody that spirit of Franco-German reconciliation from which a new and peaceful Europe would arise. Ernest Bevin, the United Kingdom Foreign Secretary, recognised this when he declared, at the Statute-signing ceremony in London on 5 May 1949:

[...] the city of Strasbourg, which throughout its long history has suffered as a bone of contention between the warring nations of Europe, will be converted into the centre of a new effort at conciliation and unity.

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17. Rules 26 to 28 of the Assembly’s Rules of Procedure.

18. See original version of Article 25.



## Chapter 2

### “Constitutional” sources

Assuming we can speak of the Council of Europe’s having a “constitution”, should we limit that term to the Statute? In fact, since 1949, all Council members have been required to accept certain conventions. The European Convention on Human Rights (ECHR) is the prime example: all new members must now sign it on joining, and ratify it speedily. This being so, when considering the Council’s “constitution”, we cannot stop short at the Statute, but must also look at all the other Council texts that have “constitutional” validity.

#### The 1949 Statute

Adopted in London on 5 May 1949, the Statute establishes the Council of Europe and determines how it is to be organised and how it should operate. Wisely, its authors left the way clear for future amendments, and certain parts of the text have indeed been modified in the meantime – although the general overhaul proposed by the Assembly has never been agreed to.

#### The Council’s constitutional charter

The Treaty of London, which approves the Statute, is the Council’s founding text, and obeys the rules of treaty law. It was signed and ratified by the ten founder members: the five states which had signed the Treaty of Brussels (also known as the Treaty of Western European Union)<sup>19</sup> – France, Britain and the three Benelux countries – plus Ireland, Italy, Denmark, Norway and Sweden. These are the only states mentioned in the Preamble, even though others joined later: Greece and Turkey (1949), Iceland (1950), the Federal Republic of Germany (1951), Austria (1956), Cyprus (1961), Switzerland (1963), Malta (1965), Portugal (1976), Spain (1977), Liechtenstein (1978), San Marino (1988) and Finland (1989). When revolution came in eastern Europe (1989-90) and the Communist system collapsed, the Council became one of the main gates to Europe for the new democracies, which flocked to ratify the Statute: Hungary (1990), Poland (1991), Bulgaria (1992), Estonia (1993), Lithuania (1993), Slovenia (1993), the Czech Republic (1993), the Slovak Republic (1993), Romania (1993), Latvia (1995), Moldova (1995), Albania (1995), Ukraine (1995), “the former Yugoslav Republic of Macedonia” (1995), the Russian Federation (1996), Croatia (1996), Georgia (1999), Armenia

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<sup>19</sup>This treaty was signed in Brussels on 17 March 1948, and committed France, Britain and the Benelux countries to assisting one another automatically in the event of their being attacked.

(2001), Azerbaijan (2001), Bosnia and Herzegovina (2002) and the Republic of Serbia and Montenegro (2003). Andorra joined in 1994, and Monaco in October 2004, and total membership now stands at forty-six.

The Statute defines the Council's aim, establishes its political organs and regulates relations between them. This is the sense in which it, and other statutory texts, can be seen as constituting the Organisation's internal constitutional law.<sup>20</sup> Seven ratifications were needed to bring it into force.

### **Amendment or review of the Statute – the procedure**

Article 41 of the Statute (Chapter IX) covers two amendment procedures. Under the "heavyweight" procedure, changes proposed by the Committee of Ministers, or proposed by the Parliamentary Assembly and approved by the Committee, are embodied in an amending Protocol, which takes effect when two-thirds of the member States have signed and ratified it. The "lightweight" procedure applies only to Articles 23-35 (internal workings of the Assembly), and Articles 38-39 (funding of the Council). For amendments to these articles to take effect, the Secretary General merely has to certify in writing that they have the approval of the Committee of Ministers and the Assembly.

Over the years, the Assembly has suggested numerous amendments to the Statute – the first a mere week after the opening of the inaugural session on 16 August 1949. The range has been extremely wide. Some have sought merely to rationalise the Council's institutions. Others have been more ambitious, or indeed revolutionary, for instance the Mackay amendment, tabled on 2 September 1949, which defined the "aim and goal of the Council of Europe" as "the creation of a European political authority with limited functions, but real powers". The latter were bound to fail, however, since states cling to their prerogatives and were not prepared to share them with international organisations.

The Statute has been amended, but has never been reviewed. As those terms are used in law, an "amendment" is an isolated change, while "review" is more radical, and may even involve a total recasting of the text. The question with fundamental changes is whether the two-thirds rule (Article 41) should apply, or unanimous acceptance be required – and the Statute itself does not answer it.

### **Failure of plan for general review of Statute**

Members of the Assembly, the Committee of Ministers and the Secretariat, as well as outside observers, have repeatedly suggested that the Statute needs a general overhaul. After 1989, when the Council expanded and its role evolved, this came to seem even more necessary. In 1993, the Assembly accordingly recommended that the whole Statute be reviewed, and itself put forward a new text (Recommendation 1212 (1993)).

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<sup>20</sup> See above, p. 17.

Although some of the Ministers' Deputies had approved the plan, few governments supported it. Most were deterred by the magnitude of the task and the difficulties involved. Negotiation of a new Statute would almost certainly have involved all the parties, and huge diplomatic efforts would have been needed to stop states from quarrelling over questions of legal co-operation, and the Council's future role and responsibilities. A rift might also have developed between EU states, which shared major economic and political interests, and the others.

There were also fears that, far from consolidating and strengthening the Council, renegotiating the Treaty of London might actually weaken it by giving states a chance to retreat on certain points. There was indeed a danger that some of them might be happy to question basic provisions, such as those relating to democracy, human rights protection and the rule of law.

Finally, it was argued that the whole exercise was pointless. The 1949 Statute had worked for half a century, had kept pace with change, and had even weathered the Council's post-1989 enlargement – in short, reviewing it would be a waste of time. At the very most, a few procedural adjustments were needed to allow for the increase in the Assembly's and the Committee of Ministers' membership.

None of this cut any ice with the Assembly, which regarded “revision of the Statute of the Organisation, which dates back to 1949, as essential” and wanted to see a new one adopted at the Vienna Summit of Heads of State and Government in October 1993 (Recommendation 1212). These hopes came to nothing: having returned an interim reply in September 1993, the Committee of Ministers finally rejected the Assembly's recommendations in its full reply of July 1999. In the best diplomatic style, it stated its view that the Assembly's proposal could not usefully be implemented in the immediate future – although the Statute might still be revised in due course. It also indicated its preference for a more flexible approach:

The need to reform the structures of the Council of Europe was reasserted by the Second Summit of the member States of the organisation (Strasbourg, 10-11 October 1997). It was the object of Chapter V of the Action Plan adopted by the Heads of State and Government, under which the Committee of Ministers was instructed “to carry out the structural reforms needed to adapt the organisation to its new tasks and its enlarged membership, and to improve its decision-making process”.

It also pointed out that it had set up a “Committee of Wise Persons”, consisting of distinguished Europeans and chaired by the former President of Portugal, Mario Soares, to discuss re-organisation of the Council,<sup>21</sup> and that the Assembly had been closely involved in its reflections on adjustment of the Council's structures.<sup>22</sup>

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21. The Committee of Wise Persons submitted its final report, “Building Greater Europe without dividing lines”, at the Committee of Ministers' 103rd session (3-4 November 1998). The President of the Assembly was an *ex-officio* member of the Committee of Wise Persons, and its Clerk acted as co-secretary with the Deputy Secretary General.

22. For full text, see Doc. 8480 of 16 July 1999, reply of the Committee of Ministers to Recommendation 1212 (1993).

It is hard to see why the Committee rejected the Assembly's plan, which included no "revolutionary" changes. Indeed, it kept most of the old text, and the effects on the Committee's powers were minimal. At all events, it is not impossible that the idea of a general review may be revived at some future date.

It may not have rewritten the Statute, but the Committee of Ministers has, since 1949, used statutory resolutions to adapt it to changes at the Council.

## **Statutory resolutions**

Originally, "Resolution of the Committee of Ministers" was the only term used. The epithet "statutory" was not used until 1993, when the Committee applied it to resolutions adopted that year. Although neither the Statute nor any Committee of Ministers decision explains the term, "statutory resolutions" might be defined as texts that the Committee adopts to adjust or supplement the original Statute. Sometimes they affect the Council's statutory system – and this makes it hard to decide whether they do not, ultimately, amend the Statute.

### **Adoption procedure**

The procedure for adoption of statutory resolutions varies. An opinion given by the Council's Legal Advice Department in 1991 explains it as follows:

These resolutions, which are concerned with statutory matters and contain provisions which are not incompatible with the present Statute, i.e. which are added to the Statute and supplement it without changing the wording of the existing provisions, are adopted by unanimity of the votes cast and a majority of the representatives entitled to sit on the Committee when they relate to matters covered by Articles 19, 21.a.1 and *b*, and 33 (Articles 20.a.ii to iv of the Statute). They are adopted by a two-thirds majority of the votes cast and a majority of the representatives entitled to sit on the Committee in all other cases (Article 20.d of the Statute), unless the Committee of Ministers decides by that majority to apply the unanimity rule (Article 20.a.vi).

Adopting statutory resolutions by a two-thirds majority would not be politically realistic. In practice, they have always been adopted by consensus.

### **Content**

So far, there have been seven statutory resolutions, as well as the Rules for appointing the specially appointed officials, which apply to the three leading posts at the Council.

The first statutory resolution (not called that at the time) was adopted by the Committee of Ministers in 1951. This was Resolution (51) 30 of 3 May 1951, which is normally appended to the Statute. Although largely obsolete today, it has never been revoked or amended. In fact, the only "basic" paragraphs that remain fully valid are the first, concerning the admission of new members, and the last, concerning relations with international intergovernmental and non-governmental organisations.

The second is Resolution (49) 20, covering the status of the Deputy Secretary General for Assembly Services, which is also obsolete, although it has never been formally rescinded.

Four statutory resolutions were subsequently adopted in 1993: Resolution (93) 26 on Observer status; Resolution (93) 27 on majorities required for decisions of the Committee of Ministers; Resolution (93) 28 on partial and enlarged agreements; and Resolution (93) 38 on relations between the Council of Europe and international non-governmental organisations.

The most recent is Statutory Resolution (2000) 1 relating to the Congress of Local and Regional Authorities of Europe.

Statutory resolutions are not all of the same kind. They can supplement the Statute, like Resolution (93) 27 on majorities required for decisions of the Committee of Ministers, establish new structures, like Resolution (2000) 1 relating to the Congress of Local and Regional Authorities, or involve substantial changes, like Resolution (93) 28 on partial and enlarged agreements.

## **Statutory conventions**

States wishing to join the Council of Europe are today required to sign certain Council conventions, and then ratify them within a reasonable time. Like the Statute itself, these conventions are legally binding on all the member States. One of them – obviously – is the European Convention on Human Rights.

### **The statutory character of the European Convention on Human Rights**

The European Convention on Human Rights is open only to Council member States, but states could originally join without accepting it. France, for example, took over twenty years to ratify it.<sup>23</sup> However, acceptance of the Convention became the norm from the 1970s on, and was finally made a requirement when the Council expanded, after 1989.

This requirement does not appear in the Statute – or in the Assembly’s draft revised version. Since 1989, however, the Assembly has insisted that candidate countries must accept the Convention,<sup>24</sup> which is now, in effect, a basic Council law, binding on all the member States. The European Court of

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23. France did not ratify the Convention until 1974. It should be noted that Greece, which had originally ratified the Convention on 28 March 1953, later denounced it with effect from 13 June 1970 – but rejoined the fold when the colonels’ regime collapsed.

24. In its first opinions on applications for membership, the Parliamentary Assembly contented itself with a “firm intention” (Opinion No. 153 (1990) of 2 October 1990 on Hungary’s application for membership) or “declared willingness” (Opinion No. 154 (1990) on Poland’s application for membership) to ratify the Convention on the part of candidate countries. Starting with Opinion No. 182 (1994) on the Principality of Andorra’s application for membership, however, it insisted that States must sign the Convention on joining, and then ratify it within a year. These deadlines were later made compulsory for all candidate countries.

Human Rights sees it as an “instrument of European public order”.<sup>25</sup> Membership of the Council and acceptance of the Convention can thus no longer be dissociated. The Convention itself recognises this in Article 58, paragraph 3, which states that “Any Contracting Party which ceases to be a member of the Council of Europe, ceases to be Party to the present Convention”.

It is true, as Professor Sudre insists, that the Convention has both ideological and institutional ties with the Council.<sup>26</sup> In fact, judges are elected by the Assembly from a list of three candidates submitted by each state.<sup>27</sup> Staff of the Court also count as staff of the Council, and may move from the Court to a Secretariat department and vice versa, although this happens rarely. Like other Council staff, staff of the Court swear an oath before the Secretary General. The latter may not appoint them, however, without the consent of the President of the Court. Some people feel that this is enough to protect the Court’s independence in the matter of staffing, while others take the view that recruitment should be totally – and solely – in its hands.

If the whole Statute is ever reviewed, the question of making the Convention an integral part of it, and as such a basic Council law, should again be discussed. There would be nothing startling in this, since most modern democratic constitutions contain lists of human rights. The European Constitution itself incorporates the EU’s Charter of Fundamental Rights, which was adopted by the three EU institutions – Commission, Parliament and Council – at the European Council in Nice (December 2000).

### **Should other Council treaties be “constitutionalised”?**

Since 1994, the Parliamentary Assembly has also insisted that states joining the Council must ratify the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the European Social Charter – which means that they, too, must be regarded as among the founding texts.

The Assembly is trying to take the trend further. In recent years, its opinions on admitting new members have regularly listed treaties that candidates must promise to sign and/or ratify. The list varies, but it frequently includes Protocol No. 6 to the European Convention on Human Rights, concerning abolition of the death penalty (ETS No. 114), the Framework Convention for the Protection of National Minorities (ETS No. 157), the European Charter of Local Self-Government, embodying the principles of local democracy (ETS No. 122) and various criminal conventions.<sup>28</sup>

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25. This was the formula used in the case of *Loizidou v. Turkey*, European Court of Human Rights, judgment of 23 March 1995, Series A, No. 310.

26. *La Convention européenne des Droits de l’Homme*, Que Sais-Je? series, No. 2513, 5th edn, PUF, Paris, 2002. On this question, see also Klebes, H., *Die Rechtsstruktur des Europarats und insbesondere seiner Parlamentarischen Versammlung*, Universität des Saarlandes, Saarbrücken, 1996.

27. See below, p. 67.

28. The examples come from the opinions on the Russian Federation (Opinion No. 193 (1996)), Croatia (Opinion No. 195 (1996)), Albania (Opinion No. 189 (1995)), the three Caucasian states: Georgia (Opinion No. 209 (1999)), Armenia (Opinion No. 221 (2000)) and Azerbaijan (Opinion No. 222 (2000)), and Bosnia and Herzegovina (Opinion No. 234 (2002)).



By obliging new members to respect them, the Assembly is attempting to give these conventions statutory value. Caution is needed, however, since some of the texts that new members promise to accept have not been ratified by all the old ones.

## **Final declarations of summits**

At this point, we need to consider the legal value of the final declarations issued by summit meetings. Can they supplement the 1949 Statute? If they can, are the heads of state and government legally empowered to do that?

In the first forty-four years of its existence, summit meetings – already a well-established tradition in the EC (or EU) and other international organisations – were unknown at the Council. François Mitterrand, speaking on enlargement of the Council to central and eastern Europe, in the Assembly on 4 May 1992, was the first to ask: “Why, for example, should the heads of state and government of the Council’s member States not meet every two years, alternating with meetings of the CSCE?” He suggested that these meetings could help to stabilise the continent after the collapse of Communism, and give the European process a new impetus. Austria, which was chairing the Committee of Ministers from May to November 1993, took up the idea and offered to host the first Council Summit, which was duly held in Vienna on 9 and 10 October 1993. All the then thirty-two member States were represented by their leaders, with three exceptions – Hungary, Greece and the UK (the absentees were genuinely unable to attend, and in no way hostile to the Council).

This first Summit, which confirmed and clarified the Council’s enlargement policy and developed the concept of democratic security, was crucial. One of the major new projects which it launched was the reform of the European Court of Human Rights, to speed up proceedings and strengthen the judicial character of the supervisory machinery. It also insisted on the need for action to curb intolerance and racism, and instructed the Committee of Ministers to prepare a framework convention, also open to non-member States, to protect the rights of national minorities “with minimum delay” (this was ready for signing less than two years later).

The second Summit, attended by the Heads of State and Government of forty member States, was held in Strasbourg on 10 and 11 October 1997, at President Jacques Chirac’s invitation. It adopted an action plan with four main emphases: democracy and respect for human rights, social cohesion, security of citizens, and education for democracy and cultural diversity. These principles fed into the Council’s work programme, and helped to determine its priorities on the eve of the third millennium.

The holding of a third Summit was proposed in May 2002 by Luxembourg (then chairing the Committee of Ministers) and by the Parliamentary Assembly (Recommendation 1568 (2002)). This Summit will be considering the Council’s role, and confirming its position as a key partner, in the new Europe. It will be held in Warsaw on 16 and 17 May 2005, under Poland’s Chairmanship of the Committee of Ministers. In its draft revised Statute

(Recommendation 1212, Article 16), the Assembly actually tried, unsuccessfully, to institutionalise the summits, making them a regular event.

The legal value of the final declarations adopted at the two first summits raises certain questions. Definitely not binding, they are more in the nature of policy texts, and the obligations they impose on states are moral only. To that extent, they resemble the texts adopted at the CSCE/OSCE, such as the Helsinki Final Act of 1 August 1975, which concluded the East-West negotiations on security and co-operation in Europe, and the other texts which followed it. The fact that these declarations have no legal force certainly makes it easier for states to negotiate their content and agree on it.

At the same time, there is no denying that they do have certain legal implications. For one thing, states cannot easily ignore texts which have been solemnly signed or adopted by consensus at the highest possible level. For another, policy texts may well serve as precedents and help to generate customary law, or accelerate its emergence. They can also be converted into customary or even written law, for example by inserting them in treaties or constitutions, if only in reference form.

Thus, the Vienna Declaration, which concluded the first Council Summit, contains one particularly important paragraph, which spells out the relatively vague provisions of Article 3 of the Statute, concerning accession to the Council. It stipulates that:

Such accession presupposes that the applicant country has brought its institutions and legal system into line with the basic principles of democracy, the rule of law and respect for human rights. The peoples' representatives must have been chosen by means of free and fair elections based on universal suffrage. Guaranteed freedom of expression and notably of the media, protection of national minorities and observance of the principle of international law must remain, in our view, decisive criteria for assessing any application for membership. An undertaking to sign the European Convention on Human Rights and accept the Convention's supervisory machinery in its entirety within a short period is also fundamental. We are resolved to ensure full compliance with the commitments accepted by all member States within the Council of Europe.

Since 1993, no member or applicant state has ever objected to this paragraph, which has been cited in numerous texts. It can rightly be regarded as a collective *opinio juris*, and its content has been confirmed by the practice followed in examining applications for membership.

## Chapter 3

### Members and special status

The Council of Europe admits states that satisfy the membership conditions laid down in the Statute. Without joining, some other states have been given special status, allowing them to participate in its work. There are three kinds of special status, of which associate member status is now obsolete, while special guest status, which eased the former Communist countries towards membership after the fall of the Berlin Wall, is little used today. The third, Observer status, is granted to non-European states which accept democracy, the rule of law and human rights, and want to work with the Council.

The need to co-ordinate its activities with those of the EU, thus ensuring maximal consistency of the legal standards applied throughout Europe, has also led the Council to propose an “institutional partnership”, allowing the EU to represent its members in areas where they have transferred their powers to it.

### Members

Article 2 of the Statute states that “the members of the Council of Europe are parties to this Statute”. The only parties mentioned in the Preamble are the ten founding states – Belgium, Denmark, France, Ireland, Italy, Luxembourg, Norway, the Netherlands, Sweden and the United Kingdom – but states which ratified the Statute after 5 May 1949 are also considered to be full members.

Greece and Turkey are not mentioned in the Statute, but may still be regarded as de facto founder members. In fact, the minutes of the conference which established the Council of Europe on 4 May 1949 include the following passage:

The Conference took note of the requests received from the Hellenic and Turkish Governments to be admitted as members of the Council of Europe. It was the general view that the accession of these two states would be acceptable, and it was agreed that the matter should be dealt with under the Statute by the Committee of Ministers as soon as it comes into being. The possibility of accession to the Statute by other European states will be considered by the Committee of Ministers at the same time.<sup>29</sup>

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<sup>29</sup> See internal memorandum of the Executive Secretariat SE 101 (undated), Council of Europe archives.

The two states attended meetings of the Committee of Ministers and the Assembly from August 1949, and their instruments of accession were deposited with the Secretary General in Strasbourg on 13 April 1950.<sup>30</sup>

Today, the Council of Europe has forty-six member States.

## Conditions for membership

The criteria for admitting new members are specified in Article 4 of the Statute, which reads:

Any European state which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers. Any state so invited shall become a member on the deposit on its behalf with the Secretary General of an instrument of accession to the present Statute.

There are two basic criteria that states wishing to join the Council must satisfy. One is geographical: they must be part of Europe. The other is political: they must accept the democratic values on which the Organisation is based, and work to increase solidarity within it by excluding any state that does not share those ideals.

### Being part of Europe

Apart from respecting human rights and upholding the rule of law, would-be members must count as European. Of course, one has to agree on what “European” means, since the continent’s boundaries have never been defined in international law. Prior to 1989, this had hardly ever been an issue – except when some people had wondered whether Turkey, 79% of which lies beyond the Bosphorus in Asia Minor, was really a European country.<sup>31</sup> It became crucial when the Communist bloc collapsed, and the time had really come to decide, once and for all, where “Europe” stopped, and how far the Council’s enlargement could go – and also to justify the policy of expansion approved at the first Summit.

At the time, various non-geographical criteria for “European-ness” were suggested – and rejected. A definition based on the concept of “European civilisation” was also put forward, theoretically opening the door to non-European states with large populations of European origin, such as the United States, Australia, Canada and New Zealand. Some people also thought of Israel, long considered an offshoot of Europe, which had had Observer status in the Assembly since 1957.<sup>32</sup>

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30. The list of signatures and ratifications of the Council Statute indicates that Turkey became a member on 13 April 1950. This date corresponds to that given in an undated memorandum – a copy of which is in the archives of the Directorate General of Legal Affairs (DGAJ) – recapitulating accessions to the Council in accordance with Articles 4 and 5 of the Statute. Turkey has never contested the date of 13 April 1950.

31. This came up again when Turkey’s admission to the European Union was being discussed, and some influential politicians could be heard saying: “The Turks are not Europeans”.

32. Observer status in the Assembly was formally introduced in 1961 by Resolution 1015, see below, p. 45.

Others even proposed a religious definition, insisting on Europe’s Christian origins, and seeing the Council as a community of Christian states. Recently, indeed, this idea resurfaced when the European Constitution was being discussed, and Germany, Poland and the Vatican suggested that the Preamble should refer to Europe’s Christian roots. This idea found little favour at the Council which, having admitted a mainly Islamic country – Turkey – as long ago as 1950, could not logically have accepted it. Moreover, any such criterion would have violated the spirit of Article 9 of the European Convention on Human Rights, which guarantees freedom of religion. At present, the Council includes three mainly Islamic states: Turkey, Albania and Azerbaijan (not to mention the Muslim component in Bosnia and Herzegovina, and the growing number of Muslim nationals of mainly Christian countries, like France and Germany).

The Bureau of the Parliamentary Assembly, and later the Assembly itself, finally set limits to the Council’s enlargement in Recommendation 1247, adopted in 1994. This stated that the Council should, in principle, base itself on the generally accepted geographical limits of Europe, and that being geographically part of Europe should be a criterion for membership – “in principle open only to states whose national territory lies wholly or partly in Europe”. It accordingly confirmed the European status of the then thirty-two member States, and the nine special guest states. It also acknowledged the potential eligibility of Andorra (which became the thirty-third member a month later) and the Federal Republic of Yugoslavia (Serbia and Montenegro), once the international community had recognised it.

More interestingly, the Assembly extended and re-interpreted this criterion in the light of the Council’s enlargement strategy. It acknowledged that “in view of their cultural links with Europe”, Armenia, Azerbaijan and Georgia could apply for membership, provided they clearly indicated “their will to be considered as part of Europe” (which they subsequently did, opening the way to joining). In other words, it added a subjective criterion – the sense of belonging to Europe – to the geographical one.

This new criterion was the main one applied to the three states in question, and is now regarded as the chief basis for enlargement of the Council. Tacitly accepted by the Committee of Ministers, the Assembly’s recommendation eventually gave us the Council we have today – far larger than anyone, however visionary, could have foreseen when it was founded.

### **Accepting democratic values**

A further basic condition for membership is spelt out in Article 3 of the Statute, which states:

Every member of the Council of Europe must accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.

This Article sums up the Council’s credo and *raison d’être*: respect by member States for the rule of law and human rights. This requirement seemed in 1949 a necessary part of learning from the horrors of totalitari-

anism and the Second World War, and it marks the triumph of parliamentary democracy today. For many years, indeed, non-acceptance of this ideological imperative barred some European states from the Council. Portugal had to wait until 1976, and Spain until 1977, to join the democratic club. In 1969, Greece was forced to withdraw, and spent four years in the wilderness, while the Colonels remained in power. In other words, the Council is – simply put – synonymous with the defence of democracy and human rights.

When the Berlin Wall fell and enlargement became the issue, the states of central and eastern Europe had to satisfy the same requirements before they could be admitted.

This is an area where the Council rejects all compromise. Even the need to combat terrorism does not dispense states from respecting these values. After the events of 11 September 2001, the Organisation insisted that human rights must not be sacrificed to the fight against terrorism – even though terrorism itself sets out to destabilise democracies and undermine the values on which they are based.<sup>33</sup>

## **Joining – the procedure**

Under the Statute, states are invited to join the Council of Europe by the Committee of Ministers. However, even when it considers that an applicant state satisfies the membership conditions, the Committee does not have an entirely free hand in the matter.

In response to pressure from the Parliamentary Assembly, the Committee agreed, at a very early stage, to consult it before deciding. In one of the first statutory resolutions, Resolution (51) 30 of 3 May 1951,<sup>34</sup> it confirmed that:

The Committee of Ministers, before inviting a state to become a member or associate member of the Council of Europe, in accordance with Articles 4 and 5 of the Statute, or inviting a member of the Council of Europe to withdraw, in accordance with Article 8, shall first consult the Consultative Assembly in accordance with existing practice.<sup>35</sup>

As we shall see, the Assembly took this as a basis, from the 1970s on, for adding new and specific membership conditions. It now insists that candidate countries must promise to carry out certain reforms, guarantee certain freedoms, or accede to certain Council of Europe agreements, thus confirming that they genuinely comply with the democratic standards upheld by the Organisation. It takes its decisions on the basis of on-the-spot investigation by its own committees and, more recently, fact-finding missions by

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33. See the European Convention on the Suppression of Terrorism (CETS No. 90), which has now been signed by forty-five Council of Europe member States, and the Guidelines on Human Rights and the Fight Against Terrorism, adopted by the Committee of Ministers in July 2002.

34. Resolution 51 (30) is always appended to the Statute.

35. See comments on Articles 4 and 8, pp. 36 and 40.

leading legal experts (usually judges in the European Court of Human Rights).

The Assembly’s opinions have no legal force, and so are not binding on the Committee of Ministers. In practice, however, the governmental body is unlikely to accept unilaterally a new member state in defiance of an unfavourable opinion by the parliamentary body – and indeed has never done so.

Although the Committee of Ministers systematically consults the Assembly on admissions, it sometimes waits several months before inviting a state, on which the Assembly has given a favourable opinion, to join. It did this, for example, with Croatia – suspected by some member States of not respecting freedom of expression. Sometimes, too, the Assembly acts before the Committee asks it for an opinion, as it did with Austria in 1951.<sup>36</sup> Similarly, in 1977, it adopted a recommendation asking the Committee of Ministers to invite Spain to join the Council.<sup>37</sup> Usually, however, it states its views at the Committee’s request.

The Committee of Ministers adopts a resolution, instructing the Secretary General to send the invitation to the applicant government. As specified in Article 6 of the Statute, this invitation indicates the number of seats the state will have in the Assembly, and also its financial contribution.<sup>38</sup> Recent invitations have also specified institutional reforms that candidate states must complete to match Council requirements.<sup>39</sup> Under Article 20.c of the Statute, the resolution is adopted by a two-thirds majority of the representatives entitled to sit on the Committee. For practical reasons, it has sometimes been adopted by the Deputies, as happened with Austria – in which case, it must be unanimous. A state invited to join becomes a member on depositing its instrument of ratification of the Statute with the Secretary General. The one remaining step after that is to amend Article 26 of the Statute and update the list of member States.

Under the draft revised Statute proposed by the Assembly in Recommendation 1212, its opinions on admissions would have been binding on the Committee of Ministers. This would have clarified the situation, and confirmed the Assembly’s involvement, ensuring that the Committee of Ministers could not drop the practice of consulting it. The proposal was not, however, taken up.

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36. Resolution 9 (1951).

37. Recommendation 820 (1977).

38. Article 6 states that, “before issuing invitations under Article 4 or 5 above, the Committee of Ministers shall determine the number of representatives on the Consultative Assembly to which the proposed members shall be entitled and its proportionate financial contribution”.

39. These requirements always include signing and ratifying the European Convention on Human Rights and a number of other conventions, such as the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Social Charter and Protocol No. 6 to the European Convention on Human Rights, abolishing the death penalty.

## **Withdrawal, suspension and expulsion**

Chapter II of the Statute, “Composition”, comprises Articles 7, 8 and 9 which cover three ways of suspending or terminating Council membership.

### **Voluntary withdrawal**

The formalities for withdrawal are simple. Under Article 7 of the Statute, “Any member of the Council of Europe may withdraw by formally notifying the Secretary General of its intention to do so”. However, withdrawal does not take effect at once, but only at the end of the current financial year, if notification is given in the first nine months of that year, or at the end of the next financial year, if it is given in the last three months of the present one.

This procedure has been used only once – by Greece under the Colonels. When the military coup of 21 April 1967 overthrew the legal government and installed an authoritarian regime, which openly violated the Council of Europe’s democratic principles, the Assembly asked the Committee of Ministers to take the action specified in Article 8 of the Statute, namely to invite Greece to withdraw from the Council. Simultaneously, the Scandinavian countries and the Netherlands brought a state application against Greece under the European Convention on Human Rights. Faced with expulsion, Greece chose to make a dramatic exit. In a last-minute statement at the Committee of Ministers’ meeting in Paris on 12 December 1969, it announced its withdrawal. The then Greek Minister for Foreign Affairs, Mr Pipinelis, sent the Secretary General two letters, one denouncing the Statute, the other denouncing the European Convention on Human Rights.

Under Article 7 of the Statute, denunciation in December could take effect only at the end of the following year. In the circumstances, however, neither the Council nor even Greece itself was anxious to prolong the connection. Greece was accordingly suspended *de facto* from 1969. It was agreed that a Greek diplomat might stay on in Strasbourg to represent Greece on the Council for Cultural Co-operation, of which it remained a member, since the European Cultural Convention (which it had ratified) was open to non-member States. Unofficially, this diplomat also served as an information conduit for the Athens Government. Greece did not return to the Council until November 1974, following the fall of the military regime and the restoration of democracy.

### **Suspension and enforced withdrawal**

#### *The procedure under Article 8 of the Statute*

No state has ever, in effect, been expelled from the Council, as provided for in Article 8 of the Statute – although this has been considered on several occasions. The term “expulsion” does not appear in the Statute, which prefers “withdrawal”. Under Article 8, any state which “seriously violates” Article 3 may be suspended from its rights of representation and asked to withdraw by the Committee of Ministers. If it fails to comply, the Committee may decide that it will cease to be a member on a specified date.



Legal experts are divided as to how Article 8 should be interpreted. Some take the view that suspension and expulsion (being asked to withdraw) are separate procedures. Others consider that, apart from the very specific procedure under Article 9 of the Statute, suspension is a prelude to expulsion, and must precede it. This second opinion seems the more convincing, since Article 8 says that a state may be “suspended and requested” – which indicates that these are cumulative, not alternative, conditions. The implication is that suspension is decided with immediate effect, and is a preliminary to being asked to withdraw.

As Article 8 indicates, asking a state to withdraw from the Council is a matter for the Committee of Ministers, although Resolution (51) 30 obliges it to consult the Assembly first. Greece remains the only member state to which this procedure has been applied in practice, but several others have been warned by the Assembly – although this has never led to a Committee of Ministers resolution or even a formal Assembly recommendation.<sup>40</sup> On the other hand, the Committee of Ministers has never denied the Assembly’s right to reject the credentials of an individual member or an entire parliamentary delegation.<sup>41</sup> It has done this on several occasions, as the following examples show.

#### *The Turkish crises*

The Turkish military coup of 12 September 1980 was accompanied by serious human rights violations. The Assembly reacted by urging the Committee of Ministers to ask Turkey to withdraw. This initiative failed, but the Assembly refused to recognise the Turkish delegation’s credentials in April 1981 – and Norway, Denmark, the Netherlands, Sweden and France brought human rights applications against Turkey under the European Convention in 1982. In Resolution 794 on the situation in Turkey (1983), the Assembly decided, “to give serious consideration to making a recommendation to the Committee of Ministers aiming at application of Article 8 of the Statute of the Council of Europe” – but tempered its position by acknowledging that the Council would be better able to influence Turkey if the tie remained intact. For its part, the Committee of Ministers never gave a decision on suspension (Turkey’s strategic position, between east and west, obviously made a diplomatic solution seem the better option). Following parliamentary elections in 1983 and municipal elections in 1984, the Assembly decided to re-admit the Turkish delegation in May 1984 – and the five human rights applications led to a friendly settlement before the European Commission of Human Rights on 7 December 1985.

The Kurdish conflict again prompted the Assembly to consider suspending Turkey in 1995. In paragraph 12 of Recommendation 1266 (1995), it asked the Committee of Ministers to:

- i. call on Turkey to withdraw its forces from northern Iraq;

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40. See, however, below, Recommendation 1266.

41. See Rules 6 to 9 of its Rules of Procedure.

- ii. call on Turkey to seek a peaceful solution to the Kurdish problem on the basis of the principles embodied in the Statute and the relevant conventions of the Council of Europe;
- iii. set a specific timetable for Turkey to bring its constitution and legislation into line with the principles and standards of the Council of Europe;
- iv. consider suspending Turkey's rights of representation, unless the Committee of Ministers can report substantial progress on items i. to iii. above at the Assembly's third part-session (26-30 June 1995).

Recent Turkish reforms, and particularly those adopted in August 2002, including abolition of the death penalty and increased protection for the Kurdish minority, make it unlikely that the Assembly will again ask the Committee of Ministers to use Article 8 of the Statute against Turkey.

### *The Maltese case*

The "Maltese case" blew up in the 1980s, when the Labour Prime Minister, Dom Mintoff, accused the opposition of using Italian radio and television stations for party political purposes. In 1982, he persuaded the Maltese Parliament, where he had a comfortable majority, to adopt the Foreign Interference Act (31 August 1982) – condemned by the Assembly as violating freedom of expression.<sup>42</sup> Around the same time, the Speaker of the Maltese Parliament refused, by agreement with the Prime Minister, to cover the travel expenses of opposition members of the Maltese delegation, who were due to attend Assembly meetings in Strasbourg. These members made the journey at their own expense, but, having no credentials, could not be accredited. The Assembly punished Malta by refusing to approve the credentials of the delegation's government members. The whole question was settled when parliamentary elections returned the opposition to government.<sup>43</sup>

### *The Cyprus case*

The Cyprus problem proved a tougher one. Since the island has two communities, a rule – theoretically still in force – decrees that the Cypriot delegation must consist of two Greek Cypriots and one Turkish Cypriot, plus the same number of substitutes. In spring 1964, the Nicosia government sent the Council of Europe the credentials of a delegation consisting solely of parliamentarians elected by the Greek community. The Assembly refused to ratify them. When the autumn part-session came round, Cyprus sent a delegation of two Greek Cypriots and their substitutes, leaving one seat free for a Turkish Cypriot member and substitute. The Assembly approved these credentials, while hoping that a member and substitute from the Turkish community would attend the next part-session. The two communities failed to

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42. See Resolution 841 (1985) and Schwarz report, Doc. 5325 of 19 December 1984.

43. For more details, see Klebes, H., "Human Rights and Parliamentary democracy in the Parliamentary Assembly", in *Protection des droits de l'homme: la dimension européenne, mélanges en l'honneur du professeur Gérard Wiarda, Président de la Cour européenne des Droits de l'Homme*, Carl Heymans Verlag, Cologne, 1998.

agree, with the result that Cyprus lost its place in the Assembly, and was represented only on the Committee of Ministers. This situation, which lasted until 1983, offends against the spirit of the Statute, which expects members to participate in both.<sup>44</sup>

After the events of 1974, appointing a joint delegation again proved impossible, since the two communities could not agree on the signing of credentials. The Greek Cypriots insisted that the Minister of Foreign Affairs of the Republic of Cyprus should sign them – a solution rejected by the Turkish Cypriots, who felt that the Greek Cypriot Government in Nicosia did not represent them properly. In 1983, the “Turkish Republic of Northern Cyprus” was unilaterally proclaimed. In 1987, the Assembly decided that the Cypriot delegation would comprise two members and two substitutes, representing the Greek Cypriots, and that the third seat would be kept open for a Turkish Cypriot representative.<sup>45</sup> Expulsion, however, was never considered for Cyprus, as it had been for Malta.

### *Ukraine and the Russian Federation*

The Assembly has repeatedly taken the Russian Federation to task over human rights violations in Chechnya – and this, indeed, was its reason for deciding, in 1995, to postpone consideration of Russia’s application for membership. It then caused general surprise by agreeing to re-open the matter, and by giving Russian accession a sizeable majority on 25 January 1996, at a time when the fighting in Chechnya was actually intensifying. As a counter-weight, however, it decided to set up an Ad hoc Committee on Chechnya.<sup>46</sup>

In 2000, the Assembly accused the Russian Federation of failing to respect its obligations as a member of the Council and a party to the European Convention on Human Rights, while also criticising the Chechnyans.<sup>47</sup> At the same time, it blamed member governments and the EU for failing to denounce Russia’s conduct more firmly. Finally, it punished the Russian Federation by suspending its delegates’ voting rights from April 2000 to January 2001. On 25 January 2001, it revoked this suspension in Resolution 1241 (2001) on the credentials of the delegation of the Russian Federation, in which it considered “that the Russian Parliamentary delegation deserves to be given another chance to prove that it is willing – and able – to influence the situation in the Chechen Republic for the better”. Although some slight progress has been made in the meantime, human rights violations in Chechnya have yet to be properly investigated. This sit-

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44. See Assembly Recommendation 1027 (1986).

45. See Klebes, H., *op. cit.*

46. Order No. 516 (1996). See Schwimmer, W., *The European Dream*, London, Continuum, 2004, pp. 137 ff.

47. See Recommendation 1444 (2000) of 27 January 2000 on the conflict in Chechnya; Recommendation 1456 (2000) of 6 April 2000 on the conflict in the Chechen Republic; Recommendation 1553 (2002) on honouring of obligations and commitments by the Russian Federation.

uation has created an atmosphere of impunity which encourages offenders to persist and discredits the Council.

In 2000 and 2001, Ukraine was repeatedly threatened with suspension, followed by expulsion under Article 8 of the Statute, for failing to honour the commitments it had given on joining and, in particular, place a moratorium on the death penalty, and carry out the promised legislative and institutional reforms.<sup>48</sup>

The Assembly's proposals for general revision of the Council's Statute (Article 20.d) included a new and politically important rule, providing that: "During any period when its representation in the Assembly is suspended, a member shall not be entitled to vote in the Committee of Ministers and may not occupy the Chair". It was thinking of Cyprus, whose nineteen-year absence from the Assembly had not prevented its Foreign Minister from chairing the Committee of Ministers. Obviously, this rule would strengthen the Assembly's position at the Council.

### **Suspension for failure to respect financial obligations**

Under Article 9 of the Statute, member States which default on their financial obligations may be suspended from the Committee of Ministers and the Assembly. The difference between suspension under Article 8 and suspension under Article 9 should be noted. The Article 9 procedure is a legal one, and has nothing to do with possible expulsion – although states which persistently ignore their financial obligations may eventually be asked to withdraw.

What are these "financial obligations"? The first is payment of a state's contribution to the general budget. But the term also applies, apart from expenses connected with representation on the Committee of Ministers (Article 38.a), to payment of the cost of the national delegation's attendance at meetings of the Assembly and of committees to which members belong. Financial obligations may also include contributions to the budgets of the partial agreements referred to in Statutory Resolution (93) 28.<sup>49</sup>

It was not clear from Article 9 how deeply in arrears a state would have to be for action to be taken. However, in view of the sums owed by certain states, the Committee of Ministers decided on 4 November 1994 that, barring exceptional circumstances, "Article 9 of the Statute would apply to any state which had not satisfied all or a substantial part of its financial obligations during a period of two years".

### **Special status**

Various kinds of special status may be granted to states wishing to work with the Council of Europe. But the big question at present is what status the European Union should be given, since its twenty-five members now form a

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48. See Recommendation 1395 (1999), Recommendation 1451 (2000) paragraph 11, and Recommendation 1513 (2001).

49. See pp. 30ff.

majority within the Council, with whose responsibilities its own are increasingly coinciding.

### **Associate member status**

Associate member status is provided for in Article 5 of the Statute, but is now essentially obsolete. It was invented so that two “countries” that were not fully sovereign at the time – the Federal Republic of Germany and the Saar<sup>50</sup> – could be rapidly “associated” with the Council’s work. The Federal Republic of Germany had associate member status from July 1950 to May 1951, when it became a full member. The Saar had it from May 1950 until a referendum made it part of Germany in 1957.

In other words, the Article providing for associate member status no longer serves any purpose. It had been suggested that it might be reworded to make this status available to certain non-European countries, which could then work more closely with the Council<sup>51</sup> – and has been kept on the assumption that it may again prove useful.<sup>52</sup>

### **Observer status**

Any state that accepts the principles of democracy, the rule of law and respect for human rights, and wishes to co-operate with the Council of Europe, may be awarded Observer status by the Committee of Ministers. This status is regulated by Statutory Resolution (93) 26. It may also be awarded, with the Assembly’s approval, to international intergovernmental organisations that seem likely to contribute usefully to the Council’s work.

Under paragraph V of the Resolution, Observer status does not entitle the holder to representation on the Committee of Ministers or in the Assembly, unless either decides otherwise for itself. However, Observer states may send representatives to expert committees (without voting rights) and, if invited to do so by the host country, to conferences of specialised ministers.<sup>53</sup> They may also appoint permanent observers to the Council.

The United States was given Observer status on 10 January 1996, Canada on 29 May 1996, Japan on 21 November 1996 and Mexico on 7 December 1999. US, Canadian and Japanese observers attend meetings of the Ministers’ Deputies fairly regularly, while the parliaments of Israel, Canada and Mexico send observer delegations to the Assembly. Finally, the European Commission is normally represented at meetings of the Deputies.

Intergovernmental organisations which are prepared to work closely with the Council may obtain Observer status under paragraph VII of Resolution (93) 26.

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50. The distinction between “states” and “countries” is deliberate.

51. See the report on which Recommendation 1212 (1993), doc. 6788, is based.

52. See new wording proposed in the Report of the Bureau of the Assembly, appended to the Reddemann report, Doc. 6629, and Recommendation 1212 (1993) on the adoption of a revised Statute of the Council of Europe (see Appendix X).

53. These conferences are not, strictly speaking, Council of Europe structures, although Council directorates help to prepare and take action on them.

### **“Special guest” status**

Special guest status was introduced by the Assembly in May 1989 and given legal form in its Rules of Procedure. It was the brainchild of Peter Sager, a Swiss Liberal parliamentarian, and previously one of the east European Communist regimes’ harshest critics. The idea was to give the “transition” countries a chance to see parliamentary democracy in action at Assembly sessions. As soon as the Berlin Wall came down, it was awarded to the parliaments of Hungary, Poland, the USSR and Yugoslavia, paving the way to Council membership for former Soviet bloc countries.

Under the Assembly’s Rules of Procedure (Rule 59.1), the decision to award special guest status is taken by the Bureau. Each special guest gets the number of seats (without substitutes) it would probably have if admitted to full membership (Rule 59.4). Members of special guest delegations sit in the Assembly, but are not entitled to vote (Rule 59.7). They may also attend committee meetings, without the right to speak or vote (Rule 47.5).

The number of special guest delegations fell steadily, as the countries concerned joined the Council, and there are none today. The special guest status awarded to Belarus was suspended on 13 January 1997, since the political situation in that country was considered incompatible with the Council’s principles.

### **The special case of the European Union**

EU enlargement and the adoption of the European Constitution are obviously going to have major effects on the role of the EU and its member States at the Council of Europe (where those twenty-five states now form a majority). The time has come to take a fresh look at the way in which the two organisations work together, and co-ordinate their standard-setting activities more closely.<sup>54</sup> For one thing, EU accession to the Convention on Human Rights – provided for in the European Constitution – and other Council of Europe conventions should ensure at least a minimum level of consistency of the legal standards applied throughout Europe.

However, since the EU is neither a state nor an intergovernmental organisation, ways of involving it in the Council’s work need to be worked out. Walter Schwimmer, former Secretary General of the Council, insisted that a wholly new approach was needed, and suggested some form of “institutional partnership”, allowing the EU to speak for all its twenty-five members in areas where they had transferred their powers to it. Obviously, details of this partnership – particularly its scope, the EU’s voting rights (it could vote for its members on questions forming part of its remit) and its financial contribution – would have to be negotiated with the EU and its member States.<sup>55</sup>

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54. See below, pp. 127ff.

55. Information document SG/Inf (2003) 35, 25 September 2003: *One Europe – a Europe of partners: Towards an associate partnership between the Council of Europe and the European Union*, Memorandum by the Secretary General.

## Chapter 4

### The Council of Europe's structure

The Council's structure reflects the compromise originally reached between those who wanted a supranational Europe and those who merely wanted intergovernmental co-operation. At a meeting of the Brussels Treaty Council, Georges Bidault, then French Minister for Foreign Affairs, suggested that negotiations on putting the Hague Congress resolutions into practice should begin. He called for a European Assembly and for an economic and customs union – of the Five to start with. His proposals were welcomed by Belgium, but vigorously opposed by Britain, which wanted nothing to do with an Assembly in which it could be outvoted. The organisation it favoured would be simply a "Council of Europe", within which sovereign governments could work together as they chose.

The compromise embodied in the Council's Statute largely follows the British line. It gives the Council two main bodies: a Committee of Ministers, which is intergovernmental (not supranational) and has decision-making powers, and an international parliamentary Assembly, which is merely consultative. Britain had also won agreement that Assembly representatives would be appointed in a manner separately determined by each government.

Some parliamentarians still hoped to make the Assembly a constituent body, and proposals on revising the Statute to increase its powers were put forward at the very first session, in August 1949. The Committee of Ministers stayed firm, but, as time went on, the Assembly did manage to acquire more independence. The first concession came in 1951, when it was agreed that members would be elected or appointed solely by national parliaments. Later, it won the right to be consulted on major political issues – particularly on conventions negotiated at the Council and on the admission of new members.

It remained an advisory body, but its function as a tribune gave it a definite authority. Not just a talking shop, it was able – once its agenda no longer required the Committee of Ministers' approval<sup>56</sup> – to seize on any issue within the Council's purview, thrash it out in public, and recommend action to the Ministers. Acting as a spur to the Committee, it soon became a valued European forum, a fact reflected in the large number of world leaders who have chosen to address it. The Council's post-1990 enlargement has made it uniquely representative in Europe, and increased its authority.

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<sup>56</sup> As early as November 1949, the Committee of Ministers agreed that it would no longer avail itself in practice of the right to supervise the Assembly's agenda, which it enjoyed under Article 23 of the Statute (initial version), provided that matters the Assembly wished to discuss were covered by Article 1. In May 1951, Article 23 was amended in due form, and the Assembly acquired sole control of its agenda.

The Committee of Ministers may be the Council's decision-making body, but its powers are still limited. True, it may make recommendations to member States, but these are not binding. It may also encourage them to sign and ratify Council treaties, but it cannot compel them to do so. The only questions it can really decide with binding effect are those which relate to the Council's organisation and internal arrangements.

The Secretary General is not referred to as an institutional part of the Council by the Statute, which simply says that the Committee of Ministers and the Assembly "shall be served by the Secretariat". However, the office has become more important since the election of holders by the Parliamentary Assembly has politicised it. As the voice of the Council, the Secretary General now wields considerable influence both inside the organisation and outside. He or she organises and coordinates the Council's work, and acts as the driving force behind its policy.

It is the ongoing dialogue between the Assembly, the Committee of Ministers and the Secretary General which today gives the Council its authority in Europe and the world at large.

## **The Council's statutory bodies**

Article 10 of the Statute is unequivocal: "The organs of the Council of Europe are: i. the Committee of Ministers; ii. the Consultative Assembly" The order reflects the authors' (particularly the British authors') determination to make the Committee of Ministers the keystone of the Council. In the meantime, the Assembly's influence and importance have grown steadily, and the roles now seem to be reversed.

### **• The Committee of Ministers**

The Committee of Ministers is the Council's supreme intergovernmental body, with sole authority to act and decide on its behalf. On the Committee, the member governments meet on an equal footing to voice their countries' views on European problems, and work together on finding European solutions to them. It makes collective decision-making possible, and promotes co-operation between the member States on all questions for which the Council is responsible. Finally, with the Assembly, it guards the values on which the Council is founded.

#### **Membership**

Unlike the EU Council, the Committee of Ministers does not vary its membership with the issues discussed. Only the member States' foreign ministers are entitled to sit on it. The Statute does provide, however, that:

When a Minister for Foreign Affairs is unable to be present or in other circumstances where it may be desirable, an alternate may be nominated to act for him, who shall, whenever possible, be a member of his government.<sup>57</sup>

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57. Article 14 of the Rules of Procedure.



In practice, foreign ministers are often replaced by other members of government (ministers for European affairs, specialised secretaries of state) or experienced diplomats.

This does not mean, of course, that other ministers may not hold specialised conferences. The first such conference – of ministers responsible for social and family affairs – was actually held in 1959. Since 1970, they have been regular events in a wide range of fields (justice, education, family affairs, health, environment, local government, migration, gender equality, labour, mass media, culture, sport and youth). They initiate projects which are either worked on by the member States or taken up by the Council itself. Formally outside the Council’s structures, they nonetheless send their conclusions to the Committee of Ministers.<sup>58</sup>

The Committee of Ministers also meets at Deputy level. Deputies are not mentioned in the Statute, but the Committee decided, in March 1952, that ministers might have deputies, empowered to act on their behalf.<sup>59</sup> The Deputies are also their countries’ permanent representatives to the Council<sup>60</sup> (which means that they actually perform two functions) and are accredited as such with the Secretary General. They normally have ambassadorial (sometimes *chargé d’affaires*) rank. They have diplomatic immunity, and are resident in Strasbourg.

There is no legal distinction between ministerial and “deputy-level” meetings of the Committee. The Deputies have the same powers as the Ministers, and their decisions have the same force. Although their conclusions start with the words “The Deputies”, their formal resolutions start with the words “The Committee of Ministers” – as if the Ministers themselves had adopted them.

In principle, the Deputies have authority to deal with all questions for which the Committee is responsible, although political questions are reserved in practice for the Ministers, and the Deputies may also discuss all questions of common interest (national defence excepted). All decisions which are not a matter for the Ministers or the Secretary General are taken by the Deputies. However, under Article 2, paragraph 3 of their Rules of Procedure, they may not take decisions on questions which one (or more) of them regards as being of major political importance, or which require, under the Statute, a unanimous decision. Doubts regarding the importance of a question are resolved by a two-thirds majority decision of the Deputies (Article 20 of the Statute). Any Deputy has the right to request that a specific question be referred to the Committee of Ministers.

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58. See section III, 17.c, of Committee of Ministers Resolution (89) 40 on the future role of the Council of Europe in European construction, which allows the Committee to delegate its powers, on an ad hoc basis, to a ministerial conference.

59. Resolution (52) 24.

60. It was in 1951 that the Committee of Ministers asked each member state to appoint a permanent representative to maintain ongoing contact with the Council.

## **How the Committee operates**

### *Chair*

Member States take it in turn to chair the Committee, in English alphabetical order, for a six-month period. The same rule applies to the Deputies. Traditionally, May and November are the change-over months.

Ministers may choose to forgo their turn, but they then lose it and may not chair the following session (Article 8 of the Committee of Ministers' Rules of Procedure). This possibility was first introduced to encourage a specific state, which was having political problems, to postpone its chairmanship, and to allow it to keep a low profile.

### *Bureau*

The Ministers and Deputies have a Bureau. The first was set up in 1975, to facilitate the Deputies' work. Since May 2001, it has had six members: the present chair, the last two chairs and the next three chairs of the Committee. It meets about three times a month, essentially to deal with questions of management, including preparation of the Deputies' meetings. It is also responsible for ensuring continuity of the successive chairs' activities.

### *Secretariat*

Council of Europe staff provide the Committee of Ministers' Secretariat. It is answerable to the Secretary to the Committee of Ministers, who has Director-General rank, organises the Ministers' sessions and the Deputies' meetings, and ensures that they run smoothly.

### *Sessions of the Committee of Ministers and meetings of the Deputies*

Article 21.c of the Statute, which was drafted in the Council's earliest days, may mislead non-specialists. It states that "the Committee shall meet before and during the beginning of every session of the Consultative (Parliamentary) Assembly and at such other times as it may decide". The second part of the sentence still holds. The first, since sessions were subdivided into part-sessions, does not. The Foreign Ministers met four times in 1950, three times in 1951, and twice-yearly for a long time after that. Now, they meet just once a year – for a day or a day and a half – to assess the progress of European co-operation, weigh the political situation, and give the Council's work the necessary political impetus.

However, their Deputies meet weekly as such – since 1999, on Wednesdays – and also in various rapporteur and working groups.<sup>61</sup>

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<sup>61</sup> The Deputies introduced rapporteur groups in 1985. They help to prepare the Deputies' meetings, comprise a number of Deputies (often represented by their substitutes), and are assisted by the Secretariat. In 1999, they were re-organised to reflect the Council's new priorities.

Unless otherwise decided, the Committee of Ministers meets in private at the Council of Europe (Article 21.a of the Statute), usually in its meeting room. It decides what information to publish on its conclusions and discussions (Article 21.b). Its discussions are recorded in confidential minutes, but a final communiqué, containing the Chair’s conclusions, is published at the end of each session.

Confidentiality of the Ministers’ sessions facilitates dialogue and political co-operation, but it also weakens the Council of Europe by depriving the decision-making process of transparency. This rule is currently being relaxed, however. For example, to facilitate co-operation with the Assembly, the latter’s President is now invited to attend the Ministers’ meetings.

### **Powers**

Under Article 13 of the Statute, the Committee of Ministers has sole authority to act on the Council of Europe’s behalf. Although it is required to take measures to realise the Council’s general objectives, its resources for doing this are limited – which is why the Council’s development has never matched the Hague visionaries’ ambitions.

#### *A general mission: realising the aims of the Council of Europe*

The Committee of Ministers’ responsibilities are wide-ranging. Under Article 15 of the Statute, it is required to consider, on the Assembly’s recommendation or its own initiative, “the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters”.

The Committee provides a platform for dialogue and political co-operation between the member States, leading on to collective decision making on matters for which the Council is responsible. Its decisions are embodied in recommendations to the member States or international agreements. Both provide a basis for the harmonisation of member States’ laws, but recommendations have no legal force, and agreements are binding only on the states that ratify them.

In a general sense, the Committee is responsible for piloting the Council’s intergovernmental co-operative activities. For a long time, the Organisation’s work was neither concerted nor methodical; it was not until 1966 that the annual “intergovernmental programme of activities” introduced systematic planning and budgeting.<sup>62</sup> The first such programme was adopted by the Committee of Ministers on 2 May 1966, on the initiative of the then Secretary General, Peter Smithers. Five-year programmes were introduced in 1974. After 1989, it became apparent that five-year planning was too rigid to

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62. The Committee of Ministers receives recommendations from the Assembly, contributions from conferences of specialised ministers and, regularly, proposals from the steering committees, which comprise representatives of specialised ministries in the member States.

cope with the rapid changes then taking place in Europe. Since 1992, the Deputies have been adopting work programmes at the end of every year, and are responsible for implementing them through advisory or technical committees. This has led to the establishment of some twenty steering committees and numerous ad hoc committees of experts, all of which help to implement the programme.<sup>63</sup>

### *Settling internal matters*

Article 16 of the Statute states that “the Committee of Ministers shall decide with binding effect all matters relating to the internal organisation and arrangements of the Council of Europe”. The Committee thus adopts the financial and administrative arrangements needed for that purpose. It is, as Guy de Vel has put it, “the organisation’s supreme administrative and financial authority”.<sup>64</sup> Its most important decisions are embodied in resolutions, which are legally binding within the Council of Europe.

### *Voting the budget*

The Committee of Ministers’ functions in the financial field are spelt out in Article 38 of the Statute, under which the Secretary General submits the Council’s annual budget to it for approval. The budget goes to the Deputies in November and is adopted, with the programme of activities, in a resolution.

The Parliamentary Assembly has succeeded in loosening the Committee of Ministers’ hold on its own budget. In 1953, it won the right to be consulted on that part of the Council’s budget that applied to itself – and, since 1963, has been involved in drafting it. Under the Financial Regulations, the Deputies are assisted by a Budget Committee of independent experts, appointed by the Committee of Ministers from candidates proposed by member governments.

### *Administrative affairs*

Under Article 37*b* of the Statute, the Secretary General is responsible to the Committee of Ministers for the work of the Secretariat.

### *Adopting its Rules of Procedure*

Under Article 18 of the Statute, the Committee of Ministers adopts its own Rules of Procedure, determining its structure and organisation. The Deputies have their own Rules of Procedure.

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<sup>63</sup> A steering committee is defined as “any committee which is answerable directly to the Committee of Ministers and responsible for a substantial portion of the medium-term plan, and to which the governments of all member States are entitled to designate persons, preferably from among national officials of the highest possible rank”. See Committee of Ministers Resolution (76) 3 on committee structures, terms of reference and working methods.

<sup>64</sup> De Vel, G., *The Committee of Ministers of the Council of Europe*, Strasbourg, Council of Europe Publishing, 1994.

### *Adopting the final text of European conventions or agreements*

See below, page 87.

### *Supervising judgments given by the European Court of Human Rights*

Under Article 46 of the European Convention on Human Rights, as amended by Protocol No. 11, the Committee of Ministers supervises execution of judgments given by the Court in accordance with the “Rules adopted by the Committee of Ministers for the application of Article 46, paragraph 2, of the European Convention on Human Rights” (text approved on 10 January 2001 at the Deputies’ 736th meeting). The Deputies hold six special “human rights” meetings for this purpose every year.

One part of the Committee’s job is verifying that just satisfaction awarded by the Court has actually been paid. Another is verifying that action has been taken to put an end to specific violations and, as far as possible, to undo their effects. The Committee also ascertains whether general measures have been taken to prevent further, or stop ongoing, violations of the same kind (Rule No. 3).

In each case, having found that the state concerned has done everything necessary to comply with the judgment, the Committee adopts a final resolution, in which it notes that it has fulfilled its functions under Article 46, paragraph 3 of the Convention (Rule No. 8). It may also adopt interim resolutions providing information on progress made with execution or, when appropriate, expressing concern or making suggestions concerning execution (Rule No. 7).

States are sometimes slow to execute judgments, and may also have problems if a judgment fails to make its practical implications sufficiently clear. In both cases, the Court’s authority may be weakened, particularly since the Committee itself has no fully effective means of securing execution. Indeed, its only recourse is to suspend the offending state’s representation, or even expel it from the Council – which hardly seems useful, since the aim of the process is precisely to bring it “back into the fold”.

The entry into force of Protocol No. 14 should, however, make for speedier, more effective execution of the Court’s judgments. Under the new procedure, the Committee may decide (by a two-thirds majority of the representatives entitled to sit on it) to ask the Court to interpret a judgment, if doubts concerning its meaning are obstructing execution. The Court’s reply settles any argument over interpretation and so makes it easier to supervise execution (new Article 46, as amended by Protocol No. 14).

The Committee of Ministers will also have authority to bring proceedings for non-compliance, before the Grand Chamber of the Court, against any state which refuses to execute a final judgment. First, however, that state must be given notice to comply. The decision to do this again requires a two-thirds majority of the representatives entitled to sit on the Committee. The aim is not to reopen the case, or even to penalise the offending state financially, since the authors of the Protocol believed that the bringing of proceedings

would be pressure enough to secure execution, without forcing the Committee to initiate the expulsion procedure.

## **Relations with member States**

### *Recommendations to member States*

With a view to realising the Council of Europe's aims, the Committee of Ministers makes recommendations – which are not binding – to the governments of member States (Article 15.b of the Statute). Under Article 20 of the Statute, they must be adopted unanimously by a majority of the representatives entitled to sit on the Committee, although a 1994 gentleman's agreement admits a two-thirds majority.<sup>65</sup> These recommendations should not be confused with the recommendations in which the Assembly asks the Committee itself to take specific action.

Under Article 15.b of the Statute, the Committee of Ministers may ask member governments to “inform it of the action taken by them” on recommendations it has adopted. In 1987 the Deputies asked the intergovernmental committees to monitor the implementation of recommendations and resolutions.<sup>66</sup> This allows member States to inform the Committee of problems they encounter in implementing specific obligations, so that it can draw the necessary conclusions. To some extent, these monitoring arrangements make up for the non-binding character of recommendations.

### *Admitting new member States*

As we have seen, the Committee of Ministers invites applicant countries to join the Council of Europe. The invitation takes the form of a resolution instructing the Secretary General to send it to the government concerned.<sup>67</sup>

### *Monitoring compliance with obligations*<sup>68</sup>

As custodian of the Council's values, and in accordance with the Vienna Summit's decisions on enlargement, the Committee of Ministers decided to follow the Assembly's example and monitor member States' compliance with their obligations to respect democracy, human rights and the rule of law, under the Council's Statute, the European Convention on Human Rights and other legal instruments.

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65. See below.

66. In 1987, at their 405th meeting, the Ministers' Deputies sent a message to the intergovernmental committees (steering committees and committees of experts), asking them to improve their monitoring of implementation of recommendations and resolutions.

67. See above, p. 38.

68. See below, p. 118ff.

## **Voting rules**

“One state, one vote” is the rule in the Committee of Ministers (Article 14 of the Statute), where states’ votes are not weighted, as they are in the EU Council of Ministers.

Apart from decisions on a few questions internal to the Council, which are taken by a simple majority, the Committee’s resolutions are adopted by a two-thirds majority or, in exceptional cases, unanimously. In practice, however, the Committee aims at unanimous agreement and usually takes no vote. Since the requirement for unanimous decisions on questions of importance to the Council threatened to block the decision-making process and paralyse the Committee, a gentleman’s agreement relaxed this rule in 1994.

Voting rules for the Committee of Ministers are laid down in Article 20 of the Statute, which provides for four different types of majority:

- unanimity of the votes cast and a majority of the representatives entitled to sit on the Committee;
- a simple majority of the representatives entitled to sit on the Committee;
- a two-thirds majority of the representatives entitled to sit on the Committee;
- a two-thirds majority of the votes cast and a majority of the representatives entitled to sit on the Committee.

### *Unanimity of the votes cast and a majority of the representatives entitled to sit on the Committee*

Under Article 20 of the statute, this rule applies in five cases, all of them relating to basic questions concerning the Council’s policy and organisation, namely, adoption of the Committee of Ministers’ activity reports, decisions on not meeting in private (Article 21.a.i of the Statute), decisions on publishing information on discussions and conclusions of meetings held in private (Article 21.b), decisions taken with the Assembly on holding ordinary Assembly sessions outside the Council, and recommendations on amending basic Statute provisions, such as Articles 1.d (exclusion of questions relating to national defence from the Council’s remit), 7 (notification of decisions to withdraw), 15 (powers of the Committee of Ministers), 20 (voting rules of the Committee) and 22 (powers of the Parliamentary Assembly).<sup>69</sup>

Traditionally, recommendations to governments also required unanimous approval, but – under a gentleman’s agreement dating from November 1994 – no delegation insists on unanimity, once a two-thirds majority of the votes cast, representing a majority of the members entitled to sit on the Committee, has been secured.<sup>70</sup> Reservations on recommendations may, however, be entered.

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<sup>69</sup> See above, p. 21, comments concerning Article 1.d.

<sup>70</sup> If the Committee of Ministers has forty-five members, at least twenty-three “yes” votes are needed, but these twenty-three must also represent at least a two-thirds majority of the votes cast – which is not the case, for example, if twenty delegations vote against (see CM/Inf(2003) 55).

The unanimity rule has also been relaxed for replies to Assembly recommendations. In December 1994, the Committee of Ministers noted that the Statute contained no binding rule on this question, and accordingly decided that replies would be adopted by the majority provided for in Article 20.*d* of the Statute, that is, a two-thirds majority of the votes cast and a majority of the representatives entitled to sit on the Committee, although every effort should be made to secure consensus within a reasonable time.

Any delegation may, however, insist on unanimity when a question's importance seems to warrant it. A point of procedure may be raised on such questions, but the initial decision that they are important requires a two-thirds majority.

#### *Simple majority of the representatives entitled to sit on the Committee*

This applies only to decisions on questions relating to the rules of procedure or the financial or administrative regulations (Article 20.*b*) – but unanimity may be required for decisions on questions that the Committee considers important.

#### *Two-thirds majority of the representatives entitled to sit on the Committee*

Decisions inviting a state to become a member (Article 4) or associate member (Article 5) of the Council require this majority (Article 20.*h*). However, this rule is theoretical, since it would clearly be hard to admit a new member in the face of an existing member's opposition.<sup>71</sup> Any such decisions at Deputy level must be unanimous, under the Deputies' Rules of Procedure.

#### *Two-thirds majority of the votes cast and a majority of the representatives entitled to sit on the Committee*

Finally, all questions that do not require some other majority are decided by a two-thirds majority of the votes cast, and a simple majority of the members entitled to sit on the Committee (Article 20.*i*). Under Article 20.*d* of the Statute, this applies to:

All other resolutions of the Committee, including adoption of the budget, of rules of procedure and of financial and administrative regulations, recommendations for the amendment of articles of this Statute, other than those mentioned in paragraph *a.v.* above, and deciding in case of doubt which paragraph of this article applies.

## • The Parliamentary Assembly

As originally conceived, the Parliamentary Assembly, which the Statute mentions second, certainly fell short of the hopes invested in it by those Hague Congress participants who wanted a real European assembly, representing

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71. The objecting member could request application of Article 20.*a.vi*.



the continent’s peoples and endowed with wide powers. But it is Europe’s first – and still largest – assembly, and today represents the full range of political forces in the Council’s member States.

The compromise anchored in the Treaty of London was accepted by Britain on condition that the Assembly would be a purely advisory body, hence its initial title – Consultative Assembly. But some of its members believed that it could still be turned into a European constituent assembly, and set about lobbying, at its very first session in August 1949, for changes in the Statute to increase its powers. Their efforts came to nothing and, although the Assembly has gradually managed to assert itself *vis-à-vis* the Committee of Ministers and add to its prerogatives,<sup>72</sup> the Committee has always rejected any proposal that smacked of joint decision making.

The symbolic connotations of the Assembly’s title reflect its struggle to wrest power from the Committee of Ministers, and its desire to be seen by the latter as a genuine parliament. In 1974, it took the plunge, dropped the label “Consultative” and started to call itself the “*Parliamentary* Assembly”. For a long time, governments resisted the change, without actually opposing it openly. For example, Assembly correspondence was headed “Parliamentary Assembly” – but the Committee of Ministers’ replies were pointedly addressed to the “*Consultative* Assembly”. It was not until the 1980s that the situation was regularised in practice. The Committee of Ministers formally confirmed its acceptance of the new title in February 1994, but the Statute has never been amended to include it.

The new title did not, however, affect the Assembly’s powers. It remains a purely advisory body and exercises no direct control over the Council’s activity, although it does elect certain officials,<sup>73</sup> and has *de facto* powers concerning the admission and expulsion of members. Nonetheless, it has gradually managed to strengthen its position in relation to the Committee of Ministers. Essentially organised on national parliament lines, it is still mainly useful as a vital European forum, with a membership far in excess of the EU’s. Free since 1950 to determine its agenda, it is the pre-eminent platform for discussing the crucial problems that tomorrow’s Europe will find itself facing. Its authority is enhanced by the presence of parliamentarians from all the countries of Europe, and by the fact that its debates often culminate in the adoption of resolutions or recommendations to the Committee of Ministers – and so lead on to action.

## **Membership**

The Assembly’s composition is determined by Article 25 of the Statute, which was amended in 1951, and again in 1953 and 1970.<sup>74</sup> Comparing the present

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72. For example, its agenda no longer requires the Committee of Ministers’ approval.

73. See below, pp. 66ff.

74. The first sentence in the paragraph was amended in 1951. Two sub-paragraphs were added in May 1953. Paragraph *a*, first sub-paragraph, was amended in October 1970.

version with its predecessors,<sup>75</sup> one can see that national parliaments have been given a bigger role in appointing their delegations.

### *National delegations*

#### *Appointing members of national delegations*

Under the original Statute, the procedure for appointment of national delegations was determined separately by each member government. Britain, which had accepted a European assembly as a compromise, had actually secured agreement that representatives might be appointed by governments, and not necessarily by national parliaments. “In some states, this made them creatures of their governments, some of which simply selected them (Belgium, Greece, Turkey), while others appointed them on the parliament’s proposal or in consultation with it (Denmark, Ireland, Luxembourg, Netherlands, United Kingdom). Since the French, Italian, Norwegian and Swedish representatives had been elected by their parliaments, those appointed in either of the two other ways seemed less morally sure of their title.”<sup>76</sup>

On 23 November 1950, the Assembly made a number of proposals on amending the Statute, one being a change in the procedure for appointing representatives. The Committee of Ministers accepted this suggestion and, under the revised version of Article 25 adopted in May 1951, the Assembly consists of “representatives of each member, elected by its parliament from among the members thereof, or appointed from among the members of that parliament, in such manner as it shall decide ...”. Today, therefore, every national or federal parliament elects or appoints its representatives in a manner determined by itself.

The only rule is that delegations must, in their political make-up, reflect with reasonable accuracy the balance of political parties or groups in their home parliaments. In accordance with a resolution adopted in September 2003, they must also include a percentage of members of the under-represented sex at least equal to that in the home parliament – and at least one member of each sex in any case.<sup>77</sup>

The Assembly now derives directly from national parliaments, and this has strengthened its legitimacy and independence within the Council. All representatives must be nationals of the states they represent, and may not simultaneously be members of the Committee of Ministers.

#### *Term of office of representatives*

The Statute says nothing about the life of the Assembly, so renewal of its membership follows no set pattern. However, Article 25 was amended and made more specific on this point in 1953. Representatives start their term when the ordinary session following their appointment opens, and end it when the next, or a later,

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75. See footnotes to Appendix I.

76. Burban, J.-L., *op. cit.*, p. 38.

77. See Resolution 1348 (2003) on gender-balanced representation in the Parliamentary Assembly, which amends 6.2 of the Assembly’s Rules of Procedure accordingly.

session opens – unless home elections are held in the meantime, in which case new appointments are made with immediate effect (Article 25.a). As a result, terms vary between countries, for example, one year for Belgium, the Netherlands and Luxembourg, four years for Germany, and five for France.

Similarly, to keep representatives independent of states, the Statute provides that no member may be deprived of their position during an Assembly session without the Assembly’s consent (Article 25.b). In Assembly usage, a “session” covers a full year, from January to December. Some states have attempted to dodge this reading of the term.<sup>78</sup> The first to try was the Colonels’ Greece: in April 1967, in the middle of a session, it sent the Secretary General a bald telegram, cancelling the credentials of its parliamentarians – some of whom were already in prison. Protests from Strasbourg were ignored.

The Turkish Generals, who seized power in 1980, did not make the same mistake. They authorised the Turkish delegation to remain until the session ended, and the new government decided to keep it for the session after that. However, since the Turkish Grand National Assembly had been dissolved, the Assembly decided that its members had ceased to be parliamentarians and had lost the right to sit in Strasbourg – and regretfully refused to approve the former delegates’ credentials.

Representatives who are unable to attend sessions may be replaced by substitutes of the same nationality, duly appointed by their national delegations, who may speak and vote on their behalf.

### *Credentials*

Before each session opens, the credentials of representatives and substitutes are sent to the President of the Assembly by the president of the national parliament, the president of a national parliamentary chamber or any other person they authorise to do so. The oldest member present submits these credentials to the Assembly for approval.

Unratified credentials may be challenged “on procedural grounds” by any member present in the Chamber. Unratified credentials of entire delegations may also be challenged “on substantial grounds” by ten members present in the Chamber belonging to at least five national delegations, or by a report by the Monitoring Committee. “Substantial grounds” include serious violations of the Council’s basic principles, persistent failure to respect obligations and commitments, and failure to co-operate with the monitoring process.<sup>79</sup> During a

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78. The Maltese case in 1984-5 was an early example.

79. See paragraph 12 of Resolution 1115 (1997): “The Assembly may penalise persistent failure to honour obligations and commitments accepted, and lack of co-operation in its monitoring process, by adopting a resolution and/or a recommendation, by the non-ratification of the credentials of a national parliamentary delegation at the beginning of its next ordinary session or by the annulment of ratified credentials in the course of the same ordinary session in accordance with Rule 6 of the Rules of Procedure. Should the member state continue to not respect its commitments, the Assembly may address a recommendation to the Committee of Ministers requesting it to take the appropriate action in accordance with Articles 8 and 9 of the Statute of the Council of Europe”.

session, the Assembly may also reconsider the ratified credentials of an entire national delegation on the basis of a motion for a resolution to annul ratification “on substantial grounds”, or of a report by the Monitoring Committee.

The Assembly may decide not to ratify credentials, to annul the ratification of credentials, or to withdraw or suspend the exercise of some of the rights of participation or representation of members of the delegation concerned in the activities of the Assembly or Assembly bodies.

From April 2000 to January 2001, for example, the Assembly refused to ratify the Russian delegation’s credentials, because of human rights violations in Chechnya. In 2004,<sup>80</sup> it decided to ratify the Maltese and Irish delegations’ credentials, but to suspend their voting rights, for as long as these delegations contained no women. As we have seen, the Rules of Procedure insist that delegations must include a percentage of members of the under-represented sex at least equal to that applying in their home parliaments, and at least one member of each sex in any case.

#### *Number of seats allocated to national delegations in the Assembly and financial contributions*

Under Article 6 of the Statute, before inviting a state to join the Council, the Committee of Ministers determines the number of seats it will have in the Assembly and its “proportionate financial contribution”, in accordance with the rules laid down in Resolution (94) 31 of 4 November 1994 on the method of calculating the scales of member States’ contributions to Council of Europe budgets.

States may have two to eighteen representatives. In deciding how many seats a state will have, the Committee of Ministers takes account of the Assembly’s opinion on its admission. The Assembly itself applies objective criteria, but also tempers them with political criteria. In principle, it takes population as its yardstick.

The central political principle puts “major contributors” to the Council’s budget on the same footing, with eighteen seats each. Until the Russian Federation joined in 1995, there were four – Germany, France, Italy and the United Kingdom – all paying the same percentage contribution and covering nearly three-quarters of the Council’s budget. Russia initially wanted to contribute at a lower rate, but for various reasons – one being the fact that a state’s contribution determines the extent of its entitlement to A-grade (senior) posts – it eventually chose to become a major contributor. When the ordinary budget for 2004 was being discussed, it had second thoughts, but again decided to keep its “major” status.

The Assembly also decided that every member state should have at least two seats, with the result that small states are heavily over-represented. In proportional terms, for example, Liechtenstein’s representation is four hundred times that of the United Kingdom. Conversely, some states, notably the Russian Federation and Germany, are definitely under-represented.<sup>81</sup>

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80. Resolution 1360 (2004).

81. In the European Parliament, seating allocation reflects population, but is far from being proportional.

Article 26 of the Statute lists national delegations in English alphabetical order and indicates the number of seats to which they are entitled. Whenever a new state joins, the Statute is amended accordingly. Currently (November 2004), national delegations total 315 parliamentarians from forty-six member States, plus the same number of substitutes.

### *Observer delegations*<sup>82</sup>

On the Bureau’s proposal, the Assembly may award Observer status to the parliaments of non-member States that satisfy the conditions laid down in paragraph 1 of Statutory Resolution (93) 26 on Observer status. It determines the size of these observer delegations, whose members sit in the Assembly, but are not allowed to vote – although they may speak with the President’s consent, and may also attend committee meetings.

An Observer delegation (three members and three substitutes) from the Israeli Knesset has been sitting in the Assembly since 1957, under the old Rule 55 of its Rules of Procedure. Following the adoption of Statutory Resolution (93) 26, six-member delegations from the Canadian and Mexican Parliaments have been attending since May 1997 and November 1999 respectively. Observers admitted under the old Rule 55, now superseded by Resolution (93) 26, keep the right to appoint substitutes, which other observers (special guests included) do not have.

### *Special guests*<sup>83</sup>

As we have seen, the Bureau of the Assembly may award special guest status to the parliaments of European non-member States. The president/speaker of the parliament concerned must submit a formal request to this effect to the President of the Assembly. If the Bureau, having consulted the Political Affairs Committee, agrees, the President of the Assembly offers that parliament special guest status. The number of seats (without substitutes) allocated to each special guest is the number it would probably have if admitted to full membership. Members of special guest delegations are not entitled to vote, but may speak with the President’s consent, and may also attend committee meetings. Special guest status can be extended or revoked.

### **How the Assembly operates**

Article 28 of the Statute allows the Assembly to adopt its Rules of Procedure,<sup>84</sup> which regulate its workings in minute detail. They have been amended on various occasions, to align the Assembly with national parliaments, increase its prerogatives and release it from supervision by the Committee of Ministers.

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82. See above, p. 45.

83. See above, p. 46.

84. The Assembly adopted its first rules of procedure on 8 December 1951. They have been reviewed at approximately ten-year intervals, most recently on 4 November 1999 (Resolution 1202 (1999)). They have been amended on several occasions. See the version updated in March 2004.

### *Presidency*

The Assembly elects one of its members to act as its President. It has gradually become customary, particularly since the 1980s, for the Assembly to elect its President after opening of the session by the oldest member present. If, after two ballots, no candidate secures an absolute majority, the candidate who receives the most votes in the third ballot is elected (Rule 13 of the Rules of Procedure). In the event of a tie, the older candidate is elected. If there is only one candidate, which is generally the case (with one exception in 1999), he or she is declared elected without a ballot. Normally, the political groups take it in turn to put forward candidates.

The President remains in office until the start of the next ordinary session, and is normally re-elected for two further terms. Barring surprises, the term is thus three years.

The President directs the Assembly's work, but does not speak in debates or vote, leaving this to his or her substitute.

### *Bureau*

The Bureau co-ordinates the work of the Assembly and its committees. This covers many functions – drawing up the Assembly's order of business, referring documents to committees, organising activities on a daily basis, and so on. It also assists the President and generally oversees the Assembly's external relations.

The members of the Bureau are the President, the nineteen Vice-Presidents and the chairs of the political groups or their substitutes (a proposal on also including the committee chairs is now being considered). The larger countries normally have permanent seats on the Bureau, while the smaller ones take turns.

### *Standing Committee*

The Standing Committee fixes dates for the opening and resumption of ordinary sessions, prepares the Assembly's work and ensures its continuity, and sometimes acts on the Assembly's behalf. It comprises the Bureau, the chairs of national delegations and the chairs of committees. It usually meets at least twice a year.

### *Political groups*

Seating in the Assembly Chamber is arranged on a horseshoe pattern, and members sit in alphabetical order – not in national delegations or political groups.

To stop members from thinking and voting on purely national lines, there was a strong move, from 1956, towards the formation of political groups. For a long time, there were only three, the Liberal, Christian Democrat and Socialist Groups, but the spectrum has now broadened and there are currently five: the Socialist Group (SOC), the Group of the European People's

Party (EPP/CD), the European Democratic Group (EDG), the Liberal, Democratic and Reformers Group (LDR) and the Group of the Unified European Left (UEL). They are all required to uphold the values defended by the Council of Europe.

At least twenty members, drawn from six national delegations, are needed to found a political group. Assembly members are entirely free to join the group of their choice. The leaders of the groups, and the President of the Assembly, together form the Presidential Committee. Since 1964, the groups have enjoyed certain rights under the Assembly's Rules of Procedure.

### **Committees**

Article 24 of the Statute authorises the Assembly to establish “committees or commissions to consider any matter which falls within its competence”, but does not oblige it to do so. The Assembly lost no time in getting organised, however, and set up six general committees and a standing committee at its very first session. The Committee of Ministers tried to discourage the founding of general committees, which it saw as potentially rivalling its own committees of experts, but the Assembly stuck to its guns. It now has ten “permanent” committees, of which two have 50, and the others 82 seats:

- the Political Affairs Committee (82 seats);
- the Committee on Legal Affairs and Human Rights (82 seats);
- the Committee on Economic Affairs and Development (82 seats);
- the Social, Health and Family Affairs Committee (82 seats);
- the Committee on Migration, Refugees and Population (82 seats);
- the Committee on Culture, Science and Education (82 seats);
- the Committee on the Environment, Agriculture and Local and Regional Affairs (82 seats);
- the Committee on Equal Opportunities for Women and Men (50 seats);
- the Committee on Rules of Procedure and Immunities (50 seats);
- the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) (82 seats).<sup>85</sup>

The Assembly sometimes sets up ad hoc committees. They are directly attached to the Bureau.

Committees may themselves establish sub-committees, whose terms of reference and composition they decide. A sub-committee's membership is limited to one-third of that (counting only full members) of its parent committee. Sub-committees do not adopt reports, and submit their decisions to their parent committees.

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85. Resolution 1356 (2003) on increasing the number of seats on the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe brought the number of seats on the Monitoring Committee into line with the figure – currently eighty-two – for the Assembly's other major committees.

Committees examine texts referred to them, including motions for resolutions, recommendations or opinions, and any question on which the Assembly or Standing Committee consults them. They may also consider other issues covered by their terms of reference, and they monitor follow-up action on Assembly texts based on their reports.

Apart from the Monitoring Committee, which has two co-rapporteurs, committees appoint a single rapporteur for each question.

### *Assembly Secretariat (Office of the Clerk)*

The Office of the Clerk is the Assembly's administrative body. It is headed by the Secretary General of the Parliamentary Assembly – known as the Clerk until 2000 – who has the same rank as the Secretary General of the Council.

The Assembly elects its Secretary General by secret ballot for a five-year term (renewable), in accordance with the "Regulations relating to appointment of the Secretary General, the Deputy Secretary General and the Clerk (Secretary General) of the Assembly". The post is non-political, and candidates must be nominated by one or more governments, the Secretary General, or one or more groups of representatives (proposals by groups must carry at least five and not more than ten signatures). The last has been the preferred procedure since the 1970s, and candidates are careful to ensure that their lists of sponsors are balanced, geographically and politically, and include both men and women.

Resolution (49) 20, which is obsolete but has never been formally revoked, defines the status of the Secretary General of the Assembly, then known as the "Deputy Secretary General for Assembly Services". It states that this official will "act under the authority of the Secretary General" of the Council of Europe. He or she none the less takes instructions directly from the President and Bureau of the Assembly – which does not affect his or her place in the Secretariat hierarchy.

Within the Assembly Secretariat, the Table Office monitors compliance with the Rules of Procedure, and advises members of the Assembly, delegation secretaries and political groups on issues arising under them. It also supervises members' credentials, convenes Assembly sessions, prepares the order of business, and channels proposals, amendments, questions, written statements and committee reports to the Assembly.

The Assembly Secretariat also includes the secretariats of the various committees and a number of special units.

### *Sessions*

Originally, the Assembly was to hold a single one-month session every year. In 1957, it decided to divide this session into three parts and, in 1994, added a "summer session" – which is now an ordinary session. In other words, the annual session<sup>86</sup> now consists of four part-sessions, lasting one week on aver-

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86. Since 1994, the parliamentary year has coincided with the calendar year.



age and held at the end of January, April, June and September. The length of the total session may not exceed thirty-one days, unless the Assembly and Committee of Ministers both decide otherwise. Between part-sessions, the Standing Committee has authority to act for the Assembly.

The Assembly's ordinary sessions are held at the Council of Europe in Strasbourg, unless the Assembly and Committee of Ministers both decide otherwise (Article 33 of the Statute). In 1987-8, the members – angered by Prime Minister Jacques Chirac's decision, following a wave of terrorist attacks in Paris, to bring back compulsory visas for nationals of non-EU countries, except Switzerland – threatened to boycott Strasbourg. But there was little real hope of securing consensus on another venue, and so the Assembly continued to meet at the Council. It actually left Strasbourg for the first time in June 1992, when Hungary hosted a plenary session in Budapest. However, committee meetings in other locations pose no problems, and this possibility was fully exploited during the crisis with France.

Article 34 of the Statute (which has never been applied) actually states that the Assembly “may be convened in extraordinary session, upon the initiative either of the Committee of Ministers or of the President of the Assembly after agreement between them, such agreement also to determine the date and place of the session”.

The Assembly's debates are public. It has never met in camera, although Article 35 of the Statute allows it to do so. Morning and afternoon sittings are normally treated as separate, and so representatives can be replaced by their substitutes at either.

### **Powers**

No longer consultative in name, the Assembly remains consultative in character. At most, it can try to influence the Committee of Ministers through recommendations or opinions, which the Committee is not obliged to follow – and is often happy to ignore. As we have seen, it is the Assembly's function as a forum for discussion which lends it authority.

#### *Forum function – discussion of issues covered by the Council's remit*

If the authors of the Statute had had their way, the Assembly's brief would have stopped at questions referred to it by the Committee of Ministers – indeed, the agenda for its first few sessions required the latter's approval. Gradually, however, it shook off these constraints. In 1950, it secured the right to adopt its agenda without submitting it to the Committee of Ministers, which decided in May 1951 to revise Article 23 of the Statute,<sup>87</sup> so that the Assembly could discuss “any matter within the aim and scope of the Council of Europe” – which clearly leaves it free to consider a wide range of highly sensitive political issues and other questions of vital importance for

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<sup>87</sup> The old version of Article 23 is included as a footnote in the annotated text of the Statute, *Rules of Procedure of the Assembly and Statute of the Council of Europe*, 2002.

tomorrow's Europe. So far, the Assembly's powers have never given rise to any dispute with the Committee of Ministers.

An extension of the Assembly's forum function is the adoption of recommendations or resolutions.

#### *Recommendations to the Committee of Ministers*

The Assembly's conclusions are embodied in recommendations to the Committee of Ministers. As defined in Rule 23 of its Rules of Procedure, a recommendation is "a proposal by the Assembly addressed to the Committee of Ministers, the implementation of which is beyond the competence of the Assembly, but within that of governments". But recommendations are not the only option open to the Assembly.

#### *Resolutions*

The Assembly can also use resolutions as a vehicle for its views and policies. As Rule 23 puts it, a resolution "embodies a decision by the Assembly on a question of substance which it is empowered to put into effect, or an expression of a view for which it alone is responsible". Resolutions require no explicit reply from the Committee of Ministers, though the latter may refer to them in its dealings with the Assembly. In fact, laymen and the media sometimes miss the distinction between recommendations to the Committee of Ministers, resolutions (even draft resolutions), and personal statements by senior Council representatives.

Motions for recommendations or resolutions must be signed by at least ten representatives or substitutes from at least five national delegations. The President decides whether they are admissible, and may consult the committee concerned and possibly the Bureau for that purpose. Motions which are in order are printed and distributed at once (Rule 23 of the Rules of Procedure).

#### *Orders*

Orders were abolished by the Standing Committee in March 2004.<sup>88</sup> They were concerned with internal questions of form, transmission, execution and procedure – but not with questions of substance (Rule 23 of the Rules of Procedure). The Assembly used them, for example, to give instructions to its subordinate bodies (such as its Bureau or committees), its secretariat or the Secretary General of the Council.

#### *Elective functions*

All parliaments elect their presidents and vice-presidents, but the Assembly elects other officials as well, and this strengthens its role as the Council of Europe's parliamentary body.

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<sup>88</sup> Motions for orders have also been abolished. Resolutions may replace orders, provided that they do not trespass on the Bureau's prerogatives, or make any committee permanently responsible for preparing reports on a given subject.

*Electing the Secretary General of the Council of Europe, the Deputy Secretary General and the Secretary General of the Assembly*

See below, p. 72ff.

*Electing judges to the European Court of Human Rights*

Under Article 22 of the European Convention on Human Rights,

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

The European Convention gave the Assembly this prerogative, which it guards jealously,<sup>89</sup> in 1950. When the single Court was introduced, it became even more determined to ensure that judges were properly elected, with members making a fully informed choice from a list of candidates possessing all the requisite qualifications.

Under the current procedure, each Convention state prepares a list of three candidates, and is free to determine its own selection procedure, which is not formally regulated by the Council. However, politicisation of the process in some states, coupled with a lack of transparency, prompted the Assembly to make recommendations on advertising vacancies in specialised journals, ensuring that candidates had human rights experience, including both women and men on the lists (this is a requirement) and putting candidates in alphabetical order.<sup>90</sup>

The lists go first to the Directorate General of Human Rights, and are then sent to the Committee of Ministers, which sets up a working party to review them. This working party may reject lists if the selection procedures are unsatisfactory, or candidates are insufficiently qualified. In practice, it normally sends them unchanged to the Assembly.

The Assembly's Committee for Legal Affairs and Human Rights and Sub-Committee on the Election of Judges to the European Court of Human Rights (an ad hoc body) rank candidates in order of preference. They meet in camera and give no reasons for their choices. Since 1996, as a decision-making aid, the Assembly has been asking candidates to submit standard-form CVs. Interviews with the Sub-Committee are another recent innovation. These initiatives met with some resistance. For one thing, outgoing judges

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89. Notwithstanding the fact that certain members seem to take little interest, and are noticeably absent when judges are being elected.

90. Assembly Recommendation 1429 (1999). See also Assembly Resolution 1200 (1999) on the election of judges to the European Court of Human Rights, the Committee of Ministers' reply to Recommendation 1429 (1999), Assembly document 8835 and the Opinion of the European Court of Human Rights on Recommendation 1429 (1999) of 6 March 2000. See also the report on the election of judges to the European Court of Human Rights, submitted by Lord Kirkhill for the Committee on Legal Affairs and Human Rights, doc. 8460, 9 July 1999, and the Interights report on the independence of the judges, "Rules and practices governing appointments to the European Court of Human Rights", May 2003.

felt that they had proved themselves already, and resented having their suitability tested by the Assembly. For another, it was suggested that Assembly involvement in electing judges might politicise the Court.

The Assembly's final decision is taken by secret ballot. To win in the first round, a candidate must have an absolute majority, but a relative majority suffices in the second. Government pressure frequently accompanies the process.

### *Electing the Commissioner for Human Rights*

The Assembly also elects the Council of Europe's Commissioner for Human Rights, by a majority of the votes cast, from a list of three candidates drawn up by the Committee of Ministers. The Commissioner is elected for a non-renewable term of six years.<sup>91</sup>

Member States nominate candidates, who must be nationals of a member state, and "be eminent personalities of a high moral character having recognised expertise in the field of human rights, a public record of attachment to the values of the Council of Europe and the personal authority necessary to discharge the mission of the Commissioner effectively".<sup>92</sup>

### *Presenting the list of candidates for the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)*

Members of the CPT are elected by the Committee of Ministers – but from a list drawn up by the Assembly's Bureau.

### *Setting the Assembly's agenda for sessions*

As currently worded, Articles 29.ii and 31 of the Statute, governing determination of the Assembly's agenda, are obsolete. It is true that the Committee of Ministers originally approved the agenda, but the Assembly soon managed to have this requirement dropped – leaving it free to discuss issues of its own choosing. These are extremely varied, but must be covered by the Council of Europe's remit.

Article 32, which requires the Assembly to ensure, as far as possible, that its sessions do not clash with national parliamentary sessions or sessions of the UN General Assembly, has also lost much of its point. Although the Assembly or the Standing Committee still determine the dates on which sessions start or resume, it has now become difficult to avoid overlapping with the UN General Assembly, whose sessions are growing steadily longer.

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91. Committee of Ministers Resolution 50 (1999) on the Council of Europe Commissioner for Human Rights, Article 9.

92. *Ibid.*, Article 10.

## **Monitoring commitments**

In its debates, resolutions and recommendations, the Assembly has never been slow to denounce serious violations of human rights and fundamental freedoms which have come to its notice. Through its Monitoring Committee, it also keeps a permanent check on member States.<sup>93</sup>

Ideally, it would have liked an even bigger role in the human rights field – which is why Article 36 of its proposed new version of the Council’s Statute allowed it to respond to flagrant human rights violations by any means at its disposal and to recommend, when appropriate, implementation of the control procedures provided for in the European Convention on Human Rights.

## **Voting rules**

Articles 29 and 30 of the Statute cover voting rules. Normally, the Assembly’s decisions are taken by a two-thirds majority of the votes cast or by a simple majority. A two-thirds majority of the votes cast, representing at least one-third of the members, is required for the adoption of draft recommendations or opinions for the Committee of Ministers, the adoption of urgent procedure, changes in the order of business, the setting-up of committees and the fixing of dates for the opening or resumption of ordinary sessions (Rule 40 of the Rules of Procedure). For appointments, an absolute majority of the votes cast is required in the first ballot, and a relative majority in the second. A majority of the votes cast suffices for the adoption of draft resolutions and all other decisions (Rule 40 of the Rules of Procedure).

No quorum is needed to determine the agenda, approve minutes of proceedings, decide procedural questions, or agree to adjourn. All other votes, except roll-call votes, are valid, regardless of the number of members voting – unless at least one-sixth of the members entitled to vote, belonging to at least five national delegations, have previously asked the President to verify that a quorum exists. That quorum is one-third of the members entitled to vote. In the absence of a quorum, the vote is postponed to the next sitting or, at the President’s proposal, a subsequent sitting.

## **Relations between the Committee of Ministers and the Assembly**

The authors of the Statute wanted contacts between the Committee of Ministers and the Assembly to remain sporadic and infrequent. They were anxious to preserve the Committee of Ministers’ decision-making authority and the Council’s intergovernmental character by minimising the Assembly’s influence. We have already seen, however, that the Assembly gradually managed to increase its authority, and now exercises a powerful influence over the Committee.

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<sup>93</sup>. See below, p. 118.

### **Liaison body: the Joint Committee**

The Joint Committee is intended to remedy the Statute's inadequate provision for consultation and co-operation between the Assembly and the Committee. Under Statutory Resolution (51) 30,<sup>94</sup> it is "the Council of Europe's Co-ordinating Body". There are few organisations that provide for direct contacts of this kind between parliamentarians and national governments.

Nonetheless, the Joint Committee's powers are limited. It acts "without prejudice to the respective rights" of the Committee of Ministers and the Assembly, under Resolution (51) 30, which is now largely obsolete on this point. Rule 55 of the Assembly's Rules of Procedure reflects the present situation more accurately. The Joint Committee does not vote and takes no formal decisions. Today, it essentially acts as a liaison body, serving as a platform for the exchange of information, and occasionally bringing pressure to bear on the Committee of Ministers.

As agreed by the Committee of Ministers on 6 December 1963, the Joint Committee comprises one representative of each member government and the same number of Assembly representatives (including the members of the Bureau and one member of each national parliamentary delegation that is not represented on the Bureau). In a "power-sharing" spirit, it is normally chaired by the President of the Assembly.

The Bureau of the Assembly and the Committee of Ministers may also decide to set up joint working parties on specific issues.

### **How the Assembly and Committee of Ministers interact**

#### *Follow-up action on Assembly Recommendations*

The Statute provides that, "on the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aims of the Council of Europe ...". In other words, it is required to take action, positive or negative, on the Assembly's recommendations – and Assembly texts are examined by the Deputies at their first meeting after the part-session at which they were adopted.

#### *Assembly Opinions*

The Assembly may be consulted by the Committee of Ministers. Today, it prepares opinions for the Committee on the admission of new members, on all draft treaties and protocols, on the budget and on implementation of the Social Charter.

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94. This Resolution 51 (30), which determines the Joint Committee's status, is essentially obsolete and needs to be revised. The Assembly would have liked the revised Statute to give the Joint Committee a bigger role and define its status and composition more clearly.

### *Admission rights and the Committee’s right to address the Assembly*

Under Article 27 of the Statute, the Committee of Ministers may be collectively represented at Assembly debates, and individual Committee members or their alternates may address the Assembly. These matters are governed by rules of procedure drawn up by the Committee in consultation with the Assembly. The Assembly lost no time in inserting into its own Rules of Procedure a rule giving the Ministers and their Permanent Representatives very broad rights to speak at its sittings and meetings of its committees.

Under Rule 54.1, all members of the Committee of Ministers and other ministers of member governments have access to the Assembly and its committees, and may speak if they so request. Under Rule 54.2, a minister may, on the same conditions, be represented by a deputy at a committee meeting with that committee’s agreement. Details are regulated by a decision adopted by the Assembly’s Standing Committee on 25 November 1987. The Committee of Ministers’ Rules of Procedure echo these provisions (Rules 17 and 18).

### *Oral and written questions by representatives*

The members of the Assembly rapidly secured the right to put written and oral questions to the Committee of Ministers. This is an essential parliamentary prerogative, modelled on national parliamentary practice. Even so, it gives the Assembly no control over the Committee – although it does oblige the latter to account for its actions and decisions.

Representatives and substitutes are free to submit written questions to the Committee of Ministers or its Chair on matters for which it is responsible. The President of the Assembly decides whether these questions are admissible.

It is a well-established practice that oral and written questions by members of the Assembly are answered by the minister of the member state which is currently chairing the committee. Oral questions are answered orally in plenary session, and a supplementary question is allowed if the answer fails to satisfy. Written questions are answered in writing.

### *Activity report by the Committee of Ministers to the Assembly*

Under Article 19 of the Statute, reports on the activity of the Committee of Ministers are prepared for the Assembly at every session. These are now produced for each part-session. They are prepared by the Secretary General, presented by the Chair of the Committee and debated by the Assembly. Members may put questions to the Chair of the Committee for oral reply.

## **Secretariat and Secretary General**

The Statute does not treat the Secretariat as one of the Council’s statutory bodies, and says very little on its functions. Article 10 merely notes that the Committee of Ministers and the Assembly “shall be served by the Secretariat of the Council of Europe”. One has to turn to Chapter VI for some very brief indications concerning its organisation.

At the top, the authors of the Statute were obviously anxious not to inflate the Secretary Generalship's importance, and to make the office purely administrative, like that of the Secretary General at the League of Nations. Nonetheless, election by the Assembly (the practice since the third incumbent) gives it political legitimacy, and has allowed successive Secretaries General to strengthen and expand their role. Today, they play a major part in shaping Council policy, although their influence obviously depends, as well, on their personal charisma and dynamism.

Since it was founded, the Council of Europe has had twelve Secretaries General: Jacques Camille Paris (France, 1949-53); Léon Marchal (France, 1953-56); Lodovico Benvenuti (Italy, 1957-64); Peter Smithers (United Kingdom, 1964-69); Lujo Toncic-Sorinj (Austria, 1969-74); Georg Kahn-Ackermann (Germany, 1974-79); Franz Karasek (Austria, 1979-84); Marcelino Oreja Aguirre (Spain, 1984-89); Catherine Lalumière (France, 1989-94); Daniel Tarschys (Sweden, 1994-99); Walter Schwimmer (Austria, 1999-2004); Terry Davis (United Kingdom, elected in June 2004 for a five-year term). Catherine Lalumière is the only woman to have held the office.

### **Appointment of the Secretary General and Deputy Secretary General**

Under Article 36.b of the Statute, the Assembly appoints the Secretary General and the Deputy Secretary General on the recommendation of the Committee of Ministers. Under Statutory Resolution (49) 20, both are elected for a five-year term, which is renewable. Nonetheless, no Secretary General has ever served for more than one term.

The Committee of Ministers sends the Assembly a recommendation containing the names of candidates. On the first two occasions, it effectively imposed its own choice by sending it only one name. The Assembly reacted by insisting that the Joint Committee must be consulted before the Committee's proposals were sent to it. In 1955, when a new Deputy Secretary General was being appointed, it persuaded the Committee to recommend several candidates, leaving it to choose – and this procedure has been followed since the third Secretary General, Lodovico Benvenuti (Italy), was elected on 2 May 1957. Arrangements for these elections are detailed in special regulations, which the Committee of Ministers adopted with the Assembly's agreement in December 1956, and amended at its suggestion in March 1962.

The first two Secretaries General (Jacques Camille Paris and Léon Marchal) were senior civil servants and career diplomats, but the third (Lodovico Benvenuti), like all his successors, was a politician. On 16 September 1956, the Committee of Ministers announced that it would henceforth nominate politicians only, "which was certain to please the Assembly, particularly since the Committee's choice had fallen on two of its members".<sup>95</sup> Lodovico Benvenuti was in fact a founder member, and all his successors (some of

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95. Burban, J.-L., *op. cit.*, p. 49.



them former ministers in their own countries) have also been drawn from its ranks – which has strengthened their political influence at the Council.

In practice, the main political groups now take it in turn to nominate candidates, in agreement with other groups. Formally, candidates are nominated by their governments.

Candidates for the post of Deputy Secretary General have no connection with any political group. They may be nominated by one or more governments, or by the Secretary General.

### **Powers**

Originally, Secretaries General simply assisted the Committee of Ministers and the Assembly, but they are now required to co-ordinate the Council's work and give it direction. They have wide-ranging responsibilities, most of them spelt out in the Statute and in the Rules of Procedure of the Committee of Ministers and the Assembly.

On the financial side, they prepare the Council's budget and submit it, in conditions laid down in the Financial Regulations, to the Committee of Ministers for approval. On the administrative side, they ensure that the Council functions effectively, and have overall charge of its activities. Unless otherwise decided, they attend all meetings of the Committee of Ministers, the Joint Committee and the Assembly in an advisory capacity. The numerous treaties concluded at the Council are also deposited with them.

Another part of their job is preparing the Committee of Ministers' activity reports to the Assembly and drawing up the annual intergovernmental programme of activities, which is approved by the Committee and reflects their own views on the direction the Council's work should take.<sup>96</sup> They are also responsible for implementing this programme with the Secretariat's assistance. Intergovernmental co-operative activities are primarily co-ordinated by the Directorates, whose responsibilities coincide with the Council's main fields of activity.<sup>97</sup>

The Secretary General also has a special role under the European Convention on Human Rights. Under Article 15 (3), High Contracting Parties intending to derogate from their obligations under the Convention in time of war or any other public emergency threatening the life of the nation, must keep the Secretary General fully informed of the measures taken and their reasons for

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96. Walter Schwimmer, for example, while serving as Secretary General, drew up an action plan for 2001-05 to meet the challenges of building a democratic, peaceful and stable Europe, and launched two priority cross-disciplinary projects: “Responses to everyday violence in a democratic society” and “Democratic institutions in action”.

97. The Secretariat comprises the Directorate of Communication and Research (DCR), the Directorate of Strategic Planning (DSO), the Directorate of Protocol, the Directorate General of Political Affairs (DGAP), the Directorate General of Legal Affairs (DG I), the Directorate General of Human Rights (DG II), the Directorate General of Social Cohesion (DG III), the Directorate General of Education, Culture and Heritage, Youth and Sport (DG IV), and the Directorate General of Administration and Logistics (DGAL).

taking them. Article 52 also empowers the Secretary General to ask any High Contracting Party to furnish an explanation “of the manner in which its internal law ensures the effective implementation of any of the provisions of the Convention” – and the Russian Federation was asked on this basis for information on the human rights situation in Chechnya.<sup>98</sup>

Secretariat staff (of whom there are about 2 000) are recruited, appointed, assigned and dismissed by the Secretary General “in accordance with the Administrative Regulations”. They have the status of international civil servants. As in all international organisations, there must be a geographical balance in both the number and seniority of posts. In fact, depending on their contributions to the budget, governments have a moral right to allocation of a certain percentage of senior (A-grade) posts to their nationals.

To ensure that staff are independent of member States, Article 36.d of the Statute stipulates that:

No member of the Secretariat shall hold any salaried office from any government or be a member of the Consultative Assembly or of any national legislature or engage in any occupation incompatible with his duties.

Staff members must solemnly declare before the Secretary General that their duty is to the Council of Europe, that they will perform their duties conscientiously, uninfluenced by any national considerations, will not seek or receive instructions in connection with the performance of their duties from any government or any authority external to the Council, and will refrain from any action that might reflect on their position as international officials responsible only to the Council. The Secretary General and the Deputy Secretary General make their declarations before the Committee of Ministers (Article 36.e of the Statute).

Article 37 of the Statute provides that the Secretariat is located at the seat of the Council, and that the Secretary General is responsible to the Committee of Ministers for its work. Among other things, he or she must provide the Assembly with the administrative services which it requires.

## **Specialised agencies**

Various specialised agencies have been set up to develop the Council’s work in specific areas. Some of these bring together, or are supported by, all the member States, for instance, the Congress of Local and Regional Authorities, which plays a vital role in the field of local democracy, the Commissioner for Human Rights, and the European Commission against Racism and Intolerance (ECRI).<sup>99</sup> Others are based on partial agreements and concern only some member States.

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98. Letter from the Secretary General to the Ministry of Foreign Affairs of the Russian Federation of 27 January 2000, Doc. 8671 (addendum), 3 April 2000.

99. The European Court of Human Rights is not mentioned here, since it is not based on the Statute and is not, therefore, a Council of Europe agency in the strict sense.

## **The Congress of Local and Regional Authorities of the Council of Europe**

The Council of Europe has always sought to promote local democracy, and regards action to involve Europeans more closely in the European project as one of its major functions. As the Committee of Ministers insisted in Statutory Resolution (2000) 1:

[...] one of the bases of a democratic society is the existence of a solid and effective local and regional democracy in conformity with the principle of subsidiarity included in the European Charter of Local Self-Government, whereby public responsibilities shall be exercised, in preference, by those authorities which are closest to the citizens, having regard to the extent and nature of the public tasks and the requirements of efficiency and economy.

The Congress of Local and Regional Authorities of Europe was established in 1994, following the first Summit of Heads of State and Government (Statutory Resolution (94) 3 relating to the setting-up of the Congress of Local and Regional Authorities of Europe), and replaced the Conference of Local and Regional Authorities of Europe, which had existed since 1957. Today, it operates on the basis of Statutory Resolution (2000) 1, and the Charter of the Congress of Local and Regional Authorities of Europe, which is appended to it.

The Congress functions as a Council of Europe advisory body, and works to give local and regional authorities a genuine part in realising the Organisation's ideals. It does this by promoting local and regional democracy, and also co-operation between local and regional authorities.

It comprises two chambers, the Chamber of Local Authorities and the Chamber of the Regions. Its Bureau co-ordinates their work and assigns issues to them for debate. Each member state is entitled to the same number of seats in the Congress as it has in the Parliamentary Assembly. Together, the two Chambers have 313 full members and 313 substitutes, who must hold elective office in local or regional government. The Congress represents over 200 000 local and regional authorities in the member States.

The Congress speaks for regional and local authorities at the Council of Europe, and gives their representatives a forum where they can discuss shared problems, pool their experience and present a united front in dealing with governments. It also advises the Committee of Ministers and the Parliamentary Assembly on all aspects of local and regional policy, and can make proposals to the former on ways of promoting local and regional democracy. It prepares regular reports on the state of local and regional democracy in member and applicant states, and ensures, in particular, that the principles laid down in the European Charter of Local Self-Government are respected. It is involved in preparing opinions on the admission of new members and in observing local and regional elections.

It adopts recommendations and opinions, which go to the Assembly or the Committee of Ministers. Its resolutions are aimed at all local authorities, and

are sent to the Assembly and Committee of Ministers for information (unless they are required to act on them).

The Congress holds an annual (ordinary) session in Strasbourg. This is attended by delegations from approved organisations representing local and regional authorities in the member States, and by special guest or observer delegations from a few non-member States. The Chambers meet immediately before or after plenary sessions.

Like the Parliamentary Assembly, the Congress remains an advisory body. Its work in promoting local democracy is particularly notable, and its importance for the Council is increasing steadily – so much so that it is now regarded as the organisation's "third pillar", alongside the Committee of Ministers and the Assembly.

### **The Commissioner for Human Rights**

The office of Commissioner for Human Rights was introduced in 1999, in the wake of the second Council of Europe Summit, held in 1997. The Commissioner's status is defined in Resolution (99) 50, which was adopted by the Committee of Ministers at their 104th session, in Budapest on 7 May 1999.

The Parliamentary Assembly elects the Commissioner by a majority of the votes cast, from a list of three candidates drawn up by the Committee of Ministers. The term of office is six years (non-renewable). The first Commissioner, Alvaro Gil-Robles (Spain), was elected in September 1999.

The Commissioner's job is to promote respect for human rights, foster human rights education and awareness, and ensure compliance with the Council of Europe's human rights instruments. His role is essentially preventive, and so complements that of the Court of Human Rights and other convention-based bodies. When Protocol No. 14 to the Convention takes effect, he will be entitled to intervene as a third party in proceedings before the Court, and will be able to "submit written comments and take part in hearings" before a Chamber or the Grand Chamber (Article 13 of Protocol No. 14, amending Article 35 of the European Convention on Human Rights).<sup>100</sup>

He must provide advice and information on protecting human rights and preventing violations. He works with other Council of Europe bodies, and may send reports, recommendations or opinions on specific questions to the Committee of Ministers and the Assembly. He has, however, no judicial powers.

### **The European Commission against Racism and Intolerance (ECRI)**

The decision to establish the European Commission against Racism and Intolerance was included in the Vienna Declaration, adopted at the Vienna Summit on 9 October 1993. On 14 June 2002, the Committee of Ministers

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100. It was at the request of the Commissioner himself – "Third Annual Report on the Activities of the Council of Europe Commissioner for Human Rights", adopted on 26 January 2004, supported by the Assembly (Recommendation 1640 (2004)) – that Protocol No. 14 introduced this possibility.

gave the Commission a new statute (Resolution (2002) 8), strengthening its role as an independent monitoring body specialising in the human rights aspect of action to combat racism, racial discrimination, xenophobia, anti-Semitism and intolerance in greater Europe.

Under its statute, ECRI's tasks are:

[To] review member States' legislation, policies and other measures to combat racism, xenophobia anti-Semitism and intolerance, and their effectiveness; [to] propose further action at local, national and European level; [to] formulate general policy recommendations to member States; [to] study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

On a country-by-country basis, ECRI monitors the situation with regard to racism, xenophobia, anti-Semitism and intolerance in all the Council's member States. Its reports identify problems and suggest ways of solving them. More generally, it adopts policy recommendations to member governments, and publicises “good practices” which have proved effective against racism and intolerance.

### **Specialised bodies based on partial agreements<sup>101</sup>**

Specialised bodies have been established for certain activities covered by the Council's remit, but supported only by some member States.<sup>102</sup> Partial agreements thus apply to only some member States. Some are open to non-members.

There are now thirteen partial agreement bodies (see list in Appendix IV). The following are the most important.

#### *The European Commission for Democracy through Law (Venice Commission)*

The Committee of Ministers established the Venice Commission under an enlarged partial agreement on 10 May 1990, after the fall of the Berlin Wall. All the Council's member States participate, and non-member States – particularly those with Observer status – may also join. The Commission, whose authority is widely acknowledged in Europe, consists of independent experts with international reputations, chosen for their experience of democratic institutions or their contributions in the fields of law and political science. These experts are appointed for four years by the Commission's member States.

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101. Following the example of the UN, which has specialised organisations, Statutory Resolution (51) 30 provides for “specialised authorities”. Its provisions have never been activated, although they have not been repealed or reviewed.

102. See “Glossary on the Treaties” (<http://conventions.coe.int>): “A partial agreement is a particular form of agreement, which allows some member States of the Council of Europe to participate in an activity in spite of the abstention of other member States”

The Commission specialises in drafting and reviewing constitutions, and has done outstanding work in this field. Indeed, it has played a vital role in providing the countries of central and eastern Europe with expert advice, ensuring that their new constitutions accord with the Council of Europe's democratic standards, and helping them to make any later adjustments needed to keep pace with democratic change. But its work is not confined to constitutions. On a wider front, it takes an interest in laws on constitutional courts, electoral laws, laws on national minorities and, more generally, all laws on the operation of democratic state institutions. It is also required to study transnational themes and prepare legal opinions for the Assembly or the Committee of Ministers – including opinions on the interpretation of Council of Europe treaties.

Finally, it co-operates with constitutional courts in its member States, and helps to disseminate their case-law.

#### *The Development Bank (CEB)*

The Development Bank was founded in 1956 and is Europe's oldest international financial institution. It is based on a partial agreement, and its aim is to help member States to fund social projects to relieve the plight of refugees, displaced persons and victims of natural or ecological disasters. It is the financial arm of the Council of Europe's solidarity policy.

#### *The Group of States against Corruption (GRECO)*

GRECO was established under an enlarged partial agreement in May 1999<sup>103</sup> by seventeen member States.<sup>104</sup> It ensures that anti-corruption measures respect certain guiding principles, and monitors compliance with the international legal instruments adopted under the action programme against corruption.<sup>105</sup> It helps to identify omissions and shortcomings in national anti-corruption laws and to launch the legislative, institutional and practical reforms needed to prevent and combat corruption more effectively. All members of GRECO prepare assessment reports.

#### *The European Audiovisual Observatory*

The Observatory is based on a partial agreement concluded in 1992. It collects, processes and disseminates information, provided by its thirty-four member States and the European Commission, on market, legal and funding developments in the audiovisual field.

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103. Committee of Ministers Resolution (98) 7 of 5 May 1988, authorising the partial and enlarged agreement establishing the "Group of States against Corruption – GRECO", and Resolution (99) 5 of 1 May 1999 establishing GRECO.

104. In July 2004, GRECO had thirty-seven members, one of them – the United States – outside the Council of Europe.

105. Two anti-corruption conventions were opened for signing at the Council of Europe in 1999: the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174). Both have appointed GRECO to monitor their implementation by states which accept them.

### *The European Centre for Global Interdependence and Solidarity (North–South Centre)*

The Centre was established in Lisbon in 1990, on the basis of a partial agreement. It has two aims – to make Europeans aware of North–South interdependence and solidarity, and to forge contacts with governments, parliaments, local authorities, media, and so on, in other parts of the world.

## **Conclusion**

The Council of Europe’s Statute<sup>106</sup> is thus the source of an intergovernmental, co-operation-based organisation, in which states retain their sovereignty. In those terms, however, the Council is atypical, since it has secured some autonomy vis-à-vis its member States. For one thing, the Parliamentary Assembly does not consist of national delegations bound by their governments’ instructions, but of independent representatives. For another, voting rules in the Assembly – and the Committee of Ministers – increasingly provide for majority decisions, although vital decisions must still be unanimous. Finally, the European Convention on Human Rights has established a supranational court of last instance, whose judgments are binding on member States.

These elements are rooted in a gradual process of institutional change, but are not the full picture. For example, the Committee of Ministers may have kept the main decision-making powers, but it cannot ignore the Assembly’s views and must respond to them. The Assembly, for its part, has devised its own means of acting, and of supervising member States, thus increasing its effectiveness. Unbalanced to start with, the relationship between the two bodies is now more equal – and will certainly evolve even further.

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106. We are using an annotated version of the Statute prepared by the Parliamentary Assembly’s Secretariat, *Rules of Procedure of the Assembly and Statute of the Council of Europe* (2002). The Secretariat’s notes explain certain provisions and record later developments. They are not an integral part of the Statute, and so have no independent legal value.





## **Part Two**

### **Harmonising the laws of member States**



The Council of Europe has always been a major source of standard-setting texts – a fact reflected in the numerous conventions concluded under its aegis. Collectively, they constitute a European *jus communis*, and have helped, by harmonising national laws, to spread democratic standards throughout the continent.

The effectiveness of some of these conventions is occasionally questioned, and it is often said – even at the Council itself – that a good recommendation is sometimes better than a bad convention. This is certainly going too far, but it is true that Committee of Ministers recommendations sometimes operate like conventions, even though they have no legal force.

The Council's work in harmonising the law of its member States is consistent with its statutory task of promoting co-operation between European governments. It has also helped to generate the idea that all the member States are part of the same civilisation – European civilisation.



## Chapter 1

### The Council of Europe as law-maker: the European Conventions

The Council of Europe's standard-setting activity is wide-ranging, but not as well known as it deserves to be. In fact, there are no fewer than 196 texts in the European Treaty Series (ETS) and the Council of Europe Treaty Series (CETS),<sup>107</sup> which together contain all its treaties.<sup>108</sup> The figure is impressive, even allowing for the fact that it includes protocols, which are separately numbered, but in practice form part of the conventions to which they refer.<sup>109</sup>

Concluding treaties is one of the means which the Council uses to fulfil its statutory aim of achieving 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. Under Article 1 of the Statute, it pursues this aim through its statutory bodies, *inter alia* "by agreements ... in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms". Member States are expected to accede to the conventions adopted by the Committee of Ministers, defined in Article 13 as "the organ which acts on behalf of the Council of Europe".

Council treaties are important, among other things, because they forge closer ties between member States by encouraging them to harmonise their laws and legal systems, and also contribute to the unification of law at European level, and the framing of minimum legal standards.

By creating a common legal area, they make the member States more cohesive – democratically, socially and culturally. They also make it easier for them to co-operate, particularly on sensitive issues, such as terrorism, bioethics, and environment. In fact, one multilateral Council convention can replace a whole series of agreements concluded bilaterally between individual countries.

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107. These series constitute the collection of *Conventions and Agreements concluded within the Council of Europe*. Council treaties are numbered chronologically. Conventions and agreements opened for signing between 1949 and 2003 were published in the European Treaty Series (ETS Nos. 1 to 193 inclusive). Since 2004, this has been extended by the Council of Europe Treaty Series (starting with CETS No. 194 – Protocol No. 14 to the European Convention on Human Rights).

108. At December 2004.

109. The same is true of "revised" conventions. For example, the revised European Social Charter (ETS No. 163) is "designed progressively to take the place of the European Social Charter", incorporating the rights guaranteed by the Charter as amended and the Additional Protocol of 1998, and adding new rights (Preamble to the revised Charter). When this substitution process is complete, the 1961 Charter and its Protocols will be obsolete, and will have to be removed from the European Treaty Series.

The wide range of topics covered by Council conventions reflects the fact that the Organisation deals with all the major problems facing Europe today – and has become one of the main platforms for finding answers to them.

## **Treaties – the rules<sup>110</sup>**

Council of Europe agreements and conventions are governed in a general sense by the Vienna Convention on the Law of Treaties of 23 May 1969. It is true that this convention is not binding on all the member States, but most of its provisions merely codify existing customary rules, and are applied as such. At the same time, certain rules specific to the Council override it. These are laid down in the Council's Statute (particularly Chapter V, which deals with the membership, powers and voting rules of the Committee of Ministers), the Statutory Resolutions adopted in 1951<sup>111</sup> and 1993,<sup>112</sup> and the Rules of Procedure applying to meetings of the Committee of Ministers and the Ministers' Deputies.<sup>113</sup>

Those rules specify that the conventions and agreements they cover are negotiated, adopted and implemented within the Council of Europe, which thus impresses its own special mark on them. To harmonise presentation and facilitate drafting, the Committee of Ministers approved two standard final clauses – one for agreements, the other for conventions – in 1962. In February 1980, these were replaced by a single clause, covering both.<sup>114</sup> These clauses are generally used, but are not a requirement – and others have sometimes been substituted.

## **Preparing a treaty – prelude and process**

The decision to start negotiating a treaty is taken by the Committee of Ministers, on its own initiative, or on that of the Parliamentary Assembly, the Congress of Local and Regional Authorities, a ministerial conference, a steering committee or a treaty-based committee.<sup>115</sup> The Assembly's propulsive role has

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110. On this point, see Polakiewicz, J., *Treaty Making in the Council of Europe*, Council of Europe Publishing, Strasbourg, 1999.

111. Resolution adopted by the Committee of Ministers at its 8th session in May 1951.

112. Statutory Resolution (93) 27 on majorities required for decisions of the Committee of Ministers, adopted by the Committee of Ministers at its 92nd session on 14 May 1993.

113. The section of Resolution (51) 30 headed "Powers of the Committee of Ministers" deals with Council of Europe conventions, i.e. treaties concluded at the Council. The first two of its four paragraphs (i to iv) are obsolete, but have historical interest. The intention at the time was to follow the example of the International Labour Organisation, whose Constitution (Article 19) provides that conventions adopted by the ILO Assembly are sent directly by the Director General to the governments, which undertake to send them, within a year, to the relevant national authorities, so that they can authorise their ratification. However, these provisions have never been applied and Council of Europe conventions are international treaties within the meaning of Article 2 of the Vienna Convention on the Law of Treaties: "'treaty' means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".

114. See Appendix VI.

115. The Committee of Ministers' chairmanship may also propose conventions.

been particularly notable, and it has fathered numerous conventions.<sup>116</sup> The decision to start working on a treaty is taken by the Committee of Ministers in accordance with Article 20.d of the Statute (two-thirds majority of the votes cast and a majority of the representatives entitled to sit on the Committee).

Unlike United Nations treaties, Council treaties are prepared by national experts appointed by their governments – hardly ever by “diplomatic conferences”. They are negotiated by steering committees answerable to the Committee of Ministers, or groups of experts answerable to a steering committee. In special cases (for example, the Framework Convention for the Protection of National Minorities – ETS No. 157), the work may be done by an ad hoc committee of experts, directly answerable to the Committee of Ministers.

Participation in committees of experts is voluntary, but every member state has the right to appoint one expert to them.<sup>117</sup> Although appointed by their governments, experts act on their own responsibility, do not commit their governments and should – in theory – receive no instructions from them. The work of committees of experts is regulated by Resolution (76) 3 on the structures, terms of reference and working methods of committees, which applies in general to committees whose members are appointed by member States, and which are established by the Committee of Ministers or with its authority.

Non-governmental organisations (NGOs), professional organisations and non-member States are increasingly influencing the preparation of treaties – indeed, the terms of reference of a committee of experts may expressly admit them as observers.<sup>118</sup> Otherwise, the steering committee concerned may itself admit observers by unanimous decision. These observers may comment orally or in writing, but are not entitled to vote.

### **Adopting the text**

Once negotiations are complete, the final text is adopted by the Committee of Ministers, which sometimes has to arbitrate and itself draft provisions on which the negotiators are deadlocked. For example, when the experts working on the Framework Convention for the Protection of National Minorities (ETS No. 157, 1995) disagreed fiercely on the practical import of certain provisions,<sup>119</sup> the Committee was obliged to draft them itself. It was also obliged to settle a

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<sup>116</sup> Haller, B., *Le rôle de l'Assemblée parlementaire du Conseil de l'Europe dans la défense des droits de l'homme*, Council of Europe, Strasbourg, 2001.

<sup>117</sup> A state may choose to appoint no representative. This happened, for example, when the United Kingdom decided not to appoint a representative to the drafting Committee for the European Convention on Foreign Money Liabilities of 11 December 1967 (ETS No. 60) on the grounds that the conceptions underlying the project were unacceptable to British businessmen and lawyers.

<sup>118</sup> Resolution (76) 3, paragraph 5.

<sup>119</sup> The provisions drafted by the Committee of Ministers concerned firstly, the right of members of minorities to use their names and first names in the minority language, and to have those names officially recognised in accordance with the legal systems of contracting parties (Article 11, paragraph 1 of the Framework Convention), and, secondly, the right to use minority languages for traditional local names, street names and other topographical indications intended for the public (Article 11, paragraph 3).

dispute over the nature of the Convention's supervisory machinery. It opted for essentially political supervision and decided to monitor compliance itself (Articles 24 to 26 of the Framework Convention). Similarly, the maximum number of permissible reservations to the Criminal Law Convention on Corruption (ETS No. 173) was finally decided by the Committee.

Once the final text of a treaty has been agreed, the Committee of Ministers' decision to open it for signing is taken by a two-thirds majority of the votes cast and a majority of the representatives entitled to sit on the Committee (Statutory Resolution (93) 27 on majorities required for decisions of the Committee of Ministers). At one time, this decision had to be unanimous, which meant that a draft convention, laboriously prepared and finally adopted by a two-thirds majority (Article 20.d) could still be lost if even one state – however small – was against its being opened for signature. Resolution (93) 27 removed this risk by cutting down on cases where unanimity was required.

The decision to open a treaty for signing is a basic one, since it puts the Council of Europe's political credit on the line. References to the Council in the preamble or text clearly identify it with the Organisation, as does the fact that supervision is normally entrusted to a Council committee of experts, or even the Committee of Ministers itself. But the Committee of Ministers' decision is still not enough to turn a draft treaty into a fully-fledged Council instrument. In fact, an adopted text has no formal existence in public international law, until states agree to be bound by it – normally by signing it, and possibly approving or ratifying it later.

To the Parliamentary Assembly's chagrin, the Statute gave it no right to be consulted on treaties before they were adopted. A 1952 Committee of Ministers Resolution (Resolution (52) 26) merely stated that the Committee might, in appropriate cases, invite it to "give its reasoned opinion" on them. Finally, in April 1985, the Committee bowed to Assembly pressure and decided that the Assembly "should, as a rule, be given the opportunity to express an opinion on draft conventions through its relevant committees".<sup>120</sup>

In practice, the Committee sought the Assembly's opinion on the most important conventions – but the Assembly still complained that it often had to ask to be consulted. In Recommendation 1361 (1998), it asked the Committee of Ministers to submit all draft agreements, conventions and protocols to it for opinion before they were adopted, to agree that disputed texts would be examined by a joint working party, and to make it a rule that decisions on adopting conventions, agreements or protocols would be taken jointly.<sup>121</sup> In reply, the Committee agreed that it would henceforth consult the Assembly on all draft treaties, but also suggested that "in practice, a small number of treaties of an exclusively technical nature" might not require this.

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120. Conclusions of the Ministers' Deputies on the working methods of the Council of Europe, approved by the Committee of Ministers at its 76th session in April 1985.

121. See Recommendations 721 (1973) and 1212 (1993).



It also stopped short of giving the Assembly the real joint decision-making powers it had asked for.<sup>122</sup>

The Committee of Ministers has systematically sought the Assembly's prior opinion on all treaties and protocols opened for signing since 1999. This serves to highlight the Assembly's vital role: vital because consulting it on draft texts involves parliamentarians in preparing them, which facilitates ratification at national level;<sup>123</sup> vital, too, because the impact of its opinions on the finalisation of treaties has often been useful. Today, the Assembly participates in the steering committees' work, which means that its views can take effect at the drafting stage.

### **Signing, accepting, approving or ratifying**

When they sign a treaty, states are indicating that they mean to ratify it. Signing does not commit them definitively, but it does oblige them, under Article 18 of the Vienna Convention on the Law of Treaties, to "refrain from acts which would defeat the object and purpose of a treaty".

For conventions, signature must in principle be followed by ratification, acceptance or approval, signifying a state's final consent to be bound by the text. Ratification, acceptance or approval is not required for agreements, and signing may sometimes suffice for commitment.

Treaties bind accepting states only when they come into force. A Council of Europe treaty takes effect when a certain number of states (specified in the final clauses) have finally consented to be bound by it. Once it comes into force, a treaty acquires legal existence in international law and in the law of states which accept it. Those states are then obliged to respect and implement it. Treaties already in force when states accede to them take effect for those states when they deposit their instruments of ratification, approval or acceptance.

In principle, Council treaties may be signed only by member States, and possibly non-member States which have helped to prepare them. Accession is the only way in for other non-member States, and the treaty in question must already be in force.<sup>124</sup> There are some exceptions, however, the main ones applying to partial agreements and the Community.

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122. In Recommendation 1361 (1998), the Assembly called for joint decision making. Its position in the explanatory memorandum was that "the Assembly and the Committee of Ministers must agree on the substance of a text and, consequently, that the Committee of Ministers must fully accept the Assembly's opinion". In its report on follow-up action on the final report of the Committee of Wise Persons, the Committee considered, however, that "the concept of co-decision is not supported" (Doc. 8398 of 28 April 1999, comments under Main Recommendation No. 8, p. 2).

123. See Schwimmer, W., "Der Einfluss der Parlamentarischen Versammlung auf die Konventionen des Europarates", in Haller, B., Krüger, H.C. and Petzold, H., *Law in Greater Europe: Toward a Common Legal Area; Studies in honour of Heinrich Klebes*, The Hague, Kluwer Law International, 2000, pp. 376-408.

124. Accession is the legal method whereby states which have not taken part in negotiating a treaty, and have not signed it, may later agree to be bound by it.

The Secretary General of the Council of Europe acts as depositary for European Conventions and Agreements. His or her functions are those described in Article 77, paragraph 1 of the Vienna Convention on the Law of Treaties:

- a.* keeping custody of the original text of the treaty and of any full powers delivered to the depositary;
- b.* preparing certified copies of the original text and preparing any further text of the treaty in such additional languages as may be required by the treaty and transmitting them to the parties and to the states entitled to become parties to the treaty;
- c.* receiving any signatures to the treaty and receiving and keeping custody of any instruments, notifications and communications relating to it;
- d.* examining whether the signature or any instrument, notification or communication relating to the treaty is in due and proper form and, if need be, bringing the matter to the attention of the state in question;
- e.* informing the parties and the states entitled to become parties to the treaty of acts, notifications and communications relating to the treaty;
- f.* informing the states entitled to become parties to the treaty when the number of signatures or of instruments of ratification, acceptance, approval or accession, required for the entry into force of the treaty has been received or deposited.

Original texts are kept at the Secretary General's office, where treaties are normally signed, and instruments of ratification, acceptance or accession deposited. The Secretary General also effects the notifications provided for in the final clauses and, when necessary, registers the treaty with the United Nations Secretariat.

Within the Directorate General of Legal Affairs, these functions are exercised by the Treaty Office, which centralises and carries out all measures connected with treaties.

### **Declarations and reservations**

In accordance with the Vienna Convention and public international law, states may make declarations or formulate reservations when signing treaties or depositing their instruments of ratification, approval or acceptance. They may use declarations to clarify their reading of the meaning or scope of a treaty or one of its provisions, or to indicate their reasons for agreeing to be bound by it. A declaration is "interpretative" when it indicates a state's understanding of a treaty, and "territorial" when it indicates the territory or territories to which a state means to apply a treaty. States may also formulate reservations, waiving or modifying the legal effects of certain provisions as applied by themselves.<sup>125</sup>

Reservations are widely accepted at the Council of Europe, since they make it easier for states to accede to its agreements or conventions, by dispensing

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125. See definition in Article 2 of the Vienna Convention: a reservation is "a unilateral statement, however phrased or named, made by a state, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state".

them from applying provisions which might otherwise prevent them from doing so. Few Council treaties admit no reservations, and most indicate provisions to which reservations are possible – although some limit the number of reservations states may record. The inherent nature of others makes reservations impossible, for example, protocols amending the European Convention on Human Rights, which regulate the procedure for settling disputes. Likewise, the Explanatory Report on Protocol No. 11, which radically reforms the judicial machinery established by the Convention, indicates that reservations are, by definition, excluded.

The excessive use of reservations by contracting states has been a recurrent cause of concern to the Assembly, which makes the point that this threatens the cohesion and integrity of treaties. It is true that reservations complicate relations between contracting parties and – since their international commitments are no longer the same – subvert the equality which should exist between them. Moreover, permitting reservations makes “bilateralisation” of treaty relations a danger<sup>126</sup> – which runs counter to the Council’s aim of harmonising the law of its member States. In Recommendation 1223 (1993), the Assembly accordingly asked the Committee of Ministers to call on states to review their reservations carefully, withdraw them if possible, and send the Secretary General a report, giving reasons, on any they chose to maintain.

In its reply of 17 February 1994, the Committee rejected the Assembly’s suggestion. It pointed out that member States had the right, under public international law, to limit their international obligations by formulating reservations, and thought that simply urging them to keep those reservations to a minimum would encourage wider participation in Council conventions.

## **Interpretation**

In principle, only states which accept a treaty have authority to interpret it. In accordance with the practice introduced by the Committee of Ministers in the 1960s, all Council of Europe conventions (apart from a few minor protocols) are accompanied by explanatory reports. These are prepared by the committee of experts working on the treaty – normally at the same time – and are published with the Committee of Ministers’ consent. They describe the main stages in the drafting process, and explain the thinking behind the text and its meaning, article by article. Adopted by the drafting committee, they are sent to the Committee of Ministers, with the draft treaty itself.

Up to 1 January 2001, the Committee of Ministers decided, when adopting a treaty, whether or not the explanatory report should be published. Since then, all such reports have been published at the same time as the treaties and recommendations they cover.<sup>127</sup> Although they may facilitate interpreta-

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<sup>126</sup>. Since reservations apply only between states which reject a provision and states which accept it.

<sup>127</sup>. Decision taken by the Ministers’ Deputies at their 735th meeting on 20 December 2000, item 10.

tion, they are not to be regarded as instruments of authentic interpretation.<sup>128</sup> At most, they may be seen as “supplementary means of interpretation”.<sup>129</sup>

With a view to ensuring uniform interpretation of Council treaties, the Assembly recently proposed, in Recommendation 1458 (2000), that a “general judicial authority” be established to give binding opinions on interpretation and application of those conventions which had no monitoring or supervisory machinery. It noted that, as the Council had grown, the number of states party to conventions had increased, multiplying the risks of conflicting interpretations and threatening the cohesion of the European human rights protection system.

The European Court of Human Rights might have been chosen to give these binding opinions, and given the final say on the interpretation of the human rights standards applying in Council member states<sup>130</sup> – at least for Council texts, which merely amplify the principles, rights and freedoms enshrined in the European Convention. In fact, the 1997 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine allows parties to apply to the Court for advisory opinions on legal questions concerning its interpretation,<sup>131</sup> but is the only convention to do this. In an opinion issued on 2 April 2001, the Court itself supported an Italian proposal for a protocol to the Framework Convention for the Protection of National Minorities, giving it authority to formulate advisory opinions.

However, in its reply to Assembly Recommendation 1458 (2000), the Committee of Ministers considered that the setting-up of a general judicial authority was “neither necessary nor expedient for the current corpus of Council of Europe conventions”.<sup>132</sup> It was against entrusting this task to the Court, which had itself noted, in the opinion on this question which it had formulated for the Committee, that “the interpretation of the different conventions would require a degree of specialised knowledge in a wide variety of sectors which would be difficult to assemble in a single body”. Moreover, adding new tasks to its already heavy workload would inevitably damage the Court’s effectiveness. Instead, the Committee suggested that the Venice Commission might be asked (although it had no specific mandate to do so) to give non-judicial, non-binding interpretations of those Council of Europe conventions which had no interpretation machinery of their own, at the request of the Committee of Ministers, the Parliamentary Assembly, the Congress, the Secretary General or any state participating in the Commission’s work. It also suggested that “the expediency of including appropriate control and interpretation mechanisms in each new convention, taking into account its object and purpose” might in future be considered.

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128. The explanatory reports usually make this clear.

129. See Article 32 of the Vienna Convention on the Law of Treaties. See also the *Maaouia v. France* judgment of 5 October 2000, [GC], No. 39652/98, CEDH 2000-X, paragraph 36.

130. Like the Inter-American Court of Human Rights.

131. Article 29.

132. Reply adopted at the 800th meeting of the Ministers’ Deputies on 24 June 2002.

### **Revision – the procedure**

In principle, the consent of all the states party to a treaty is required to amend or revise it, in spite of the practical problems – particularly with deadlines – which this may cause. Thus, Protocol No. 11 to the European Convention on Human Rights, restructuring the Convention's control machinery, was opened for signing on 11 May 1994, but did not receive its final ratification until October 1997.

Revision may involve adding new provisions or modifying old ones. The Council of Europe usually speaks of additional protocols in the first case, and amending protocols in the second. For example, Protocols Nos. 6 and 13 to the European Convention on Human Rights, which introduce new provisions on the death penalty, are regarded as additional protocols, while Protocols Nos. 11 and 14, which modify the Convention's content, are amending protocols. Amending protocols must be adopted unanimously, while additional protocols need only a limited number of ratifications to take effect.

Many other techniques are used to facilitate treaty revision. Some treaties, for example, have technical appendices, for which the amendment procedure is simpler than for other provisions. Others include provisions designed to facilitate their own revision, but this is unusual. Finally, tacit acceptance sometimes applies when technical clauses are being modified – the changes are regarded as having been adopted if no State Party objects within a stated time. However, this works only in a limited range of cases, and major changes must always be expressly ratified by parties.

### **Denunciation**

Conventions themselves contain rules on denouncing them. Under Article 58 of the European Convention on Human Rights, for example, states may not denounce the Convention within five years of its coming into force for them, and must notify the Secretary General six months in advance.

Two European treaties have been denounced by all the states which accepted them: the European Convention on the International Classification of Patents for Invention of 19 December 1954 (ETS No. 17) and the Convention Relating to Stops on Bearer Securities in International Circulation of 28 May 1970 (ETS No. 72). Individual denunciations are rare, but sometimes highlight the obsolete character of certain Council treaties.

May states denounce protocols without denouncing the treaties to which they apply? Opinions on this point are divided. In the case of the European Convention on Human Rights, some authors consider that protocols, both additional and amending, are indissolubly linked to the Convention for states which ratify them – and which cannot therefore denounce them without denouncing the entire Convention.<sup>133</sup>

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133. Imbert, P.H., commentary on Article 65 in Petiti, L.E., Decaux, E. and Imbert, P.H. (ed.), *La Convention européenne des Droits de l'Homme: commentaire article par article*, 3rd edn, Paris, Economica, 1999, p. 949.

## **Characteristics of treaties**

### **Multilateral conventions**

In principle, Council of Europe conventions are multilateral, that is, they apply between more than two states. Only two treaties are bilateral by definition, namely those concluded between the Council and France, the host country: the Special Agreement relating to the Seat of the Council of Europe of 2 September 1949 (ETS No. 3) and the Supplementary Agreement to the General Agreement on Privileges and Immunities of the Council of Europe of 18 March 1950 (ETS No. 4).

### **Increased number of conventions open to non-members**

In the past, the special ties between Council of Europe member States were sometimes cited as a reason for not opening certain Council treaties to non-member States which did not share the same values. Nonetheless, there are relatively few conventions or agreements which are “closed” to non-members, and they all correspond to an ideological phase in the Council’s treaty-making activity.<sup>134</sup> The best known are the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ETS No. 5), the European Social Charter of 18 October 1961 (ETS No. 35), the revised Social Charter of 3 May 1996 (ETS No. 163) and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 26 November 1987 (ETS No. 126).

The Council’s tendency now is to open previously closed treaties to outside states. For example, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was opened to non-member States when its first Protocol (ETS No. 151) took effect on 1 March 2002, and the Convention on the Suppression of Terrorism was similarly opened by the Protocol of 15 May 2003 (ETS No. 190). Moreover, the Council has adopted no “closed” treaties since 1987, and is actively trying to extend the legal co-operation which exists between member States to non-member States as well. Indeed, some conventions would be less effective if they covered members only. The principle today is that non-member States which help to prepare a treaty are generally entitled to sign and ratify it.

Some treaties are open only to European non-member States. Others cast a wider net. The United States of America was allowed, for example, to accede

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134. Only twelve Council of Europe treaties are not open to outsiders: apart from those mentioned in the text, see the European Convention on Establishment (ETS No. 19), the European Convention for the Peaceful Settlement of Disputes (ETS No. 23), the European Convention on Establishment of Companies (ETS No. 57), the European Agreement relating to Persons Participating in Proceedings of the European Commission and Court of Human Rights (ETS No. 67), and its revised version (ETS No. 161), the European Convention on the Suppression of Terrorism (ETS No. 90), the European Convention on the Legal Status of Migrant Workers (ETS No. 93), and the European Charter of Local Self-Government (ETS No. 122). To these must be added the Council of Europe’s Statute and the General Agreement on Privileges and Immunities, to which only member States are party.

to the Convention on the Transfer of Sentenced Persons (ETS No. 112) of 21 March 1983.<sup>135</sup>

At the same time, non-member States have no positive right to accede to Council treaties, but must be formally invited to do so by the Committee of Ministers – which gives member States some control over accessions. Article C of the “model final clauses” of 1980 describes the procedure as follows:

After the entry into force of (this Agreement) (this Convention), the Committee of Ministers of the Council of Europe may invite any state not a member of the Council to accede to (this Agreement) (this Convention), by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.<sup>136</sup>

The next question is whether non-member States should participate in the supervisory machinery, particularly when this involves the Committee of Ministers.

The Committee of Ministers has also agreed that members of other international organisations may accede to Council conventions, and believes that this will make for greater solidarity in Europe. Some conventions are thus open to non-member States specified in advance, an example being the Convention on Mutual Administrative Assistance in Tax Matters (ETS No. 127), which is open for signing by member States and “the member countries of OECD”, and the Convention on the Recognition of Qualifications Relating to Higher Education in the European Region (ETS No. 165), which is open to member States of the Unesco Europe Region, and to all states which have signed or ratified the Council of Europe’s Cultural Convention and/or the Unesco Convention, and which were invited to the diplomatic conference responsible for adopting the Convention.<sup>137,138</sup>

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135. This led to the Bahamas acceding as well. As E. Cornu says: “When a state wishes to conclude a bilateral treaty on the transfer of prisoners with it, it appears that the US encourages it to accede to the Council of Europe convention instead”, in “L’effectivité de la technique conventionnelle dans la pratique du Conseil de l’Europe”, Doctorate thesis, Strasbourg, Robert Schuman University, 2004, p. 6.

136. Only member States on the Committee of Ministers may participate in decisions inviting non-member States to accede to conventions. Non-member States are excluded from the decision-making process. The status of member state outweighs that of state party. See also the innovations introduced by the Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104), which P.H. Imbert describes. It should be noted that these innovations are possible because the “model final clauses” are not binding, but merely indicative.

137. Australia, Canada, Japan, Mexico, New Zealand and the United States.

138. See also the European Convention on Transfrontier Television (ETS No. 132), and the European Convention relating to Questions of Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite (ETS No. 153), which are open for signing by Council member States, states party to the Council’s European Cultural Convention, and also to the EC. Similarly, the Anti-Doping Convention (ETS No. 135) is open for signing by member States, States party to the Cultural Convention and all other non-member States.

### **Participation by the European Community in Council of Europe Conventions**

Participation by the Community (and, once the European Constitution takes effect, the European Union) in Council of Europe treaties is a vital part of guaranteeing minimum legal consistency in Europe. This is why the Council and the Community agreed, in the letters formally exchanged on 16 June 1987, that the expediency of including a clause providing for Community accession would be carefully considered whenever future Council treaties were being drafted. Such clauses are now inserted at the Community's request.<sup>139</sup> At the same time, as the 1987 agreement makes clear, the insertion of this clause in no way prejudices the Community's – or the Union's – decision to accede.<sup>140</sup>

Community participation can take various forms, and the choice is made jointly by its own and the Council's member States. The possibilities include: signature, acceptance, signature followed by acceptance, ratification or approval and, finally, accession at the Committee of Ministers' invitation.<sup>141</sup> The Council conventions affected include a "European clause", regulating Community participation in administering them, and specifically its voting rights and those of its member States on convention-based bodies. To facilitate Community participation, a "disconnecting clause" has also been inserted in agreements and conventions thought to need it. This allows the Community to adopt or keep its own solutions, rather than those provided for in the convention, for internal use – provided that it respects its obligations under the text in dealing with third parties.

### **Classifying treaties**

So far, most attempts to classify inter-state treaties have had no legal value and, at most, theoretical, rather than practical, utility. At all events, the classification systems normally used in public international law are not really suited to Council of Europe agreements and conventions.

#### **Classification by title – reasons against**

The term "treaty" is used only in the title of collections of Council of Europe conventions.<sup>142</sup> In fact, treaties concluded under Council auspices include

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139. In the case of certain treaties, this clause has been included in a protocol. It should be noted that the Community plays a part in negotiating treaties relating to matters for which it is responsible.

140. Today, only the Community – not the Union – has legal personality and is thus entitled to conclude agreements. In practice, the Union has decided that it does have authority to conclude treaties which it regards as falling within its legal orbit. The European Constitution gives it legal personality.

141. See De Vel, G., "L'Union européenne et les activités du Conseil de l'Europe", in Dormoy, D., *L'Union européenne et les organisations internationales*, Brussels, Bruylant, 1997, pp. 105-122.

142. The term "treaty" has certainly been taken over from the UN. See the definition given in Article 2, paragraph 1.a of the Vienna Convention: "'treaty' means an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation".



“conventions”, “agreements”, “arrangements” (in French), “charters”, “codes” and “outline or framework conventions”. Whatever they are called, they all have the same legal scope – in other words, the title chosen has no effect on their legal character or the legal system which applies to them.

### *Conventions*

Conventions are the largest group. A distinction used to be made between agreements and conventions, but the Council no longer concludes agreements. In any case, the distinction itself has ceased to be valid. It was based solely on forms of consent: in principle, states acceded to conventions by depositing an instrument of ratification, acceptance or approval, while signing was often enough for agreements.<sup>143</sup> Now, however, some conventions can also be signed without requiring ratification, acceptance or approval.<sup>144</sup>

Some commentators tried to make a distinction between “ordinary” and “European” conventions and agreements, the latter being those which were not open to states outside the Council.<sup>145</sup> This, too, is not really convincing, since the great majority of “European” conventions on the Council’s long list are open to non-member States.<sup>146</sup>

The agreements mostly known in French as arrangements are usually concerned with implementing some other text.<sup>147</sup>

### *Charters*

The term “charter” has no special legal significance and is generally used symbolically. It should, however, be noted that the Council charters’ main feature is the freedom they give contracting states to make their own choice of commitments – although this is not peculiar to them.<sup>148</sup> Only four charters have been adopted at the Council: the European Social Charter (ETS No. 35),

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143. The “model final clauses” approved by the Committee of Ministers in 1962 confirmed this. The first part covered final clauses of “agreements that can be signed without reservation as to ratification and acceptance”, the second final clauses of “conventions requiring ratification or acceptance”. The single model adopted by the Committee of Ministers in 1980, which applies to both conventions and agreements, keeps both alternatives (consent by, and without, ratification). See Appendix VI.

144. See, for example, the European Convention on Nationality (ETS No. 166) or the Criminal Convention on Corruption (ETS No. 173).

145. It is true that “convention” is not always prefaced by “European” in the title of treaties, e.g. the Convention on the Conservation of European Wildlife and Natural Habitats.

146. Imbert, P.H., “La Convention relative à la conservation de la vie sauvage et du milieu naturel de l’Europe, exception ou étape?” in *Annuaire Français de Droit Internationale*, 1979, p. 743.

147. See the European Agreement concerning programme exchanges by means of television films of 15 December 1958, the European Agreement on the protection of television broadcasts of 22 June 1960, the Agreement relating to Application of the European Convention on International Commercial Arbitration of 17 December 1962, and the Arrangement for the Application of the European Agreement of 17 October 1980 concerning the Provision of Medical Care to Persons during Temporary Residence of 26 May 1988 (not yet in force).

148. See below – but other treaties, e.g. the European Code of Social Security do the same.

the European Charter of Local Self-Government (ETS No. 122), the European Charter for Regional or Minority Languages (ETS No. 148) and the revised Social Charter (ETS No. 163).

#### *Outline or framework conventions*

Outline or framework conventions are merely “programmatic”, and define objectives which states commit themselves to achieving. Essentially, they are implemented by national measures or bilateral agreements. In fact, since their provisions are too general to be directly applicable, states have considerable freedom to adapt the action they take to their own situation and requirements. Two such conventions have been concluded – the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and the Framework Convention for the Protection of National Minorities (ETS No. 157).

Finally, there is just one code – the European Code of Social Security, which was adopted in 1964 (ETS No. 48) and revised in 1990 (ETS No. 140).

#### *Partial and enlarged partial agreements*

A partial agreement is not an international treaty, as the term is used in international law, but a special kind of agreement, under which some Council of Europe member States decide – with the others’ consent – to work together on an activity covered by the Council’s remit, which interests all of them.<sup>149</sup>

In other words, partial agreements are flexible-format agreements covering co-operation on activities which are supported by only some member States. Bodies founded on this basis include the European Commission for Democracy through Law (Venice Commission), the Group of States against Corruption (GRECO) and the European Audiovisual Observatory.

Enlarged partial agreements allow some member States to work with non-member States, using the Council’s permanent structures for that purpose. Enlarged agreements allow all member States to do the same. Both types make it possible for the Council to tackle problems which extend beyond its normal geographical coverage. They also allow it to respond favourably when non-member States invite it to take a hand in their intergovernmental activities.

Practical details of partial, enlarged partial, and enlarged agreements are regulated by Statutory Resolution (93) 28, which was adopted in May 1993, with the Assembly’s approval. The arrangements are relatively flexible, allowing some or all member States, as well as certain non-member States, to organise intergovernmental activities together on an equal footing.<sup>150</sup> Under this

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149. See “Glossary on the Treaties” (<http://conventions.coe.int>): “A partial agreement is a particular form of agreement, which allows some member States of the Council of Europe to participate in an activity in spite of the abstention of other member States.”  
150. See Statutory Resolution (93) 28 on Partial and Enlarged Agreements, which replaces Statutory Resolution (51) 62.

Resolution, it is the Committee of Ministers which decides, by the majority specified in Article 20.d of the Statute, to authorise certain member States to undertake an activity or series of activities under a partial agreement.<sup>151</sup> On a reduced membership basis (representatives of the states covered by the partial agreement concerned), it also invites non-member States to join partial agreements or participate in some of their activities. Finally, it may invite any non-member state to join member States in conducting an activity or series of activities.

Partial agreements are funded by contributions from participating member and non-member States. The decision setting up an agreement indicates the bodies which are to be responsible for it, and the ways in which its activities are to be conducted. Unless otherwise specified, the Council's general rules on structures, terms of reference and working methods of committees, and particularly the rules of procedure for meetings of the Ministers' Deputies, apply, *mutatis mutandis*, to partial agreement bodies.

Unless otherwise specified in the founding decision, any member state may accede to a partial agreement at any time, by making a declaration to that effect to the Secretary General. Similarly, the Committee of Ministers – having first consulted non-member States which already participate – may invite any other non-member state to join an enlarged or enlarged partial agreement. Finally, the Committee of Ministers may also – again after consulting participating non-member States – invite any non-member state or international intergovernmental organisation to participate as an observer in activities conducted under a partial, enlarged partial, or enlarged agreement.

Statutory Resolution (93) 28 further provides that the Committee of Ministers may invite the European community to participate in a partial, enlarged partial, or enlarged agreement. Practical details are specified in the decision inviting it to do so.

### **Classification with reference to subject**

A first distinction can be made between agreements which are chiefly designed to harmonise standards at European level, and agreements which are simply designed to promote co-operation between member States. The European Convention on Human Rights, for example, which essentially sets out to compel states to respect the fundamental rights it specifies, is clearly in the first category. The same applies to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), which lays down standardised rules.

On the other hand, the European Convention on Extradition (ETS No. 24), the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), the Convention on the General Equivalence of Periods of University Study (ETS No. 138), the European Convention on the Suppression of Terrorism (ETS

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<sup>151</sup> See Resolution (93) 27 on the majorities required for decisions of the Committee of Ministers. The majority required is two-thirds of the votes cast and a majority of the representatives entitled to sit on the Committee.

No. 90) and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) are typical examples of treaties focused on inter-state co-operation. But the distinction between the two types is not always clear-cut, and some conventions may aim both at harmonisation and at imposing inter-state obligations.

Treaties can also be classified with reference to fields of Council activity. However, the range is so vast, and the number of treaties concluded so great, that no such classification will ever be watertight or exhaustive.

A first series of treaties is designed to safeguard and strengthen pluralist democracy and human rights. The European Convention on Human Rights remains the chief of these, but others are equally significant. Thus, the European Social Charter (ETS No. 35) and the revised Social Charter (ETS No. 163),<sup>152</sup> which cover a broad range of rights applying to housing, health, education, employment, social protection and non-discrimination, are regarded as pendants to the ECHR in the economic and social field – even if they have no judicial system to guarantee those rights. Similarly, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which was opened for signing in 1987 (ETS No. 126), adds to the protection given by the ECHR by setting up a special European committee (the CPT), with power to inspect and admonish. The Framework Convention for the Protection of National Minorities, which came into force in 1998 (ETS No. 157), is the only binding multilateral agreement to guarantee full, effective equality between minorities and majorities, and between minorities.

Also worth mentioning is the Convention for the Protection of Human Rights and Human Dignity with regard to the Application of Biology and Medicine (ETS No. 164) – the first binding international agreement to offer protection against aberrant practices in those two areas.<sup>153</sup> This lays down principles which ensure that human beings count for more than technology – principles which form the kernel of a modern European code of patients' rights. The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) is designed to ensure that computerised processing of personal data does not violate rights and freedoms, and particularly the right to privacy, regardless of nationality or place of residence.

Another series of conventions sets out to promote European cultural identity. The European Cultural Convention was the founding text in this area, providing an initial framework for co-operation at the Council of Europe in the fields of education, culture, youth and sport. The European Charter for Regional or Minority Languages, which came into force on 1 March 1998

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152. The revised Social Charter brings together in a single text all the rights included in the original Charter and the 1988 protocol, which modifies existing rights and introduces new ones.

153. A protocol prohibiting the cloning of human beings (ETS No. 168) was signed in Paris in 1998, and a protocol on the transplantation of organs and tissues of human origin (ETS No. 186) has also been concluded.

(ETS No. 148), is designed to preserve and promote those languages, whose extinction would be a major cultural loss – and indirectly protect the people who speak them. Europe's rich cultural heritage is again the focus of the Convention on the Protection of the Archaeological Heritage (ETS No. 66) and the Convention for the Protection of the Architectural Heritage (ETS No. 121).

Others, such as the European Charter of Local Self-Government (ETS No. 122), the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144), are concerned with local democracy and transfrontier co-operation.

Finally, there is a whole series of conventions which respond more generally to the challenges facing European society today. Some, such as the Bern Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104), the European Landscape Convention (ETS No. 176) and the Convention on Protection of the Environment through Criminal Law (ETS No. 172), are concerned with the environment. Others are concerned with criminal law, and aim at increased co-operation between member States, helping them to fight all forms of crime, including terrorism, more effectively: the European Convention on Extradition (ETS No. 24), the European Convention on the Suppression of Terrorism (ETS No. 90) and its amending Protocol (ETS No. 190), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the Convention on Cybercrime (ETS No. 185) all serve this purpose.

As Elise Cornu puts it in her thesis:

Apart from giving us a panoramic view of the many issues which the Council of Europe has tackled, classification by field helps us to make connections between treaties, and form a better idea of the way in which the Council's convention-based activities hang together. Treaties concluded in the same area, e.g. education or criminal law, often refer to one another, and this highlights their complementary character. In other words, the treaties concluded in any given field are variations on a general objective determined by agreement. We shall see, too, that specific areas are sometimes matched by specific legal methods, which vary with the area's sensitivity and the level of integration (co-operation, harmonisation, unification) envisaged. Criminal law treaties, for example, are straightforward co-operation agreements, based on reciprocity, whereas outline or framework conventions tend to be commoner in sensitive areas (transfrontier co-operation, minorities, bio-ethics), where defining principles and general commitments is the most that can be done.<sup>154</sup>

### **Classification with reference to state obligations**

The distinctions between traditional conventions, à la carte conventions, and outline or framework conventions, are based on the nature of the obligations they impose on states.

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<sup>154</sup> Cornu, E., *op. cit.*, p. 7.

A la carte conventions allow contracting states to modulate their commitments, meaning that they accept certain parts of the text, but not others. States party to the 1961 Social Charter, for example, must agree to be bound by at least ten of the nineteen articles – including a specified number of “core” articles. Similarly, states party to the Charter of Local Self-Government (ETS No. 122) must agree to be bound by at least twenty sections of part I, including a minimum of ten “core” provisions.

The Charter for Regional or Minority Languages (ETS No. 148) gives states an even freer hand, since they have a double choice – first, of the languages to which their commitments apply, and then of those commitments themselves. In both these areas, they again have many options, ranging from minimum to maximum protection. Their only obligation, under Article 2 (2) is to apply a minimum of thirty-five provisions out of close on a hundred,<sup>155</sup> including at least three in the field of education, three in the field of cultural activities and facilities, and at least one in each of the following: judicial authorities, administrative authorities and public services, media, and economic and social life. These figures are not arbitrary, but are carefully designed to ensure that no major aspect of protecting regional or minority languages can be neglected.

Finally, the European Code of Social Security (ETS No. 48) should also be mentioned, since it, too, includes parts which all contracting states must accept (Parts I, XI, XII, XIII and XIV), and others which they can choose freely.

Some treaties have also been cast in the form of outline or framework conventions, because these are flexible, and also non-binding. The commitments or principles they embody are general, and contracting parties are required to achieve certain results – but can decide for themselves how to do that. This gives them considerable latitude to tailor their laws to their own situation and requirements.

For example, parties to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) merely undertake to facilitate and promote transfrontier co-operation, and particularly to “promote the conclusion of any agreements and arrangements that may prove necessary for this purpose with due regard to the different constitutional provisions of each party” (Article 1). They are to base these agreements and arrangements on the model and outline agreements, statutes and contracts appended to the Convention, on the understanding that these are “intended for guidance only and have no treaty value” (Article 3.1). In the case of the Framework Convention for the Protection of National Minorities (ETS No. 157), the principles set out in the text are to be implemented “through national legislation and appropriate governmental policies” and, on a secondary level, through bilateral agreements.

The European Convention on the Legal Status of Migrant Workers (ETS No. 93) gives nothing away in its title, but the explanatory report indicates that it is essentially “an outline convention, dealing with the most important

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<sup>155</sup>. Of the ninety-four paragraphs or sub-paragraphs in Articles 8 to 14 of the Charter.

aspects of the legal situation of migrant workers, without claiming to regulate all those aspects in detail”.

### **Classification with reference to type of supervisory machinery**

The nature of supervisory machinery is usually determined by the content of the treaty supervised, since compliance with rules that create subjective rights for individuals cannot be monitored in the same way as compliance with rules that require states to do certain things.

The judicial machinery established for the European Convention on Human Rights is totally unlike the political machinery established for other Council treaties. Indeed, the ECHR is the only convention that judicially guarantees the effectiveness of the rights it protects. Most Council treaties are backed by political machinery, and make the Committee of Ministers responsible for monitoring their implementation.

Supervision is carefully graded, depending on the extent to which states party to a convention have accepted it. The Committee of Ministers is usually assisted by committees of experts (also known as convention committees), comprising representatives of the contracting parties and mostly established by the conventions themselves. Some of these, like the Committee of Experts for the Framework Convention for the Protection of National Minorities, merely help the Committee of Ministers. Others go further and submit recommendations to it, which it may then pass on to the parties. The Committee of Experts on the European Charter for Regional or Minority Languages (ETS No. 148) is one example.

The two-tier system established for the European Social Charter (ETS No. 35) is worth noting. The European Committee of Social Rights, which consists of thirteen independent experts, first examines the reports submitted by states and decides whether or not they are respecting the Charter. Ensuring compliance with its conclusions then becomes a matter for the Committee of Ministers, which may send recommendations to states, urging them to bring their laws or practices into line with the Charter. In doing this, it is supported by the Governmental Committee, a political body comprising representatives of states which have ratified the Charter, assisted by observers from workers' and employers' associations.

Another, contrasting system is based on declarations of non-compliance. The aim here is to establish formally that states have failed to honour their commitments. This applies, above all, to convention-based obligations which individuals can invoke directly. Thus, under the European Convention on Human Rights, the Court has the task of finding that states have violated their obligations under the Convention, and obliging them to make good any damage suffered by the victims.

Other conventions are backed by monitoring systems which verify state compliance, and collect the information needed for that purpose. The purpose here is not to punish states for failing to comply, but to encourage them to do so. This kind of machinery usually applies to conventions embodying “programmatic” standards, which are hard to supervise. Examples include the Framework Convention for the Protection of National Minorities

(ETS No. 157) and the Charter for Regional or Minority Languages (ETS No. 148), both of which rely on regular reports by states on the action they have taken to achieve the aims laid down in the texts. The Committee of Ministers assesses this action and makes any recommendations it considers necessary. The machinery established by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) is even less stringent. The committee in this case is advisory only: it can express an opinion on any question raised by application of the text – but must first be asked to do so by one of the parties.

The supervisory system for the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) is preventive, and forms an important pendant to the judicial system established by the European Convention on Human Rights. It is based on an international committee of distinguished independent experts, who are empowered to inspect all places where individuals are imprisoned or detained by public authorities, and where necessary to make recommendations and suggestions on improved protection against torture and maltreatment.

Finally, some conventions have individual, and others collective, and even inter-state, complaint systems. Thus, the 1995 Protocol to the Social Charter (ETS No. 158) adds a collective complaints procedure to the government report system (which makes supervision of the Charter more effective), while the European Convention on Human Rights provides for inter-state applications, as well as individual petitions.<sup>156</sup>

## **Conventions – do they work?**

Some people are inclined to question the effectiveness of the Council's conventions. It is true that there are about twenty which have never come into force, because no – or not enough – states have ratified them.<sup>157</sup> A former President of the Assembly once commented:

Members of the Assembly often wonder how a government expert can, acting on the instructions of its ministry, prepare a text, obtain further information, continue and complete his work and then his government declares that they will not sign. For us that is a mystery. But the mystery becomes still deeper when the Ministers come here and sign a convention and then it is not ratified.<sup>158</sup>

Other conventions have been signed or ratified by only a few states – which robs them of effect and indicates that no real agreement on their content has ever been reached at European level. Others again are considered obsolete or as being of limited interest, but undoing is harder than doing – and so

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156. See thesis by Elise Cornu, *op. cit.*

157. Seven treaties have attracted no ratifications, and one – the Arrangement for the application of the European Agreement of 17 October 1980 concerning the provision of medical care to persons during temporary residence – not even one signature (its obsolete character is the reason). Twelve treaties and fourteen protocols have not attracted enough ratifications to take effect. For complete list, see E. Cornu, *op. cit.*, p. 416.

158. Karl Czernetz, quoted by R. Bonnel in his report on "The role of national parliaments in the ratification of Council of Europe conventions and agreements", Doc. 4915, 14 June 1982, p. 22.



they remain on the books. The Assembly has also deplored the number and nature of the reservations entered by states to certain agreements, draining them of substance and distorting their character.

It should also be noted that, to rationalise the management of conventions relating to intellectual property, two such conventions, the Convention Relating to the Formalities Required for Patent Applications (ETS No. 16) and the Convention on the International Classification of Patents for Invention (ETS No. 17) have been denounced – the first<sup>159</sup> by some, the second by all the states which had accepted it – and transferred to the World Intellectual Property Office, which now administers them.

Finally, it has been suggested that some conventions are seriously compromised by the weakness of their supervisory and monitoring machinery. Moreover, the monitoring committees are often inadequately funded and staffed. As a result, states do not always take the legislative, administrative and technical measures needed to ensure that their commitments are respected. Another complaint is that the machinery for certain conventions is over-flexible, giving states too much latitude to pick and choose among commitments.

In fact, flexibility was regarded as a necessary part of encouraging states to ratify these texts. It allows them to match the level of protection provided to their own situation, and allow for the cost of applying the provisions they accept. Knowing they can tailor conventions to their needs, states are less slow to commit themselves. But for this flexibility, these treaties – which now seem so vital to the progress of human rights and democracy – would never have got off the ground. A further advantage is that flexibility encourages states to accept more commitments as time goes on, and changes in their general or financial situation make this possible.

In other words, flexibility makes it easier for member States to accept the Council's conventions, particularly in sensitive areas, such as national minorities, terrorism, bioethics or the environment. It certainly explains why there are so many conventions. And, if some are now obsolete, this is no cause for concern. The Council's chief task, after all, is to initiate and organise legal co-operation between its member States, and so gradually create the political and material conditions needed to strengthen their democratic, social and cultural cohesion. Another part of that task is, surely, to encourage member States to frame legal rules with a view to building up a body of minimum legal standards, and establishing a common legal area in Europe.

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<sup>159</sup>. This Convention (ETS No. 16) was denounced by sixteen of the twenty-one States Party between 1976 and 1991 – but this did not stop “the former Yugoslav Republic of Macedonia” from ratifying it in 1998.



## Chapter 2

### Harmonising law – other approaches

Conventions certainly attract more media attention, and are of more interest to experts, than recommendations – but Committee of Ministers' recommendations and the exchange of information between member States can also help to unify the latter's laws and contribute to that common legal area which the Council wishes to help build in Europe.

#### Committee of Ministers' recommendations

In fact, when it comes to harmonising law, the Council relies equally on conventions and recommendations, depending on their respective characters, the aims pursued and the situation requiring regulation.<sup>160</sup> Conventions may have the advantage of being more precise and of being binding on member States, but recommendations – though not binding – have their plus points too. For one thing, they take instant effect when adopted, and are addressed to all the member States. For another, they are more flexible than conventions, since implementation is wholly a matter for states, and they can be modified more rapidly. Finally, in spite of their non-binding character, they do reflect a measure of agreement between all the member governments on the issue they target. At the Council of Europe, it is often said that a good recommendation does more to promote the rule of law than a bad convention.

In fact, the Committee of Ministers can use recommendations to lay down guidelines for the member States' policies and laws. And member States can use them to propose joint solutions to new problems. Thus, the Committee of Ministers may recommend that states adopt laws inspired by joint regulations set out in recommendations, or model codes appended to them. Recommendation No. R (2000) 10, for example, urges the governments of member States:

[To] promote, subject to national law and the principles of public administration, the adoption of national codes of conduct for public officials based on the model code of conduct for public officials annexed to this recommendation.

Similarly, Recommendation Rec(2003)4:

[R]ecommends that the governments of member States adopt, in their national legal systems, rules against corruption in the funding of political parties in elec-

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<sup>160</sup> De Vel, G. and Markert, T., "Importance and weakness of the Council of Europe Conventions and of the Recommendations addressed by the Committee of Ministers to Member States" in *Law in Greater Europe: Studies in honour of Heinrich Klebes*, The Hague, Kluwer Law International, 2000, p. 345.

toral campaigns which are inspired by the common rules reproduced in the appendix to this recommendation, in so far as states do not already have particular laws, procedures or systems that provide effective and well functioning alternatives.

Recommendations can also supplement conventions. For example, the 1981 Data Protection Convention (ETS No. 108) solemnly lays down principles in the rigid form of a convention – but is supplemented by a whole series of recommendations on specific and sensitive areas, such as medical data (Recommendation No. R (97) 18 concerning the protection of personal data collected and processed for statistical purposes), or personal data collected and processed on the Internet and personal data collected for insurance purposes (Recommendation No. R (99) 5). Recommendations have the advantage of going into greater detail, and being more easily updated, than conventions.

Being open to monitoring also strengthens their authority. In fact, under Article 15 of the Statute, the Committee of Ministers may ask governments to inform it of the action they take on its recommendations. It no longer monitors implementation itself, but instructs the steering or ad hoc committees to do this on its behalf, asking them to examine action taken on selected recommendations in their own areas, and discuss the texts. Their conclusions are embodied in reports to the Committee of Ministers, which may then decide to focus on the difficulties involved in implementing particular recommendations.<sup>161</sup>

## **Projected legislation – exchanging information and views at the drafting stage**

Member States have adopted the practice of exchanging information and opinions with the Council when drafting constitutions, laws, regulations and other legal texts – which also helps to harmonise European law. This is particularly true of new members, who are anxious to draw on the Council's advice and experience, and so avoid violating the democratic principles on which it operates. Indeed, most of them submit new laws to it for evaluation before adopting them finally. The Council's expert guidance helps to ensure that their laws, regulations and constitutional amendments are compatible with its standards, and shields them from negative comments they might otherwise attract in the course of later monitoring.

## **“Soft law”: the indirect impact of non-binding texts**

The Committee of Ministers' recommendations are not binding, but they do have “moral” authority, since they reflect the collective position of European

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161. In 1987, at their 405th meeting, the Ministers' Deputies sent a message to the intergovernmental committees (steering committees and committees of experts) asking them to monitor the implementation of recommendations and resolutions more effectively.

governments on the subjects they cover – and their influence on member States is attested. Sometimes, they and Assembly recommendations may even constitute “soft law” and produce direct effects in public international law. An example is Assembly Recommendation 1201, which is expressly mentioned in several bilateral co-operation and good-neighbour treaties concluded since 1993, including those between Hungary and Slovakia (March 1995) and Hungary and Romania (September 1996). Being referred to in those treaties gave it the same legal value for the parties as the other provisions.

On occasion, Assembly recommendations have also been cited by constitutional courts in support of their arguments, and have thus produced indirect legal effects. Admittedly, this has not happened often. For example, Recommendation 1201 was mentioned by the Romanian Constitutional Court in its decision of 20 July 1999, in which it ruled – rightly or wrongly – that it had authority to decide whether ratification of the Charter for Regional or Minority Languages required prior revision of the Romanian Constitution.<sup>162</sup>

Resolutions adopted by the Committee of Ministers, for the purpose of enforcing judgments given by the European Court of Human Rights, also produce indirect effects in law. In fact, the Committee is required to conclude every case brought before the Strasbourg Court by adopting a final resolution in which it confirms that it has discharged its functions under Article 46, paragraph 2 of the European Convention, which makes it responsible for supervising execution of the Court’s judgments. These final resolutions thus have the indirect effect of releasing the respondent state from its obligations, since they certify that it has indeed taken all the action needed to comply with the judgment, and that any compensation awarded has been paid.<sup>163</sup>

The Committee of Ministers may also adopt interim resolutions, noting progress made with execution, or expressing concern and/or making suggestions on this issue.<sup>164</sup> These again are non-binding, but they can be used to put pressure on governments when information supplied by the latter indicates failure to execute a judgment. The matter then remains on the Committee’s agenda until execution is complete.<sup>165</sup>

Finally, the Court has occasionally used Assembly Resolutions to support its own arguments. For example, in a decision on admissibility, given on 11 June 2002 in the *Prisma Presse v. France* case,<sup>166</sup> it cited Resolution 1165 (1998) on the right to privacy, in support of its conclusion that publication of a press communiqué could adequately compensate the victim by informing the

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162. This decision was later deferred, however, since the Constitutional Court lacked authority to decide whether treaties were compatible with the Constitution.

163. See above, p. 53.

164. See the Rules adopted by the Committee of Ministers for implementation of Article 46, paragraph 2 of the European Convention on Human Rights, approved by the Committee on 10 January 2001.

165. For example, by changing the law or by producing proof that the rule in question is no longer applied.

166. *Revue Universelle des Droits de l’Homme*, 2003, Vol. 15, Nos. 3-6, p. 211.

public that he or she was opposed to publication of his or her picture without consent. It found that this measure, which had been complained of, “is fully compatible with the guidelines contained in the aforesaid Resolution of the Parliamentary Assembly of the Council of Europe, and helps to ensure, as far as possible, that certain facts relating to private life do not become a highly profitable commodity for certain media”.

## **Part Three**

### **Council of Europe law in the European area**





This part is concerned with various aspects of the dissemination and development of Council law. In fact, these are parallel processes: Council law gets disseminated as the Organisation expands to cover the continent, and it gets developed as new conventions are negotiated, and new recommendations to governments adopted. Obviously, the Council's rapid growth after the fall of the Berlin Wall did much to accelerate both.

We shall also be looking at Council law in the European area, and particularly its links with the other European organisations. This is a vital question today, since those organisations often have the same members – and increasingly the same responsibilities. How can the emergence of conflicting legal standards be prevented? And how can the work of the various organisations be co-ordinated? The ultimate question, of course, is that of the Council's role in the new Europe – and the Third Council Summit will be discussing it.



## Chapter 1

### Towards a common legal area

Council of Europe law is disseminated as the Organisation admits new members and extends its geographical coverage. For new members, signing the Statute produces certain effects at once, and the commitments they accept on joining produce other effects in the short term. Council law also spreads as Council conventions are adopted and incorporated into domestic law. Is it too much to say that Council law is helping to generate regional international law?

### Geographical enlargement and new members' commitments

The Council's decision to expand after the fall of the Communist dictatorships gave real meaning to its original political project – bringing all the democratic states of Europe together, for the purpose of bringing peace, stability and prosperity to a continent too long divided and at odds with itself. Today, new ties are being forged on the basis of certain shared values, which the former Soviet countries agreed to respect on joining the Council.

#### The search for a common legal area

The Council of Europe's intention from the outset was to base itself on a community of values, and specifically a community of law. It did not want to standardise its member States' laws (an unrealistic aim in any case), but it did – and still does – want to harmonise their laws on the basis of common principles, such as democracy, the rule of law and human rights.

Only ten European States (Belgium, Denmark, France, Ireland, Italy, Luxembourg, Norway, the Netherlands, Sweden and the United Kingdom) identified with those values when the Treaty of London, approving the Council's Statute, was signed in May 1949. Greece and Turkey joined a few months later, in 1950, and the Federal Republic of Germany, restored to full sovereignty, followed suit in 1951. Gradually, other west European countries were added.<sup>167</sup> Just before the Berlin Wall came down, the Council had twenty-two members, all of them sharing its democratic values, even though some of them had known periods of dictatorship or authoritarian rule.<sup>168</sup>

Before some of them joined, the democratic character of certain aspects of their legal systems had been discussed by the Assembly. For example, the

<sup>167</sup> See Appendix II.

<sup>168</sup> The perversion of all law which characterised Germany after 1933 – and, to a lesser extent, Italy, Spain and Portugal – cannot be overlooked.

fact that women in some cantons lacked the vote was considered a black mark against Switzerland. Similarly, Liechtenstein's economic dependence on Switzerland made certain members question its political autonomy – as they questioned San Marino's independence of Italy. Basically, however, ideological differences in western Europe were minimal.

Finland was a late recruit, in May 1989, although its internal system was generally considered compatible, in all but a few details, with Council requirements. For geopolitical reasons, however, it could not apply to join until the Gorbachev era dawned in the late 1980s. It remains exemplary, since no other candidate state has ever examined its own laws so carefully, to ensure compatibility with the Council's Statute and the European Convention on Human Rights.

However, the west European states in the Council and their east European neighbours disagreed profoundly on the nature of democracy, basic legal principles and organisation of judicial systems. After the Second World War, the east European countries had been forced to accept the Soviet system and had established their own regional organisations, Comecon and the Warsaw Pact. Within the Soviet bloc, the regional international law generated by these institutions was regarded as superior to general international law.<sup>169</sup>

The fall of the communist dictatorships put an end to the ideological rift, and allowed Europe to re-unite around the values defended and defined by the Council. Under pressure from the new democracies of central and eastern Europe, which were clamouring to join, the Council rapidly decided to open its doors and let them in (it had, after all, had some experience of restoring democracy in Greece, Portugal and Spain in the 1970s). On 6 November 1990, Hungary became the first former Soviet state to join. Since then, no fewer than twenty other central and east European countries (the last being Serbia and Montenegro in April 2003) have followed suit.<sup>170</sup> The enlargement process showed that Europe, war-torn and ideologically divided, had at last recovered its lost unity within the Council of Europe, which had now become what it was meant to be – a truly pan-European organisation.

### **Two yardsticks for membership**

Many people have wondered whether the Council was not applying double standards by imposing obligations which earlier members had not been required to accept – including various reforms and the ratification of specified conventions – on states which joined after 1991. It is true that the countries of central and eastern Europe lost no time in applying to join the Council once the Berlin Wall had gone. They saw membership of the European demo-

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169. Warsaw Pact intervention in Soviet countries where the Socialist system was threatened, e.g. Czechoslovakia in 1968, was justified by this belief in the superiority of regional international law to international public law. On the primacy of regional law, see Tunkin, G., *Theory of International Law*, Moscow State Institute of International Relations, 1970; see also the five-volume collective work produced in the former German Democratic Republic: *Völkerrecht*, Berlin (East), Staatsverlag der DDR, 1973.

170. Monaco joined in October 2004, becoming the forty-sixth member State.

cratic family as vital to legitimising their new political institutions and stabilising the democratic process – and their enthusiasm for the Council was compounded by the fact that its values were precisely the values which the Communist dictatorships had denied them.

They also wanted to secure a first foothold in western structures, seeing Council membership as just one step in a process which would eventually lead them to the EU and Nato. This is why the Council is sometimes described as an “antechamber” to the EU – or even a kind of “purgatory”. In fact, the EU encouraged the Council to expand: it was not at all sure that the central and east European countries should be allowed to accede to the Treaty of Rome, and hoped that Council membership would keep them quiet in the meantime – and at least remove the need for an early decision. It was accordingly agreed that the Council would prepare them for possible EU membership by encouraging them to democratise their institutions, respect the rule of law and protect human rights.

The candidate countries were impatient, and the whole Council – Committee of Ministers, Parliamentary Assembly and Secretariat – had to join in deciding, in the early 1990s, how enlargement should be handled, and how fast it should go. Interpreting Article 4 of the Statute, which gave the Committee of Ministers authority to verify the ability and willingness of candidate countries to comply with the Council’s fundamental principles, was the central issue here.<sup>171</sup> Should candidates be admitted, as the “purists” insisted, only when they respected Council standards in practice (which would leave those standards undiluted, but certainly delay accession)? Or should they be admitted before they actually satisfied the criteria laid down in Article 3 of the Statute?<sup>172</sup> Eventually, the latter view prevailed.

As Daniel Tarschys, a former Secretary General, liked to say, inclusion is always better than exclusion. It was decided that the better option was to bring these states in without delay, support them, help them to learn about pluralist democracy, and encourage them to hold to it at a time when serious economic problems, rooted in the transition to a market economy, were threatening the limited progress they had made since the Communist dictatorships fell.

This was the Council’s reason for insisting that new members must carry out certain institutional reforms, or sign and ratify certain Council conventions within a short time. It was true that new and older members were being treated differently, but the specified reforms were badly needed to ensure that the newcomers could satisfy the democratic requirements for accession as soon as possible. It was also hoped that their acceptance of standards which some of the “old guard” had ignored would encourage the latter to think again and follow the trend. The Council was thus becoming, in the fullest sense, a school for democracy.

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171. See above, pp. 36ff., comments on Articles 3 and 4 of the Statute.

172. On these questions, see, among others, Klebes, H., ‘Le Conseil de l’Europe, survivra-t-il à son élargissement?’ in J.-F. Flauss and P. Wachsmann (eds), *Le droit des organisations internationales: recueil d’études à la mémoire de Jacques Schwob*, Brussels, Bruylant, 1997.

## **Monitoring commitments**

The Assembly was the first, in 1993, to set up special machinery to monitor the new members' compliance with the commitments they had given on joining. Stressing the importance of such compliance, the Committee of Ministers then decided, in 1994, to establish its own monitoring system. In fact, the two systems are complementary: while the Assembly selects a state and considers the overall situation in that state, the Committee of Ministers chooses a theme and then sees how all the member States perform on it.

### *Monitoring by the Assembly*

Since the second half of the 1970s, in its opinions on admitting would-be member States, the Assembly had been asking them to promise certain reforms or accession to certain Council treaties. Thus, in its opinion on Portugal's accession (1976), it had insisted on Portugal undertaking to sign and ratify the European Convention on Human Rights without delay.<sup>173</sup> It imposed the same condition on Malta in 1965, at a time when neither Greece nor France – both long-standing members – had accepted the Convention. As membership applications flooded in after 1989, its list of requirements gradually grew longer.

### *Commitments on joining – their nature*

Ratification of the European Convention on Human Rights was the first condition laid down for joining. It is true that a "firm intention"<sup>174</sup> or "declared willingness"<sup>175</sup> to ratify was enough for the Assembly in its first opinions on membership applications after the fall of the Berlin Wall. But, starting with Opinion No. 182 (1994) on Andorra's application for membership, it insisted that the Convention must be signed on joining and ratified within a year. Those deadlines were later imposed on other candidate countries. In this connection, Resolution 1031 (1994) makes the timely point that:

[A]ccession to the Council of Europe must be accompanied by accession to the European Convention on Human Rights. It [the Assembly] accordingly considers that the ratification procedure should normally be completed within one year of acceding to the Statute and signing the Convention.

Ratification of the Protocols to the European Convention was later added to the requirements. It was in 1995, in connection with Latvia's membership application, that the Assembly first asked for ratification of the Protocols within a year.<sup>176</sup> Specifically, it insisted that Protocol No. 6, covering abolition of the death penalty, must be ratified without delay<sup>177</sup> – but gave states which

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173. Opinion No. 44.

174. Opinion No. 153 (1990) of 2 October 1990 on Hungary's application for membership.

175. Opinion No. 154 (1990) on Poland's application for membership.

176. Opinion No. 183 (1995) on Latvia's application for membership.

177. See Shabas, A., *The Abolition of the Death Penalty in International Law*, 3rd edn, Cambridge, Cambridge University Press, 2002, pp. 297-299; and Cornu, E., *op. cit.*, p. 279.

still had it more time to do this, while insisting that they “place a moratorium on executions, immediately after acceding”.<sup>178</sup>

From 1994 on, signing and ratifying the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and later the European Social Charter, became further conditions for joining the Council.

Usually, the main criminal conventions, such as the European Convention on Extradition and the Convention on the Transfer of Sentenced Persons, are also mentioned in the Assembly’s opinions. Since Latvia applied to join, the European Convention on Mutual Legal Aid in Criminal Matters and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, have been on the list as well. The Outline Convention on Transfrontier Co-operation between Territorial Communities and Authorities, the European Charter of Local Self-Government, the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities are further frequent inclusions. Otherwise, the list of expected commitments presented to candidate countries depends on the legal and political shortcomings noted by the Assembly – which may insist on a state’s carrying out certain institutional, legislative or other reforms as soon as possible after joining.

### *Machinery*

Until 1993, the Assembly had no way of verifying that its requirements had been satisfied. Some states were slow to redeem their promises, and the need for supervision of compliance with commitments was rapidly felt. The necessary steps were taken, not on the strength of an Assembly decision, but as the result of a political incident involving two states. In 1993, Slovakia was waiting for admission, the Assembly having given it the green light. The formal decision was to be taken by the Committee of Ministers at Deputy level – which meant that it had to be unanimous. However, the Permanent Representation of Hungary indicated that it would vote against Slovakia, if it did not promise that the rights of its Hungarian minority would be genuinely and effectively respected.

The Assembly reacted by adopting Order No. 488 “on the honouring of obligations accepted by new member States”, known as the Halonen Order,<sup>179</sup> which organises supervision, on 29 June 1993. It noted that:

Recent Assembly opinions on applications for membership of the Council of Europe refer to specific commitments entered into by the authorities of the candidate states on issues related to the basic principles of the Organisation. The Assembly considers that the honouring of these commitments is a condition for full participation of parliamentary delegations of new member States in its work. The Assembly therefore instructs its Political Affairs Committee and Committee on

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178. Opinion No. 190 (1995) of 26 September 1995 on Ukraine’s application for membership; Opinion No. 193 (1996) on the Russian Federation’s application for membership.

179. Named after its author, Tarja Halonen, later President of Finland.

Legal Affairs and Human Rights to monitor closely the honouring of commitments entered into by the authorities of new member States and to report to the Bureau at regular six monthly intervals until all undertakings have been honoured.

The adoption of this order ignited a fresh controversy. The “new” member States felt that they were being unfairly treated, since they were the only ones subject to supervision. Resolution 1031 of 14 April 1994 duly put this right, by extending the procedure to all the member States, in accordance with the principle of inter-state equality. It also modified the spirit of the procedure, which initially applied only to commitments given on joining (the problem here was that states which had joined before 1990 had never given commitments of the kind expected of new member States).

In Resolution 1031 (1994), the Assembly noted that:

[A]ll member States of the Council of Europe are required to respect their obligations under the Statute, the European Convention on Human Rights and all other conventions to which they are parties. In addition to these obligations, the authorities of certain states, which have become members since the adoption in May 1989 of Resolution 917 (1989) on a special guest status with the Parliamentary Assembly, freely entered into specific commitments on issues related to the basic principles of the Council of Europe during the examination of their request for membership by the Assembly. The main commitments concerned are explicitly referred to in the relevant opinions adopted by the Assembly.

This resolution generated a distinction between (a) monitoring of specific commitments freely given on accession by states which joined the Council after 1989 and (b) monitoring of compliance with convention-based obligations, that is, rules embodied in conventions accepted by member States both old and new.<sup>180</sup> In other words, monitoring of commitments applies to newcomers only, and monitoring of obligations applies to all members – although the Assembly, in Order No. 508 (1995), instructs the Committee on Legal Affairs and Human Rights (for report) and the Political Affairs Committee (for opinion) to continue to ensure that *all* member States are respecting their obligations, and report directly to it.

In practice, the Assembly has never looked at the honouring of convention-based obligations by member States, old or new – but it has systematically examined new members’ compliance with commitments accepted on joining. Turkey is the only long-standing member to have been monitored by the Assembly. In July 2004, nine states were still on its list: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Moldova, the Russian Federation, Serbia and Montenegro, and Ukraine.

### *Procedure*

In 1997, the procedure detailed in Order No. 508 (1995) was replaced by a new system, operated by an Assembly committee specially established for that purpose, the Committee on the Honouring of Obligations and

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180. States’ obligations may vary, depending on the conventions they ratify.



Commitments by Member States of the Council of Europe (Monitoring Committee), whose working methods and composition are determined by Resolution 1115 (1997).<sup>181</sup> This committee must report to the Assembly once a year on the general state of monitoring procedures, and report on each country monitored at least once every two years (Resolution 1115, paragraph 13).<sup>182</sup> Assembly debates on monitoring are public, but the committee procedure is confidential. The Assembly may adopt a resolution, proposing ways of improving the situation, and a recommendation to the Committee of Ministers. Monitoring of a state continues until the Assembly, having discussed its performance in plenary session, adopts a resolution concluding that it has honoured all its obligations.

Since 1997, the Assembly has also practised “post-monitoring” dialogue. When it formally stops monitoring a state, it also declares that it intends to maintain dialogue with its authorities on certain issues mentioned in the resolutions – leaving itself free to re-open the procedure if no progress is made.

### *Sanctions*

Paragraph 12 of Resolution 1115 allows the Assembly to punish persistent non-compliance with obligations and commitments, and failure to cooperate with the monitoring process. It may refuse to ratify a national parliamentary delegation’s credentials, or annul credentials already ratified (as it did in the Russian Federation’s case in 2000, over the Chechen conflict).<sup>183</sup> If a state still fails to respect its commitments, the Assembly may send a recommendation to the Committee of Ministers, asking it to take the action specified in Articles 8 and 9 of the Statute.

### *Commitments accepted by candidate countries – their legal character*

The binding force of commitments accepted by candidate countries gave rise to some discussion. It was argued by some that the Assembly did not possess international legal personality, and could not conclude agreements with candidate countries – even if it was responsible for negotiating their commitments on joining. Those commitments could be considered binding only on the basis of an agreement – even a tacit agreement – between the state concerned and the Committee of Ministers, which had sole authority (Article 13 of the Statute) to act for the Council of Europe.

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181. See also Resolution 1356 (2003), which brings the number of seats on the Monitoring Committee into line with the figure for the Assembly’s other main committees – currently eighty-two. It also notes that members of the Monitoring Committee, unlike members of other committees, are appointed by the Bureau of the Assembly from a list of candidates put forward by the political groups (Rule 42 of the Assembly’s Rules of Procedure), and that these appointments are submitted to the Assembly for ratification.

182. Since 1998, the Committee has submitted five annual reports on the monitoring procedure. Since 1997, it has submitted numerous reports on individual countries.

183. See also Rules 8.2 and 8.1 of the Assembly’s Rules of Procedure.

This legal difficulty has since been overcome. In the past, it is true that the Committee of Ministers, when inviting states to join, merely referred to the Assembly opinions which defined the candidate country's commitments.<sup>184</sup> But it is now recognised that acceptance by a state of the Committee's invitation, in the terms in which it is formulated, implies acceptance of the commitments referred to and amounts to an agreement between the Council and that state. This interpretation is confirmed by the Committee's recent practice in dealing with the South Caucasian countries. The three resolutions inviting Georgia, Armenia and Azerbaijan to join the Council contain an identical preliminary clause, which reads, *mutatis mutandis*:

In the light of the commitments entered into by Georgia, as set out in Opinion No. 209 (1999) by the Parliamentary Assembly and the assurances for their fulfilment given by the Georgian Government in the letter by the Minister for Foreign Affairs of 18 March 1999, in reply to the letter by the Chairman of the Committee of Ministers of the Council of Europe of 16 March 1999, with a view to membership of the Council of Europe ....<sup>185</sup>

### *Monitoring by the Committee of Ministers*

#### *Thematic monitoring*

The thematic monitoring introduced by the Committee of Ministers in 1994 is a procedure based on constructive and confidential dialogue, and on intensified co-operation between member States and the Committee. While Assembly monitoring focuses on specific member States, the Committee of Ministers selects principles and verifies the way in which all member States apply them (which does not stop it from looking more closely at some states than others).

Thematic monitoring by the Committee of Ministers is based on the procedure detailed in the Secretariat memorandum, Monitor/Inf(2004)3.<sup>186</sup> The Deputies adjusted that procedure on 13 July 2004, to keep it consistent with other Council monitoring procedures, and make it more functional.

The rules which govern thematic monitoring today<sup>187</sup> are as follows. The themes selected for monitoring must be specific, clearly defined, concern questions which are topical at European level and respect the principles of

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184. Committee of Ministers Resolution (93) 37 on the invitation to Romania to become a member of the Council of Europe is an exception. It contains the following words: "in the light of the commitments entered into and the assurances for their fulfilment given by the Romanian Government in its contacts with the Council of Europe, including its Parliamentary Assembly, with a view to membership of the Council of Europe ...".

185. Committee of Ministers Resolution (99) 4. For Armenia and Azerbaijan, see Resolutions (2000) 13 and 14 respectively; for Serbia and Montenegro, see Resolution (2003) 3. Resolution (96) 31 inviting Croatia to join the Council of Europe contains the following paragraph: "In the light of the exchange of correspondence between the Chairman of the Committee of Ministers and the Deputy Prime Minister and Minister for Foreign Affairs of Croatia whereby Croatia accepted the priority commitments and expectations associated with the accession of Croatia to the Council of Europe".

186. Available on [www.coe.int/cm](http://www.coe.int/cm)

187. The amended procedure has applied since October 2004.

non-overlapping and subsidiarity. Although themes may be proposed by any delegation and by the Secretary General, sometimes after consultation/liaison with other organisations and Council of Europe institutions involved in monitoring, the final choice lies with the Committee of Ministers.

The thematic monitoring reports are then prepared regularly by the Secretary General or, if necessary, another body designated by the Committee of Ministers, and provide a basis for discussion and the Committee's decision on follow-up action. To avoid stigmatising individual states, reports must remain confidential, and may be declassified only by decision of the Committee. Finally, the Committee must look regularly at the action taken, with a view to noting progress and proposing supplementary monitoring.

So far, ten themes have been selected: freedom of expression and information; functioning and protection of democratic institutions; functioning of the judicial system; local democracy; capital punishment; police and security forces; effectiveness of judicial remedies; non-discrimination with emphasis on the fight against intolerance and racism; freedom of conscience and religion; and equality between women and men.

#### *Other machinery*

The first paragraph of the 1994 Declaration on compliance with commitments accepted by member States of the Council of Europe also provides that the Committee of Ministers may consider "the situation of democracy, human rights and the rule of law in any member state". It may do so at the request of member States or the Secretary General, or on the basis of a recommendation from the Council of Europe's Parliamentary Assembly.

The Committee of Ministers has twice been asked, under this paragraph, to consider the human rights situation in Chechnya (Russian Federation), first by the Secretary General on 26 June 2000, then by the Parliamentary Assembly on 2 April 2003.<sup>188</sup>

Under paragraph 4 of the 1994 Declaration, the Committee of Ministers may also, in cases where "specific action" is required:

- request the Secretary General to make contacts, collect information or furnish advice;
- issue an opinion or recommendation;
- forward a communication to the Parliamentary Assembly;
- take any other decision within its statutory powers.

The Committee has used these powers in connection with thematic monitoring of democratic institutions and freedom of expression and information, and in response to expressions of concern by other bodies, including the Assembly.<sup>189</sup>

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<sup>188</sup>. See SG/Inf/(2004) and Assembly Recommendation 1600 (2003).

<sup>189</sup>. This led to monitoring visits to Ukraine (2001), Georgia (2001, 2002, 2004) and Moldova (2002).

Under paragraphs 5 and 6 of the “Procedure for implementing the Declaration of 10 November 1994 on compliance with commitments accepted by member States of the Council of Europe”, any Committee of Ministers delegation or the Secretary General may request that the situation in any member state be placed on the agenda of a special monitoring meeting (held in camera), on the basis of its own concern or with reference to an assembly debate. This request must be accompanied by specific questions. The Secretary General has used this possibility once, early in 2002, when the situation in Moldova was the issue. There has also been specific “post-accession” monitoring of Armenia and Azerbaijan,<sup>190</sup> Bosnia and Herzegovina, Serbia and Montenegro,<sup>191</sup> and Georgia.<sup>192</sup>

## **Incorporation of Council of Europe conventions into domestic law**

As a rule, Council conventions say nothing on their incorporation into domestic law. However, fulfilment in good faith of convention-based obligations – a classic principle of public international law – obliges states to incorporate treaties that establish rights and obligations for individuals into their domestic law.

The Council of Europe does not require them to do this in any particular way. This is left to their discretion, and depends on their constitutions. Generally, treaties are incorporated by act of government, but the formal nature of that act varies from system to system.

In the United Kingdom and Ireland, for example, incorporating conventions into domestic law requires an act of parliament. Thus, the 1998 Human Rights Act brought the European Convention on Human Rights into British law. One reason for this is the fact that the UK Government has power to commit the state at international level, without necessarily being authorised to do so by Parliament.

In other states, such as Germany and Italy, it is the domestic law ratifying a treaty (usually a law passed by parliament) that turns its substantive provisions into domestic provisions, or makes it possible to incorporate them into the national system. This is also the approach in some central and east European countries, which are influenced by the German legal tradition. Under the Hungarian Constitution, for example, the courts cannot apply an

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190. On 3 September 2003, the Deputies took note of the third progress report of their Monitoring Group GT-SUIVI.AGO, covering the period from July 2002 to June 2003, and based on the findings of its third visit to Armenia and Azerbaijan. It also considered the problem of political prisoners, which is now confined to Azerbaijan.

191. Since Bosnia and Herzegovina joined in 2002, and Serbia and Montenegro joined in 2003, the Secretary General has been submitting three-monthly reports. These are examined by the Deputies' Rapporteur Group on Democratic Stability, which then reports to the Committee of Ministers.

192. Regular monitoring, at six-monthly intervals, of Georgia's compliance with its obligations and commitments was introduced in 2003. Various priority areas were selected.

international treaty ratified by parliament until a specific law has been passed, giving it the status and force of a domestic law.

Finally, the Scandinavian countries have an even stricter system. There, the government may not sign an international treaty without parliament's prior consent. And consent does not incorporate that treaty into domestic law – a separate law must be passed for that purpose.

In states which follow the “monist” tradition, on the other hand, promulgating a treaty is enough to make it a domestic law, and has the force of an execution order. Thus the Polish Constitution stipulates (Article 91, paragraph 1) that a ratified and promulgated treaty “constitutes part of the domestic legal order” and is “directly applied” unless application requires the passing of a law. Sometimes – as in Belgium, France, Luxembourg, Portugal and Croatia<sup>193</sup> – incorporation is automatic: ratifying or approving a treaty, and publishing it in the Official Gazette, is enough to make it internally applicable.

Council of Europe conventions also say nothing of their legal value in domestic law, and the member States have adopted various solutions in this area.

At the same time, some conventions are sufficiently precise to require no internal application measures. They are considered self-executing and may, if national courts so decide, be directly applied in legal proceedings. National execution measures are often needed, however – and some Council conventions contain clauses confirming this requirement. Thus, Article 4 of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, 1981) states that:

Each party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter. These measures shall be taken at the latest at the time of entry into force of this Convention in respect of that party.

In the same way, Article 1, paragraph 2 of the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (ETS No. 164, 1997) requires each party to “take in its internal law the necessary measures to give effect to the provisions of this Convention”.

However, as long as states comply with their convention-based obligations, international law takes no interest in the manner of their doing so. Thus, the Strasbourg Court has acknowledged that the European Convention on Human Rights does not impose on states “any given manner for ensuring within their internal law the effect of implementation of any of the provisions of the Convention”. (*Swedish Engine Drivers' Union v. Sweden*, Judgment of 6 February 1976, Series A, No. 20, paragraph 50).

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<sup>193</sup>. Article 134 of the Croatian Constitution states that international agreements concluded and ratified are part of the internal legal order, and take precedence over domestic laws in terms of their legal effects.

## **Council of Europe law as regional international law**

Council of Europe law forms part of general international law and sometimes makes good its omissions. More often, it supplements it and adapts it to European requirements, and so constitutes regional international law. The wording used in the Preamble to the Protocol to the European Convention on the Suppression of Terrorism is revealing here:

Bearing in mind the General Assembly of the United Nations Resolution A/RES/51/210 on measures to eliminate international terrorism and the annexed Declaration to supplement the 1994 Declaration on Measures to Eliminate International Terrorism ....

Sometimes, indeed, Council of Europe conventions are designed to give effect in Europe to principles adopted at world level. Thus, the Preamble to the European Convention on Human Rights – which refers in its very first sub-paragraph to the Universal Declaration of Human Rights of 1948 – states that the signatory states are “resolved ... to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration ...”. The UN General Assembly has itself had occasion to welcome the Council’s contribution to international law, and particularly international criminal law.<sup>194</sup>

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<sup>194</sup> General Assembly Resolution of 16 December 2002. Co-operation between the UN and the Council of Europe is long-standing. It is enshrined in the agreements signed on 15 December 1951 by the Council of Europe and the UN Secretary General, and in the agreements on co-operation and liaison between the Secretariats of the Council and the UN, concluded on 19 November 1971.

## Chapter 2

### The Council of Europe and other international organisations

Ever since it was founded, the Council of Europe has been competing with other European organisations, some of them far better resourced than itself. Excluded from the military sphere by its Statute and the establishment of the WEU, the Council chose not to become active in the economic field, although its Statute would have allowed it to do so. In fact, the founding of the OEEC (later OECD), which was initially given the task of distributing American aid after the Second World War, followed by that of the ECSC and the European Economic Community, rapidly restricted its scope for action in that area. Even in its own preferred field – unification of law – extension of the EU's remit to include co-operation in civil, judicial and criminal matters has reduced the impact of its work for member States which are also members of the EU. Finally, the OSCE has also extended the range of its activities, gradually encroaching on Council territory.

Today, it is up to the Council to highlight the things it can do uniquely well, while remaining open to co-operation with these other organisations. In fact, the various European organisations, whose tasks and geographical coverage sometimes diverge, and sometimes overlap, with the smaller membership of some partly coinciding with the larger membership of others, have established a network which allows them to exchange information and influence one another – and which helps to make them complementary.

#### Council of Europe and European Union

Stronger links between the EU and the Council of Europe today appear a necessity but, as long ago as 1974, in the report of its Group of Six “on the future role of the Council of Europe”,<sup>195</sup> the Committee of Ministers already thought it vital to build on complementarity with other international organisations and institutions, and particularly the European Communities. In agreement with the Permanent Representatives to the Communities in Brussels, it accordingly suggested that areas of common interest be identified, and programmes regularly examined to spot openings for useful co-operation. It was at this point that the Council of Europe decided to set up a liaison office in Brussels.

In 1985, the Committee of Ministers declared that European solidarity would be strengthened by consolidating and intensifying co-operation between the Council and the Community. It wanted to promote close co-operation between the two – but co-operation which respected their different natures and proce-

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<sup>195</sup> See also Resolution 74 (74), which refers to it.

dures.<sup>196</sup> A first exchange of correspondence between the Council and the Community on 16 June 1987 helped to give this co-operation concrete shape. A second exchange of letters, on 5 November 1996, fleshed out the plan and confirmed the desire of both sides to strengthen their co-operation “through maximum Community participation in work done in Strasbourg”.<sup>197</sup>

These two exchanges of letters are regarded as international agreements and are the legal basis of co-operation between Strasbourg and Brussels, in accordance with Articles 302 and 303 of the Treaty of Rome.<sup>198</sup> All the same, co-operation is lopsided, since the Council of Europe rarely attends meetings of EU Council working parties, while the Commission is represented at meetings of the Committee of Ministers. The imbalance is, however, lessening.

Today, co-operation is rendered even more essential by the fact that the EU has recently started to interest itself in areas which largely coincide with those covered by the Council, and certain problems cannot be solved at EU level. Drug trafficking and organised crime, for example, are major problems for both sides. Similarly, money laundering and terrorism are not just EU concerns, but affect the whole of Europe. These, obviously, are problems on which the two organisations need to work together.

Moreover, the EU has recently shown signs of moving into areas already covered by the Council, which seems likely to interfere with the management of both – and creates a danger that two yardsticks will be applied. One example is action against racism and anti-Semitism, first dealt with by the Council and then taken up by the EU. The latter now has an observatory in Vienna, while the Council has ECRI, which pursues similar objectives. True, the two bodies have agreed to co-operate, but was doubling-up really necessary? Moreover, the European Council of 12 December 2003 decided to give the European Observatory on Racism and Xenophobia a new mandate, turning it into the “Agency of Fundamental Rights of the European Union”, and giving it the task of ensuring that human rights are respected and protected within the EU and its member States. Similarly, both organisations now monitor their member States’ compliance with their commitments concerning human rights and democracy. Surely, the Commission’s monitoring of member States under Article 7, paragraph 1<sup>199</sup> of the Treaty on European Union, and of candidate countries as well, simply duplicates the procedures launched by the Council’s Parliamentary Assembly and Committee of Ministers?

Finally, since 2004, the EU has embarked on a process of enlargement, and now covers a majority of the Council’s member States – twenty-five of forty-six. There is nothing surprising in this, since the Council helped to prepare candidate states for EU membership. In fact, the Copenhagen criteria which

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196. Resolution (85) 5 of 25 April 1985.

197. See Appendix VII.

198. See also the Joint Declaration, signed on 3 April 2001 by Chris Patten for the European Commission, and Walter Schwimmer for the Council of Europe, on co-operation and partnership between the Council and the European Commission.

199. Article 7 of the Treaty introduces sanctions for EU member States which seriously and continually violate the values specified in Article 6, paragraph 1, including respect for human rights and fundamental freedoms.



would-be members of the EU must satisfy are its basic principles. Indeed, the “quadripartite” meeting<sup>200</sup> on 22 March 2004 emphasised the importance of the contribution which the Council had made to EU enlargement by agreeing, in accordance with the mandate given it at the Vienna Summit in 1993, to admit, on an equal footing and in permanent structures, the European democracies freed from communist oppression.<sup>201</sup>

### **Participation by the European Community in treaties negotiated at the Council of Europe**

The European Community has been able to accede to certain Council of Europe treaties, on terms decided by the Council. Obviously, Community participation in multilateral conventions depends, first and foremost, on its own regulations. These conventions now contain a “European clause”, regulating the voting rights of the Community and its member States on convention bodies, thus giving the Community a say in administering these instruments. When this is thought necessary, a “disconnecting clause” is also inserted, allowing the EU to adopt or keep its own solutions, and not those covered by the convention, for internal use – provided that it respects its obligations under the text in dealing with third parties.

Although many of its responsibilities coincide with those of the Council, the EU has taken only limited interest in the Strasbourg conventions. Becoming a party is relatively easy, but the EU is currently bound by only nine Council treaties.<sup>202</sup> Although legal instruments allowing it to participate are in place, it

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200. These are regular, top-level political meetings between the two institutions, attended by the Chairs of the Council of Ministers and the Committee of Ministers, the Commissioner concerned and the Secretary General of the Council of Europe.

201. The Vienna Declaration also specified that accession presupposed that a candidate state had brought its institutions and legal system into line with the basic principles of a democratic state.

202. Treaties to which the Community has become a party by signing them are: European Agreement on the exchange of therapeutic substances of human origin (ETS No. 26), signed on 30 March 1987; Agreement on the temporary importation, free of duty, of medical, surgical and laboratory equipment for use on free loan in hospitals and other medical institutions for purposes of diagnosis or treatment (ETS No. 33, 1960), signed on 30 March 1987; European Agreement on the exchange of blood-grouping reagents (ETS No. 39, 1962), signed on 30 March 1987; European Agreement on the exchange of tissue-typing reagents (ETS No. 84, 1974), signed on 22 November 1977. Conventions to which the Community has become a party by signing and later approving them are: European Convention for the protection of animals kept for farming purposes (ETS No. 87, 1976), approved on 18 October 1988; Convention on the conservation of European wildlife and natural habitats (Bern Convention) (ETS No. 104, 1979), approved on 7 May 1982; European Convention for the protection of vertebrate animals used for experimental and other scientific purposes (ETS No. 123, 1986), approved on 13 April 1998. Convention to which the Community has become a party by acceding to it: Convention on the elaboration of a European Pharmacopoeia (ETS No. 50, 1964), acceded to on 21 June 1994. The Community simply signed the European Convention relating to questions of copyright law and neighbouring rights in the framework of transfrontier broadcasting by satellite (ETS No. 153, 1994) on 26 June 1996, but has not yet ratified it. Finally, on 22 March 2004, the President of the European Union signed and concluded, on the Community's behalf, the Council of Europe Convention on information and legal co-operation concerning “information society services” (ETS No. 180, 2001).

lacks the political will to do so, for reasons connected with its own internal problems.<sup>203</sup> It would, however, be harmful if the Union failed to recognise the rules agreed at the Council as minimum legal standards. In fact, its interest is reviving in certain conventions in areas covered by the third pillar, namely, justice and internal affairs.

Some Council conventions which are not actually binding on the EU have strongly influenced its legislation, which has been quick to take up the principles embodied in them. Thus, Directive 95/46 EC of the European Parliament and of the Council of 24 October 1995, on the protection of individuals with regard to the processing of personal data and on the free movement of such data, is based on the rules laid down in the Council's Convention (ETS No. 108). Similarly, the European Convention on the Suppression of Terrorism (ETS No. 90) inspired the EU framework decision of June 2002 on combating terrorism. More generally, the Treaty on European Union refers to the European Convention on Human Rights, while the Treaty of Rome, as revised by the Treaty of Maastricht, refers to the European Social Charter.

To date, twenty-five Council of Europe conventions have also been included in the Community corpus, which would-be members are required to respect. For example, states wishing to enter the Schengen area must ratify the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). Similarly, ratification by candidate states of eight Council of Europe criminal law instruments is one of the requirements specified in the Union's crime-fighting strategy for the third millennium. To accelerate this process, the Council's Directorate General of Legal Affairs has set up working meetings for policy makers and senior officials from the national ministries concerned.

Finally, the Union has used the Council to extend some of its rules and standards to the whole of Europe – even in cases where EU states have later decided to go further within their own, narrower circle. Thus, at the Union's request, the Council adopted the Convention on Information and Legal Co-operation concerning "Information Society Services" (ETS No. 180), which extends an EU Directive to its own member States, in 2001. A similar request, concerning electronic signatures, is now being considered.

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203. There are various reasons for this. First of all, in the case of joint agreements, the Community waits for all its member States to ratify, before itself becoming a party, which delays the process. Secondly, the Community sometimes has to satisfy internal obligations before concluding an agreement. This applies, for example, to the Convention on data protection, since the Community has to wait until it has itself acquired full legislation in this field. Finally, since the Community can help to negotiate treaties, influence their content, and then absorb their main elements into its own internal law, it sees little interest in acceding formally, since the intended result of doing so has already been achieved. Only agreements which do not simply standardise laws, but create reciprocal rights and obligations, seem likely to make the Community think that formal ties with outside states might be useful.

### **Institutional participation by the Union or the Community in the work of the Council of Europe**

The agreement concluded in June 1987 gave the Commission a permanent invitation to attend all meetings of committees established by the Committee of Ministers. Today, the Community is increasingly a part of the Council's institutional structures, and the Commission participates in various Council activities and forums, at the invitation of the bodies which run them. The meetings and activities of the Committee of Ministers, and its subsidiary structures, are also open to it.

However, the letters exchanged on 6 November 1996 stipulated that the Commission (representing the Union or Community) was not entitled to vote, or to play a part in Council decision making. The Community participates in the preliminary discussions which lead to decisions (and can thus influence their content) – but it may not speak for its member States, which alone enjoy the privileges of Council membership, including the right to vote. On important issues, however, the EU states increasingly tend to agree their positions in advance within the second and third pillar bodies, and, when they do this, the Union itself behaves like a *de facto* member.

To institutionalise co-operation between the two organisations, quadripartite meetings were introduced in 1989. In principle, these are held twice-yearly, and are attended by the Chair of the Committee of Ministers and the Secretary General for the Council of Europe, and by the President of the Council and the President of the Commission (in fact the Commissioner concerned) for the Union. The Parliamentary Assembly has suggested that its own President and the President of the European Parliament should also be included.<sup>204</sup> The potential scope for inter-institutional co-operation is enormous. The most varied questions are covered, ranging from preparation of the Council's Summits to the situation in countries or regions of interest to both organisations. The result is an increasing number of joint projects and programmes, aimed at reinforcing democracy, the rule of law and human rights, including the protection of national minorities. This co-operation also helps to make the assistance provided for the countries concerned more consistent.

Today, information is frequently and fruitfully exchanged, and co-ordinated activities involving both Strasbourg and Brussels are increasing. Regular contacts between the Secretary General of the Council of Europe, the EU Commissioners, and the various EU Council bodies responsible for foreign and security policy reflect the steadily intensifying links. These contacts in no way compromise the independence of either side – any more than they subordinate one to the other. The EU countries are all members of the Council of Europe. Each institution has its own special features, and complementarity of their activities is a fact – a fact reflected in ongoing liaison, particularly in the field of “justice and internal affairs”. Constant dialogue between the Council of Europe and the Commission, and also successive

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<sup>204</sup> Report on the European Union's intergovernmental conference of 1996, 22 September 1995, Doc. 1373, p. 20.

EU presidencies, has gradually been organised.<sup>205</sup> As part of their co-ordinated efforts to strengthen the rule of law, the Council of Europe and the European Commission are together running several joint programmes, which combine EU funding with Council know-how and some Council co-funding.<sup>206</sup>

There are further opportunities for co-operation and partnership when the Council and the Commission meet on bodies like the Steering Group of the Stability Pact Anti-Corruption Initiative for South Eastern Europe (Spai), whose secretariat is jointly provided by the Council of Europe and OECD, or the Advisory Liaison Group of the Stability Pact Initiative against Organised Crime (Spoc). The Council of Europe supports these two initiatives on the strength of its own Programme Against Corruption and Organised Crime (Paco).

### **EU accession to the European Convention on Human Rights**

The adoption of the Charter of Fundamental Rights of the European Union by the European Council in Nice on 10 and 11 December 2000, and its inclusion in the European Constitution, re-opened the debate on accession by the European Community – and, better still, the Union – to the European Convention on Human Rights. Opinion 2/94, given by the Court of Justice, Luxembourg, on 28 March 1996 when consulted by the Council of Ministers, had made accession difficult, since the Court had held that, although the general principles of law obliged the Community to respect fundamental rights, there was nothing in the Treaty of Rome which gave its institutions authority to lay down human rights standards or conclude international conventions in that field. It concluded that “as Community law now stands, the Community has no competence to accede to the European Convention on Human Rights”.<sup>207</sup> It accordingly left the member States to decide whether revising the Treaty on this point was politically opportune.

Those states have so far been unwilling to do that, but it is now generally agreed that a clause giving accession a specific legal basis needs to be

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205. In the last three areas, a practice has developed whereby the EU invites the Council of Europe Secretariat to participate, on an ad hoc basis, in the work of the working parties which deal with questions of common interest under the Common Foreign and Security Policy (CFSP). The Secretary General and various senior Council officials have thus been invited, on several occasions, to address the COSCE (Working Group on the OSCE and the Council of Europe). At the invitation of the Presidency, the Secretary General has also met representatives of the EU Council's Political and Security Committee (PSC).

206. For a clearer, fuller picture of joint programmes at the beginning of 2004, see: Joint Council of Europe/European Commission Programmes – Situation in March 2004, DSP (2004) 4 rev. of 25 March 2004; at that time, twenty-eight joint programmes were running, with a total budget of 32.3 million euros (Commission contribution: 21.2 million euros; Council of Europe contribution: 11.1 million).

207. Opinion 2/94 of 28 March 1996 on the accession of the European Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Rec. p.I. 6079, *Revue Universelle des Droits de l'Homme*, 1996, p. 167.

inserted in the European Constitution.<sup>208</sup> Even the states with the strongest reservations, including France, the United Kingdom and Spain, have grudgingly accepted this. While the draft Brussels Convention insisted on negotiation only, Article 7.2 of the Union Constitution insists on results: "the Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Constitution". A Protocol contains some further explanations, providing guidance for negotiations with the Council of Europe.<sup>209</sup> Protocol No. 14 to the European Convention on Human Rights amends Article 59 of the Convention to permit EU accession.

Accession by the Community or Union to the Convention would greatly contribute to coherent human rights protection in Europe.<sup>210</sup> This would involve harmonising human rights protection systems to avoid weakening the overall protection provided in Europe and reducing legal security. But harmonisation is possible only if the European Convention on Human Rights is the minimum standard accepted by all European democracies. This being so, it is important to forestall a situation in which two protection systems – the Convention system and the Union system – might find themselves competing, and ensure that all individuals under EU jurisdiction are guaranteed the minimum standard embodied in the Convention. In this context, EU accession to the Convention would not detract from the value or scope of the Charter, which could produce its own effects, but would ensure that the same basic set of minimum values applied throughout Europe, and that supervision at last instance was exercised by the same court – the European Court of Human Rights.

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208. The opponents of accession chiefly argued that it was incompatible with the principle of autonomy of Community law. They also argued that it would cast doubt on the status of the Court of Justice, which was recognised as the sole arbiter on questions of Community law, and subordinate it to the European Court of Human Rights. Finally, they argued that it would be inappropriate for the Union to be subject to possible supervision by non-Community judges, who might not understand the special character of European integration, and would not necessarily have the same conception of democracy and human rights.

209. Under the Protocol relating to Article 1.7, paragraph 2, of the Constitution on accession by the Union to the European Convention on Human Rights, the accession agreement "shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

- the specific arrangements for the Union's possible participation in the control bodies of the European convention;
- the mechanisms necessary to ensure that proceedings by non-member States and individual applications are correctly addressed to member States and/or the Union as appropriate."

The agreement must also "ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of member States in relation to the European Convention ...".

210. See, *inter alia*, Krüger, H.C. and Polakiewicz, J., "Propositions pour la création d'un système cohérent de protection des droits de l'homme en Europe" in *Revue Universelle des Droits de l'Homme*, Vol. 13, Nos. 1-4, 2001, p. 1; "Study of the legal and technical issues raised by the possible accession of the European Union to the European Convention on Human Rights", report adopted by the Steering Committee for Human Rights (CDDH) at its 53rd meeting (25-28 June 2002), document DG-II(2002)006.

On the Union side, the technical difficulties of accession have often been used as a pretext for ignoring the whole question. In fact, these difficulties can be overcome by amending Article 59 of the Convention to allow the EU or EC to become a party to it. Protocol No. 14 to the Convention has done this – but practical details of EU accession have still to be worked out.

Some people favour “limited” accession, taking the form of a procedure for preliminary opinions or questions, which might be regarded as replacing or supplementing full accession, which others think the better option. Full accession would put the EU on the same footing as other parties. It would therefore have a judge, representing it on the European Court of Human Rights in a manner still to be defined.

### **An associate partnership between the Council of Europe and the European Union?**

For a long time it has been suggested (Colombo Report, June 1986) that:

[A]n essential step forward in European co-operation would be taken through participation by the Community as such in Council of Europe activities, in ways to be defined in the spirit of Article 230 of the Treaty of Rome: this might go as far as accession to the Statute of the Council of Europe.

The Council’s present Secretary General still hopes for closer ties, and thinks the time has come to explore the prospects for an associate partnership between the Council and the EU, taking due account of the latter’s special status.<sup>211</sup> As an “associate partner”, the EU could represent its twenty-five members in areas where they had transferred their powers to it.<sup>212</sup> Apart from introducing global representation of EU states in areas for which the EU was responsible, the new arrangement would be chiefly useful in confirming the existence of a common European vision, based on respect for the Council’s values, and encouraging the two European institutions to join in working for democratic stability in Europe. On a more practical level, it would prevent duplication, and make it possible to rationalise certain activities and use the achievements and work of the two organisations to maximum advantage.

Better still, an associate partnership between the Council and the EU would clarify and simplify Europe’s existing political architecture. In the wake of EU enlargement, the Council might prove the perfect forum for dialogue between the EU and its neighbours, and for the definition of standards apply-

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211. To forestall misleading references to past precedents (the Saar) and Article 5 of the Statute, the Secretary General avoids the term “associate membership”, and speaks simply of an “associate partnership”, suggesting that this be based on a statutory resolution. See “One Europe – A Europe of Partners: Towards an associate partnership between the Council of Europe and the European Union” (SG/Inf(2003)35 of 25 September 2003).

212. It would thus be directly involved in Council decision making, and would have to be given participation and voting rights, corresponding to its powers, in all Council activities and on all Council bodies – including the Committee of Ministers, the Parliamentary Assembly and the Congress. On issues for which it was responsible, it could vote for its members, with appropriate weighting.

ing to the whole continent. In fact, the Council, with its Committee of Ministers and Parliamentary Assembly, offers an ideal framework for in-depth discussion of the social problems facing greater Europe. In this way, the two sides – the enlarged and integrated EU, and the Council of Europe – could pool and mutually reinforce their efforts to guarantee the continent's democratic unity.

At the same time, the new context in which we are considering an institutional partnership should not blind us to the problems. In fact, the EU has yet to show that it genuinely wants such a partnership, and there are legal obstacles as well. These concern the founding treaties, which will have to be amended or supplemented to make accession possible.<sup>213</sup> Once these obstacles have been removed, it will still be necessary to solve the problem of Community representation on Council of Europe bodies.

## **Relations with other international organisations<sup>214</sup>**

### **Co-operation and co-ordination agreements**

We are concerned here, not just with organisations based in Europe, but with organisations operating in Europe, with activities close to those of the Council of Europe – which would threaten overlapping, unless agreement was reached on co-ordination, co-operation and the exchange of information. This was the thinking behind Committee of Ministers Resolution (51) 30 on relations with intergovernmental and non-governmental international organisations, which provides a legal basis for such agreements, and states that:

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213. On the Council side, Article 4 of the Statute restricts membership to European states. It will thus be necessary to amend, not just this provision, but also all the others which are linked to it, such as Articles 14, 15.*b*, 25, 26, 36.*d*, 38 and 42. This may well be a long and laborious process. Article 4 is not an important question within the meaning of Article 20.*a.v*, and so a two-thirds majority of the Committee of Ministers should suffice to amend it (Article 20.*d*), but amendments to Article 15 will require unanimity. Moreover, Article 20.*a.vi* states that the Committee of Ministers may decide, by a resolution passed under Article 20.*d*, i.e. by a two-thirds majority, that "on account of its importance" a decision must be unanimous. It seems reasonable to suppose that the question of an institutional partnership between the European Union/Communities and the Council of Europe will be considered important. Nonetheless, the Council's Secretary General favours using a statutory resolution. With this approach, the Statute would not be modified, but simply supplemented with rules on the practicalities of Union participation, just as Statutory Resolution (93)26 on Observer status regulates the participation of Observer states. On the Union/Communities side, a partnership may also raise problems. One of those would be deciding whether the Community or the Union should accede. At present, only the European Community has legal personality and may conclude international treaties. In fact, the Union has concluded a number of international treaties, and there have been no objections. Moreover, the draft European Constitution envisages giving it international personality, and it seems logical that it should be the one to accede, since the two co-operation pillars which – with the Community pillar – make up the Union, are concerned with Council of Europe activities.

214. On the Council of Europe's external relations, see de Jonge, Johannes, "Die Auswärtigen Beziehungen des Europarats", revised version of a report presented at a colloquy on international, transnational and supranational parliamentary activity at Alpbach, Austria, 26-28 May 2002.

- i. The Committee of Ministers may, on behalf of the Council of Europe, conclude with any intergovernmental organisation agreements on matters which are within the competence of the Council. These agreements shall, in particular, define the terms on which such an organisation shall be brought into relationship with the Council of Europe;
- ii. The Council of Europe, or any of its organs, shall be authorised to exercise any functions coming within the scope of the Council of Europe which may be entrusted to it by other European intergovernmental organisations. The Committee of Ministers shall conclude any agreements necessary for this purpose;
- iii. The agreements referred to in paragraph i. may provide, in particular:
  - a. that the Council shall take appropriate steps to obtain from, and furnish to, the organisations in question regular reports and information, either in writing or orally;
  - b. that the Council should give opinions and render such services as may be requested by these organisations;
- iv. The Committee of Ministers may, on behalf of the Council of Europe, make suitable arrangements for consultation with international non-governmental organisations which deal with matters that are within the competence of the Council of Europe.

There are currently some thirty bilateral agreements of this kind, which are listed in Appendix V.

Most of them are basically very similar, and differences reflect the relative closeness of the ties between partner organisations and the Council. Under some agreements, the Assembly holds a debate, and then adopts a text, on the other organisation's activities. This applies, for example, to the OECD and the EBRD (European Bank for Reconstruction and Development). As early as 1952, the Committee of Ministers decided (Resolution (52) 26) that draft agreements between the Council of Europe and other international organisations might be submitted to the Assembly for opinion.

By way of example, we shall now look more closely at the agreements concluded by the Council with the United Nations, OECD and the OSCE.

### *The Agreement with the United Nations*

The first agreement with the United Nations was concluded in 1951. Twenty years later, it was renewed and expanded in the form of a "co-operation and liaison agreement". Finally, in October 1989, the General Assembly of the United Nations gave the Council Observer status in Resolution 44/6. Since 2000, an annual report on co-operation between the UN and the Council has featured on the General Assembly's agenda.<sup>215</sup> The two organisations share many interests, including human rights, minority rights, action against racism, gender equality, social cohesion and environment.

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<sup>215</sup> de Jonge, J., op. cit.



One much-discussed question is whether – because of the military implications – the Council qualifies as a “regional agency” within the meaning of Article 52 of the UN Charter. The question has lost some of its importance since Europe was “re-united” after 1989, but has never been finally answered. At all events, the Council recently co-operated closely with Unmik, the United Nations civil administration in Kosovo, when the fighting ceased.

Co-operation with the UN also extends to some of its specialised agencies, such as Unesco, the World Health Organisation (WHO), the International Labour Organisation (ILO) and the United Nations offices in Geneva and Vienna. Specific agreements have been concluded for those purposes (see list in Appendix V).

### ***Agreement with the Organisation for Economic Co-operation and Development (OECD)***

In 1962, the OECD succeeded the OEEC (Organisation for European Economic Co-operation), founded in 1948 to co-ordinate US aid for the countries of western Europe, whose economies had been shattered by the war (the USA also offered aid to the countries of eastern Europe, but Soviet pressure and the “cold war” context led to their refusing it).

The Council of Europe and the OEEC concluded a co-operation agreement in 1951. When the OECD succeeded, and Canada and the United States joined, a replacement agreement was negotiated by the two secretariats. This was approved by the OECD Council on 9 January 1962, and by the Council of Europe’s Committee of Ministers on 1 February 1962 (Resolution (62) 4). The text of the agreement is subdivided into eight parts, which are largely obsolete. Only the first is reproduced below:

#### **I. General principles**

The principles which govern co-operation between the Organisation for Economic Co-operation and Development (OECD) and the Council of Europe are described below.

1. Co-operation between the two organisations shall be based on reciprocity.
2. The procedure and methods of application shall be established by the two liaison committees set up by the two organisations concerned. These committees shall report to the Council of the OECD and to the Committee of Ministers of the Council of Europe, and shall submit to them such proposals as may usefully contribute to closer co-operation between the two organisations.
3. Within the framework of this co-operation, the OECD shall transmit to the Council of Europe periodic reports on economic problems which have already been studied by the Organisation or on which studies are in progress.
4. In addition to these reports, ‘restricted’ documents of interest to the Council of Europe may be officially transmitted to the Council of Europe so that it may be kept regularly informed of the work of the OECD.

The Council of Europe, for their part also, shall transmit to the OECD such of their documents as relate to problems concerning the activities of the OECD.

5. Observers from the Council of Europe may be authorised to attend meetings of the Council and technical committees of the OECD which have a bearing on the work of the Council of Europe. The Secretariat of the OECD shall enjoy reciprocal facilities.

6. Representatives of the parliamentary committees of the Council of Europe concerned with economic and social questions may consult experts of the OECD. Exchanges of views may also be arranged, at the instance of the OECD, between members of these committees and representatives of the OECD.

7. The Secretary General of the OECD may, at the request of the Secretary General of the Council of Europe, assist the latter in preparing work on economic questions undertaken by the different bodies of the Council of Europe.

Today, the most important aspect of relations between the two organisations is the holding of an annual Parliamentary Assembly debate on the OECD's progress report, which is presented by its Secretary General. Apart from the Assembly's member delegations, this debate is attended by parliamentary delegations from OECD states that are not members of the Council (this currently applies to the parliaments of Canada, Korea, the United States of America, Japan, Australia, New Zealand and Mexico).

At the end of the debate, the enlarged Assembly adopts a resolution on the activities of the OECD, which is sent to all the governments concerned. The non-Council delegations help to draft this text at the meeting of the Committee on Economic Affairs and Development. Members of those delegations may also speak and vote in the Assembly debate, and when the resolution is being adopted.

The Council of Europe co-operates in much the same way with the European Bank for Reconstruction and Development (EBRD).

#### *The agreement with the Organisation for Security and Co-operation in Europe (OSCE)*

An agreement (in fact, a catalogue of means of co-operation) was concluded between the two organisations in 2000 (see Appendix IX). The OSCE is the institutionalised version of the CSCE, which grew out of the Helsinki Final Act of 1 August 1979.

For a time, the Council of Europe Assembly thought that it might become the OSCE's parliamentary arm,<sup>216</sup> organising annual debates attended by parliamentary delegations from states participating in the CSCE/OSCE process. However, resistance in various quarters – particularly from the USA, which thought that the OSCE should have its own assembly – blocked this proposal. The OSCE Assembly and its Secretariat were eventually set up in Copenhagen, and a US Congress official became its Secretary General. Clearly, this solution is not the one best calculated to facilitate co-ordination of the two organisations' activities, but fruitful co-operation has developed in spite of it.

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<sup>216</sup> See Recommendation 1381 (1998).

The Council of Europe and the OSCE have other shared interests, such as co-operation in the Mediterranean, minorities, equal opportunity for women and men, and Roma (this list is not exhaustive). They also co-operate extensively in the field.

### **Interparliamentary agreements**

Relations between parliaments are not clearly regulated. In fact, parliaments are not covered by public international law, and do not possess legal personality, although they often behave as if they did. They nonetheless play an effective role on the international scene, where they count as *de facto* protagonists. Today, interparliamentary agreements are proliferating, and new international parliamentary institutions are being established.<sup>217</sup>

Under Rule 12 of the Parliamentary Assembly's Rules of Procedure, the Bureau "guides the external relations of the Assembly". The latest state of those relations is detailed in document AS/Bur(2003) 26 revised, to which a draft interparliamentary agreement is appended.

### **International organisations – their "complementary and mutually reinforcing role"**

The Declaration adopted at the EU-US Summit in Washington (1995) spoke of the "complementary and mutually reinforcing role" of the various international organisations. The same words were used at the OSCE Lisbon Summit (1996), and in the State Department's report for Congress on Nato enlargement (spring 1997).<sup>218</sup> The message is plain: international organisations must not compete or vie with one another, but co-ordinate their work to make it more effective and avoid duplication. In short, they must aim at complementarity, which holds the key to increasing their impact.

That is the principle – but has not always been the practice. In fact, every international organisation has tended to evolve its own dynamic, from which the competitive urge has never been entirely absent. Indeed, the fall of the Berlin Wall initially sparked fierce rivalries between the European organisations, but these have slowly given way to a new, universally beneficial spirit of co-operation. This is reflected in the term "interlocking institutions" (Nato, OSCE, Council of Europe, European Union), used since 1991 in communiqués issued by the Atlantic Alliance and its partnerships with the new democracies.

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217. See Klebes, H., "Les institutions parlementaires internationales", in *Revue Générale du Droit International Public*, 1988, No. 4. By the same author, with an updated appendix, *The development of international parliamentary institutions in the series Informations Constitutionnelles et Parlementaires*, No. 159, Geneva and London, 1990. See also the report by John D. Priestman on relations between national parliaments and international parliamentary assemblies, in the same series, No. 123, 1980.

218. For more details, see Klebes, H., *The Quest for Democratic Security in Europe*, Washington, United States Institute of Peace, 1998.

The report, “Building Greater Europe without dividing lines”, submitted to the Committee of Ministers by the Committee of Wise Persons in November 1998, as the Council of Europe was preparing to celebrate its 50th anniversary, deserves special attention in this context. It takes up the concept of interlocking institutions, and insists that a multi-institutional Europe is a good thing, and must be seen and affirmed as such. It stresses that co-ordination and co-operation between the national authorities responsible for deciding what the various European organisations are to do is vital, to ensure complementarity and avoid duplication and unnecessary overlapping. There should also be greater co-operation and complementarity between the Council of Europe, the European Union, the OSCE and the regional organisations. The concept of a Europe without dividing lines later became part of the EU’s vocabulary, when the new neighbourhood policy was officially launched in 2003.

The Vilnius Declaration of May 2002 on “Regional Co-operation and the Consolidation of Democratic Stability in Greater Europe” confirmed the importance attached by the Committee of Ministers to regional co-operation machinery (the Nordic Council, Co-operation of the Baltic Countries, the Central Europe Initiative, the Stability Pact, the Commonwealth of Independent States, etc.). This is also the thinking behind the Council of Europe Secretary General’s decision to convene a working meeting to co-ordinate the various regional co-operation structures.

## Conclusion

### Towards a new shape for Europe

In the years which have passed since it was founded, the Council of Europe has successfully identified the essential features of a legal system covering all the states of Europe, based on the rule of law. The basic conception behind its own legal system is summed up in its “trptych” of values – democracy, the rule of law and human rights. In fact, the first two are contained in the third. Democracy is not just a matter of letting the majority take the decisions – the rights and freedoms of the minority (or minorities) must be respected as well. Similarly, the rule of law means law which is democratically framed, and which respects human rights and basic freedoms. The Council has realised these principles on a broad front, proposing solutions which respect them. On this basis, it has helped its members to meet the challenges of social change (its work on data protection and bioethics are just two examples). Having learned the great lesson of the Second World War – that human dignity is paramount – it has repeatedly alerted its members to the many threats to human dignity inherent in social change. In recent years, it has shared that ideal with its new members, helping them forward on the difficult road to democracy.

On that level, the Council of Europe is one of the chief architects of the new Europe, which has slowly been taking shape since the Berlin Wall came down. Rivalry between the European organisations is not unknown, but is gradually giving way to complementarity. It is true that the European Union embodies a far fuller form of integration – but its geographical coverage will stay smaller than the Council’s for many years to come. It is true that the OSCE is good at devising techniques for conflict prevention and settlement – but it has no standard-setting brief. This is why the Council is very much a part of tomorrow’s Europe – a Europe spanning the whole continent and united by a shared vision of democracy and law – and is working to keep it united by devising common standards, which the other European organisations can take and use as a basis for their own activities.



## **Appendices**





# Appendix I – Statute of the Council of Europe, statutory texts and resolutions

## Statute of the Council of Europe (London, 5 May 1949)<sup>1</sup>

The Governments of the Kingdom of Belgium, the Kingdom of Denmark, the French Republic, the Irish Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Kingdom of Norway, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland,

Convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation;

Reaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy;

Believing that, for the maintenance and further realisation of these ideals and in the interests of economic and social progress, there is a need of a closer unity between all likeminded countries of Europe;

Considering that, to respond to this need and to the expressed aspirations of their peoples in this regard, it is necessary forthwith to create an organisation which will bring European States into closer association,

Have in consequence decided to set up a Council of Europe consisting of a committee of representatives of governments and of a consultative assembly, and have for this purpose adopted the following Statute.

### Chapter I – Aim of the Council of Europe

#### *Article 1*

*a.* The aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safe-guarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress.

*b.* This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common

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1. The Statute of the Council of Europe has been numbered "1" in the European Treaty Series. Amendments and texts of statutory character adopted later have been numbered 6, 7, 8 and 11.

action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms.

*c.* Participation in the Council of Europe shall not affect the collaboration of its members in the work of the United Nations and of other international organisations or unions to which they are parties.

*d.* Matters relating to national defence do not fall within the scope of the Council of Europe.

## **Chapter II – Membership**

### *Article 2*

The members of the Council of Europe are the Parties to this Statute.

### *Article 3*

Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.

### *Article 4*

Any European State which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited to become a member of the Council of Europe by the Committee of Ministers. Any State so invited shall become a member on the deposit on its behalf with the Secretary General of an instrument of accession to the present Statute.

### *Article 5*

*a.* In special circumstances, a European country which is deemed to be able and willing to fulfil the provisions of Article 3 may be invited by the Committee of Ministers to become an associate member of the Council of Europe. Any country so invited shall become an associate member on the deposit on its behalf with the Secretary General of an instrument accepting the present Statute. An associate member shall be entitled to be represented in the Consultative Assembly only.

*b.* The expression “member” in this Statute includes an associate member except when used in connexion with representation on the Committee of Ministers.

### *Article 6*

Before issuing invitations under Article 4 or 5 above, the Committee of Ministers shall determine the number of representatives on the Consultative

Assembly to which the proposed member shall be entitled and its proportionate financial contribution.

*Article 7*

Any member of the Council of Europe may withdraw by formally notifying the Secretary General of its intention to do so. Such withdrawal shall take effect at the end of the financial year in which it is notified, if the notification is given during the first nine months of that financial year. If the notification is given in the last three months of the financial year, it shall take effect at the end of the next financial year.

*Article 8*

Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.

*Article 9*

The Committee of Ministers may suspend the right of representation on the Committee and on the Consultative Assembly of a member which has failed to fulfil its financial obligation during such period as the obligation remains unfulfilled.

**Chapter III – General**

*Article 10*

The organs of the Council of Europe are:

- i. the Committee of Ministers;
- ii. the Consultative Assembly.

Both these organs shall be served by the Secretariat of the Council of Europe.

*Article 11*

The seat of the Council of Europe is at Strasbourg.

*Article 12*

The official languages of the Council of Europe are English and French. The rules of procedure of the Committee of Ministers and of the Consultative Assembly shall determine in what circumstances and under what conditions other languages may be used.

#### **Chapter IV – Committee of Ministers**

##### *Article 13*

The Committee of Ministers is the organ which acts on behalf of the Council of Europe in accordance with Articles 15 and 16.

##### *Article 14*

Each member shall be entitled to one representative on the Committee of Ministers, and each representative shall be entitled to one vote. Representatives on the Committee shall be the Ministers for Foreign Affairs. When a Minister for Foreign Affairs is unable to be present or in other circumstances where it may be desirable, an alternate may be nominated to act for him, who shall, whenever possible, be a member of his government.

##### *Article 15*

*a.* On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters. Its conclusions shall be communicated to members by the Secretary General.

*b.* In appropriate cases, the conclusions of the Committee may take the form of recommendations to the governments of members, and the Committee may request the governments of members to inform it of the action taken by them with regard to such recommendations.

##### *Article 16*

The Committee of Ministers shall, subject to the provisions of Articles 24, 28, 30, 32, 33 and 35, relating to the powers of the Consultative Assembly, decide with binding effect all matters relating to the internal organisation and arrangements of the Council of Europe. For this purpose the Committee of Ministers shall adopt such financial and administrative arrangements as may be necessary.

##### *Article 17*

The Committee of Ministers may set up advisory and technical committees or commissions for such specific purposes as it may deem desirable.

##### *Article 18*

The Committee of Ministers shall adopt its rules of procedure, which shall determine amongst other things:

- i. the quorum;
- ii. the method of appointment and term of office of its President;
- iii. the procedure for the admission of items to its agenda, including the giving of notice of proposals for resolutions; and

- iv. the notifications required for the nomination of alternates under Article 14.

*Article 19*

At each session of the Consultative Assembly the Committee of Ministers shall furnish the Assembly with statements of its activities, accompanied by appropriate documentation.

*Article 20*

*a.* Resolutions of the Committee of Ministers relating to the following important matters, namely:

- i. recommendations under Article 15.*b*;
- ii. questions under Article 19;
- iii. questions under Article 21.*a.i* and *b*;
- iv. questions under Article 33;
- v. recommendations for the amendment of Articles 1.*d*, 7, 15, 20 and 22; and
- vi. any other question which the Committee may, by a resolution passed under *d* below, decide should be subject to a unanimous vote on account of its importance,

require the unanimous vote of the representatives casting a vote, and of a majority of the representatives entitled to sit on the Committee.

*b.* Questions arising under the rules of procedure or under the financial and administrative regulations may be decided by a simple majority vote of the representatives entitled to sit on the Committee.

*c.* Resolutions of the Committee under Articles 4 and 5 require a two-thirds majority of all the representatives entitled to sit on the Committee.

*d.* All other resolutions of the Committee, including adoption of the budget, of rules of procedure and of financial and administrative regulations, recommendations for the amendment of articles of this Statute, other than those mentioned in paragraph *a.v* above, and deciding in case of doubt which paragraph of this article applies, require a two-thirds majority of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee.

*Article 21*

*a.* Unless the Committee decides otherwise, meetings of the Committee of Ministers shall be held:

- i. in private, and
- ii. at the seat of the Council.

*b.* The Committee shall determine what information shall be published regarding the conclusions and discussions of a meeting held in private.

*c.* The Committee shall meet before and during the beginning of every session of the Consultative Assembly and at such other times as it may decide.

## **Chapter V – Consultative Assembly**

### *Article 22*

The Consultative Assembly is the deliberative organ of the Council of Europe. It shall debate matters within its competence under this Statute and present its conclusions, in the form of recommendations, to the Committee of Ministers.

### *Article 23<sup>2</sup>*

*a.* The Consultative Assembly may discuss and make recommendations upon any matter within the aim and scope of the Council of Europe as defined in Chapter I. It shall also discuss and may make recommendations upon any matter referred to it by the Committee of Ministers with a request for its opinion.

*b.* The Assembly shall draw up its agenda in accordance with the provisions of paragraph *a* above. In so doing, it shall have regard to the work of other European intergovernmental organisations to which some or all of the members of the Council are parties.

*c.* The President of the Assembly shall decide, in case of doubt, whether any question raised in the course of the session is within the agenda of the Assembly.

### *Article 24*

The Consultative Assembly may, with due regard to the provisions of Article 38.*d*, establish committees or commissions to consider and report to it any matter which falls within its competence under Article 23, to examine and prepare questions on its agenda and to advise on all matters of procedure.

### *Article 25<sup>3</sup>*

*a.* The Consultative Assembly shall consist of representatives of each member, elected by its parliament from among the members thereof, or appointed from among the members of that parliament, in such manner as it shall decide, subject, however, to the right of each member government to make any additional appointments necessary when the parliament is not in session and has not laid down the procedure to be followed in that case. Each representative must be a national of the member whom he represents, but shall not at the same time be a member of the Committee of Ministers.

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2. As amended in May 1951.

3. First sentence of paragraph *a*, as amended in May 1951. The last two sub-paragraphs of paragraph *a* were added in May 1953; first sub-paragraph of paragraph *a* amended in October 1970.

The term of office of representatives thus appointed will date from the opening of the ordinary session following their appointment; it will expire at the opening of the next ordinary session or of a later ordinary session, except that, in the event of elections to their parliaments having taken place, members shall be entitled to make new appointments.

If a member fills vacancies due to death or resignation, or proceeds to make new appointments as a result of elections to its parliament, the term of office of the new representatives shall date from the first sitting of the Assembly following their appointment.

*b.* No representative shall be deprived of his position as such during a session of the Assembly without the agreement of the Assembly.

*c.* Each representative may have a substitute who may, in the absence of the representative, sit, speak and vote in his place. The provisions of paragraph *a* above apply to the appointment of substitutes.

*Article 26<sup>4</sup>*

Members shall be entitled to the number of representatives given below:

|                        |    |
|------------------------|----|
| Albania                | 4  |
| Andorra                | 2  |
| Armenia                | 4  |
| Austria                | 6  |
| Azerbaijan             | 6  |
| Belgium                | 7  |
| Bosnia and Herzegovina | 5  |
| Bulgaria               | 6  |
| Croatia                | 5  |
| Cyprus                 | 3  |
| Czech Republic         | 7  |
| Denmark                | 5  |
| Estonia                | 3  |
| Finland                | 5  |
| France                 | 18 |
| Georgia                | 5  |
| Germany                | 18 |
| Greece                 | 7  |
| Hungary                | 7  |
| Iceland                | 3  |
| Ireland                | 4  |
| Italy                  | 18 |

4. As amended in December 1951, in May 1958, in November 1961, in May 1963, in May 1965, in February 1971, in December 1974, in October 1976, in January 1978, in November 1978, in November 1988, in May 1989, in November 1990, in November 1991, in May 1992, in May 1993, in June 1993, in October 1993, in November 1994, in February 1995, in November 1995, in February 1996, in November 1996, in April 1999, in January 2001, in May 2002, in April 2003 and in October 2004.

|  |    |
|--|----|
| Latvia   | 3  |
| Liechtenstein  | 2  |
| Lithuania  | 4  |
| Luxembourg   | 3  |
| Malta  | 3  |
| Moldova  | 5  |
| Monaco   | 2  |
| Netherlands  | 7  |
| Norway   | 5  |
| Poland   | 12 |
| Portugal   | 7  |
| Romania  | 10 |
| Russian Federation                                   | 18 |
| San Marino   | 2  |
| Serbia and Montenegro                                | 7  |
| Slovak Republic                                      | 5  |
| Slovenia   | 3  |
| Spain  | 12 |
| Sweden   | 6  |
| Switzerland  | 6  |
| “The former Yugoslav Republic of Macedonia”          | 3  |
| Turkey   | 12 |
| Ukraine  | 12 |
| United Kingdom of Great Britain and Northern Ireland | 18 |

*Article 27<sup>5</sup>*

The conditions under which the Committee of Ministers collectively may be represented in the debates of the Consultative Assembly, or individual representatives on the Committee or their alternates may address the Assembly, shall be determined by such rules of procedure on this subject as may be drawn up by the Committee after consultation with the Assembly.

*Article 28*

*a.* The Consultative Assembly shall adopt its rules of procedure and shall elect from members its President, who shall remain in office until the next ordinary session.

*b.* The President shall control the proceedings but shall not take part in the debate or vote. The substitute of the representative who is President may sit, speak and vote in his place.

*c.* The rules of procedure shall determine, *inter alia*:

- i. the quorum;
- ii. the manner of the election and terms of office of the President and other officers;

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5. As amended in May 1951.



- iii. the manner in which the agenda shall be drawn up and be communicated to representatives;
- iv. the time and manner in which the names of representatives and their substitutes shall be notified.

*Article 29*

Subject to the provisions of Article 30, all resolutions of the Consultative Assembly, including resolutions:

- i. embodying recommendations to the Committee of Ministers;
- ii. proposing to the Committee matters for discussion in the Assembly;
- iii. establishing committees or commissions;
- iv. determining the date of commencement of its sessions;
- v. determining what majority is required for resolutions in cases not covered by sections i to iv above or determining cases of doubt as to what majority is required,

shall require a two-thirds majority of the representatives casting a vote.

*Article 30*

On matters relating to its internal procedure, which includes the election of officers, the nomination of persons to serve on committees and commissions and the adoption of rules of procedure, resolutions of the Consultative Assembly shall be carried by such majorities as the Assembly may determine in accordance with Article 29.v.

*Article 31*

Debates on proposals to be made to the Committee of Ministers that a matter should be placed on the agenda of the Consultative Assembly shall be confined to an indication of the proposed subject-matter and the reasons for and against its inclusion in the agenda.

*Article 32*

The Consultative Assembly shall meet in ordinary session once a year, the date and duration of which shall be determined by the Assembly so as to avoid as far as possible overlapping with parliamentary sessions of members and with sessions of the General Assembly of the United Nations. In no circumstances shall the duration of an ordinary session exceed one month unless both the Assembly and the Committee of Ministers concur.

*Article 33*

Ordinary sessions of the Consultative Assembly shall be held at the seat of the Council unless both the Assembly and the Committee of Ministers concur that the session should be held elsewhere.

*Article 34<sup>6</sup>*

The Consultative Assembly may be convened in extraordinary session, upon the initiative either of the Committee of Ministers or of the President of the Assembly after agreement between them, such agreement also to determine the date and place of the session.

*Article 35*

Unless the Consultative Assembly decides otherwise, its debates shall be conducted in public.

**Chapter VI – Secretariat**

*Article 36*

*a.* The Secretariat shall consist of a Secretary General, a Deputy Secretary General and such other staff as may be required.

*b.* The Secretary General and Deputy Secretary General shall be appointed by the Consultative Assembly on the recommendation of the Committee of Ministers.

*c.* The remaining staff of the Secretariat shall be appointed by the Secretary General, in accordance with the administrative regulations.

*d.* No member of the Secretariat shall hold any salaried office from any government or be a member of the Consultative Assembly or of any national legislature or engage in any occupation incompatible with his duties.

*e.* Every member of the staff of the Secretariat shall make a solemn declaration affirming that his duty is to the Council of Europe and that he will perform his duties conscientiously, uninfluenced by any national considerations, and that he will not seek or receive instructions in connexion with the performance of his duties from any government or any authority external to the Council and will refrain from any action which might reflect on his position as an international official responsible only to the Council. In the case of the Secretary General and the Deputy Secretary General this declaration shall be made before the Committee, and in the case of all other members of the staff, before the Secretary General.

*f.* Every member shall respect the exclusively international character of the responsibilities of the Secretary General and the staff of the Secretariat and not seek to influence them in the discharge of their responsibilities.

*Article 37*

*a.* The Secretariat shall be located at the seat of the Council.

*b.* The Secretary General is responsible to the Committee of Ministers for the work of the Secretariat. Amongst other things, he shall, subject to

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6. As amended in May 1951.

Article 38.*d*, provide such secretariat and other assistance as the Consultative Assembly may require.

## **Chapter VII – Finance**

### *Article 38<sup>7</sup>*

*a.* Each member shall bear the expenses of its own representation in the Committee of Ministers and in the Consultative Assembly.

*b.* The expenses of the Secretariat and all other common expenses shall be shared between all members in such proportions as shall be determined by the Committee on the basis of the population of members.

The contributions of an associate member shall be determined by the Committee.

*c.* In accordance with the financial regulations, the budget of the Council shall be submitted annually by the Secretary General for adoption by the Committee.

*d.* The Secretary General shall refer to the Committee requests from the Assembly which involve expenditure exceeding the amount already allocated in the budget for the Assembly and its activities.

*e.* The Secretary General shall also submit to the Committee of Ministers an estimate of the expenditure to which the implementation of each of the recommendations presented to the Committee would give rise. Any resolution the implementation of which requires additional expenditure shall not be considered as adopted by the Committee of Ministers unless the Committee has also approved the corresponding estimates for such additional expenditure.

### *Article 39*

The Secretary General shall each year notify the government of each member of the amount of its contribution, and each member shall pay to the Secretary General the amount of its contribution, which shall be deemed to be due on the date of its notification, not later than six months after that date.

## **Chapter VIII – Privileges and immunities**

### *Article 40*

*a.* The Council of Europe, representatives of members and the Secretariat shall enjoy in the territories of its members such privileges and immunities as are reasonably necessary for the fulfilment of their functions. These immunities shall include immunity for all representatives to the Consultative Assembly from arrest and all legal proceedings in the territories of all members, in respect of words spoken and votes cast in the debates of the Assembly or its committees or commissions.

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<sup>7</sup> Paragraph *e* of Article 38 was added in May 1951.

*b.* The members undertake as soon as possible to enter into agreement for the purpose of fulfilling the provisions of paragraph *a* above. For this purpose the Committee of Ministers shall recommend to the governments of members the acceptance of an agreement defining the privileges and immunities to be granted in the territories of all members. In addition, a special agreement shall be concluded with the Government of the French Republic defining the privileges and immunities which the Council shall enjoy at its seat.

## **Chapter IX – Amendments**

### *Article 41*

*a.* Proposals for the amendment of this Statute may be made in the Committee of Ministers or, in the conditions provided for in Article 23, in the Consultative Assembly.

*b.* The Committee shall recommend and cause to be embodied in a protocol those amendments which it considers to be desirable.

*c.* An amending protocol shall come into force when it has been signed and ratified on behalf of two-thirds of the members.

*d.* Notwithstanding the provisions of the preceding paragraphs of this article, amendments to Articles 23 to 35, 38 and 39 which have been approved by the Committee and by the Assembly shall come into force on the date of the certificate of the Secretary General, transmitted to the governments of members, certifying that they have been so approved. This paragraph shall not operate until the conclusion of the second ordinary session of the Assembly.

## **Chapter X – Final provisions**

### *Article 42*

*a.* This Statute shall be ratified. Ratifications shall be deposited with the Government of the United Kingdom of Great Britain and Northern Ireland.

*b.* . The present Statute shall come into force as soon as seven instruments of ratification have been deposited. The Government of the United Kingdom shall transmit to all signatory governments a certificate declaring that the Statute has entered into force and giving the names of the members of the Council of Europe on that date.

*c.* Thereafter each other signatory shall become a Party to this Statute as from the date of the deposit of its instrument of ratification.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Statute.

Done at London, this 5th day of May 1949, in English and French, both texts being equally authentic, in a single copy which shall remain deposited in the archives of the Government of the United Kingdom which shall transmit certified copies to the other signatory governments.

## **Texts of a statutory character<sup>8</sup> adopted by the Committee of Ministers in the course of its 8th and 9th Sessions with a view to their ultimate inclusion in a revised Statute**

### **I – Resolution adopted by the Committee of Ministers at its 8th Session, May 1951**

The Committee of Ministers,

Having regard to certain proposals made by the Consultative Assembly for the revision of the Statute of the Council of Europe;

Considering that the provisions hereinafter set out are not inconsistent with the present Statute,

Declares its intention of putting into effect the following provisions:

#### **Admission of new members**

The Committee of Ministers, before inviting a State to become a member or associate member of the Council of Europe, in accordance with Articles 4 and 5 of the Statute, or inviting a member of the Council of Europe to withdraw, in accordance with Article 8, shall first consult the Consultative Assembly in accordance with existing practice.

#### **Powers of the Committee of Ministers** (Article 15 of the Statute)

The conclusions of the Committee may, where appropriate, take the form of a convention or agreement. In that event the following provisions shall be applied:

- i. The convention or agreement shall be submitted by the Secretary General to all members for ratification;
- ii. Each member undertakes that, within one year of such submission or, where this is impossible owing to exceptional circumstances, within eighteen months, the question of ratification of the convention or agreement shall be brought before the competent authority or authorities in its country;
- iii. The instruments of ratification shall be deposited with the Secretary General;
- iv. The convention or agreement shall be binding only on such members as have ratified it.

#### **Joint Committee**

- i. The Joint Committee is the organ of co-ordination of the Council of Europe. Without prejudice to the respective rights of the Committee of Ministers and

<sup>8</sup> This edition of the "Texts of a statutory character" incorporates the verbal emendations, with a view to a precise concordance of the French and English versions, which were approved at the 40th meeting of the Ministers' Deputies (8-16 June 1956).

the Consultative Assembly, the functions of the Joint Committee shall be, in particular:

- a.* to examine the problems which are common to those two organs;
  - b.* to draw the attention of those two organs to questions which appear to be of particular interest to the Council of Europe;
  - c.* to make proposals for the draft agenda of the sessions of the Committee of Ministers and of the Consultative Assembly;
  - d.* to examine and promote means of giving practical effect to the recommendations adopted by one or other of these two organs.
- ii. *a.* The Joint Committee shall be composed in principle of twelve members, five representing the Committee of Ministers and seven representing the Consultative Assembly, the latter number to include the President of the Consultative Assembly, who shall be a member *ex officio*.

The number of members may be increased by agreement between the Committee of Ministers and the Assembly. Nevertheless, the Committee of Ministers shall, at its discretion, be entitled to increase the number of its representatives by one or two.

- b.* The Committee of Ministers and the Consultative Assembly shall each be free to choose its own method of selecting its representatives on the Joint Committee.
  - c.* The Secretary General shall be entitled to attend the meetings of the Joint Committee in an advisory capacity.
- iii. *a.* The President of the Consultative Assembly shall be the Chairman of the Joint Committee.
- b.* No proceedings of the Committee shall be regarded as valid unless there is a quorum consisting of three of the representatives of the Committee of Ministers and five of the representatives of the Consultative Assembly.
  - c.* The conclusions of the Joint Committee shall be reached without voting.
  - d.* The meetings of the Joint Committee shall be convened by the Chairman and shall take place as often as is necessary and, in particular, before and after the sessions of the Committee of Ministers and of the Consultative Assembly.
  - e.* Subject to the foregoing provisions, the Joint Committee may adopt its own Rules of Procedure.

#### **Specialised authorities**

- i. *a.* The Council of Europe may take the initiative of instituting negotiations between members with a view to the creation of European specialised authorities, each with its own competence in the economic, social, cultural, legal, administrative or other related fields.
- b.* Each member shall remain free to adhere or not to adhere to any such European specialised authority.

- ii. If member States set up European specialised authorities among themselves on their own initiative, the desirability of bringing these authorities into relationship with the Council of Europe shall be considered, due account being taken of the interests of the European community as a whole.
- iii. *a.* The Committee of Ministers may invite each authority to submit to it a periodical report on its activities.
  - b.* In so far as any agreement setting up a specialised authority provides for a parliamentary body, this body may be invited to submit a periodical report to the Consultative Assembly of the Council of Europe.
- iv. *a.* The conditions under which a specialised authority shall be brought into relationship with the Council may be determined by special agreements concluded between the Council and the specialised authority concerned. Such agreements may cover, in particular:
  - 1. reciprocal representation and, if the question arises, appropriate forms of integration between the organs of the Council of Europe and those of the specialised authority;
  - 2. the exchange of information, documents and statistical data;
  - 3. the presentation of reports by the specialised authority to the Council of Europe and of recommendations of the Council of Europe to the specialised authority;
  - 4. arrangements concerning staff and administrative, technical, budgetary and financial services.
  - b.* Such agreements shall be negotiated and concluded on behalf of the Council of Europe by the Committee of Ministers after an opinion has been given by the Consultative Assembly.
- v. The Council of Europe may co-ordinate the work of the specialised authorities brought into relationship with the Council of Europe in accordance with the foregoing provisions by holding joint discussions and by submitting recommendations to them, as well as by submitting recommendations to member governments.

**Relations with intergovernmental and non-governmental international organisations**

- i. The Committee of Ministers may, on behalf of the Council of Europe, conclude with any intergovernmental organisation agreements on matters which are within the competence of the Council. These agreements shall, in particular, define the terms on which such an organisation shall be brought into relationship with the Council of Europe.
- ii. The Council of Europe, or any of its organs, shall be authorised to exercise any functions coming within the scope of the Council of Europe which may be entrusted to it by other European intergovernmental organisations. The Committee of Ministers shall conclude any agreements necessary for this purpose.

- iii. The agreement referred to in paragraph i may provide, in particular:
- a.* that the Council shall take appropriate steps to obtain from, and furnish to, the organisations in question regular reports and information, either in writing or orally;
  - b.* that the Council shall give opinions and render such services as may be requested by these organisations.
- iv. The Committee of Ministers may, on behalf of the Council of Europe, make suitable arrangements for consultation with international non-governmental organisations which deal with matters that are within the competence of the Council of Europe.

## **II – Partial Agreements**

*(Resolution adopted by the Committee of Ministers at its 9th Session, August 1951)*

The Committee of Ministers,

Having regard to Article 20.*a* of the Statute, which provides that recommendations by the Committee of Ministers to member governments require the unanimous vote of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee;

Having regard to Recommendation 3 adopted by the Consultative Assembly in August 1950;

Desirous, whenever possible, of reaching agreement by unanimous decision, but recognising, nevertheless, that in certain circumstances individual members may wish to abstain from participating in a course of action advocated by other members;

Considering that it is desirable for this purpose that the procedure of abstention already recognised under Article 20.*a* of the Statute should be so defined that the individual representatives on the Committee of Ministers should be able, by abstaining from voting for a proposal, to avoid committing their governments to the decision taken by their colleagues,

Resolves:

1. If the Committee, by the unanimous vote of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee, decides that abstention from participation in any proposal before it shall be permitted, that proposal shall be put to the Committee; it shall be considered as adopted only by the representatives who then vote in favour of it, and its application shall be limited accordingly.
2. Any additional expenditure incurred by the Council in connection with a proposal adopted under the above procedure shall be borne exclusively by the members whose representatives have voted in favour of it.



## Statutory resolutions

### Statutory Resolution (93) 26 on observer status

*(Adopted by the Committee of Ministers on 14 May 1993 at its 92nd Session)*

The Committee of Ministers, under the terms of Articles 15.a and 16 of the Statute of the Council of Europe,

Having regard to the Parliamentary Assembly's proposals for institutional reforms within the Council of Europe;

Bearing in mind the changed political situation in Europe and the world;

Convinced that this situation requires increased co-operation between the Council of Europe and non-member States sharing the Organisation's ideals and values;

Considering that an institutional framework should be given to such co-operation;

Considering that the provisions hereinafter set out are not inconsistent with the Statute of the Council of Europe,

Resolves as follows :

I. Any State willing to accept the principles of democracy, the rule of law and of 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.

II. States enjoying observer status shall be entitled to send observers to those of the Council of Europe Committees of experts which were set up under Article 17 of the Statute and to which all member States are entitled to designate participants.

III. States enjoying observer status shall be entitled, upon invitation by the host country, to send observers to conferences of specialised ministers.

IV. Decisions on inviting States enjoying observer status to participate in the activities of Partial, Enlarged or Enlarged Partial Agreements shall be taken in accordance with the rules applicable to the respective agreement.

V. Observer status gives no right to be represented on the Committee of Ministers or the Parliamentary Assembly unless a specific decision has been taken by one of these organs on its own behalf.

VI. States enjoying observer status may appoint a permanent observer to the Council of Europe.

VII. An international intergovernmental organisation willing to co-operate closely with the Council of Europe and deemed able to make an important contribution to its work, may be granted by the Committee of Ministers, after

consulting the Parliamentary Assembly, observer status with the rights set out in Articles II, III and IV for States enjoying observer status.

VIII. The Committee of Ministers may suspend and, after consulting the Parliamentary Assembly, withdraw observer status.

### **Statutory Resolution (93) 27 on majorities required for decisions of the Committee of Ministers**

*(Adopted by the Committee of Ministers on 14 May 1993 at its 92nd Session)*

The Committee of Ministers, under the terms of Articles 15*a* and 16 of the Statute of the Council of Europe,

Having regard to the Parliamentary Assembly's proposals for institutional reforms within the Council of Europe;

Bearing in mind the increased membership of the Council of Europe and the need to strengthen the Organisation's capacity for action;

Considering it therefore desirable to reduce the number of cases where unanimity is required for decisions of the Committee of Ministers;

Considering that the provisions hereinafter set out are not inconsistent with the Statute of the Council of Europe,

Resolves as follows :

#### **I. Opening of Conventions and Agreements for signature**

Decisions on the opening for signature of Conventions and Agreements concluded within the Council of Europe shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee, as set out in Article 20.*d* of the Statute.

#### **II. Partial Agreements**

In accordance with the Statutory Resolution on Partial and Enlarged Agreements decisions authorising certain member States to pursue an activity as a Partial Agreement shall be taken by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee, as set out in Article 20.*d* of the Statute.

### **Statutory Resolution (93) 28 on partial and enlarged agreements**

*(Adopted by the Committee of Ministers on 14 May 1993 at its 92nd Session)*

The Committee of Ministers,

Considering that the Statute of the Council of Europe gives the Organisation competence in a wide range of spheres, in which it pursues the aim of achieving a greater unity between its members;

Considering that Partial Agreements allowing members to abstain from participating in a course of action advocated by other members, as established in the Statutory Resolution adopted by the Committee of Ministers at its 9th Session on 2 August 1951, have proved fruitful;

Considering that in some cases the problems dealt with in the Council of Europe outstrip the geographical framework of the territory of its members and that the Organisation must be ready to examine any proposal emanating from non-member States for the joint carrying out of an intergovernmental activity;

Considering that provision ought therefore to be made for flexible and non-institutionalised arrangements whereby some or all members as well as non-members of the Council of Europe may pursue an intergovernmental activity together on an equal footing, within the framework of a Partial, Enlarged Partial or Enlarged Agreement;

Having regard to the Parliamentary Assembly's favourable opinion,

Resolves as follows:

#### **I. Participation in activities**

Activities or a series of activities which are not pursued as a joint effort by all member States of the Council of Europe or to which one wishes to associate non-member States of the Council of Europe may be carried out:

- by some member States of the Council of Europe as a Partial Agreement;
- by some member States of the Council of Europe together with one or more non-member States as an Enlarged Partial Agreement;
- by all member States of the Council of Europe together with one or more non-member States as an Enlarged Agreement.

#### **II. Decision on participation**

The Committee of Ministers may, by the majority stipulated in Article 20.d of the Statute of the Council of Europe:

- authorise some member States to carry out an activity or a series of activities within the framework of the Organisation, the activity or series of activities being adopted only by the representatives who vote in favour of it and being limited accordingly;
- in its composition restricted to representatives of member States of a Partial Agreement, invite any non-member State to join the Partial Agreement or certain of its activities;
- invite any non-member State to join the member States of the Council of Europe in carrying out an activity or series of activities.

#### **III. Budget**

The Partial Agreement, Enlarged Partial Agreement or Enlarged Agreement (hereinafter "the Agreement") shall be financed by a budget constituted by contributions from the member States and non-member States participating in it.

The scale according to which the contributions of non-member States are calculated shall be decided in agreement with the latter; as a general rule, that scale shall conform to the criteria for determining the scale of contributions to the general budget of the Council of Europe.

The budget shall be adopted annually by an organ composed of the representatives on the Committee of Ministers of the member States participating in the activity and where appropriate of representatives of the non-member States participating in the activity who shall thus be entitled to vote.

The Financial Regulations shall apply, *mutatis mutandis*, to the adoption and management of the budget of the Agreement.

#### **IV. Functioning of the Agreement**

The decision setting up the Agreement shall provide for its organs and lay down specific arrangements for the pursuit of its activities. Unless otherwise stipulated in the decision, the general rules in force in the Council of Europe concerning committee structures, terms of reference and working methods and, in particular, the Rules of Procedure for the Meetings of the Ministers' Deputies shall apply, *mutatis mutandis*, to the organs of the Agreement.

Secretarial services for the organs of the Agreement shall be provided by the Secretary General of the Council of Europe.

#### **V. Additional members and observers**

Unless otherwise provided in the decision setting up the Agreement,

- any member State of the Council of Europe may join at any moment any Agreement by making a declaration to this effect to the Secretary General;
- any non-member State of the Council of Europe may be invited to join an Enlarged or Enlarged Partial Agreement by decision of the Committee of Ministers, following consultation of the non-member States already participating;
- any non-member State and any international intergovernmental organisation may be invited by the Committee of Ministers, following consultation of the non-member States already participating, to take part as an observer in the activities of a Partial, Enlarged Partial or Enlarged Agreement. No budget contribution shall be required from observers.

#### **VI. European Community**

The European Community may be invited by the Committee of Ministers to participate in a Partial, Enlarged Partial or Enlarged Agreement. The modalities of its participation shall be determined in the decision inviting it to participate.

#### **VII. Transitory provisions**

This text replaces the Statutory Resolution on Partial Agreements adopted by the Committee of Ministers at its 9th Session on 2 August 1951.

Partial Agreements already established shall continue to function according to their own rules.

**Statutory Resolution (2000) 1 relating to the Congress of Local and Regional Authorities of Europe<sup>9</sup>**

*(Adopted by the Committee of Ministers on 15 March 2000 at the 702nd meeting of the Ministers' Deputies)<sup>10</sup>*

The Committee of Ministers, under the terms of Articles 15.a and 16 of the Statute of the Council of Europe,

Having regard to Statutory Resolution (94) 3 relating to the setting up of the Congress of Local and Regional Authorities of Europe;

Having regard to the Parliamentary Assembly's proposal for institutional reforms within the Council of Europe;

Having regard to the proposals of the Standing Conference of Local and Regional Authorities of Europe relating to the reform of its Statute and of the Congress of Local and Regional Authorities of Europe relating to statutory reinforcement and revision of the Charter;

Having consulted the organisations representing local and regional authorities of Europe, in particular the Assembly of European Regions and the Council of European Municipalities and Regions, and taking into account their contribution to the development of democracy at regional and local levels;

Considering that one of the bases of a democratic society is the existence of a solid and effective local and regional democracy in conformity with the principle of subsidiarity included in the European Charter of Local Self-Government whereby public responsibilities shall be exercised, in preference, by those authorities which are closest to the citizens, having regard to the extent and nature of the public tasks and the requirements of efficiency and economy;

Wishing to enhance and develop the role of local and regional authorities within the institutional structure of the Council of Europe;

Bearing in mind that the creation of a consultative organ genuinely representing both local and regional authorities in Europe has already been approved in principle by the heads of state and government of the Council of Europe at the Vienna Summit;

Considering that the provisions hereinafter set out are not inconsistent with the Statute of the Council of Europe,

Resolves as follows:

*Article 1*

The Congress of Local and Regional Authorities of Europe (hereinafter referred to as the CLRAE) is the organ representing local and regional

9. Note by the Secretariat: this text replaces Statutory Resolution (94) 3 relating to the setting up of the Congress of Local and Regional Authorities of Europe adopted by the Committee of Ministers on 14 January 1994, at the 506th meeting of the Ministers' Deputies. See Article 6.

10. The same day the Committee of Ministers adopted the Charter of the Congress of Local and Regional Authorities of Europe set out in the appendix to this resolution.

authorities. Its membership and functions are regulated by the present articles, by the Charter adopted by the Committee of Ministers and by the Rules of Procedure adopted by the CLRAE.

*Article 2*

1. The CLRAE shall be a consultative body the aims of which shall be:
  - a.* to ensure the participation of local and regional authorities in the implementation of the ideal of European unity, as defined in Article 1 of the Statute of the Council of Europe, as well as their representation and active involvement in the Council of Europe's work;
  - b.* to submit proposals to the Committee of Ministers in order to promote local and regional democracy;
  - c.* to promote co-operation between local and regional authorities;
  - d.* to maintain, within the sphere of its responsibilities, contact with international organisations as part of the general external relations policy of the Council of Europe;
  - e.* to work in close co-operation, on the one hand with the national, democratic associations of local and regional authorities, and on the other hand with the European organisations representing local and regional authorities of the member States of the Council of Europe.
2. The Committee of Ministers and the Parliamentary Assembly shall consult the CLRAE on issues which are likely to affect the responsibilities and essential interests of the local and/or regional authorities which the CLRAE represents.
3. The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented.
4. Recommendations and opinions of the CLRAE shall be sent as appropriate to the Parliamentary Assembly and/or the Committee of Ministers. Resolutions and other adopted texts which do not entail possible action by the Assembly and/or the Committee of Ministers shall be transmitted to them for their information.

*Article 3*

1. Allowing for exceptions foreseen in its Charter, the CLRAE shall be composed of Representatives holding a local or regional authority electoral mandate. Delegates shall be appointed according to the criteria and procedure established in the Charter, which will be adopted by the Committee of Ministers, each state ensuring in particular an equitable representation of its various types of local and regional authorities.
2. Each member state shall have the right to the same number of seats in the CLRAE as it has in the Parliamentary Assembly. Each member state may send a number of Substitutes equal to the number of Representatives appointed according to the same criteria and procedure.

3. Representatives and Substitutes shall be sent for a period of two ordinary sessions of the CLRAE and shall maintain their functions until the opening of the following session.

*Article 4*

1. The CLRAE shall meet in ordinary session once a year. Ordinary sessions shall be held at the seat of the Council of Europe unless the Congress and the Committee of Ministers decide by common consent that the session should be held elsewhere.

2. The CLRAE shall exercise its functions with the participation of two Chambers: one representative of local authorities (hereinafter referred to as the "Chamber of Local Authorities") and the other representative of regional authorities (hereinafter referred to as the "Chamber of Regions"). The CLRAE may set up, within the limits of the budgetary resources allocated to it and considering the priorities of the Council of Europe, the following bodies: a Bureau, a Standing Committee, statutory committees and if need be ad hoc working groups, which are necessary to perform its tasks. The Congress will inform the Committee of Ministers on the setting up of its committees. The Bureau, Standing Committee and Statutory Committees may meet in Chamber only during the plenary meetings of these bodies, and any matter considered by a Statutory Committee meeting in Chamber may not be considered by the plenary meeting of that Committee.

*Article 5*

The number of seats in the statutory committees will be set by the Congress in its Rules of Procedure, in such a way as to guarantee the principle according to which each Congress member has the right to a seat on a committee.

*Article 6*

1. The current text replaces Statutory Resolution (94) 3 relating to the setting up of the Congress of Local and Regional Authorities of Europe adopted by the Committee of Ministers on 14 January 1994, at the 506th meeting of the Ministers' Deputies.

2. The text of the Charter of the Congress of Local and Regional Authorities of Europe appended to the current Statutory Resolution replaces the text of the Charter adopted by the Committee of Ministers on 14 January 1994 at the 506th meeting of the Ministers' Deputies.

**Appendix to Statutory Resolution (2000) I**

**Charter of the Congress of Local and Regional Authorities of Europe (CLRAE)**

*(Adopted by the Committee of Ministers on 15 March 2000 at the 702nd meeting of the Ministers' Deputies)*

*Article 1*

The objectives of the CLRAE are set out in Article 2 of Statutory Resolution (2000) I relating to the Congress of Local and Regional Authorities of Europe.

*Article 2*

1. Allowing for exceptions foreseen in a transitory provision of the present Charter, the CLRAE shall be composed of Representatives who shall be chosen from among holders of a local or regional authority electoral mandate.

2. The membership of each member State's delegation to the CLRAE shall be such as to ensure:

- a.* a balanced geographical distribution of Representatives from the member State's territory;
- b.* equitable representation of the various types of local and regional authorities in the member State;
- c.* equitable representation of the various political forces in the statutory bodies of local and regional authorities in the member State;
- d.* equitable representation of women and men on the statutory bodies of local and regional authorities in the member State.

3. Each member State shall have the right to the same number of seats in the CLRAE as it has in the Parliamentary Assembly. Each member State may send a number of Substitutes equal to the number of Representatives it sends. Substitutes shall be members of the Chambers in the same capacity as Representatives.

4. With regard to the Chamber of Regions, Representatives must be from authorities placed between central government and local authorities and enjoying prerogatives either of self-organisation or of a type normally associated with the central authority and having a genuine competence to manage, on their own responsibility and in the interests of their populations, a substantial share of public affairs, in accordance with the principle of subsidiarity. If a country has authorities which cover a large area and exercise both local and regional responsibilities, Representatives of such authorities shall also be entitled to sit in the Chamber of Regions. A list of these authorities shall be provided in the context of the national appointment procedure. Member States which do not have regional authorities within the meaning of this paragraph shall be able to send Representatives to the Chamber of Regions and its organs in an advisory capacity.<sup>11</sup>

5. The rules and procedures governing the choice of Representatives to the CLRAE shall also apply to Substitutes.

6. Representatives and Substitutes shall be sent for a period of two ordinary sessions of the CLRAE and shall maintain their functions until the opening of the following session. In the event of the death or resignation of a Representative or Substitute or of loss of the mandate referred to in paragraph 1 above, a replacement shall be chosen, in accordance with the same rules and procedure, for the remainder of his or her predecessor's mandate. In addition, the composition of national delegations may be amended to take account of the altered political situation following local and/or regional elec-

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11. This provision does not affect the participation of these Representatives as full members of the plenary Congress and its organs.



tions, at the latest one month prior to the plenary session. The new delegation should, in this event, also comply with the aforementioned criteria.

*Article 3*

1. Representatives and Substitutes to the CLRAE shall be appointed by an official procedure specific to each member state. In particular, it shall provide for consultation in each member state of the relevant associations and/or institutional bodies and shall specify the principles to be adhered to in apportioning Representatives in the two Chambers. Each government shall inform the Secretary General of the Council of Europe of this procedure. Such a procedure shall be approved by the CLRAE in conformity with the principles contained in its Rules of Procedure.

2. Each member State, when notifying the Secretary General of the composition of its delegation, shall indicate those Representatives and Substitutes who will be members of the Chamber of Local Authorities and those who will be members of the Chamber of Regions.

*Article 4*

Each time members are appointed, the Bureau shall examine the credentials of the Representatives thus appointed. This examination by the Bureau shall result in a vote in session or, if the appointment takes place at another time, in the Standing Committee. Refusal to accept the credentials of a member can lead to consequences ranging from the non-payment of daily allowances to straightforward exclusion.

*Article 5*

1. International associations of local and regional authorities which have consultative status with the Council of Europe shall have Observer status with the CLRAE. Other organisations may, on request, obtain Observer status with the CLRAE, if its Standing Committee so decides, or with one of its Chambers under the latter's Rules of Procedure.

2. The CLRAE may, on request, grant Special Guest status to delegations from local and regional authorities in European non-member States which have such status with the Parliamentary Assembly of the Council of Europe. The Bureau of the CLRAE shall assign to each Special Guest state the same number of seats as it has in the Parliamentary Assembly. The appointment of Special Guest delegations shall be based on the same criteria set out in Articles 2 and 3.

3. Observers and members of the delegations mentioned in paragraph 2 shall take part in the proceedings of the CLRAE and of its Chambers, with the right to speak, subject to the President's consent, but not to vote. The other conditions of their participation in the Standing Committee, Statutory Committees and in working groups shall be laid down in the Rules of Procedure of the CLRAE.

*Article 6*

1. The CLRAE shall meet in ordinary session once a year. Ordinary sessions shall be held at the Council of Europe's headquarters, unless otherwise decided, by common consent, by the CLRAE or its Standing Committee and the Committee of Ministers.

2. The sessions of each of the two Chambers shall be held either immediately before and/or after the session of the CLRAE. On the proposal of the Bureau of the CLRAE, either Chamber may hold other sessions after prior agreement with the Committee of Ministers.

*Article 7*

1. The CLRAE shall organise its work within the framework of two Chambers: the Chamber of Local Authorities and the Chamber of Regions. Each Chamber has at its disposal a number of seats equal to that of the Congress itself.

2. Each Chamber shall appoint its Bureau which shall be composed of the President of the Chamber and seven members, respecting as far as possible a fair geographical distribution among member States. No member state shall have more than one Representative on the Bureau of either Chamber.

*Article 8*

1. The Standing Committee shall act on behalf of the CLRAE between sessions.

2. The Standing Committee shall consist of two Representatives from each national delegation. Members of the Bureau of the CLRAE shall be included among those Representatives. States which are represented in only one Chamber shall have only one seat on the Standing Committee.

*Article 9*

1. The two Bureaux shall constitute jointly the Bureau of the CLRAE, which shall be responsible, in the period between the sessions of the Standing Committee and the Congress, for ensuring the continuity of the Congress's work.

2. The Bureau shall also be responsible for the preparation of the plenary session of the CLRAE, the co-ordination of the work of the two Chambers, in particular the distribution of questions between the two Chambers, the co-ordination of the work of the statutory committees, preparation of the budget and the balanced allocation of budgetary resources between the Congress and the two Chambers. As regards the distribution of questions, no question may be considered in both Chambers. Any matter in which both Chambers would have an interest shall be considered in the CLRAE.

3. The Bureau of the Congress shall be presided over by the President of the Congress.

*Article 10*

1. After the distribution of questions between the two Chambers and the statutory committees in accordance with Article 9, the Bureau of the

Chamber competent to deal with a question may, in exceptional cases, set up an ad hoc working group with a limited number of members (a maximum of eleven) empowered with specific terms of reference (preparation of reports, organisation of conferences, follow-up to co-operation projects or to specific intergovernmental activities of the Council of Europe).

2. When a question falls within the competence of the two Chambers, the Bureau of the CLRAE may, in exceptional cases, set up an ad hoc working group common to both Chambers.

3. Organisation of the work of ad hoc working groups shall be governed by the Rules of Procedure.

4. The CLRAE and its two Chambers may consult, in accordance with the provisions to be set out in their Rules of Procedure, representatives of international associations of local and regional authorities mentioned in Article 5 as well as national associations of local and regional authorities designated by national delegations. The cost of participation in these consultations shall be borne by such organisations or associations.

#### *Article 11*

1. All the recommendations and opinions to be addressed to the Committee of Ministers and/or the Parliamentary Assembly as well as the resolutions addressed to the local and regional authorities as a whole shall be adopted by the CLRAE at its plenary session or by the Standing Committee.

2. However, when a question is considered by the Bureau of the CLRAE as falling exclusively within the competence of a Chamber:

- a.* the recommendations and opinions relating to such questions which are addressed to the Committee of Ministers, and/or to the Parliamentary Assembly shall be adopted by the Standing Committee, but without any consideration of the substance of the matter. In exceptional cases, the Bureau of the Congress may authorise the other Chamber to formulate an opinion on these draft texts.
- b.* the resolutions relating to the question and which are addressed to the authorities that the Chamber represents shall be adopted by the Standing Committee without consideration of the substance of the matter.

#### *Article 12*

The conditions under which the Committee of Ministers and the Parliamentary Assembly may be collectively represented in the debates of the CLRAE or of the Chambers and those under which their Representatives may, in an individual capacity, speak therein shall be drawn up by the Committee of Ministers after consultation with the CLRAE and inserted in the Rules of Procedure of the latter.

#### *Article 13*

1. The CLRAE and each of its Chambers shall adopt their own Rules of Procedure. In particular, each set of rules shall provide for:

- a.* a quorum;
  - b.* questions concerning the right to vote and the majorities required, it being understood that the recommendations and opinions addressed to the Committee of Ministers and the Parliamentary Assembly shall be adopted by a majority of two-thirds of the votes cast;
  - c.* the procedure for the election of the president, vice-presidents and other members of the Bureau;
  - d.* the procedure for the establishment of the agenda and its transmission to delegates;
  - e.* the organisation of the work of the statutory committees and of the ad hoc working groups.
2. Moreover, the rules of the CLRAE shall provide for the time limit and method of notification of the names of Representatives and their Substitutes and the procedure for the examination of their credentials, by taking into account in particular Articles 2 and 7 of the present Charter.

*Article 14*

1. The Congress shall appoint its president from the members of each Chamber on an alternating basis. The President shall remain in office for two ordinary sessions.
2. Each Chamber of the CLRAE shall choose from among its members a president who shall remain in office for two ordinary sessions.

*Article 15*

1. The Secretariat of the Congress shall be provided by the Chief Executive of the Congress, elected by the Congress. The Chief Executive shall be answerable to the Congress and its organs and act under the authority of the Secretary General. Candidates shall be free to submit their applications directly to the Secretary General of the Council of Europe, who will transmit them to the President of the Congress, together with his opinion. Following examination of these candidatures, the Bureau shall submit a list of candidates to the vote of the Congress. The Standing Committee, on behalf of the Congress, shall establish the procedure for the election of the Chief Executive of the Congress, in order to clarify points which are not dealt with in the current Charter.
2. The Congress shall elect its Chief Executive for a renewable term of five years, without the age limit applicable to all Council of Europe staff being exceeded.
3. The Secretary General shall appoint a Deputy Chief Executive, following consultation of the Bureau of the Congress.
4. In relation to the Secretaries of each Chamber, the Secretary General shall appoint them after an informal exchange of views with the President of the Chamber concerned, during which he or she shall communicate his or her intentions and the reasons for his or her choice.

*Article 16*

1. The Committee of Ministers shall adopt the budget of the Congress, as part of the Ordinary Budget of the Council of Europe.
2. This budget shall be designed, in particular, to cover the expenditure occasioned by the CLRAE sessions, by the meetings of the two Chambers and CLRAE organs, and by all other clearly identifiable expenditure linked to the activities of the CLRAE. For plenary sessions, only the participation costs of Representatives shall be defrayed by this budget.
3. The budget of the Congress shall constitute a specific vote of the Council of Europe budget.
4. The CLRAE shall inform the Secretary General and the Committee of Ministers of its budgetary needs. Its requests shall be examined in the general context of the draft budget presented by the Secretary General.
5. The rates and methods of calculating Congress members' per diem allowances shall be subject to a specific decision by the Committee of Ministers.
6. The budget of the Congress (apart from the remuneration of permanent staff and the amounts allocated to political groups) shall constitute a package which the Bureau of the Congress will be responsible for managing. However, the Bureau shall abide by the financial regulations of the Council of Europe and see to it that the necessary funds are earmarked for the functioning of the statutory bodies of the Congress and of the two Chambers. It may not exceed the limit of the overall budgetary provision allocated to the Congress.

**Transitional provisions**

1. As an exception to Article 2 paragraph 1, non-elected persons responsible to an elected local or regional body may be Representatives in the Congress, provided they can be dismissed individually by, or following a decision of, the aforesaid directly elected body and that such a power of dismissal is stipulated by law. This provision shall be re-examined after a six-year period.
2. The Chief Executive of the Congress, provided for under Article 15, shall be elected once the necessary conditions are in place.



## Appendix II – Member States of the Council of Europe – Dates of accession

| <b>Member State</b>    | <b>Date of accession</b> |
|------------------------|--------------------------|
| Albania                | 13.7.1995                |
| Andorra                | 10.11.1994               |
| Armenia                | 25.1.2001                |
| Austria                | 16.4.1956                |
| Azerbaijan             | 25.1.2001                |
| Belgium                | 5.5.1949                 |
| Bosnia and Herzegovina | 24.4.2002                |
| Bulgaria               | 7.5.1992                 |
| Croatia                | 6.11.1996                |
| Cyprus                 | 24.5.1961                |
| Czech Republic         | 30.6.1993                |
| Denmark                | 5.5.1949                 |
| Estonia                | 14.5.1993                |
| Finland                | 5.5.1989                 |
| France                 | 5.5.1949                 |
| Georgia                | 27.4.1999                |
| Germany                | 13.7.1950                |
| Greece                 | 9.8.1949                 |
| Hungary                | 6.11.1990                |
| Iceland                | 7.3.1950                 |
| Ireland                | 5.5.1949                 |
| Italy                  | 5.5.1949                 |
| Latvia                 | 10.2.1995                |
| Liechtenstein          | 23.11.1978               |
| Lithuania              | 14.5.1993                |
| Luxembourg             | 5.5.1949                 |
| Malta                  | 29.4.1965                |
| Moldova                | 13.7.1995                |
| Monaco                 | 5.10.2004                |
| Netherlands            | 5.5.1949                 |
| Norway                 | 5.5.1949                 |
| Poland                 | 26.11.1991               |
| Portugal               | 22.9.1976                |
| Romania                | 7.10.1993                |
| Russian Federation     | 28.2.1996                |
| San Marino             | 16.11.1988               |
| Serbia and Montenegro  | 3.4.2003                 |
| Slovakia               | 30.6.1993                |
| Slovenia               | 14.5.1993                |
| Spain                  | 24.11.1977               |

|   |           |
|---|-----------|
| Sweden                                      | 5.5.1949  |
| Switzerland                                 | 6.5.1963  |
| “The former Yugoslav Republic of Macedonia” | 9.11.1995 |
| Turkey                                      | 9.8.1949  |
| Ukraine                                     | 9.11.1995 |
| United Kingdom                              | 5.5.1949  |

The ten founding member States were Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom.



## Appendix III – Complete list of the Council of Europe’s treaties\*

| No.  | Title  | Opening of the treaty | Entry into force | E. | N. | C. |
|------|--|-----------------------|------------------|----|----|----|
| 001  | Statute of the Council of Europe   | 5/5/1949              | 3/8/1949         |    |    |    |
| 002  | General Agreement on Privileges and Immunities of the Council of Europe  | 2/9/1949              | 10/9/1952        |    |    |    |
| 005  | Convention for the Protection of Human Rights and Fundamental Freedoms   | 4/11/1950             | 3/9/1953         |    |    |    |
| 009  | Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms                                       | 20/3/1952             | 18/5/1954        |    |    |    |
| 010  | Protocol to the General Agreement on Privileges and Immunities of the Council of Europe                                      | 6/11/1952             | 11/7/1956        |    |    |    |
| 012  | European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors                          | 11/12/1953            | 1/7/1954         | X  | X  |    |
| 012A | Protocol to the European Interim Agreement on Social Security Schemes Relating to Old Age, Invalidity and Survivors          | 11/12/1953            | 1/10/1954        | X  | X  |    |
| 013  | European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors                       | 11/12/1953            | 1/7/1954         | X  | X  |    |
| 013A | Protocol to the European Interim Agreement on Social Security other than Schemes for Old Age, Invalidity and Survivors       | 11/12/1953            | 1/10/1954        | X  | X  |    |
| 014  | European Convention on Social and Medical Assistance   | 11/12/1953            | 1/7/1954         | X  | X  |    |
| 014A | Protocol to the European Convention on Social and Medical Assistance   | 11/12/1953            | 1/7/1954         | X  | X  |    |
| 015  | European Convention on the Equivalence of Diplomas leading to Admission to Universities                                      | 11/12/1953            | 20/4/1954        | X  | X  |    |
| 016  | European Convention relating to the Formalities required for Patent Applications   | 11/12/1953            | 1/6/1955         | X  | X  |    |
| 017  | European Convention on the International Classification of Patents for Inventions  | 19/12/1954            | 1/8/1955         | X  | X  |    |
| 018  | European Cultural Convention   | 19/12/1954            | 5/5/1955         | X  |    |    |
| 019  | European Convention on Establishment   | 13/12/1955            | 23/2/1965        |    |    |    |
| 020  | Agreement on the Exchange of War Cripples between Member Countries of the Council of Europe with a view to Medical Treatment | 13/12/1955            | 1/1/1956         | X  | X  |    |
| 021  | European Convention on the Equivalence of Periods of University Study  | 15/12/1956            | 18/9/1957        | X  | X  |    |
| 022  | Second Protocol to the General Agreement on Privileges and Immunities of the Council of Europe                               | 15/12/1956            | 15/12/1956       |    |    |    |

\* Convention(s) and Agreement(s) opened to the member States of the Council of Europe and, where appropriate, to: E: European non-member States; N: Non-European non-member States; C: European Community. See the final provisions of each treaty. Source: Treaty Office on <http://conventions.coe.int>

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|     |  |            |            |   |   |   |
|-----|--|------------|------------|---|---|---|
| 023 | European Convention for the Peaceful Settlement of Disputes  | 29/4/1957  | 30/4/1958  | X | X |   |
| 024 | European Convention on Extradition   | 13/12/1957 | 18/4/1960  | X | X |   |
| 025 | European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe   | 13/12/1957 | 1/1/1958   | X | X |   |
| 026 | European Agreement on the Exchange of Therapeutic Substances of Human Origin   | 15/12/1958 | 1/1/1959   | X | X | X |
| 027 | European Agreement concerning Programme Exchanges by means of Television Films   | 15/12/1958 | 1/7/1961   | X | X |   |
| 028 | Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe  | 6/3/1959   | 15/3/1963  |   |   |   |
| 029 | European Convention on Compulsory Insurance against Civil Liability in respect of Motor Vehicles   | 20/4/1959  | 22/9/1969  | X | X |   |
| 030 | European Convention on Mutual Assistance in Criminal Matters   | 20/4/1959  | 12/6/1962  | X | X |   |
| 031 | European Agreement on the Abolition of Visas for Refugees  | 20/4/1959  | 4/9/1960   | X | X |   |
| 032 | European Convention on the Academic Recognition of University Qualifications   | 14/12/1959 | 27/11/1961 | X | X |   |
| 033 | Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for use on free loan in Hospitals and other Medical Institutions for purposes of Diagnosis or Treatment  | 28/4/1960  | 29/7/1960  | X | X | X |
| 034 | European Agreement on the Protection of Television Broadcasts  | 22/6/1960  | 1/7/1961   |   |   |   |
| 035 | European Social Charter  | 18/10/1961 | 26/2/1965  |   |   |   |
| 036 | Fourth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe   | 16/12/1961 | 16/12/1961 |   |   |   |
| 037 | European Agreement on Travel by Young Persons on Collective Passports between the Member Countries of the Council of Europe  | 16/12/1961 | 17/1/1962  | X | X |   |
| 038 | European Agreement on Mutual Assistance in the matter of Special Medical Treatments and Climatic Facilities  | 14/5/1962  | 15/6/1962  | X | X |   |
| 039 | European Agreement on the Exchanges of Blood-Grouping Reagents   | 14/5/1962  | 14/10/1962 | X | X | X |
| 040 | Agreement between the Member States of the Council of Europe on the issue to Military and Civilian War-Disabled of an International Book of Vouchers for the repair of Prosthetic and Orthopaedic Appliances | 17/12/1962 | 27/12/1963 | X | X |   |
| 041 | Convention on the Liability of Hotel-keepers concerning the Property of their Guests   | 17/12/1962 | 15/2/1967  | X | X |   |
| 042 | Agreement relating to Application of the European Convention on International Commercial Arbitration   | 17/12/1962 | 25/1/1965  | X | X |   |
| 043 | Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality  | 6/5/1963   | 28/3/1968  | X | X |   |
| 044 | Protocol No. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, conferring upon the European Court of Human Rights competence to give advisory opinions                        | 6/5/1963   | 21/9/1970  |   |   |   |
| 045 | Protocol No. 3 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 29, 30 and 34 of the Convention  | 6/5/1963   | 21/9/1970  |   |   |   |

|      |  |            |            |   |   |   |
|------|--|------------|------------|---|---|---|
| 046  | Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto | 16/9/1963  | 2/5/1968   |   |   |   |
| 047  | Convention on the Unification of Certain Points of Substantive Law on Patents for Invention  | 27/11/1963 | 1/8/1980   | X | X |   |
| 048  | European Code of Social Security   | 16/4/1964  | 17/3/1968  | X | X |   |
| 048A | Protocol to the European Code of Social Security   | 16/4/1964  | 17/3/1968  | X | X |   |
| 049  | Protocol to the European Convention on the Equivalence of Diplomas leading to Admission to Universities  | 3/6/1964   | 4/7/1964   | X | X |   |
| 050  | Convention on the Elaboration of a European Pharmacopoeia  | 22/7/1964  | 8/5/1974   | X | X |   |
| 051  | European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders  | 30/11/1964 | 22/8/1975  | X | X |   |
| 052  | European Convention on the Punishment of Road Traffic Offences   | 30/11/1964 | 18/7/1972  | X | X |   |
| 053  | European Agreement for the Prevention of Broadcasts transmitted from Stations outside National Territories   | 22/1/1965  | 19/10/1967 | X | X |   |
| 054  | Protocol to the European Agreement on the Protection of Television Broadcasts  | 22/1/1965  | 24/3/1965  | X | X |   |
| 055  | Protocol No. 5 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending Articles 22 and 40 of the Convention  | 20/1/1966  | 20/12/1971 |   |   |   |
| 056  | European Convention providing a Uniform Law on Arbitration   | 20/1/1966  |            | X | X |   |
| 057  | European Convention on Establishment of Companies  | 20/1/1966  |            |   |   |   |
| 058  | European Convention on the Adoption of Children  | 24/4/1967  | 26/4/1968  | X | X |   |
| 059  | European Agreement on the Instruction and Education of Nurses  | 25/10/1967 | 7/8/1969   | X | X |   |
| 060  | European Convention on Foreign Money Liabilities   | 11/12/1967 |            | X | X |   |
| 061  | European Convention on Consular Functions  | 11/12/1967 |            | X |   |   |
| 061A | Protocol to the European Convention on Consular Functions concerning the Protection of Refugees  | 11/12/1967 |            | X |   |   |
| 061B | Protocol to the European Convention on Consular Functions relating to Consular Functions in respect of Civil Aircraft  | 11/12/1967 |            | X |   |   |
| 062  | European Convention on Information on Foreign Law  | 7/6/1968   | 17/12/1969 | X | X |   |
| 063  | European Convention on the Abolition of Legalisation of Documents executed by Diplomatic Agents or Consular Officers   | 7/6/1968   | 14/8/1970  | X | X |   |
| 064  | European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products  | 16/9/1968  | 16/2/1971  | X | X |   |
| 065  | European Convention for the Protection of Animals during International Transport   | 13/12/1968 | 20/2/1971  | X | X | X |
| 066  | European Convention on the Protection of the Archaeological Heritage   | 6/5/1969   | 20/11/1970 | X | X |   |
| 067  | European Agreement relating to Persons participating in Proceedings of the European Commission and Court of Human Rights   | 6/5/1969   | 17/4/1971  |   |   |   |
| 068  | European Agreement on Au Pair Placement  | 24/11/1969 | 30/5/1971  | X | X |   |
| 069  | European Agreement on continued Payment of Scholarships to students studying abroad  | 12/12/1969 | 2/10/1971  | X | X |   |
| 070  | European Convention on the International Validity of Criminal Judgments  | 28/5/1970  | 26/7/1974  | X | X |   |

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|      |   |            |            |   |   |   |
|------|---|------------|------------|---|---|---|
| 071  | European Convention on the Repatriation of Minors   | 28/5/1970  |            | X | X |   |
| 072  | Convention relating to Stops on Bearer Securities in International Circulation  | 28/5/1970  | 11/2/1979  | X | X |   |
| 073  | European Convention on the Transfer of Proceedings in Criminal Matters  | 15/5/1972  | 30/3/1978  | X | X |   |
| 074  | European Convention on State Immunity   | 16/5/1972  | 11/6/1976  | X | X |   |
| 074A | Additional Protocol to the European Convention on State Immunity  | 16/5/1972  | 22/5/1985  | X | X |   |
| 075  | European Convention on the Place of Payment of Money Liabilities  | 16/5/1972  |            | X | X |   |
| 076  | European Convention on the Calculation of Time-Limits   | 16/5/1972  | 28/4/1983  | X | X |   |
| 077  | Convention on the Establishment of a Scheme of Registration of Wills  | 16/5/1972  | 20/3/1976  | X | X |   |
| 078  | European Convention on Social Security  | 14/12/1972 | 1/3/1977   | X | X |   |
| 078A | Supplementary Agreement for the Application of the European Convention on Social Security   | 14/12/1972 | 1/3/1977   | X | X |   |
| 079  | European Convention on Civil Liability for Damage caused by Motor Vehicles  | 14/5/1973  |            | X | X |   |
| 080  | Agreement on the Transfer of Corpses  | 26/10/1973 | 11/11/1975 | X | X |   |
| 081  | Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts  | 14/1/1974  | 31/12/1974 | X | X |   |
| 082  | European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes                                    | 25/1/1974  | 27/6/2003  | X | X |   |
| 083  | European Convention on the Social Protection of Farmers   | 6/5/1974   | 17/6/1977  | X | X |   |
| 084  | European Agreement on the Exchange of Tissue-Typing Reagents  | 17/9/1974  | 23/4/1977  | X | X | X |
| 085  | European Convention on the Legal Status of Children born out of Wedlock   | 15/10/1975 | 11/8/1978  | X | X |   |
| 086  | Additional Protocol to the European Convention on Extradition   | 15/10/1975 | 20/8/1979  | X | X |   |
| 087  | European Convention for the Protection of Animals kept for Farming Purposes   | 10/3/1976  | 10/9/1978  | X | X | X |
| 088  | European Convention on the International Effects of Deprivation of the Right to Drive a Motor Vehicle   | 3/6/1976   | 28/4/1983  | X | X |   |
| 089  | Additional Protocol to the European Agreement on the Exchange of Tissue-Typing Reagents   | 24/6/1976  | 23/4/1977  | X | X | X |
| 090  | European Convention on the Suppression of Terrorism   | 27/1/1977  | 4/8/1978   |   |   |   |
| 091  | European Convention on Products Liability in regard to Personal Injury and Death  | 27/1/1977  |            | X | X |   |
| 092  | European Agreement on the Transmission of Applications for Legal Aid  | 27/1/1977  | 28/2/1977  | X | X |   |
| 093  | European Convention on the Legal Status of Migrant Workers  | 24/11/1977 | 1/5/1983   |   |   |   |
| 094  | European Convention on the Service Abroad of Documents relating to Administrative Matters   | 24/11/1977 | 1/11/1982  | X | X |   |
| 095  | Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality      | 24/11/1977 | 8/9/1978   | X | X |   |
| 096  | Additional Protocol to the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality | 24/11/1977 | 17/10/1983 | X | X |   |
| 097  | Additional Protocol to the European Convention on Information on Foreign Law  | 15/3/1978  | 31/8/1979  | X | X |   |
| 098  | Second Additional Protocol to the European Convention on Extradition  | 17/3/1978  | 5/6/1983   | X | X |   |

|     |  |            |            |   |   |   |
|-----|--|------------|------------|---|---|---|
| 099 | Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters  | 17/3/1978  | 12/4/1982  | X | X |   |
| 100 | European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters  | 15/3/1978  | 1/1/1983   | X | X |   |
| 101 | European Convention on the Control of the Acquisition and Possession of Firearms by Individuals  | 28/6/1978  | 1/7/1982   | X | X |   |
| 102 | European Convention for the Protection of Animals for Slaughter  | 10/5/1979  | 11/6/1982  | X | X | X |
| 103 | Additional Protocol to the European Convention for the Protection of Animals during International Transport  | 10/5/1979  | 7/11/1989  | X | X | X |
| 104 | Convention on the Conservation of European Wildlife and Natural Habitats   | 19/9/1979  | 1/6/1982   | X | X | X |
| 105 | European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children   | 20/5/1980  | 1/9/1983   | X | X |   |
| 106 | European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities   | 21/5/1980  | 22/12/1981 | X |   |   |
| 107 | European Agreement on Transfer of Responsibility for Refugees  | 16/10/1980 | 1/12/1980  | X | X |   |
| 108 | Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data  | 28/1/1981  | 1/10/1985  | X | X |   |
| 109 | Additional Protocol to the European Agreement on the Exchange of Therapeutic Substances of Human Origin  | 1/1/1983   | 1/1/1985   | X | X |   |
| 110 | Additional Protocol to the Agreement on the Temporary Importation, free of duty, of Medical, Surgical and Laboratory Equipment for Use on free loan in Hospitals and other Medical Institutions for Purposes of Diagnosis or Treatment | 1/1/1983   | 1/1/1985   | X | X |   |
| 111 | Additional Protocol to the European Agreement on the Exchanges of Blood-Grouping Reagents  | 1/1/1983   | 1/1/1985   | X | X |   |
| 112 | Convention on the Transfer of Sentenced Persons  | 21/3/1983  | 1/7/1985   | X | X |   |
| 113 | Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts   | 21/3/1983  | 1/1/1985   | X | X |   |
| 114 | Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty   | 28/4/1983  | 1/3/1985   |   |   |   |
| 115 | Protocol amending the European Agreement on the Restriction of the Use of certain Detergents in Washing and Cleaning Products  | 25/10/1983 | 1/11/1984  | X | X |   |
| 116 | European Convention on the Compensation of Victims of Violent Crimes   | 24/11/1983 | 1/2/1988   | X | X |   |
| 117 | Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms   | 22/11/1984 | 1/11/1988  |   |   |   |
| 118 | Protocol No. 8 to the Convention for the Protection of Human Rights and Fundamental Freedoms   | 19/3/1985  | 1/1/1990   |   |   |   |
| 119 | European Convention on Offences relating to Cultural Property  | 23/6/1985  |            | X | X |   |
| 120 | European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches  | 19/8/1985  | 1/11/1985  | X | X |   |
| 121 | Convention for the Protection of the Architectural Heritage of Europe  | 3/10/1985  | 1/12/1987  | X | X | X |
| 122 | European Charter of Local Self-Government  | 15/10/1985 | 1/9/1988   |   |   |   |
| 123 | European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes   | 18/3/1986  | 1/1/1991   | X | X | X |

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|     |   |            |           |   |   |   |
|-----|---|------------|-----------|---|---|---|
| 124 | European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations   | 24/4/1986  | 1/1/1991  | X | X |   |
| 125 | European Convention for the Protection of Pet Animals   | 13/11/1987 | 1/5/1992  | X | X |   |
| 126 | European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment  | 26/11/1987 | 1/2/1989  | X | X |   |
| 127 | Convention on Mutual Administrative Assistance in Tax Matters   | 25/1/1988  | 1/4/1995  | X | X |   |
| 128 | Additional Protocol to the European Social Charter  | 5/5/1988   | 4/9/1992  |   |   |   |
| 129 | Arrangement for the Application of the European Agreement of 17 October 1980 concerning the Provision of Medical Care to Persons during Temporary Residence | 26/5/1988  |           | X |   |   |
| 130 | Convention on Insider Trading   | 20/4/1989  | 1/10/1991 | X | X | X |
| 131 | Third Additional Protocol to the Protocol to the European Agreement on the Protection of Television Broadcasts  | 20/4/1989  |           | X | X |   |
| 132 | European Convention on Transfrontier Television   | 5/5/1989   | 1/5/1993  | X | X | X |
| 133 | Protocol to the Convention on Insider Trading   | 11/9/1989  | 1/10/1991 |   |   |   |
| 134 | Protocol to the Convention on the Elaboration of a European Pharmacopoeia   | 16/11/1989 | 1/11/1992 | X | X |   |
| 135 | Anti-Doping Convention  | 16/11/1989 | 1/3/1990  | X | X |   |
| 136 | European Convention on Certain International Aspects of Bankruptcy  | 5/6/1990   |           | X | X |   |
| 137 | Fifth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe   | 18/6/1990  | 1/11/1991 |   |   |   |
| 138 | European Convention on the General Equivalence of Periods of University Study   | 6/11/1990  | 1/1/1991  | X | X | X |
| 139 | European Code of Social Security (Revised)  | 6/11/1990  |           | X | X | X |
| 140 | Protocol No. 9 to the Convention for the Protection of Human Rights and Fundamental Freedoms  | 6/11/1990  | 1/10/1994 |   |   |   |
| 141 | Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime   | 8/11/1990  | 1/9/1993  | X | X |   |
| 142 | Protocol amending the European Social Charter   | 21/10/1991 |           |   |   |   |
| 143 | European Convention on the Protection of the Archaeological Heritage (Revised)  | 16/1/1992  | 25/5/1995 | X | X | X |
| 144 | Convention on the Participation of Foreigners in Public Life at Local Level   | 5/2/1992   | 1/5/1997  | X | X |   |
| 145 | Protocol of Amendment to the European Convention for the Protection of Animals kept for Farming Purposes  | 6/2/1992   |           | X | X | X |
| 146 | Protocol No. 10 to the Convention for the Protection of Human Rights and Fundamental Freedoms   | 25/3/1992  |           |   |   |   |
| 147 | European Convention on Cinematographic Co-Production  | 2/10/1992  | 1/4/1994  | X | X |   |
| 148 | European Charter for Regional or Minority Languages   | 5/11/1992  | 1/3/1998  | X | X |   |
| 149 | Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality         | 2/2/1993   | 24/3/1995 | X | X |   |
| 150 | Convention on Civil Liability for Damage resulting from Activities Dangerous to the Environment   | 21/6/1993  |           | X | X | X |
| 151 | Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment                                    | 4/11/1993  | 1/3/2002  |   |   |   |

|     |  |            |           |   |   |   |
|-----|--|------------|-----------|---|---|---|
| 152 | Protocol No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment   | 4/11/1993  | 1/3/2002  |   |   |   |
| 153 | European Convention relating to questions on Copyright Law and Neighbouring Rights in the Framework of Transfrontier Broadcasting by Satellite   | 11/5/1994  |           | X | X |   |
| 154 | Protocol to the European Convention on Social Security   | 11/5/1994  |           | X | X |   |
| 155 | Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby   | 11/5/1994  | 1/11/1998 |   |   |   |
| 156 | Agreement on illicit traffic by sea, implementing Article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances  | 31/1/1995  | 1/5/2000  | X | X |   |
| 157 | Framework Convention for the Protection of National Minorities   | 1/2/1995   | 1/2/1998  | X | X |   |
| 158 | Additional Protocol to the European Social Charter Providing for a System of Collective Complaints   | 9/11/1995  | 1/7/1998  |   |   |   |
| 159 | Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities  | 9/11/1995  | 1/12/1998 | X |   |   |
| 160 | European Convention on the Exercise of Children's Rights   | 25/1/1996  | 1/7/2000  | X | X | X |
| 161 | European Agreement relating to persons participating in proceedings of the European Court of Human Rights  | 5/3/1996   | 1/1/1999  |   |   |   |
| 162 | Sixth Protocol to the General Agreement on Privileges and Immunities of the Council of Europe  | 5/3/1996   | 1/11/1998 |   |   |   |
| 163 | European Social Charter (revised)  | 3/5/1996   | 1/7/1999  |   |   |   |
| 164 | Convention for the protection of Human Rights and dignity of the human being with regard to the application of biology and medicine: Convention on Human Rights and Biomedicine                            | 4/4/1997   | 1/12/1999 | X | X | X |
| 165 | Convention on the Recognition of Qualifications concerning Higher Education in the European Region   | 11/4/1997  | 1/2/1999  | X | X | X |
| 166 | European Convention on Nationality   | 6/11/1997  | 1/3/2000  | X | X |   |
| 167 | Additional Protocol to the Convention on the Transfer of Sentenced Persons   | 18/12/1997 | 1/6/2000  | X | X |   |
| 168 | Additional Protocol to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, on the Prohibition of Cloning Human Beings | 12/1/1998  | 1/3/2001  | X | X | X |
| 169 | Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation                                    | 5/5/1998   | 1/2/2001  | X |   |   |
| 170 | Protocol of Amendment to the European Convention for the Protection of Vertebrate Animals used for Experimental and other Scientific Purposes  | 22/6/1998  |           | X | X | X |
| 171 | Protocol amending the European Convention on Transfrontier Television  | 1/10/1998  | 1/3/2002  | X | X | X |
| 172 | Convention on the Protection of Environment through Criminal Law   | 4/11/1998  |           | X | X |   |
| 173 | Criminal Law Convention on Corruption  | 27/1/1999  | 1/7/2002  | X | X | X |
| 174 | Civil Law Convention on Corruption   | 4/11/1999  | 1/11/2003 | X | X | X |
| 175 | European Convention on the Promotion of a Transnational Long-Term Voluntary Service for Young People   | 11/5/2000  |           | X |   |   |
| 176 | European Landscape Convention  | 20/10/2000 | 1/3/2004  | X |   |   |

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|     |  |            |          |   |   |   |
|-----|--|------------|----------|---|---|---|
| 177 | Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms  | 4/11/2000  | 1/4/2005 |   |   |   |
| 178 | European Convention on the Legal Protection of Services based on, or consisting of, Conditional Access   | 24/1/2001  | 1/7/2003 | X | X | X |
| 179 | Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid  | 4/10/2001  | 1/9/2002 | X | X |   |
| 180 | Convention on Information and Legal Co-operation concerning "Information Society Services"   | 4/10/2001  |          | X | X | X |
| 181 | Additional Protocol to the Convention for Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows | 8/11/2001  | 1/7/2004 | X | X | X |
| 182 | Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters   | 8/11/2001  | 1/2/2004 | X | X |   |
| 183 | European Convention for the protection of the Audiovisual Heritage   | 8/11/2001  |          | X | X | X |
| 184 | Protocol to the European Convention on the protection of the Audiovisual Heritage, on the protection of Television Productions   | 8/11/2001  |          | X | X | X |
| 185 | Convention on Cybercrime   | 23/11/2001 | 1/7/2004 | X | X |   |
| 186 | Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin   | 24/1/2002  |          | X | X | X |
| 187 | Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances                      | 3/5/2002   | 1/7/2003 |   |   |   |
| 188 | Additional Protocol to the Anti-Doping Convention  | 12/9/2002  | 1/4/2004 | X | X |   |
| 189 | Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems                       | 28/1/2003  |          | X | X |   |
| 190 | Protocol amending the European Convention on the Suppression of Terrorism  | 15/5/2003  |          |   |   |   |
| 191 | Additional Protocol to the Criminal Law Convention on Corruption   | 15/5/2003  | 1/2/2005 | X | X | X |
| 192 | Convention on Contact concerning Children  | 15/5/2003  |          | X | X | X |
| 193 | European Convention for the Protection of Animals during International Transport (Revised)   | 6/11/2003  |          | X | X | X |
| 194 | Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention   | 13/5/2004  |          |   |   |   |
| 195 | Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research  | 25/1/2005  |          | X | X | X |

Total: 197 treaties



## **Appendix IV – List of partial agreements**

### **Council of Europe Development Bank**

Basic texts: R(56)9 – 16/04/1956 – Governing Board’s Decision – 28/06/1999 – Statute

Within the framework of this partial agreement the Third Protocol to the General Agreement on Privileges and Immunities of the Council of Europe has been concluded (ETS No. 28).

### **Partial Agreement in the Social and Public Health Field**

Basic texts: R (59) 23 – 16/11/1959 – R (61) 40 – 16/12/1961 – R (96) 34 – 02/10/1996 – R (96) 35 – 02/10/1996

Within the framework of this partial agreement, two European treaties have been concluded: the Convention on the elaboration of a European Pharmacopoeia (ETS No. 50) and the European Agreement on the restriction of the use of certain detergents in washing and cleaning products (ETS No. 64).

### **Convention on the elaboration of a European Pharmacopoeia**

Basic text: Council of Europe Treaty Series No. 50

### **European Card for Substantially Handicapped Persons**

(The card has not been instituted. Article 4 of the Appendix to the Resolution of 4 November 1977 reads as follows: “The Government of each participating State recognises the validity in its territory of the card issued by the authorised bodies of the other participating States.”)

### **Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group)**

Basic texts: R (80) 2 – 27/03/1980 – R (80) 15 – 17/09/1980

### **Co-operation Group for the Prevention of, Protection Against, and Organisation of Relief in Major Natural and Technological Disasters (EUR-OPA)**

Basic text: R (87) 2 – 20/03/1987

**European Support Fund for the Co-Production and Distribution of Creative Cinematographic and Audiovisual Works “Eurimages”**

Basic texts: R (88) 15 – 26/10/1988 (as amended by R (89) 6 – 15/06/1989 – R (90) 34 – 30/11/1990 – R (92) 3 – 10/02/1992 – R (93) 10 – 03/04/1993 – R (98) 10 – 02/07/1998)

**European Centre for Global Interdependence and Solidarity (North-South Centre)**

Basic texts: R (89) 14 – 16/11/1989 – R (93) 51 – 21/10/1993

**Partial Agreement on the Youth Card for the Purpose of Promoting and Facilitating Youth Mobility in Europe**

Basic text: R (91) 20 – 13/09/1991

**European Audiovisual Observatory**

Basic texts: R (92) 70 – 15/12/1992 – R (97) 4 – 20/03/1997 – Res(2000)7 – 21/09/2000

**Enlarged Partial Agreement establishing the European Centre for Modern Languages (Graz Centre)**

Basic texts: R (94) 10 – 08/04/1994 – R (98) 11 – 02/07/1998

**Agreement establishing the Group of States against Corruption (GRECO)**

Basic texts: R (98) 7 – 05/05/1998 – R (99) 5 – 01/05/1999

**European Commission for Democracy through Law (Venice Commission)**

Basic texts: Res(2002)3 – 21/02/2002 (Revised Statute) – R (90) 6 – 10/05/1990

## **Appendix V – List of agreements between the Council of Europe and other international organisations**

Agreement between the Council of Europe and the Organisation for European Economic Co-operation (OEEC) (with additional texts) – March 1951. In 1961, the OEEC became the Organisation for Economic Co-operation and Development (OECD).

[www.oecd.org](http://www.oecd.org)

Protocol concerning the relations between the European Coal and Steel Community and the Council of Europe – 18 April 1951. On 8 April 1965, the ECSC institutions merged with those of the European Economic Community and Euratom with a single commission and council. When the Treaty of Paris expired on 23 July 2002, the coal and steel sectors were incorporated in the European Union, thereby rendering the protocol obsolete.

[www.europa.eu.int/abc/obj/treaties/en/entoc29.htm](http://www.europa.eu.int/abc/obj/treaties/en/entoc29.htm)

Agreement between the Secretariat General of the Council of Europe and the Secretariat General of the Brussels Treaty Organisation – 15 November 1951. On 23 October 1954, the Brussels Treaty was amended to include the Federal Republic of Germany and Italy, leading to the establishment of the Western European Union (WEU). In November 2000, most of its responsibilities were transferred to the European Union.

[www.weu.int](http://www.weu.int)

Agreement between the Council of Europe and the International Labour Organisation – 23 November 1951.

[www.ilo.org](http://www.ilo.org)

Agreement between the Secretariat General of the Council of Europe and the Secretariat of the United Nations – 15 December 1951. This agreement was updated in 1971 with the Arrangement on Co-operation and Liaison between the Secretariats of the Council of Europe and the United Nations.

[www.un.org](http://www.un.org)

Agreement between the Secretary General of the Council of Europe and the Director of the Provisional Intergovernmental Committee for the movement of migrants from Europe – 25 February 1952. Set up in 1951 at the International Migration Conference held in Brussels on the initiative of Belgium and the United States, the Provisional Intergovernmental Committee for the movement of migrants from Europe became the International Organisation for Migration (IOM) in 1989, following amendment and ratification of the 1953 Constitution.

[www.iom.int](http://www.iom.int)

Relations of the Council of Europe with the Office of the United Nations High Commissioner for Refugees and the United Nations International Children's Emergency Fund (exchange of letters between the Secretary General of the United Nations and the Secretary General of the Council of Europe – 3-28 July 1952). This agreement was supplemented by a memorandum of understanding in 1999.

[www.unhcr.ch](http://www.unhcr.ch)

Agreement between the Secretary General of the Council of Europe and the Director of the Regional Office for Europe of the World Health Organisation – 9 September 1952.

[www.who.int](http://www.who.int)

Agreement between the Council of Europe and the United Nations Educational, Scientific and Cultural Organisation – 10 November 1952.

[www.unesco.org](http://www.unesco.org)

Agreement between the Secretary General of the Council of Europe and the Director of the Combined International Bureaux for the protection of industrial property and of literary and artistic works – 22 April 1953. This small organisation was the predecessor to the World Intellectual Property Organisation (WIPO) set up under the Convention establishing the World Intellectual Property Organisation signed in Stockholm on 14 July 1967. Its headquarters are in Geneva. On 17 December 1974, the WIPO became a specialised agency of the United Nations system of organisations.

[www.wipo.org](http://www.wipo.org)

Agreement between the Council of Europe and the International Institute for the Unification of Private Law – 12 January 1954.

[www.unidroit.org/](http://www.unidroit.org/)

Relations between the Council of Europe and the European Conference of Ministers of Transport – 17 March 1954.

[www.oecd.org](http://www.oecd.org)

Agreement between the Council of Europe and the International Commission on Civil Status (exchange of letters of 28 and 31 October 1955). The Council of Europe is regularly invited to attend the commission's general meetings as an observer and the commission is regularly represented as an observer on the committees of experts which deal with issues in its field and those of its various members.

[www.ciec1.org](http://www.ciec1.org)

Relations of the Council of Europe with the European Civil Aviation Conference – 19 November 1955. At its 22nd intermediate session in Paris on 22 April 1993, and in connection with the first complete revision of its constitution, the Directors General of Civil Aviation of the ECAC's member States replaced the term "commission" in the French name with "conference" to avoid confusion with any other organisation.

[www.ecac-ceac.org](http://www.ecac-ceac.org)

Agreement between the Council of Europe and The Hague Conference on Private International Law – 13 December 1955.  
[www.hcch.net](http://www.hcch.net)

Agreement between the Council of Europe and the Food and Agriculture Organisation of the United Nations – 11 January 1956.  
[www.fao.org](http://www.fao.org)

Financial agreement between the Secretariat General of the Council of Europe and the Secretariat General of the Common Assembly of the ECSC – 15 February 1957.  
[www.europa.eu.int/abc/obj/treaties/en/entoc29.htm](http://www.europa.eu.int/abc/obj/treaties/en/entoc29.htm)

Agreement between the Combined International Bureaux for the protection of industrial property and of literary and artistic works and the Council of Europe – 28 May 1957. This agreement replaced the previous one concluded by exchange of letters in April 1953.  
[www.wipo.org](http://www.wipo.org)

Arrangement between the Committee of Ministers of the Council of Europe and the Commission of the European Atomic Energy Community (EURATOM) – 18 August 1959.  
[www.europa.eu.int/abc/obj/treaties/en/entoc38.htm](http://www.europa.eu.int/abc/obj/treaties/en/entoc38.htm)

Arrangement between the Committee of Ministers of the Council of Europe and the Commission of the European Economic Community and texts concerning the establishment of a Council of Europe Liaison Office in Brussels – 18 August 1959. The establishment of a Council of Europe Liaison Office with the European Communities in Brussels was decided upon by the Committee of Ministers of the Council of Europe in Resolution (74) 13 adopted on 6 May 1974.  
[www.pages.infinit.net/ivhl/cee.html](http://www.pages.infinit.net/ivhl/cee.html)

Agreement between the Council of Europe and the International Criminal Police Organisation (INTERPOL) – 1-9 February 1960 (exchange of letters).  
[www.interpol.int](http://www.interpol.int)

Arrangement between the International Labour Organisation and the Council of Europe on the creation and activities of the International Vocational Training Information and Research Centre – 8 December 1960.  
[www.ilo.org](http://www.ilo.org)

Arrangement between the Council of Europe and the Organisation for Economic Co-operation and Development (approved by the OECD Council on 9 January 1962 and the Committee of Ministers of the Council of Europe on 1 February 1962 (Resolution (62) 4)).  
[www.oecd.org](http://www.oecd.org)

Agreement between the Council of Europe and the International Union for Conservation of Nature and Natural Resources – 18 December 1962. This organisation was founded on 5 October 1948 as the International Union for the Protection of Nature (IUPN) following an international conference in Fontainebleau, France. The organisation changed its name to the International Union for Conservation of Nature and Natural Resources (IUCN) in 1956. In

1990, its name was shortened to IUCN – The World Conservation Union.  
[www.iucn.org](http://www.iucn.org)

Arrangement between the Council of Europe and the European Cultural Foundation – 10 November 1965.  
[www.eurocult.org](http://www.eurocult.org)

Arrangements on Co-operation and Liaison between the Secretariats of the Council of Europe and of the United Nations (exchange of letters of 19 November 1971). This memorandum updated the means for establishing working relations between the secretariats of the two organisations set out in the exchange of correspondence dated 15 December 1951 between the Secretary General of the Council of Europe and the Secretary General of the United Nations. On 17 October 1989, the United Nations General Assembly adopted a resolution granting the Council of Europe Observer status at its meetings. The Council of Europe has attended General Assembly sessions as an observer on a regular basis since then.<sup>1</sup>  
[www.un.org](http://www.un.org)

Agreement on co-operation between the Council of Europe and the Ibero-American Bureau of Education – 21 December 1982. In May 1985, the organisation became the Organisation of Ibero-American States for Education, Science and Culture.  
[www.oei.es](http://www.oei.es)

Agreement on co-operation between the Council of Europe and the Agency for Cultural and Technical Co-operation (ACCT) – 17 March 1983. The agency officially became the *Agence de la francophonie* (Agency for the French-Speaking Community), following modification of its statute at the 7th *Francophonie* Summit in Hanoi in 1997. In view of the wide range of players and the specific nature of its intergovernmental status, it was agreed in 1999 that it should be known as the *Agence intergouvernementale de la francophonie*. The intergovernmental agency is the main operative body of the *Organisation internationale de la francophonie* (OIF).  
[www.agence.francophonie.org](http://www.agence.francophonie.org)

Agreement between the Council of Europe and the Institute of Ibero-American Co-operation (exchange of letters of 20 May and 12 June 1985). In November 1988, the institute became part of the Spanish Agency for International Co-operation (AECI).  
[www.aeci.es](http://www.aeci.es)

Agreement between the Council of Europe and the Institute for European-Latin American Relations (IRELA) (exchange of letters of 17 December 1985 and 13 January 1986). The institute ceased to exist several years ago.

Arrangement between the Council of Europe and the European Community – 16 June 1987. This agreement was supplemented by the exchange of let-

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1. In October 2000, December 2001 and November-December 2002, the United Nations General Assembly held several debates on co-operation with the Council of Europe, culminating in the adoption of Resolutions 55/3, 56/46 and 57/156.

ters between the Secretary General of the Council of Europe and the President of the Commission of the European Communities in 1996.

[www.europa.eu.int/abc/obj/treaties/en/entoc05.htm](http://www.europa.eu.int/abc/obj/treaties/en/entoc05.htm)

Exchange of letters of 13 November 1987 between the Secretary General of the Council of Europe and the Secretary General of the Organisation of American States.

[www.oas.org](http://www.oas.org)

Agreement between the European Bank for Reconstruction and Development and the Council of Europe – 14 April 1992 (supplemented by an agreement between the EBRD and the Parliamentary Assembly in September 1992).

[www.ebrd.com](http://www.ebrd.com)

Exchange of letters between the Secretary General of the Council of Europe and the President of the Commission of the European Communities (supplementing the “Arrangement” between the Council of Europe and the European Community concluded on 16 June 1987) – 5 November 1996.

[www.europa.eu.int/abc/obj/treaties/en/entoc05.htm](http://www.europa.eu.int/abc/obj/treaties/en/entoc05.htm)

Agreement between the European Community and the Council of Europe for the purpose of establishing, in accordance with Article 7(3) of Council Regulation (EC) No. 1035/97 of 2 June 1997 establishing a European Monitoring Centre on Racism and Xenophobia, close co-operation between the Centre and the Council of Europe – 10 February 1999.

Co-operation between the Council of Europe and the Office of the United Nations High Commissioner for Refugees, Memorandum of Understanding – 25 August 1999.

[www.unhcr.ch](http://www.unhcr.ch)

Memorandum of Understanding between the European Bank for Reconstruction and Development and the Council of Europe Social Development Fund (which became the Council of Europe Development Bank in November 1999) – 5 May 1999.

[www.ebrd.com](http://www.ebrd.com)

A “Common Catalogue of Co-operation Modalities” was signed by the Secretaries General of the OSCE and the Council of Europe at the High-level ‘2+2’ Meeting in Vienna on 12 April 2000. The purpose of this first formal agreement on relations between the Council of Europe and the OSCE is to continue existing good practice, avoid duplication of effort and facilitate future action and co-operation.

[www.osce.org](http://www.osce.org)

A tripartite agreement between the Council, the European Commission and the WHO was signed in June 2001. The WHO and the Council of Europe co-operate through the European Health Committee. Recent co-operation has included health aspects of the Stability Pact and bioethics. The European Directorate for the Quality of Medicines is a key partner regarding quality assurance standards for pharmaceutical substances, while the Co-operation

Group to Combat Drug Abuse and Illicit Trafficking in Drugs, known as the Pompidou Group, also co-operates very closely with the WHO. Recently, co-operation between the WHO and the Council of Europe has focused on the health aspects of the Stability Pact and bioethics. A proposed tripartite agreement between the Council, the European Commission and the WHO should promote further co-operation in the health sector.  
[www.who.int](http://www.who.int)

In Strasbourg on 3 April 2001, the European Commissioner for External Relations, Chris Patten, and the Secretary General of the Council of Europe, Walter Schwimmer, signed a Joint Declaration on Co-operation and Partnership between the Council of Europe and the European Commission.  
[www.europa.eu.int/comm](http://www.europa.eu.int/comm)  
[www.coe.int/T/E/Com/Files/Cooperation/UE/default.asp/](http://www.coe.int/T/E/Com/Files/Cooperation/UE/default.asp/)



## **Appendix VI – Model Final Clauses for Conventions and Agreements concluded within the Council of Europe**

*(As adopted by the Committee of Ministers of the Council of Europe at its 384th meeting, in February 1980.)*

### **A. Introduction**

At the 113th meeting of the Deputies in September 1962, the Committee of Ministers of the Council of Europe approved two texts of final clauses to be used for international treaties concluded within the Council of Europe. One of these texts was designed for agreements that can be signed without reservation as to ratification and acceptance, and the other for conventions requiring ratification or acceptance. These texts were to serve as models for committees of experts charged with drawing up Council of Europe agreements or conventions. It was agreed that the texts could subsequently be amended in special cases or in the light of the results of the work of the International Law Commission of the United Nations.

Since 1962, these model final clauses have been used in a great many European conventions and agreements. This very use has, however, revealed the need for certain changes to the texts. Moreover, the work of the International Law Commission resulted in the adoption in 1969 of the Vienna Convention on the Law of Treaties, which takes account of the most recent developments in international practice.

So as to take these different factors into account, the Committee of Ministers has approved a single new set of model final clauses, at the 315th meeting of the Deputies in February 1980. This model applies to conventions or agreements concluded between states. The Committee of Ministers points out that when considering the draft European Convention for the Protection of International Watercourses against Pollution, and in order to enable the European Economic Community as such to become a Party to that Convention, it adopted final clauses providing for that possibility. Similar clauses are found in the European Convention of 10 March 1976 for the Protection of Animals kept for Farming Purposes, the European Convention of 10 May 1979 on the Protection of Animals for Slaughter and the Convention of 19 September 1979 on the Conservation of European Wildlife and Natural Habitats.

The model final clauses appearing hereafter apply to both conventions and agreements. With the exception of Article *a* for which two alternatives are proposed, the texts of all the articles are the same for conventions and

agreements: it suffices to maintain or to delete, as appropriate, the words between brackets.

Finally, it should be noted that these model final clauses are intended only to facilitate the task of committees of experts and avoid textual divergences which would not have any real justification. The model is in no way binding and different clauses may be adopted to fit particular cases.

## **B. Article a**

### ***Alternative 1 (agreements)***

1. This Agreement shall be open for signature by the member States of the Council of Europe which may express their consent to be bound by:

- a.* signature without reservation as to ratification, acceptance or approval, or
- b.* signature with reservation as to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

### ***Alternative 2 (conventions)***

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

## **C. Article b**

1. (This Agreement) (This Convention) shall enter into force on the first day of the month following the expiration of a period of ... months after the date on which ... member States of the Council of Europe have expressed their consent to be bound by (the Agreement) (the Convention) in accordance with the provisions of Article *a*.

2. In respect of any member State which subsequently expresses its consent to be bound by it, (the Agreement) (the Convention) shall enter into force on the first day of the month following the expiration of a period of ... months after the date (of signature or)<sup>1</sup> of the deposit of the instrument of ratification, acceptance or approval.

## **D. Article c**

1. After the entry into force of (this Agreement) (this Convention), the Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to (this Agreement) (this Convention), by a decision taken by the majority provided for in Article 20.*d* of the Statute of

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1. The words "of signature or" only apply in the case of an agreement.

the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.<sup>2</sup>

2. In respect of any acceding State, (the Agreement) (the Convention) shall enter into force on the first day of the month following the expiration of a period of ... months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **E. Article d**

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which (this Agreement) (this Convention) shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of (this Agreement) (this Convention) to any other territory specified in the declaration. In respect of such territory, (the Agreement) (the Convention) shall enter into force on the first day of the month following the expiration of a period of ... months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of ... months after the date of receipt of such notification by the Secretary General.

#### **F. Article e<sup>3</sup>**

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in the annex<sup>4</sup>

2. The particulars concerning the rules according to which the decision is taken are intended for guidance. Obviously, there are other alternatives, such as: making no stipulation at all, in which case the decision has to be taken by the majority provided for in Article 20.d of the Statute; requiring a unanimous decision by the Committee of Ministers, for the agreement of the States parties which are not members of the Council of Europe. In the text proposed above, "unanimous vote of the representatives of the Contracting States entitled to sit on the Committee" means that all of those States must approve the decision. The decision cannot be taken if some of those States are absent or abstain.

3. Where a treaty contains no reservation clause, any reservation compatible with the object and purpose of the treaty may be formulated. If such is not the intention of the bodies responsible for drawing up the treaty, who might on the contrary wish that no reservations be made, an article such as the following should be adopted: "No reservation may be made in respect of the provisions (of this Agreement) (of this Convention)." Article e above is only one example of the different arrangements possible for the formulation of reservations, certain of which are already provided for in several Council of Europe agreements or conventions.

4. The annex might be worded as follows:

"Annex

(Article e)

Any State may declare that it reserves the right:

1. to ...
2. to ... "

to (this Agreement) (this Convention)<sup>5</sup>. No other reservation may be made.<sup>6</sup>

2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

3. A Party which has made a reservation in respect of a provision of (this Agreement) (this Convention) may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

#### **G. Article f**

1. Any Party may at any time denounce (this Agreement) (this Convention) by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of ... months after the date of receipt of the notification by the Secretary General.

#### **H. Article g**

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to (this Agreement) (this Convention) of:

- a.* any signature;
- b.* the deposit of any instrument of ratification, acceptance, approval or accession;
- c.* any date of entry into force of (this Agreement) (this Convention) in accordance with Articles *b*, *c*, and *d*;
- d.* any other act, notification or communication relating to (this Agreement) (this Convention).

In witness whereof the undersigned, being duly authorised thereto, have signed (this Agreement) (this Convention).

Done at ..... the ....., in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to (this Agreement) (this Convention).

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5. If formulated when signing the treaty, a reservation must be formally confirmed by the reserving State when expressing its consent to be bound by the treaty. In such a case the reservation shall be considered as having been made on the date of its confirmation.

6. The sentence "No other reservation may be made" is intended to make it clear that the list of authorised reservations is exclusive. This sentence might, however, be deleted in appropriate cases.

## **Appendix VII – Exchange of letters between the Council of Europe and the European Community**

### **1. Exchange of letters between the Council of Europe and the European Community concerning the consolidation and intensification of co-operation (16 June 1987)**

*(87/476/EEC)*

#### **Letter from the Secretary General of the Council of Europe to the President of the Commission of the European Communities**

*Strasbourg, 16 June 1987*

Sir,

In its Resolution (85) 5 on co-operation between the Council of Europe and the European Community, adopted on 25 April 1985 at its 76th Session, the Committee of Ministers stated that it was convinced that European solidarity would be strengthened by the consolidation and intensification of co-operation between the Council of Europe and the European Community, which were the essential institutions of European construction; it expressed its determination to promote closer co-operation between the two institutions with the aim of achieving progress in co-operation within the largest possible European framework while fully respecting the differences in their nature and procedures.

In this spirit, the Committee of Ministers instructed me to initiate contacts with the competent bodies of the European Community for the purpose of elaborating with them concrete proposals designed to strengthen co-operation between our two institutions.

The Committee of Ministers has been informed of the results of those contacts through the report I submitted on this matter, and has agreed, without prejudging the internal division of powers between the Community and its Member States, that in future:

- (a) The European Community, represented by the Commission, will be invited to participate in the work of mutual interest of committees established by the Committee of Ministers composed of persons appointed by the governments of the member States, including committees of this type established within the framework of Partial Agreements. In cases where

the Community has participated in the elaboration of a draft European Convention or Agreement, the Community, represented by the Commission, will be invited to arrange to be represented at meetings of the Ministers' Deputies at which such a draft is discussed.

(b) As regards any new draft European Convention or Agreement, consideration will be given to the appropriateness of inserting a clause allowing for the European Community to become a Contracting Party to the Convention or Agreement; it is understood that the insertion of such a clause would in no way prejudice the decision which the competent bodies of the Community might finally take with regard to the conclusion of the Convention or Agreement by the Community.

(c) The European Community, represented by the Commission, will be invited to participate in the work of mutual interest of Conferences of Specialized Ministers with which the Council of Europe has established a special working relationship, without prejudice to the decisions which might be taken by the competent authorities of those conferences.

In addition, having regard to the results of our contacts, and in the desire to act in a pragmatic manner without creating new bureaucratic structures, the Committee of Ministers has given its approval to the following measures which, without prejudice to the subsequent conclusion of a general agreement with the European Community, and which, taking into account what is set out above, might be accepted by both parties in place of those set out in the arrangements entered into on 18 August 1959 by exchanges of letters between the Secretary General of the Council of Europe and the Presidents of the Commissions of the European Economic Community and of the European Atomic Energy Community.

A. As regards relations between the Committee of Ministers and the Commission of the European Communities:

1. The Commission will forward to the Committee of Ministers the annual general report specified in Article 18 of the Treaty establishing a Single Council and a Single Commission of the European Communities. On its part the Commission will be sent the Committee of Ministers' statutory reports and the reports which the Secretary General of the Council of Europe submits to the Committee of Ministers on the progress of European co-operation.
2. The Committee of Ministers may invite the Commission to participate in its discussions on the progress of European co-operation, as well as on any other question of mutual interest.
3. The Commission may be invited to arrange to be represented and participate at meetings of the Ministers' Deputies dealing with questions of mutual interest.
4. The Committee of Ministers may address to the Commission any comments it may have to make on the reports submitted by the Commission or on any other question of mutual interest.

5. The Secretary General of the Commission will participate, as a general rule once a year, in an exchange of views with the Ministers' Deputies in order to take stock of the state of co-operation between the Council of Europe and the Community.

B. As regards relations between the Secretary General of the Council of Europe and the Commission of the European Communities:

1. The Secretary General and the Commission will consult each other whenever necessary on questions of mutual interest. This consultation should as far as possible aim at co-ordination and concertation, joint activities and the widest possible application of the content of instruments and other documents adopted by either side.

2. High-level meetings between officials of the Council of Europe Secretariat and of the Commission will be arranged as required to examine questions of mutual interest in specific fields, to obtain information on each other's programmes, to take stock of the state of co-operation and, possibly, to identify projects which might suitably be carried out in common, together with a timetable and a financial plan for their implementation. Such meetings will be organized periodically in particular in the fields of legal affairs, social and health matters, education and culture, and heritage and environment, without prejudice to the possibility of convening similar meetings in other fields of mutual interest.

3. The Commission will, if appropriate, invite representatives of the Council of Europe Secretariat to participate as observers in the work of its committees of experts and advisory groups for the consideration of points of mutual interest.

4. The Secretary General of the Council of Europe and the Commission will take suitable measures to ensure close liaison and co-operation between officials of the two institutions working in fields of mutual interest. For this purpose a senior official shall be appointed by each side to follow the progress of co-operation between the two institutions and act as a point of contact in this respect.

I should be grateful if you would let me know whether the foregoing arrangements are acceptable to the Commission.

Please accept, Sir, the assurance of my highest consideration.

Marcelino OREJA

*Secretary General of the Council of Europe*

**Letter from the President of the Commission of the European Communities to the Secretary General of the Council of Europe**

*Brussels, 16 June 1987*

Sir,

I have the honour to acknowledge receipt of your letter of today's date concerning co-operation between the Council of Europe and the European Community.

I should like you to know that the Commission of the European Communities shares the conviction of the Committee of Ministers that European solidarity will be strengthened by the consolidation and intensification of co-operation between the Council of Europe and the European Community, which are the essential institutions of European construction; it has expressed its determination to promote closer co-operation between the two institutions with the aim of achieving progress in co-operation within the largest possible European framework, while fully respecting the differences in their nature and procedures.

The Commission warmly welcomes the provisions that the Committee of Ministers has agreed to adopt in accordance with the report you submitted, in order to facilitate participation by the Community in the work of the Council of Europe, and notes its contents.

In addition, having regard to the results of our contacts, and in the desire to act in a pragmatic manner without creating new bureaucratic structures, I am pleased to inform you, on behalf of the Commission of the European Communities, that I approve the measures described in your letter and set out below, which without prejudice to the subsequent conclusion of a general agreement with the European Community, will take the place of those set out in the arrangements entered into on 18 August 1959 by exchanges of letters between the Secretary General of the Council of Europe and the Presidents of the Commissions of the European Economic Community and of the European Atomic Energy Community.

A. As regards relations between the Committee of Ministers and the Commission of the European Communities:

1. The Commission will forward to the Committee of Ministers the annual general report specified in Article 18 of the Treaty establishing a Single Council and a Single Commission of the European Communities. The Commission will be sent the Committee of Ministers' statutory reports and the reports which the Secretary General of the Council of Europe submits to the Committee of Ministers on the progress of European co-operation.
2. The Committee of Ministers may invite the Commission to participate in its discussions on the progress of European co-operation, as well as on any other question of mutual interest.



3. The Commission may be invited to arrange to be represented and participate at meetings of the Ministers' Deputies dealing with questions of mutual interest.

4. The Committee of Ministers may address to the Commission any comments it may have to make on the reports submitted by the Commission or on any other question of mutual interest.

5. The Secretary General of the Commission will participate, as a general rule once a year, in an exchange of views with the Ministers' Deputies in order to take stock of the state of co-operation between the Council of Europe and the Community.

B. As regards relations between the Secretary General of the Council of Europe and the Commission of the European Communities:

1. The Secretary General and the Commission will consult each other whenever necessary on questions of mutual interest. This consultation should as far as possible aim at co-ordination and the concerting of efforts, joint activities and the widest possible application of the content of instruments and other documents adopted by either side.

2. High-level meetings between officials of the Council of Europe Secretariat and of the Commission will be arranged as required to examine questions of mutual interest in specific fields, to obtain information on each other's programmes, to take stock of the state of co-operation, and, possibly, to identify projects which might suitably be carried out in common, together with a timetable and a financial plan for their implementation. Such meetings will be organized periodically in particular in the fields of legal affairs, social and health matters, education and culture, and heritage and environment, without prejudice to the possibility of convening similar meetings in other fields of mutual interest.

3. The Commission will, if appropriate, invite representatives of the Council of Europe Secretariat to participate as observers in the work of its committees of experts and advisory groups for the consideration of points of mutual interest.

4. The Secretary General of the Council of Europe and the Commission will take suitable measures to ensure close liaison and co-operation between officials of the two institutions working in fields of mutual interest. For this purpose a senior official will be appointed by each side to follow the progress of co-operation between the two institutions and ensure liaison in this respect.

Please accept, Sir, the assurance of my highest consideration.

Jacques DELORS

*President of the Commission of the European Communities*

## **2. Exchange of letters between the Secretary General of the Council of Europe and the President of the Commission of the European Communities on 5 November 1996**

*(supplementing the “Arrangement” between the Council of Europe and the European Community concluded on 16 June 1987)*

### **Letter from the President of the Commission of the European Communities to the Secretary General of the Council of Europe**

*Brussels, 5 November 1996*

Sir,

At our Brussels meeting in March 1995, we noted the need to give effect to the progress in both political and sectoral co-operation between Brussels and Strasbourg by confirming and updating the exchange of letters of 16 June 1987 between our two organisations.

Mr van den Broek, the Commission member responsible for relations with the Council of Europe, told me after the Paris quadripartite meeting in April last year that delegates there had reached the same conclusion.

While its goals and the arrangements for which it provides still hold good, the 1987 exchange of letters is no longer suited to the day-to-day needs of a co-operative relationship which must be able to respond instantly to current and future developments both in the Community and the Council of Europe.

Having completed the first single market of its type in Europe, the Community, following the entry into force of the Maastricht Treaty, is proceeding apace towards Union. The Council of Europe, meanwhile, has been making an essential contribution to the new architecture of Europe through successive enlargements.

In their different ways, both organisations work together in providing Europe with an institutional framework. Their activities, which are usually complementary, now require increasing co-ordination in the light of the respective goals of the Union Treaty and the Council of Europe’s Statute.

While existing commitments should be upheld and confirmed, therefore, we now see a need for the Community to be involved as fully as possible in the work of Strasbourg in order to achieve effective operational co-operation.

As in the past, a Senior Official responsible for co-operation under the member of the Commission with responsibility for the subject matter will work with a Senior Official of the Secretariat of the Council of Europe to see to the implementation of Community participation in the meetings and activities of the main bodies and sectoral departments of the Council of Europe.

If you agree, the meetings and activities of the Committee of Ministers, Ministers' Deputies, rapporteur groups of the deputies and any other working party convened by you will henceforward be open to the Commission at the invitation of the competent Council of Europe authorities. The Commission will not enjoy voting rights and will not be involved in the Organisation's decision-making process.

For its part, the Commission is willing, in accordance with the practice already established between us, to consider requests for participation by the Council of Europe in Commission departmental meetings whose work has not yet been submitted to the Community's internal decision-making process.

Pending the outcome of this year's intergovernmental conference, I believe that this new procedure will lead us to closer co-operation, something that will in particular benefit the new member countries of the Council of Europe.

I should be obliged if you would tell me whether or not the above is acceptable to you and whether this letter and your reply to it together constitute the agreement supplementing the above-mentioned exchange of letters of 16 June 1987.

I am, Sir, your obedient servant,

Jacques SANTER,

*President of the Commission of the European Communities*

**Letter of the Secretary General of the Council of Europe to the President of the Commission of the European Communities**

*Strasbourg, 5 November 1996*

Sir,

Thank you for your letter of 5 November 1996 concerning the consolidation and intensification of co-operation between the Council of Europe and the European Community.

The discussions at the two recent quadripartite meetings have clearly demonstrated the need to up-date the arrangements for co-operation between our organisations in order to take account of the profound political and institutional changes which have taken place both within the Council of Europe and in the European Union since the conclusion of the Arrangement through the exchange of letters between President Jacques Delors and Mr Marcelino Oreja on 16 June 1987.

The Committee of Ministers has been informed of your letter and has agreed that the meetings and activities of the Committee of Ministers, Ministers' Deputies, rapporteur groups and any other working party convened by it will henceforth be open to the Commission at the invitation of competent Council of Europe authorities. The Commission will not enjoy voting rights and will not be involved in the organisation's decision-making process.

It has also noted that this arrangement will supplement the arrangements and procedures contained in the exchange of letters of 16 June 1987 which consequently remains the basis for co-operation between our two organisations and should be implemented to the full.

Moreover, the Committee of Ministers welcomes your statement that the Commission for its part, in accordance with the practice already established between us, will consider requests for participation by the Council of Europe in Commission departmental meetings whose work has not yet been submitted to the Commission's internal decision-making process.

As provided for under the 1987 exchange of letters, a senior Council of Europe official and a senior Commission official will together continue to oversee co-operation and act as a point of contact between our two organisations.

I am therefore glad to confirm that your letter and my reply to it should constitute the agreement supplementing the above-mentioned exchange of letters of 16 June 1987.

I am, Sir, your obedient servant,

Daniel TARSCHYS

*Secretary General of the Council of Europe*

## **Appendix VIII – Council of Europe agreements with the United Nations**

### **Agreement between the Secretariat General of the Council of Europe and the Secretariat of the United Nations**

*Exchange of letters between Mr J.C. Paris and Mr Trygve Lie*

#### **Letter from the Secretary General of the Council of Europe to the Secretary General of the United Nations**

*Strasbourg, 15th December 1951*

Sir,

According to Article 1 of the Statute:

“(a) The aim of the Council of Europe is 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.

(b) This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms.

(c) Participation in the Council of Europe shall not affect the collaboration of its Members in the work of the United Nations and of other international organisations or unions to which they are parties.

(d) Matters relating to National Defence do not fall within the scope of the Council of Europe.”

It is plain that in order to give effect to these provisions and in particular paragraph (c), the Council of Europe has a duty to co-ordinate its work with that of the international organisations concerned, and in particular with the United Nations.

The organs of the Council of Europe have in the event been led to consult studies already made by other international organisations or to call on their experience and services. This has resulted in a *de facto* form of co-operation for which it seems desirable to lay down a more formal method of procedure.

In the course of its Seventh Session on 17th March, 1951, the Committee of Ministers instructed me to establish contact with certain of these organisa-

tions, particularly the United Nations, in order to draw up agreements for co-operation with them.

The scope of the Council of Europe, as defined in Article 1 of the Statute, is indeed such as to make it particularly valuable for the accomplishment of its mission that it be acquainted with the work carried out by the United Nations in the economic, social, cultural, scientific, legal and administrative fields, as well as those of human rights and fundamental freedoms. Both the Consultative Assembly and its Committees and the Committee of Ministers and its Committees of Experts would benefit from receiving exact information of these activities from the Secretariat General. This aim might be achieved by an exchange between the two organisations of all documents likely to be of mutual interest, by consultation between them whenever it was felt necessary, and by arranging for observers from the Secretariats General to attend such meetings of either organisation as are of interest to the other.

I have the honour to inform you that, for my part, in order to facilitate such co-operation with the Secretariat General of the United Nations. I am prepared to make the following arrangements:

### **1. Exchange of information**

The Secretariat General of the Council of Europe will transmit to the Secretariat General of the United Nations, subject to any measures which might be necessary to safeguard the confidential nature of certain documents, all publications and documents relating to its activities on subject of interest to the United Nations. This exchange of documents will be supplemented, if thought necessary, by periodical contacts between members of the two Secretariats General for the purpose of consultation as regards projects or activities of common interest.

### **2. Mutual consultation**

The Secretariat General of the Council of Europe will take part in any consultations which may be deemed necessary at all stages of the preparatory work and the execution of programmes being carried out by the two Organisations. The Secretariat General will in particular submit to the Committee of Ministers those suggestions which may be transmitted to it for that purpose by the Secretariat General of the United Nations.

### **3. Attendance of representatives of the Secretariat General of the United Nations at meetings of the Council of Europe**

Consultations will take place with a view to arranging for attendance of the representative of the Secretary General of the United Nations at sessions of the Consultative Assembly of the Council of Europe and meetings of committees which may be convened to study questions of interest to the United Nations. When appropriate, the representative of the Secretary General of the United Nations will also be invited to attend meetings of committees of governmental experts convened by the Committee of Ministers.

#### **4. Technical co-operation**

The Secretariat General of the Council of Europe will afford to the Secretariat General of the United Nations any technical co-operation which may be asked of it for the purpose of studying questions of common interest and the execution of certain projects.

I take leave to hope that these measures may contribute to the establishment between the Council of Europe and the United Nations of the means of profitable collaboration and that it may be possible for you to reinforce them by granting similar facilities to the Secretariat General of the Council of Europe.

I have the honour to be, Sir,

Your obedient Servant,

J.C. PARIS

*Secretary General of the Council of Europe*

#### **Letter from the Secretary General of the United Nations to the Secretary General of the Council of Europe (SG 324/080)**

*Paris, 15 December 1951*

Sir,

I wish to acknowledge receipt of your letter of 15 December 1951 in which you have suggested ways and means of establishing working relationships between the Secretariat of the Council of Europe and the Secretariat of the United Nations.

I fully agree with you that it would be most valuable for the Secretariat of each Organisation to be acquainted with the work carried out by the other, especially in the economic and social fields, and that this aim might be achieved by an exchange between the two organisations of all documents likely to be of mutual interest, by consultation between them whenever it were felt necessary, and by arranging for observers from the Secretariats General to attend such meetings of either Organisation as are of interest to the other.

The proposals contained in your letter for the establishment of working relationships with the United Nations Secretariat are acceptable to me and I shall make reciprocal arrangements in regard to the Secretariat General of the Council of Europe.

Please accept, Sir, the assurance of my highest consideration.

TRYGVE LIE

*Secretary General of the United Nations*

**Arrangements on Co-operation and Liaison between the Secretariats of the Council of Europe and of the United Nations, Strasbourg, November 1971**

**Letter from the Secretary General of the Council of Europe to the Secretary General of the United Nations**

*Strasbourg, 19 November 1971*

Sir,

I have the honour to refer, as did an exchange of correspondence of 15 December 1951 between the Secretaries General of the Council of Europe and of the United Nations, to Article 1 of the Statute of the Council of Europe, which provides as follows:

“(a) The aim of the Council of Europe is 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.

(b) This aim shall be pursued through the organs of the Council by discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms.

(c) Participation in the Council of Europe shall not affect the collaboration of its Members in the work of the United Nations and of other international organisations, or unions to which they are parties.

(d) Matters relating to National Defence do not fall within the scope of the Council of Europe.”

Generally speaking, there is an increasing need for co-operation between the Secretariats of the Council of Europe, of the United Nations and of the Economic Commission for Europe especially, both in order to give effect to the above provisions of the Statute of the Council of Europe and in order to honour the spirit of the United Nations Charter.

The de facto co-operation, which the exchange of correspondence of 15 December 1951 provided with a methodical foundation, should, in my view, now be brought up to date in the light of subsequent developments and of the desire expressed by both our Secretariats to enter into closer relations.

Indeed, since the above-mentioned exchange of correspondence of 15 December 1951 between the Secretary General of the Council of Europe and the Secretary General of the United Nations and following the visits by the Secretaries General to the headquarters of the two Organisations, there has been undoubted development in relations between the Secretariats of our two institutions.

This development, desired by both sides, marks a new step forward which naturally requires that certain adjustments be made in various directions.



I, therefore, have the honour to propose facilitating our future co-operation still further by adapting the existing arrangements to those set out in the attached memorandum on co-operation and liaison between the Secretariats of the Council of Europe and of the United Nations.

In addition to the points set out in the attached memorandum and in order to satisfy the common concern of our two Secretariats, I very much hope that further efforts will henceforth be made to co-ordinate common activities and to exchange information at working level; this would assist that combination of effort by the Secretariats of our two organisations which seems to me essential for the achievement of the objectives pursued both by the United Nations and by the Council of Europe in the spirit of the Charter.

I am convinced that this formulation of relations between the Secretariats of the two organisations, which essentially takes account of the existing de facto situation, also reflects as faithfully as possible your own determination to develop the fruitful co-operation between the Council of Europe and the United Nations, as you described it in general terms before the Consultative Assembly of the Council of Europe, at Strasbourg in May 1966.

Please accept, Sir, the assurance of my highest consideration

LUJO TONCIC-SORINJ

*Secretary General of the Council of Europe*

*Appendix to the letter of 19 November 1971 from the Secretary General of the Council of Europe to the Secretary General of the United Nations*

## **Memorandum on co-operation and liaison between the Secretariats of the Council of Europe and of the United Nations**

### **I. Introduction**

1. On 15 December 1951 an exchange of correspondence took place between the Secretary General of the Council of Europe and the Secretary General of the United Nations on ways and means of establishing working relationships between the Secretariats of the United Nations and of the Council of Europe. The present memorandum is intended to bring up to date in the light of experience and of subsequent developments, the previous exchange of correspondence.

### **II. Exchange of Information**

2. Subject to any measures which may be necessary to safeguard the confidential or restricted nature of certain documentation, the Secretariat General of the Council of Europe and the Secretariat General of the United Nations will communicate to each other, as promptly as possible, all documentation and publications relating to their activities in fields of common concern.

The organs of the Council of Europe and of the United Nations, the documentation and publications of which will be subject to this exchange, will be enumerated by the competent officials of the two Secretariats.

3. The prompt exchange of documentation and publications envisaged in paragraph 2 above may, as in the past, be supplemented by regular contacts between officials of the two Secretariats for the purpose of consultation on projects or activities of common interest.

### **III. Mutual Consultation**

4. The Secretariat General of the Council of Europe and the Secretariat of the United Nations may consult, whenever appropriate, both when preparing and when implementing programmes instituted by the two organisations in fields of common concern. In addition to such regular consultation, the two Secretariats may agree to further develop the valuable existing practice of holding inter-Secretariat meetings of the Council of Europe, the United Nations, the Economic Commission for Europe and other United Nations bodies competent in fields of common concern.

### **IV. Attendance by Representatives of the United Nations' Secretariat at meetings of organs of the Council of Europe and of the Representatives of the Council of Europe Secretariat at meetings of United Nations' organs**

5. In accordance with existing practice, and subject as necessary to the consent of the organs concerned, the Secretaries General of the United Nations and of the Council of Europe or their representatives may continue on the basis of inter-Secretariat invitation to attend sessions of the Assemblies or other bodies of the two organisations convened to discuss matters of common interest.

6. In accordance with and subject to the foregoing, a representative of the Secretary General of the United Nations may be invited, whenever appropriate, to attend meetings of governmental experts convened by the Committee of Ministers of the Council of Europe; similarly, the Secretary General of the Council of Europe, or his representative, may be invited to attend meetings of United Nations' organs where this would be in the common interest.

### **V. Technical Co-operation**

7. The Secretariat General of the Council of Europe and the Secretariat of the United Nations will in the future use their best endeavours to afford each other the technical assistance required for the study of matters of common interest or for the implementation of individual or joint projects arising out of them.

### **Letter from the Secretary General of the United Nations to the Secretary General of the Council of Europe**

*New York, 19 November 1971*

Sir,

I wish to acknowledge receipt of your letter of 19 November 1971, transmitting the text of a memorandum on co-operation and liaison between the

Secretariats of the United Nations and of the Council of Europe. This memorandum brings up to date the ways and means of establishing working relationships between the Secretariats of the two Organisations which were set out in an exchange of correspondence of 15 December 1951 between the Secretary General of the Council of Europe and the Secretary General of the United Nations.

In order to promote the existing harmonious relations between the two Secretariats in matters agreed to be of common interest and concern, I am happy to indicate that the terms of your memorandum are acceptable to me in defining the de facto and practical situation of such relations.

Please accept, Sir, the assurance of my highest consideration.

U THANT

*Secretary General of the United Nations*



## **Appendix IX – Council of Europe agreements with the OSCE**

### **Relations between the Council of Europe and the Organisation for Security and Co-operation in Europe (OSCE) – Common Catalogue of Co-operation Modalities, Vienna, 12 April 2000**

#### **Introduction**

The Common Catalogue of Co-operation Modalities has been elaborated following a series of inter-institutional discussions guided by the recommendations of the Council of Europe's Committee of Wise Persons and the elaboration of the OSCE Platform for Co-operative Security adopted at the OSCE Istanbul Summit on 18-19 November 1999, as well as following suggestions expressed during the OSCE/Council of Europe meeting on procedures for monitoring of commitments and on present and future co-operation between the Council of Europe and the OSCE, which took place in Vienna on 4 October 1999. Consequently, the high-level '2+2' meeting held in Berlin on 20 October 1999 decided to task the respective Secretariats to compile a common catalogue of co-operation modalities.

The Catalogue aims at guaranteeing the institutional memory and ensuring that existing good practice is not forgotten or lost. It also shows perspectives for the future.

The relationship between the Council of Europe and the OSCE is based on the common values of democracy, Human Rights and the rule of law, and the Organisations' commitment to mutual reinforcement of action, taking into consideration the difference in membership and working methods.

#### **1. Consultations**

##### *1.1. '2+2' meetings*

###### *1.1.1. High-level '2+2' meetings*

The high-level meetings take place once or twice per year. They are organised in turn by the Council of Europe and the OSCE respectively.

These meetings provide for discussing topical political issues of mutual interest, reviewing relations, assessing ongoing co-operation and devising orientations for future co-operation.

Participants:

For the Council of Europe: the Chairman of the Committee of Ministers, the Secretary General, Chairmen of the Ministers' Deputies and of relevant Rapporteur Groups, in particular those on Relations between the Council of Europe and the OSCE (GR-OSCE) and on Democratic Stability (GR-EDS) and the Director General of Political Affairs.

For the OSCE: the Chairperson-in-Office, Secretary General, the High Commissioner on National Minorities (HCNM), the Director of the Office for Democratic Institutions and Human Rights (ODIHR), the Representative on Freedom of the Media, Head of External Co-operation Section, and occasionally the Director of the CPC and Co-ordinator of OSCE Economic and Environmental Activities.

A joint statement is distributed to delegations in Strasbourg and Vienna and to the press at the end of the meeting.

*1.1.2. '2+2' Meetings at the level of senior officials*

The meetings at senior level take place as a rule at the end of the first half of the year. They are organised in turn by the Council of Europe and the OSCE respectively.

The main aim of such meetings is to discuss concrete topics of co-operation.

Participation in meetings at the level of senior officials differs in terms of level and composition from the high-level meetings. They include also representatives of the secretariats of the two Parliamentary Assemblies.

For the Council of Europe: the Chairmen of the Ministers' Deputies, GR-OSCE and GREDS, the Secretary General of the Parliamentary Assembly and the Director General of Political Affairs, and, where appropriate, other Council of Europe representatives.

For the OSCE: the Representative of the Chairperson-in-Office and other Troika members, the Secretary General or his representative, the Director of the CPC, the HCNM, the Director of ODIHR, the Representative on Freedom of the Media, and the Secretary General of the Parliamentary Assembly (or their representatives).

*1.2. Parliamentary meetings*

Delegations of the Bureaux of the two Parliamentary Assemblies meet periodically to exchange views on questions of common interest and to review co-operation between the two Assemblies.

*1.3. Joint meetings*

A first meeting was organised by the Council of Europe at the initiative of Norway in March 1997 with the aim of exchanging views and experiences on the methodology of implementation of commitments and the various monitoring mechanisms of the two organisations.

Participants included Permanent Representatives to the Council of Europe in Strasbourg and to the OSCE in Vienna, with the participation of experts from capitals, as well as representatives of the Secretariats.

A second was held in June 1998 in The Hague upon an initiative of the Netherlands. It took a broader look at the relationship between the Council of Europe and the OSCE and involved also parliamentarians from both organisations.

A third meeting took place upon invitation of the Norwegian OSCE Chairmanship on 4 October 1999 in Vienna. It was a direct follow-up to the March 1997 meeting and it dealt with procedures for the monitoring of commitments and present and future co-operation between the Council of Europe and the OSCE.

Participants underlined the usefulness of the joint meetings and recommended holding such meetings every two years on themes of mutual interest.

#### *1.4. Ad hoc contacts and consultations*

The following modalities have been developed with a view to exploring possibilities for co-operation or defining a coherent message, especially during crisis situations or when preparing new initiatives:

- ad hoc consultations between the Secretary General of the Council of Europe and the OSCE Chairperson-in-Office;
- ad hoc consultations between the Council of Europe Secretariat and the representatives of the OSCE Chairperson-in-Office;
- ad hoc consultations between the two Secretaries General;
- ad hoc consultations between the Council of Europe Commissioner on Human Rights and representatives of the OSCE Chairperson-in-Office;
- joint visit (Council of Europe Chairman of the Committee of Ministers and Secretary General and OSCE Chairman-in-Office and Secretary General), Tirana, September 1998;
- joint declaration of Council of Europe, the OSCE, the European Union (EU) and the Western European Union (WEU) on Albania, September 1998;
- tri-parliamentary visits of members of the Parliamentary Assembly of the Council of Europe, Parliamentary Assembly of the OSCE and the European Parliament to Tirana in 1997 and 1998, and Belarus in 2000;
- participation of Council of Europe senior officials in visits of the OSCE Chairman-in-Office to Armenia, Azerbaijan and Georgia, 1998 and 1999;
- participation of Council of Europe officials in trips of the Personal Representatives of the OSCE Chairman-in-Office to Albania and Belarus in 1997;
- participation of OSCE officials in the Council of Europe Parliamentary Assembly delegation to Chechnya in 2000.

## **1.5. Enlarged consultations**

### **1.5.1. High-level 'tripartite' Council of Europe / OSCE / UN meetings**

The high-level 'tripartite' meetings are organised once per year in turn by the Council of Europe, the OSCE and the United Nations Office at Geneva.

At these meetings, participants discuss topical issues of mutual interest and fields of co-operation.

Participants:

For the Council of Europe: the Secretary General, the Chairmen of the Ministers' Deputies, GR-OSCE and GR-EDS, and the Council of Europe Commissioner for Human Rights.

For the OSCE: the Secretary General, a Representative of the Chairperson-in-Office, the HCNM, the Director of ODIHR and the Representative on Freedom of the Media.

For the UN: the Director General of the United Nations Office at Geneva, senior representatives of the Department of Political Affairs, the Office of the High Commissioner for Refugees, the Office of the High Commissioner for Human Rights, the Economic Commission for Europe and the United Nations Development Programme.

In function of the agenda, representatives of the International Organisation for Migration (IOM) and the International Committee of the Red Cross (ICRC) also participate. The European Commission participated for the first time in the high-level meeting held in February 2000.

Participants issue a joint statement at the end of 'tripartite' meetings.

### **1.5.2. Target-oriented meetings**

Target-oriented meetings are organised within the framework of the 'tripartite' consultation process on an ad hoc basis. They are held at the level of senior officials and experts (including those from the "field presence" of the participating organisations) and involve, in function of the agenda, also other international organisations and institutions.

The purpose of these meetings is to inform on ongoing and planned activities and to identify possibilities for enhanced co-operation.

So far, target-oriented meetings have dealt with the Caucasus (several meetings), Albania, Kosovo, judicial system reform and, in February 2000, law enforcement, in particular the police.

### **1.5.3. Meetings on electronic information exchange**

These meetings are organised prior to the high-level 'tripartite' meeting with the aim of discussing the use of new information technologies for the purpose of improving the exchange of information between the three



organisations. A common information database with names of contact persons has been created on the server of the UN office in Geneva.

## **2. Representation and Liaison**

### *2.1. Participation in the meetings*

#### *2.1.1. Summits*

The Chairman-in-Office of the OSCE represented his Organisation at the Council of Europe Summit in October 1997 in Strasbourg and addressed the meeting. The OSCE Secretary General was invited but could not attend. The Chairman of the Committee of Ministers and the Secretary General of the Council of Europe represented the Organisation at, and addressed, the OSCE Summit in Istanbul.

#### *2.1.2. Ministerial meetings/sessions*

The Chairman-in-Office of the OSCE participated in the London meeting and addressed the Budapest meeting organised in May 1999 to celebrate the 50th Anniversary of the Council of Europe.

The Secretary General of the Council of Europe represents the Organisation at OSCE Ministerial Councils and delivers statements at the meetings.

The Foreign Minister of the country that has the OSCE Chairmanship addresses the Sessions of the Council of Europe Committee of Ministers in his/her capacity as representative of the member State of the Council of Europe and as Chairperson-in-Office of the OSCE.

#### *2.1.3. Parliamentary Assemblies*

The Chairperson-in-Office of the OSCE addresses regularly the Parliamentary Assembly of the Council of Europe.

The Presidents of the Parliamentary Assemblies of the Council of Europe and the OSCE speak at the sessions of the other Assembly.

The Parliamentary Assembly of the Council of Europe, as well as the Parliamentary Assembly of the OSCE, invite regularly representatives of the other Assembly to participate in committee meetings, seminars, conferences, etc.

In 1998, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1381 (1998) on 'General Policy: Council of Europe and the OSCE'.

#### *2.1.4. Council of Europe Ministers' Deputies, OSCE Permanent Council and their Subsidiary Structures*

OSCE representatives – the Representative of the Chairperson-in-Office, the Secretary General, Heads of OSCE Missions, the Director of ODIHR, the Representative on Freedom of the Media – are regularly invited to

exchanges of views with the Council of Europe Ministers' Deputies or their Rapporteur Groups.

The Secretary General of the Council of Europe regularly addresses the OSCE Permanent Council in Vienna, followed by questions and answers.

The Director General of Political Affairs and members of his service have participated in several reinforced meetings of the OSCE Permanent Council and in informal meetings of the Security Model Committee with international organisations on the Platform for Co-operative Security.

Since October 1998, the OSCE is invited to participate in the meetings of the Council of Europe Ministers' Deputies Rapporteur Group on relations with the OSCE (GR-OSCE). Representatives of the OSCE Chairmanship and members of the OSCE Secretariat, in particular the Section for External Co-operation, actively participate in the deliberations.

The Permanent Representative of the country holding the OSCE Chairmanship speaks occasionally in meetings of the Council of Europe Ministers' Deputies or GR-EDS on behalf of the OSCE Chairmanship.

It has been agreed with the OSCE Chairmanship that the representative of the delegation of the country holding the Committee of Ministers' Chairmanship could take the floor at meetings of the OSCE Permanent Council to inform on relevant activities of the Council of Europe.

## **2.2. Liaison**

The Council of Europe representation at the OSCE headquarters in Vienna is based on informal arrangements.

The Council of Europe-OSCE Liaison Officer joins the delegation of the country that chairs the Committee of Ministers in the plenary and informal meetings of the OSCE Permanent Council and the Security Model Committee, however, without the right to take the floor. Upon invitation of the Chairperson of the OSCE Permanent Council, the Council of Europe-OSCE Liaison Officer informs subsidiary groups of the OSCE Permanent Council on relevant Council of Europe activities.

In the OSCE Co-ordination Unit in the Ministry of Foreign Affairs of the country holding the OSCE Chairmanship, an official is responsible for liaising with other international organisations, including the Council of Europe.

In the OSCE Secretariat, the External Co-operation Section (CPC) is, *inter alia*, in charge of liaison with other organisations, including the Council of Europe.

## **3. Co-operation**

### **3.1. Field co-operation**

The following modalities have been developed:

- the Council of Europe Offices on the ground (Tirana, Sarajevo, Pristina and Mostar) maintain close contacts with the OSCE missions. They

provide also liaison with the authorities and international organisations present in the field and support in the implementation of Council of Europe projects;

- sharing of information and assessments by officials of the Council of Europe Secretariat and heads of OSCE missions and their staff through regular informal contacts and visits;
- participants of the Council of Europe Secretariat in planning meetings organised by the CPC to prepare co-operation in the field;
- participation of the Council of Europe Secretariat in the annual meetings of heads of OSCE missions in Vienna;
- co-ordination of action in conflict prevention and post-conflict rehabilitation, Council of Europe contribution to monitoring and advice;
- provision of Council of Europe legal expertise;
- joint organisation and contribution to seminars;
- joint assessment teams;
- participation of Council of Europe experts and staff members in short- and medium-term missions; long-term secondment of Council of Europe experts to the OSCE mission in Kosovo;
- joint training courses;
- provision of logistical support by OSCE missions to delegations of the Council of Europe Parliamentary Assembly, CLRAE and Secretariat;
- since its creation in September 1998, the Council of Europe participates in the 'Friends of Albania', whose meetings are co-chaired by the OSCE and EU presidencies;
- joint initiative of the Council of Europe, OSCE, the European Commission and the Office of the UN High Commissioner for Human Rights (OHCHR) on human rights training of members of field missions: elaboration of pedagogical tools, including a manual giving practical advice on how to handle human rights violations. Continuation of this initiative, applying it to specific regions and operations, in co-ordination with heads of OSCE missions and taking into consideration the initiatives of EU and OHCHR and eventually the OSCE REACT programme.

### 3.2. Thematic co-operation

#### 3.2.1. Democracy, Human Rights and Rule of Law

The following modalities have been developed:

- sharing of information and assessments by officials of the Council of Europe Secretariat and the Director and staff of the ODIHR through regular informal contacts and visits;
- regular meetings between the Secretariat of the Council of Europe and ODIHR to co-ordinate programmes and their implementation;

- participation of ODIHR representatives in the Council of Europe's annual consultation and planning meetings in the fields of human rights and legal co-operation (ADACS);
- Council of Europe contribution to and participation in ODIHR seminars and co-operation in the organisation of seminars;
- Council of Europe participation in the OSCE Human Dimension Implementation meetings, provision of documentation and participation of members of the Secretariat;
- ODIHR representation at the meetings of the Venice Commission;
- co-operation between the Council of Europe Co-ordinator on Roma/Gypsies and the ODIHR Contact Point on Roma and Sinti Issues;
- Council of Europe contribution to the ODIHR Expert Panel on the Prevention of Torture;
- contacts between the Human Rights Commissioner of the Council of Europe and ODIHR;
- contacts between the Monitoring Unit of the Secretary General of the Council of Europe and ODIHR;
- contacts between the Council of Europe Secretariat and the ODIHR advisers on trafficking and gender issues;
- participation of Council of Europe officials in ODIHR needs assessment missions, for example in Eastern Slavonia and the Caucasus;
- contacts and co-operation on matters relating to democracy, human rights and the rule of law between the Council of Europe and the OSCE field missions.

### **3.2.2. Minorities**

Co-operation between the Council of Europe and the HCNM concerns concrete situations in specific countries relevant to the prevention of conflicts and the implementation of European standards for the protection of national minorities.

The following modalities have been developed:

- sharing of information and assessments by officials of the Council of Europe and the HCNM and his staff through regular informal contacts and working visits;
- reference of the HCNM to Council of Europe standard-setting instruments in his recommendations to OSCE participating States, notably the European Convention on Human Rights, the Framework Convention for the Protection of National Minorities, and the European Charter on Regional or Minority Languages;
- close co-operation between Council of Europe officials and experts and the HCNM on country-specific issues by co-ordinated approaches and joint endeavours, sometimes also including the European Commission;
- participation of Council of Europe officials and experts in experts' meetings organised by the HCNM;

- HCNM contacts with the Council of Europe’s Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN) and the Monitoring Committee of the Council of Europe’s Parliamentary Assembly;
- participation of Council of Europe staff in seminars organised or co-organised by the HCNM.

### **3.2.3. Roma/Sinti**

Co-operation between the Council of Europe and the OSCE involve on the Council of Europe side the Co-ordinator of Activities on Roma/Gypsies and on the OSCE side the ODIHR Contact Point on Roma/Sinti and some field missions, in particular in South-East Europe.

The following modalities have been developed:

- participation in each other’s meetings;
- joint meetings;
- joint field visits;
- joint reports as a follow-up to the joint visits;
- collaboration in the preparation of a draft programme on Roma as part of Working Table I of the Stability Pact.

### **3.2.4. Media**

The Council of Europe Secretariat was associated with the elaboration of the mandate of the Representative on Freedom of the Media.

The interpretative statement of 32 participating states of the OSCE stipulates that the Representative on Freedom of the Media should also be guided by the provisions of the European Convention on Human Rights in the fulfilment of his/her mandate (statement made after the adoption of the mandate in 1997). Co-operation between the Council of Europe and the OSCE Representative on Freedom of the Media focuses on issues or country situations which are of common interest to both organisations.

The following modalities have been developed:

- sharing of information and assessments by officials of the Council of Europe Secretariat and the OSCE Representative on Freedom of the Media and his staff through regular informal contacts and working visits;
- reference by the Representative to Council of Europe standard-setting instruments, in particular the European Convention on Human Rights, and legislative expertise carried out by the Council of Europe in his recommendations to OSCE participating States;
- provision of Council of Europe legislative expertise at the request of the Representative;
- joint seminars and recommendations;
- participation in seminars organised or co-organised by the other;

- contacts of the Office of the Representative with the Council of Europe Steering Committee on the Mass Media (CDMM).

### *3.2.5. Economic and environmental activities*

The following modalities have been developed:

- working visit of the Co-ordinator of the OSCE Economic and Environmental Activities to the Council of Europe;
- participation of Council of Europe staff and experts in seminars organised or co-organised by the Co-ordinator;
- participation of the Council of Europe officials and members of the Parliamentary Assembly in the annual meetings of the OSCE Economic Forum.

## *3.3. Monitoring*

### *3.3.1. Compliance with commitments*

Monitoring was the theme of two high-level joint meetings in 1997 and 1999.

The following modalities have been developed:

- sharing of public or restricted reports of the Parliamentary Assembly, CLRAE and the Committee of Ministers of the Council of Europe and OSCE field missions;
- participation of Council of Europe officials in OSCE Human Dimension Implementation Meetings and Review Conferences;
- provision of manuals and training of monitors deployed by OSCE field missions;
- concerted efforts concerning specific countries.

### *3.3.2. Election observation*

#### *3.3.2.1. Parliamentary and presidential elections*

The Council of Europe's Parliamentary Assembly, the ODIHR and the OSCE Parliamentary Assembly are in contact in the monitoring of elections. This includes, as the case may be, joint press conferences and joint statements.

#### *3.3.2.2. Local elections*

The Congress of Local and Regional Authorities of Europe is in contact with ODIHR and OSCE Missions in the monitoring and evaluation of local elections, organised by the national authorities, to which they send observer delegations.

## *3.4. Special programmes*

Stability Pact for South Eastern Europe

The Council of Europe is a participating organisation in the Stability Pact, which was launched by the European Union and placed under the auspices of the OSCE.

The two Organisations co-operate, in particular in Working Table I on Democratisation and Human Rights and in transversal issues in fields such as minorities, Roma, ombudsman institutions, good governance, gender, media, corruption and organised crime, and the legislative clearing house.

The following modalities have been developed:

- participation in conferences and meetings organised by the other organisation;
- participation in the activities led by the other organisation, for example participation of a member of the Office of the HCNM in the special delegation of advisers on minorities preparing the conference on national minorities and inter-ethnic relations;
- Council of Europe advice on OSCE projects, for example the legislative clearing house;
- OSCE advice on Council of Europe projects;
- joint project proposals, for example, on the development of legislative frameworks for the media and on training in media standards, or an initiative on 'hate speech'.

### *3.5. Secretarial co-operation*

The following modalities have been developed:

- close contacts between the Council of Europe Secretariat and the Section for External Co-operation, the conflict prevention centre of the OSCE Secretariat, to ensure smooth co-operation, in particular in the preparation of '2+2', 'tripartite' meetings, and other consultations;
- Council of Europe Secretariat contacts with the Conflict Prevention Centre of the OSCE Secretariat, on contributions to OSCE missions;
- Council of Europe contribution to and participation in seminars organised by the OSCE Secretariat;
- secretarial contacts concerning planning of ADACS;
- operational contacts concerning REACT;
- regular contacts between the Secretariats of the Parliamentary Assemblies.

### *3.6. Information exchange*

The following modalities have been developed:

- The Council of Europe Secretariat receives all OSCE documents as they are distributed to the OSCE Delegations;
- The OSCE participating States, institutions and the Secretariat receive regularly official Council of Europe documents, and have been given access to the Council of Europe Committee of Ministers restricted site of the Internet.

**Outlook**

This Common Catalogue of Co-operation Modalities reflects the co-operation achievements in early 2000. It will have to be kept under regular review to include new developments reflecting the flexible and pragmatic character of co-operation between the Council of Europe and the OSCE.

Walter SCHWIMMER  
*Secretary General of the Council of Europe*

JĀN KUBIŠ  
*Secretary General of the OSCE*



## **Appendix X – Draft revised Statute**

### **Recommendation 1212 (1993) on the adoption of a revised Statute of the Council of Europe<sup>1</sup>**

1. The Council of Europe has taken on new responsibilities at continental level since the democratic process started in the central and east European countries.

2. The Assembly therefore regards the revision of the Statute of the Organisation, which dates back to 1949, as essential and to this end it submits to the Committee of Ministers the draft revised Statute which it has prepared. The Assembly considers that the revised Statute should be adopted on the occasion of the summit of heads of state and government in Vienna in October 1993, which will be a major political event in the life of the Council of Europe. This would then show the new role which has fallen upon the Council of Europe in the construction of Europe.

3. In addition to this political target, the revision will also make it possible:

- i. to update the Statute and bring its wording into line with current practice and with the institutional texts adopted by the Committee of Ministers since 1949;
- ii. to adapt the Organisation's structure, particularly with a view to increasing its capacity for action and strengthening its ties with the main European institutions.

4. Consequently the Assembly recommends that the Committee of Ministers:

- i. approve the draft revised Statute of the Council of Europe;
- ii. invite member States to adopt it on the occasion of the summit of heads of state and government in Vienna in October 1993;
- iii. consult it on all draft statutory resolutions which are intended to advance the process of institutional reform, pending implementation of the proposed revision of the Statute.

## **Draft revised Statute of the Council of Europe**

### **Preamble**

1. The governments of the Council of Europe member States,

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<sup>1</sup> Assembly debate on 11 May 1993 (32nd Sitting); see Doc. 6788, report of the Committee on Rules of Procedure, Rapporteur: Lord Finsberg. Text adopted by the Assembly on 11 May 1993 (32nd Sitting).

2. Convinced that the pursuit of peace based upon justice and international co-operation is vital for the preservation of human society and civilisation,
3. Reaffirm their devotion to the spiritual and moral values which are the common heritage of all their peoples and the true source of individual freedom, political liberty and the rule of law, the principles which form the basis of all effective pluralist political democracy;
4. Believing that, for the maintenance and further realisation of these ideals and for the promotion of social and economic progress, there is need of a closer unity between all like-minded countries of Europe;
5. Recall that the Council of Europe was established for this purpose on 5 May 1949 by the Treaty of London;
6. Consider that this unity must be extended over the whole of Europe and that acceptance of the values on which it is founded must be promoted among all the European peoples wishing to be part of it;
7. Decide to adapt accordingly the structures of the Council of Europe, whose function is to bring together all the countries of Europe for the purpose of co-operating together on an equal footing and developing ever-closer links within its framework, thereby safeguarding the peace, security and democratic stability of the continent.

## **Chapter I – Aim of the Council of Europe**

### *Article 1*

*a.* The aim of the Council of Europe is to achieve an ever-greater unity between its members, founded on the principles of parliamentary democracy, the rule of law and human rights, for the purpose of safeguarding and realising the ideals and values which are their common heritage and facilitating their social and economic progress.

*b.* This aim shall be pursued through the organs of the Council by discussion of questions of common concern, by conventions and agreements and common action in the fields necessary to achieve this unity with the exception of matters relating to national defence.

## **Chapter II – Membership**

### *Article 2*

The members of the Council of Europe are the Parties to this Statute.

### *Article 3*

Every member of the Council of Europe must accept the principles of pluralist parliamentary democracy, of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. It undertakes to collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I. In particular, it shall facilitate the fulfilment of their mission by the organs and the institutions of the Council of Europe.

*Article 4*

Any European state which is deemed to be able and willing to fulfil the provisions of Article 3 and which undertakes to adhere to the European Convention on Human Rights and to submit to the jurisdiction of the organs established under the Convention, may be invited by the Committee of Ministers, after obtaining the assent of the Parliamentary Assembly, to become a member of the Council of Europe. Any state so invited shall become a member upon the deposit with the Secretary General on its behalf of an instrument of accession to the present Statute.

*Article 5*

*a.* A European state which is deemed able and willing to fulfil the provisions of Article 3 may be invited by the Committee of Ministers, after obtaining the assent of the Assembly, to become an associate member of the Council of Europe. Any state so invited shall become an associate member upon the deposit with the Secretary General on its behalf of the instrument accepting the present Statute. An associate member shall be represented in the Parliamentary Assembly, without the right to vote. It may be invited by the Committee of Ministers to participate in meetings, without the right to vote.

*b.* The expression “member” in the Statute includes an associate member, except when otherwise stated.

*Article 6*

A state interested in the activities of the Organisation may be granted observer status by the Committee of Ministers, after obtaining the assent of the Assembly. Observers are not represented in the Parliamentary Assembly and the Committee of Ministers unless a decision to the contrary is taken by one of those bodies.

*Article 7*

The Council of Europe shall maintain appropriate institutional and working relations with the European Community, in accordance with arrangements to be determined by the Committee of Ministers with the prior approval of the Parliamentary Assembly.

*Article 8*

An international intergovernmental organisation willing to co-operate closely with the Council of Europe and deemed able to make an important contribution to its work may be granted observer status by the Committee of Ministers after obtaining the assent of the Parliamentary Assembly.

*Article 9*

The Secretary General acting on behalf of the Committee of Ministers and after obtaining the assent of the Assembly may conclude co-ordination and co-operation agreements with other international intergovernmental

organisations as well as agreements with non-member States wishing to participate in specific sectors of the Organisation's activities.

*Article 10*

The Secretary General may consult international non-governmental organisations which deal with matters that are within the competence of the Council of Europe and whose activities in the various fields of European co-operation must be encouraged. The establishment of formal working relations between the Council of Europe and international non-governmental organisations is subject to special regulations.

*Article 11*

Before issuing invitations under Article 4 or Article 5 above, the Committee of Ministers shall determine the proportionate financial contribution of the future member, having regard to the population figure and the gross domestic product.

*Article 12*

Any member of the Council of Europe may withdraw by formally notifying the Secretary General of its intention to do so. When such notification is made within the first nine months of the year, it shall take effect at the end of the year. In this event, the state shall be liable for the whole amount of its contribution for that year. When notification is made during the last three months of the year, it shall take effect at the end of the following year, for which the state shall remain liable for the whole amount of its contribution.

*Article 13*

Any member of the Council of Europe which has seriously violated Article 3 may, after obtaining the assent of the Parliamentary Assembly, be suspended from its rights of representation or requested by the Committee of Ministers to withdraw under Article 12. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine after obtaining the assent of the Assembly.

*Article 14*

The Committee of Ministers may, after obtaining the assent of the Assembly, suspend the right of representation on the Committee and in the Parliamentary Assembly of a member which has failed to fulfil its financial obligations during such period as the obligations remain unfulfilled.

**Chapter III – General Provisions**

*Article 15*

The organs of the Council of Europe are:

- i. the Committee of Ministers;

ii. the Parliamentary Assembly.

These organs shall be served by the Secretariat of the Council of Europe.

*Article 16*

A conference of heads of state or government shall meet periodically within the framework of the Council of Europe to lay down the general policy guidelines for its activity, which the Assembly shall then consider.

*Article 17*

The seat of the Council of Europe is at Strasbourg.

*Article 18*

The official languages of the Council of Europe are English and French. The Rules of Procedure of the Committee of Ministers and the Parliamentary Assembly shall determine in what circumstances and under what conditions other languages may be used.

**Chapter IV – Committee of Ministers**

*Article 19*

The Committee of Ministers is the organ which acts on behalf of the Council of Europe, in accordance with Articles 21 and 22, without prejudice to the prerogatives of the Parliamentary Assembly.

*Article 20*

*a.* Each member shall be entitled to one representative on the Committee of Ministers, and each representative shall be entitled to one vote. Representatives on the Committee shall be the ministers for foreign affairs. When a minister for foreign affairs is unable to be present or in other circumstances where it may be desirable, an alternate may be nominated to act for him, who shall, whenever possible, be a member of his government.

*b.* Each minister shall appoint a deputy to act in his or her name outside meetings held at ministerial level. Decisions taken by the deputies shall have the same force and effects as those taken by the Committee of Ministers sitting at ministerial level.

*c.* The Council of Europe shall establish close working relations with the conferences of specialised ministers. In appropriate cases the Committee of Ministers may delegate its powers to a conference of specialised ministers.

*d.* During any period when its representation in the Assembly is suspended, a member shall not be entitled to vote in the Committee of Ministers and may not occupy the Chair.

*Article 21*

*a.* The Committee of Ministers shall engage in permanent political dialogue for the purpose of reaching agreed positions on questions of mutual interest and so contributing to cohesion and solidarity between the member States.

*b.* On the recommendation of the Parliamentary Assembly or on its own initiative, it shall consider any measure intended to reinforce co-operation between the member States in the Organisation's various fields of activity.

*c.* As appropriate, the conclusions of the Committee may take the form of conventions, agreements or protocols, recommendations to the member States or resolutions. They shall be communicated to members by the Secretary General.

*d.* Such conventions and agreements shall be binding only upon the states which have given their consent thereto by ratification or other appropriate procedures. The instruments of ratification shall be deposited with the Secretary General of the Council of Europe.

*e.* A Council of Europe activity may be restricted to only some of the member States and take the form of a partial agreement. It shall be deemed to have been adopted only by the representatives of the member States who voted in favour of it. In its composition restricted to representatives of member States of a partial agreement, the Committee of Ministers may invite any non-member state to join a partial agreement.

*f.* Likewise, the Committee of Ministers may decide to extend an activity under an enlarged agreement to include a state that is not a member of the Council of Europe.

*Article 22*

The Committee of Ministers shall, subject to the provisions of Articles 18, 29, 30, 32, 33, 34, 35, 38, 40, 41, 42, 43, 44, 47*b*, 49, relating to the powers of the Parliamentary Assembly, decide with binding effect all matters relating to the internal organisation and arrangements of the Council of Europe. For this purpose the Committee of Ministers shall adopt such financial and administrative regulations as may be necessary.

*Article 23*

The Committee of Ministers may, after obtaining the assent of the Parliamentary Assembly, establish specialised institutions operating within the framework of the Council of Europe and set up advisory and technical committees or commissions for such specific purposes as it may deem desirable.

*Article 24*

The Committee of Ministers shall adopt its Rules of Procedure, which shall determine amongst other things:

- i. the quorum;
- ii. the method of appointment and term of office of its President;

- iii. the procedure for the admission of items to its agenda, including the giving of notice of proposals for resolutions;
- iv. the notifications required for the nomination of alternates under Article 20;
- v. the powers of the Ministers' Deputies;
- vi. the delegation of authority to conferences of specialised ministers;
- vii. relations with the Parliamentary Assembly;
- viii. the membership of the Bureau of the Committee of Ministers;
- ix. relations with the Chamber of Local and Regional Authorities.

*Article 25*

At each part-session of the Parliamentary Assembly the Committee of Ministers shall furnish the Assembly with a report on its activity, accompanied by the appropriate documentation. The Chairman-in-Office of the Committee of Ministers shall present this report at a public sitting of the Assembly and shall answer questions.

*Article 26*

*a.* The following decisions of the Committee of Ministers shall require a vote supported by all its members who cast a vote and by a majority of the Representatives entitled to sit on the Committee:

- i. the adoption of recommendations to member States under Article 21.*c*;
- ii. the adoption of recommendations for the amendments of Articles 1.*b*, 12, 21 and 26 of this Statute.

*b.* Questions arising under the Rules of Procedure or under the financial and administrative regulations may be decided by a vote supported by a simple majority of the Representatives entitled to sit on the Committee.

*c.* The following decisions shall require a vote supported by two-thirds of the members casting a vote and by a majority of the Representatives entitled to sit on the Committee:

- i. the adoption of resolutions;
- ii. the adoption of recommendations for the amendment of articles of this Statute other than those specified in paragraph *a.ii* above;
- iii. the adoption of conventions, agreements and protocols, and the opening thereof for signature under Article 21.*c*;
- iv. decisions concerning the enlarged and partial agreements under Articles 21.*e* and 21.*f*.

*Article 27*

*a.* Unless the Committee decides otherwise, meetings of the Committee of Ministers shall be held:

- i. in private; and

ii. at the seat of the Council.

*b.* The Committee shall decide what information shall be published regarding discussions held in private.

*c.* The Committee shall meet at ministerial level at least twice a year, if possible during a part-session of the Parliamentary Assembly. It shall also meet whenever it sees fit.

## **Chapter V – Parliamentary Assembly**

### *Article 28*

*a.* The Parliamentary Assembly is the deliberative organ of the Council of Europe. It shall debate any matter relevant to the aim and falling within the competence of the Council of Europe as defined in this Statute, in conventions concluded within the Council of Europe or in resolutions and decisions adopted by the Committee of Ministers. It shall also deliberate on any matter referred to it by the Committee of Ministers for an opinion. It shall present its conclusions to the Committee of Ministers in the form of recommendations and statutory opinions.

*b.* The Assembly shall draw up its agenda in accordance with the provisions of paragraph *a* above.

### *Article 29*

The Parliamentary Assembly may, with due regard to the provisions of Article 49.e, establish committees to consider and report to it on any matter which falls within its competence under Article 28, to examine and prepare questions on its agenda and to advise on all matters of procedure, and organise hearings and conferences.

### *Article 30*

The Parliamentary Assembly shall establish appropriate working relations and conclude, if necessary, agreements to this effect with national parliaments and interparliamentary assemblies. It may act as a parliamentary forum for other international organisations possessing no parliamentary organ.

### *Article 31*

*a.* The Parliamentary Assembly shall consist of Representatives of each member, elected by its parliament from among the members thereof, or appointed from among the members of that parliament according to a procedure laid down by it and so as to reflect the various currents of opinion within that parliament. Every Representative must have the nationality of the member which he represents. A Representative may not be a member of the government of the member State, nor a member of the European Court or Commission of Human Rights or of any body set up under a convention.

*b.* The term of office of Representatives thus appointed shall date from the opening of the first sitting of the Assembly or meeting of the Standing



Committee following submission of their credentials; it shall expire at the opening of the next ordinary session or of a later ordinary session. However, following a general election, a member parliament shall make new appointments within six months. Moreover, a parliament may fill vacancies due to death or resignation. The term of office of the new Representatives shall date from the first sitting of the Assembly or the Standing Committee following their appointment.

*c.* Subject to the foregoing no Representative shall be deprived of his position as such during a session of the Assembly without the agreement of the Assembly.

*d.* Each Representative may have a Substitute who may, in the absence of the Representative, sit, speak and vote in his place. The provisions of paragraph *a* above apply to the appointment of Substitutes.

*Article 32*

The Parliamentary Assembly shall determine the distribution of seats among member States, having regard, *inter alia*, to their population figures and their gross domestic product. Members shall be entitled to not more than eighteen and not fewer than two Representatives.

*Article 33*

The Assembly may request the Committee of Ministers by every procedure at its disposal, and particularly by interpellation or oral question with debate, to present its views and/or to give explanations on any question falling within the Council of Europe's competence.

*Article 34*

The Parliamentary Assembly shall determine the scope and procedure for such investigations as it may deem necessary of matters falling within the Council of Europe's competence.

*Article 35*

The Parliamentary Assembly has a right of initiative in respect of conventions. The Committee of Ministers shall submit to it all draft conventions, agreements and protocols for approval prior to adoption. If necessary, the Secretary General shall report on the implementation of these treaties to the Assembly which, in the event of non-compliance, shall address recommendations to governments to the Committee of Ministers for the purpose of remedying this. If the Assembly's recommendations are not accepted, the Committee of Ministers shall give a reasoned reply.

*Article 36*

In pursuance of its task of ensuring respect for human rights, the Parliamentary Assembly may take, on the basis of the Statute, any action in its power in the event of a flagrant human rights violation and may, if

necessary, recommend implementation of the control procedures provided for in the European Convention on Human Rights.

*Article 37*

The Secretary General shall communicate to the Parliamentary Assembly, at the same time as to the Committee of Ministers, the Organisation's draft budget and draft intergovernmental programme of activities.

*Article 38*

*a.* The Parliamentary Assembly shall adopt its Rules of Procedure.

*b.* The Rules of Procedure of the Assembly shall determine, *inter alia*:

- i. the quorum;
- ii. the manner of the election and terms of office of the President and other members of the Bureau;
- iii. the manner in which the agenda shall be drawn up and communicated to Representatives;
- iv. the time and manner in which the names of Representatives and their Substitutes shall be notified;
- v. the membership of the Standing Committee which shall be responsible for sessions;
- vi. arrangements concerning the political groups;
- vii. the number of its committees and their fields of activity.

*Article 39*

The following decisions of the Parliamentary Assembly shall require a two-thirds majority of the votes cast:

- i. recommendations and statutory opinions addressed to the Committee of Ministers;
- ii. establishing committees;
- iii. determining the date of commencement of its sessions;
- iv. deciding to hold an extraordinary or part-session elsewhere than at the seat of the Council;
- v. determining what majority is required for decisions not covered by i to iv above or determining cases of doubt as to what appropriate majority is required.

*Article 40*

Other decisions shall be adopted by the majority determined by the Parliamentary Assembly in its Rules of Procedure in application of Article 39.v.

*Article 41*

The Parliamentary Assembly shall hold each year an ordinary session which may be divided into several parts.

*Article 42*

The Parliamentary Assembly may hold extraordinary sessions in accordance with Article 39. The Committee of Ministers may propose such a session.

*Article 43*

Ordinary sessions of the Parliamentary Assembly shall be held at the seat of the Council, unless the Assembly exceptionally decides otherwise, having due regard to the provisions of Articles 39 and 49.e.

*Article 44*

Unless the Parliamentary Assembly decides otherwise, its debates shall be conducted in public.

**Chapter VI – Joint Committee**

*Article 45*

*a.* The Joint Committee is the structure of concerted action and co-ordination between the Committee of Ministers and the Parliamentary Assembly of the Council of Europe. Without prejudice to the competences of each of these two organs, the functions of the Joint Committee should be, in particular:

- i. to consider problems which are common to both organs;
- ii. to draw attention to questions which appear to be of particular interest to the Council of Europe, particularly the political aspects of European co-operation;
- iii. to make proposals for the draft agenda of the sessions of the Committee of Ministers and the Parliamentary Assembly.

*b.* The Joint Committee shall be composed of an equal number of members of the Committee of Ministers and Representatives of the Parliamentary Assembly, appointed in accordance with its Rules of Procedure. It may hold meetings in restricted composition to consider a particular question.

*c.* The Joint Committee shall meet as often as may be necessary. It shall meet at least once a year at ministerial level.

*d.* The Joint Committee shall be chaired by the President of the Parliamentary Assembly.

*e.* The Secretary General shall attend meetings of the Joint Committee.

*f.* The conclusions of the Joint Committee shall be reached without voting.

*g.* Subject to the above provisions, the Joint Committee may adopt its own Rules of Procedure.

## **Chapter VII – Chamber of Local and Regional Authorities**

### *Article 46*

The Chamber of Local and Regional Authorities shall be the representative organ of local and regional authorities. It shall address its recommendations to the Committee of Ministers and to the Parliamentary Assembly, which shall consult it in appropriate cases.

The rules of operation of the Chamber of Local and Regional Authorities shall be laid down in a charter adopted by the Committee of Ministers, after obtaining the assent of the Parliamentary Assembly.

The Chamber shall adopt its Rules of Procedure.

## **Chapter VIII – Secretariat**

### *Article 47*

*a.* The Secretariat shall consist of a Secretary General, two Deputy Secretaries General and such other staff as may be required. One of the Deputy Secretaries General shall assist the Secretary General in all his duties except those relating to the Assembly. The other Deputy Secretary General shall be the Clerk of the Assembly; he shall be responsible for organising the Assembly's business and shall be accountable to its President.

*b.* The Secretary General and the Deputy Secretaries General shall be elected by the Parliamentary Assembly in accordance with special regulations issued by agreement between the Committee of Ministers and the Assembly.

*c.* The remaining staff of the Secretariat shall be appointed by the Secretary General, in accordance with the administrative regulations.

*d.* No member of the Secretariat shall hold any salaried office from any government or be a member of the Parliamentary Assembly, of any other international parliamentary institution, of any national legislature or engage in any occupation incompatible with his duties.

*e.* In the performance of their duties the Secretary General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organisation. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organisation.

*f.* Every member shall respect the exclusively international character of the responsibilities of the Secretary General and the staff of the Secretariat and not seek to influence them in the discharge of their responsibilities.

### *Article 48*

*a.* The Secretariat shall be located at the seat of the Council.

*b.* The Secretary General is responsible to the Committee of Ministers for the work of the Secretariat. He reports on his action to the Assembly as necessary and at least once a year.

*c.* The Secretary General shall provide such secretariat and other assistance as the Parliamentary Assembly requires. The Parliamentary Assembly is served by the Office of the Clerk under the authority of the Clerk.

## **Chapter IX – Finance**

### *Article 49*

*a.* The Committee of Ministers shall adopt the annual budget of the Council of Europe, subject to the opinion of the Parliamentary Assembly.

*b.* Each member shall bear the expenses of its own representation in the Committee of Ministers, conferences of specialised ministers, the Parliamentary Assembly and the Chamber of Local and Regional Authorities.

*c.* The expenses of the Secretariat and all other common expenses shall be shared between all members in such proportions and according to such criteria as shall be determined by the Committee, having due regard to the population and total gross domestic product of members. Expenses incurred under partial or enlarged agreements shall be charged exclusively to the states which are parties to the agreement.

The contributions of an associate member shall be determined by the Committee.

*d.* In accordance with the Financial Regulations, the budget of the Council shall be submitted annually by the Secretary General for adoption by the Committee.

*e.* The Parliamentary Assembly shall determine the amount of its expenditure, the rate of growth being agreed between the Committee of Ministers and the Assembly.

*f.* The Secretary General shall also submit to the Committee of Ministers an estimate of the expenditure to which the implementation of each of the recommendations presented to the Committee would give rise. Any resolution, the implementation of which requires additional expenditure shall not be considered as adopted by the Committee of Ministers unless the Committee has also approved the corresponding estimates for such additional expenditure.

### *Article 50*

The Secretary General shall each year notify the government of each member of the amount of its contribution; each member shall pay to the Organisation the amount of its contribution, which shall be deemed to be due on the date of its notification, not later than six months after that date.

## **Chapter X – Privileges and immunities**

### *Article 51*

*a.* The Council of Europe, Representatives of members and the Secretariat shall enjoy, in the territories of its members, such privileges and immunities as are reasonably necessary for the fulfilment of their functions. These

immunities shall include immunity for all Representatives and Substitutes to the Parliamentary Assembly from arrest and all legal proceedings in the territories of all members, in respect of words spoken and votes cast in the debates of the Assembly and its committees or other subordinate bodies.

*b.* The privileges and immunities shall be as defined by the General Agreement on Privileges and Immunities of the Council of Europe of 2 September 1949 and by the supplementary agreement and additional protocols. Every state which becomes a member shall accede to the agreement, to the supplementary agreement and to the additional protocols. The privileges and immunities enjoyed by the Council at its seat shall be as defined in the special agreement concluded on 2 September 1949 with the government of the French Republic.

## **Chapter XI – Amendments**

### *Article 52*

*a.* Proposals for the amendment of this Statute may be made in the Committee of Ministers or in the Parliamentary Assembly.

*b.* The Committee shall, after obtaining the assent of the Parliamentary Assembly, recommend and cause to be embodied in a protocol those amendments which it considers to be desirable.

*c.* An amending protocol shall come into force when it has been signed and ratified on behalf of two-thirds of the members.

*d.* Notwithstanding the provisions of the preceding paragraphs of this article, amendments to Articles 5 to 10, 28 to 44, 45, 46, 49 and 50, which have been approved by the Committee and by the Assembly, shall come into force on the date of the certificate of the Secretary General, transmitted to the governments of members, certifying that they have been so approved.

## **Chapter XII – Final provisions**

### *Article 53*

*a.* This revised Statute will enter into force after the deposit of the instruments of ratification by two-thirds of the member States with the Secretary General of the Council of Europe. It will replace the Statute which entered into force on 3 August 1949.

*b.* Any further signatory shall become a party to this revised Statute as provided for in Articles 4 and 5 above.

## Bibliography

- Albanese, F., "Le processus législatif au Conseil de l'Europe", in *Revue Trimestrielle de Droit Européen*, 1986, pp. 403 ff.
- Benoît-Rohmer, F., "L'adhésion de l'Union à la Convention européenne des Droits de l'Homme", in *Revue Universelle des Droits de l'Homme*, Nos. 1-2, 2000, pp. 57 ff.
- Burban, J.-L., *Le Conseil de l'Europe*, Que Sais-Je? series, No. 885, 3rd edn, Paris, PUF, 1996, p. 18.
- Cornu, E., "L'effectivité de la technique conventionnelle dans la pratique du Conseil de l'Europe", Doctoral thesis, Strasbourg, Robert Schuman University, 2004.
- Decaux, E., "Conseil de l'Europe", *Jurisclasseur Droit international public*, fascicule 6100.
- De Vel, G., "L'Union européenne et les activités du Conseil de l'Europe", in Dormoy, D., *L'Union européenne et les organisations internationales*, Brussels, Bruylant, 1997, pp. 105ff.
- De Vel, G. and Markert, T., "Importance and weakness of the Council of Europe Convention and of the recommendations addressed by the Committee of Ministers to member States", in Haller, B., Krüger, H.C. and Petzold, H., *Law in Greater Europe: Toward a Common Legal Area? Studies in Honour of Heinrich Klebes*, The Hague, Kluwer Law International, 2000, p. 345.
- Drzemczewski, A., "Le monitoring du Comité des Ministres du Conseil de l'Europe: un aperçu de son évolution", in *Libertés, justice, tolérance: mélanges en hommage au Doyen Gérard Cohen-Jonathan*, Brussels, Bruylant, 2004.
- Ghebali, V.Y., *L'OSCE dans l'Europe postcommuniste 1990-1996. Vers une identité paneuropéenne de sécurité*, Brussels, Bruylant, 1996, p. 643.
- Harremoes, E., "Le Conseil de l'Europe et les conventions européennes", in *Consejo de Estudios Internacionales Avanzados, Cooperación Académica internacional, Desarrollo progresivo del Derecho internacional*. Aportaciones de organizaciones, tribunales y parlamentos internacionales, Buenos Aires, 1991, p. 190.
- Imbert, P.H., "La Convention relative à la conservation de la vie sauvage et du milieu naturel de l'Europe, exception ou étape?", in *Annuaire Français de Droit International*, 1979, p. 743.
- Klebes, H., *Die Rechtsstruktur des Europarats und insbesondere seiner Parlamentarischen Versammlung*, Saarbrücken, Universität des Saarlandes, 1996.
- Klebes, H., "Human rights and parliamentary democracy in the Parliamentary Assembly", in *Mélanges à la mémoire de Rolv Rysdal*, Cologne, Carl Heymans Verlag, 2000, pp. 698 ff.

Krüger, H.C. and Polakiewicz, J., "Propositions pour la création d'un système cohérent de protection des droits de l'homme en Europe", in *Revue Universelle des Droits de l'Homme*, Vol. 13, Nos. 1-4, 2001, p. 1.

Malenowski, J., "Suivi des engagements des Etats membres du Conseil de l'Europe par son Assemblée parlementaire: une course difficile entre droit et politique", in *Annuaire Français de Droit International*, 1997, pp. 633 ff.

Massigli, R., *La comédie des erreurs*, Paris, Plon, 1978.

Modinos, P., "Du droit conventionnel général au droit conventionnel européen, Quelques problèmes d'élaboration et d'application des conventions du Conseil de l'Europe", in *Cahiers de Droit Européen*, 1968, pp. 3-37.

Polakiewicz, J., *Treaty Making in the Council of Europe*, Strasbourg, Council of Europe Publishing, 1999.

Robertson, A.H., *Le Conseil de l'Europe, sa structure, ses fonctions et ses réalisations*, Leiden, Sijthoff, 1962.

Schwimmer, W., "Des Einfluss des Parlamentarischen Versammlung auf die Konventionen des Europarates", in Haller, B., Krüger, H.C. and Petzold, H., *Law in Greater Europe: Toward a Common Legal Area? Studies in Honour of Heinrich Klebes*, The Hague, Kluwer Law International, 2000, pp. 376-408.

Schwimmer, W., *The European Dream*, London, Continuum, 2004.



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