

III. Recent developments in the Parliamentary Assembly of the Council of Europe

Communication by Mr Bruno HALLER (Council of Europe), Moscow Session (September 1998)

Mr DAVIES invited Mr Bruno HALLER, Secretary General of the Parliamentary Assembly of the Council of Europe, to address the Association on recent developments in the Parliamentary Assembly of the Council of Europe.

Mr HALLER said that he had been Secretary General of the Parliamentary Assembly of the Council of Europe for the last three years. As an international body, the Assembly did not have the same challenges as a national parliament but it remained extremely interesting work. In recent times the Assembly had increased very significantly the number of its members. It had, therefore, become very strict in the time allotted for speaking and he would try to be as disciplined in his own presentation.

One important issue was the battle by the Parliamentary Assembly to increase its powers in relation to the originally governmental institution of the Council of Europe. The Secretary General was important in this matter. The Assembly did not sit permanently in its own headquarters since it consisted of national members of parliament who came together. It did however have a permanent secretariat. There was clearly a political aspect to this question of respective powers, albeit not a party political one. It was easier for the Secretary General to have some role since he was elected by the plenary Assembly for a five year period which was renewable.

The Assembly of the Council of Europe was, of course, distinct from the European Parliament but it did also sit in Strasbourg. Two dates were very important in its history. The first was 1949 when the Council of Europe was established in London on 5 May. It was the first European organisation to unite European countries, reconcile its peoples and build togetherness. Strasbourg was chosen as the headquarters because it was a city bitterly fought over. It was therefore a good place to choose in order to demonstrate reconciliation of the peoples of Europe. From the beginning there were two organisations, a Committee of Ministers which was the executive power of the organisation, and a consultative assembly which had less power.

In 1949, the Council of Europe brought together the countries of western Europe and then united them in 1950 with the European Convention on Human Rights. This was the first and best system of legal protection of human rights, with a court which could make binding decisions. All member citizens of countries within the Council of Europe could appeal to the European Court of Human Rights. This was one of the pillars of the Council of Europe. Later the Council of Europe adopted international conventions and contributed to their legal harmonisation.

The second important date in the Council of Europe's history was 1989. It had been thought that Finland would be the last member to join the Council of Europe. But then came the fall of the Berlin Wall. Thus 1989 was a key year. The Council of Europe set up the status of "special guest" for the new democracies. It thus proved to be a political institution to get people together. In 1989 Mr Gorbachev was invited to address the Council of Europe. Then Hungary and other emerging democracies joined and there were now 40 member states of the Council of Europe. Two candidate countries were currently waiting for permission, Belarus and Yugoslavia, and there were four further candidates, Armenia, Azerbaijan, Georgia and Bosnia Herzegovina. The Council of Europe had thus become a pan-European organisation, not just a western European organisation and the main challenge now was to ensure that all the countries of Europe were involved on an equal footing.

The Assembly of the Council of Europe had a weak statutory basis to start with. It did have some statutory prerogatives. It was for instance a "body" which was important since it could make recommendations. It did indeed do so, producing many recommendations calling for the drafting of legal texts and conventions. Forty per cent of the Council of Europe's conventions originated in the Assembly, for instance those on human rights, the prevention of torture and the protection of minorities. The Assembly could elect the Secretary General of the Council of Europe, the Deputy Secretary General and the Clerk. It also elected the member judges on the European Court of Human Rights and this was its most important power. This was particularly important now since the forty member states each had a right to one judge. Elections took place on the basis of lists of proposed candidates, each country providing three candidates. The Assembly received the candidates and heard them. The first time such hearings had taken place was that year. A special ad hoc sub-committee had been established for these hearings which made recommendations to the Assembly. He knew that parliamentarians would like to make recommendations for the future with regard to conditions for candidates, which were at present too imprecise. Thus the judicial role played by the Assembly was extremely significant.

With regard to the admission of new member states to the Council of Europe there was in the statute no special provision stating that the Assembly had to be consulted. There was, however, a provision relating to the member state list through which the Assembly did manage to achieve more power in this area. It did thus play a part in the enlargement process from the 23 members in 1989 to the current 40 member states. The Assembly indeed had a great deal of work to do on a very slight statutory basis. The Assembly controlled the enlargement process and its calendar. When requests for membership came in the Committee of Ministers referred them to the Assembly. The Assembly had to draw up a doctrine for admission since, at the time, the statute was too general. Therefore in recent times the Clerk had, as his main task, the establishment of such a procedure. Progressively the Assembly set up the new system to consider candidates, which involved visits to countries, the observation of elections, the consideration of legal systems, the use of specialists for particular studies, the appointment of rapporteurs, the involvement of two committees, the political and legal committees, which also had responsibilities in this area. Secretaries General of new member states' parliaments knew this procedure very well.

The Assembly also had an influence on the timetable. Rejecting any pressure the Assembly decided to suspend the admission procedure for Russia during the Chechen crisis. It had also decided to suspend the special status of Belarus and keep pending the candidacy of Yugoslavia. It therefore did have considerable control in the procedure for the admission of new members.

Since all countries were not entirely ready for membership in that they did not meet all the terms and conditions, the Assembly produced a new procedure. The Assembly said that it did wish such countries to be members provided that their highest authorities committed themselves to changes in the judiciary, the separation of powers and the drafting of penal and civil codes. This allowed countries to become new members more quickly but there were then follow-up procedures to ensure that the conditions were being fulfilled. Some claimed that the Council of Europe had lost some of its values by accepting new members too quickly. Mr HALLER, however, did not agree. The Council of Europe wished to spread its principles and should not stick to a small risk free group. Certain political requirements for membership were sent to the Committee of Ministers. This was necessary if all the countries were to be accepted on the same footing. The Assembly wanted the Committee of Ministers to be more political to create a pan-European political forum where questions arising in member states could be discussed. The Assembly also wanted the Committee of Ministers to have a higher profile. The Council of Europe was very involved in the observing of elections. In the coming weeks, six elections were to be

observed in member states and in candidate states. The character of the Assembly was developing and becoming increasingly political. Guests were invited to speak at each session including presidents and prime ministers. There was also a greater political dimension to the Assembly's debates and a higher profile internationally through some clear cut decisions. The Bureau gave power to the Speaker and in the Speaker's absence to the Clerk to take political decisions in some circumstances. There was, however, the anomaly that the Assembly did not have budgetary power unlike other assemblies. The Assembly was a para-legislative body rather than a legislative body but it did wish to take a greater part in the decision making process, in particular to have a role in the establishment of international conventions.

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Mr DAVIES thanked Mr HALLER for his presentation and invited questions.

Mr MYTTENAERE (Belgium) asked how many member states had signed the Convention of Human Rights. It was the pillar of the Council of Europe and yet there was always a list of member states who had not yet signed. He asked about developments in the work of the European Court of Human Rights and also whether any thought was being given to the possibility of ending the double allegiance of delegates to the Western European Union as well as the Council of Europe. With the increasing amount of work of the Council of Europe it was no doubt becoming increasingly difficult for national members of parliament to participate in both organisations.

Mr KAITOUNI (Morocco) asked if countries could be observers in the Council of Europe and what was Israel's position in the organisation. He also asked whether the Assembly considered the immigration question and its relation to human rights issues.

Mr HALLER said with regard to the questions of Mr MYTTENAERE that from last year all members of the Council of Europe had signed and ratified the European Convention on Human Rights. This had been done under pressure from the Assembly who had required it as a sine qua non of acceptance into membership. The Convention had been accepted by two summits of heads of government and new members had to do the same. With regard to the Court, 39 judges had been elected. There had been a delay for the Russian judge but that appointment would take place soon. The new European Court of Human Rights began its work on 1 November that year. There was a significant change.

Previously there had been a Committee on Human Rights to filter cases which then went to the Court. There was now a single Tribunal. This meant a very considerable re-organisation and reform to the rules. All judges sat permanently in Strasbourg. The Tribunal had a very different dimension to the previous system.

With regard to double allegiance, Mr HALLER agreed with the point made by Mr MYTTENAERE but to end it it would be necessary to change the Treaty which stated that the same delegation would attend both the Western European Union Assembly and the Council of Europe Assembly. Already it had to be said that some specialisation existed with some members of the delegation going to one body and some to the other.

In answer to Mr KAITOUNI he regretted that he had been unable to accompany the Speaker of the Parliamentary Assembly, Mrs Fischer, to Morocco on a recent visit. Israel had been an observer to the Assembly since 1957 and no other country then had this status which was accorded under Article 56. Since then, however, the Committee of Ministers had established the status of observer through statutes for other countries, the United States, Canada and Japan. Other requests for this status were under consideration. The Assembly looked at requests under the new procedure. The Assembly did have a specialised committee on immigration and Mr HALLER was happy to put Mr KAITOUNI in touch with the members of that committee. It looked both at immigration problems and more widely at the issues surrounding them.

Mr DAVIES thanked Mr HALLER again for his very interesting presentation and for his answers to the questions.