

## **THE COUNCIL OF EUROPE: DEMOCRACY AND HUMAN RIGHTS FOR A “GREATER EUROPE”**

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The article provides a comprehensive and critical overview of the structures and policies of the Council of Europe, with special emphasis on the post-Cold War period. In that period policies were adopted to prevent the weakening of the organization's internal procedures and international role in view of its rapid enlargement, that in the course of twelve years more than doubled its membership. Developments like the procedure to “monitor member states' commitments”, the inauguration of the “Single Court of Human Rights”, the office of the Commissioner of Human Rights, the Framework Convention of National Minorities and others are discussed and evaluated. The author draws from his rich experience as Greece's Permanent Representative during that country's presidency of the Council of Europe (May-November 1998) to provide suggestions for long-term policies and short-term practical measures to enhance the organization's international posture in the field of “democratic security”.

### **1. Some Introductory Thoughts**

**T**he Council of Europe has always been a peculiar institutional formation. To begin with it is endowed with a set of moral principles to evaluate and criticize state behavior in sensitive matters of domestic jurisdiction, in fact the behavior of those very states that gave it birth. At first sight this appears like the contemporary realization of an old dream of international lawyers and some political philosophers to subject state power to the moral authority of a superior institutional entity. Alas, at a closer look this illusion quickly fades away.

Second, to perform this task the organization is equipped with intergovernmental, parliamentary and judicial or quasi-judicial mechanisms, more or less, inadequate to meet the challenge.

Inadequate are also the financial means that members-states make available to the organization. One must recall that at the Second Summit (1997) participating state leaders adopted an ambitious action plan, but they, subsequently, refused to make proportionate increases to their governments' contributions to implement their pledges except for the funds required for the new Court.

Third, the Council of Europe is the only international organization accepting individuals as parties with equal status in proceedings before its human rights tribunal. The role it allows non-governmental organizations and other private entities adds to the perception of an intergovernmental institution in a continuous, direct, interaction with the societies of its member-states. But at the same time makes an exclusive prerogative of its intergovernmental body i.e. the Committee of Ministers, that meets twice a year (in fact the Committee of Permanent Representatives, or CPE, that meets every week) the authority to make binding decisions. It is this body, that oversees the implementation of the judgments of the human rights tribunal. At the same time, voting rules providing for simple or 2/3 majority are customarily by passed to attain consensus, a reality diminishing the political weight of those decisions.

Finally, the Council of Europe is a regional organization with a broad mandate and a large membership, today 43 states, that excludes the United States, the hegemonic power of our times. This is the domain of another great illusion: that almost one fourth of United Nations' members, including three permanent members of the Security Council can make important decisions on contemporary international affairs that do not bear the American "seal of approval". But when the moment of truth comes in the form of an international crisis like the one in Yugoslavia, where United States interests are at stake neither formal non-membership nor institutional process could prevent the exercise of effective American influence over the affairs of the Council of Europe.

Alternating between illusion and reality, frustration and excitement the Council of Europe remains a unique *place* in contemporary European and world affairs. It is also a difficult place to work at not so much because of the enormous amount of paperwork produced daily by sessions and meetings of Committees, Commissions, Working Groups etc., as for the futility of every day coordination of the work of the independent experts and state representatives involved. In this article I will attempt to sketch a

brief overview of political and institutional developments in the Council of Europe since the early 1990's with special emphasis on the 1997-1999 period when I was personally involved in its affairs. I do not intend to provide an exhaustive or even comprehensive sequence of events and institutional developments which are readily available through books, periodicals or electronic means. My intention is to outline as accurately and objectively as possible, the opportunities that the evolving institutional framework of the Council of Europe offers to state policy as well as societies and individuals.

## 2. The Basic Institutional Setting

Students of European integration are perhaps more familiar with the background of the establishment of the Council of Europe in the early post War II years than with the organization's current activities. For one thing, the Council of Europe is the oldest European institution still in full operation. It was the aftermath of the famous Hague Conference organized by the European Movement after the end of the war that led to the conclusion, on 5 May 1949, of the Treaty of London signed by 10 states (Belgium, France, Luxembourg, the Netherlands, the United Kingdom, Denmark, Norway, Ireland, Italy and Sweden). Later the same year Greece and Turkey joined the original signatory states. By the end of the 1980's the membership had reached 23: Iceland and Germany (1950), Austria (1956), Cyprus (1961), Switzerland (1963), Malta (1965), Portugal (1976), Spain (1977), Liechtenstein (1978), San Marino (1988), Finland (1989).

The aim of the Council of Europe i.e. the achievement of greater unity among its members, was to be attained through the functions of its statutory organs: the Committee of Ministers; the Consultative (after February 1994 the term "Parliamentary" is used in all official documents) Assembly; and the Secretariat headed by the Secretary General. In 1994 a statutory resolution – a convenient compared to formal amendments, method to make additions to the original text – was used to add to the above the Congress of Local and Regional Authorities of Europe (CLRAE)<sup>1</sup> already in existence as a "Standing Committee" since 1957.

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<sup>1</sup> D. Pinto, "The Council of Europe: its missions and structures" *The Challenges of a Greater Europe*, Council of Europe Publishing (Strasbourg: 1996) 29-46 at 32.

The Committee of Ministers is the only body authorized to make decisions directly binding on member states. Twice a year there are meetings at the ministerial level and every week at the level of the Committee of Permanent Representatives i.e. the Ambassadors representing their countries before the Council of Europe. The Chairmanship rotates every six months in alphabetical order, among member-states and the foreign Minister chairs the meeting at the end of his/her 6-month Presidency, held at ministerial level while the respective Ambassador chairs the weekly meetings of the Committee of Permanent Representatives.

The Committee of Ministers acts either on its own initiative or at the recommendation of the Parliamentary Assembly or the CLRAE. With the exceptions of issues arising out of the Committee's rules of procedure or under financial and administrative regulations – requiring simple majority – other decisions require a two-third majority. Still, as already mentioned, the Committee tends to act on a consensus. As a result of its mainly ceremonial functions the bi-annual meetings at Ministerial level of the Committee, tend to attract fewer and fewer ministers and more deputy-ministers, general secretaries etc, while it is becoming more common, especially with the great powers, for the Ambassadors to represent their countries at the ministerial meetings as well. A major disincentive is an agenda of already negotiated and agreed-to-the-last-detail items which leaves no room for spontaneous political debate and interaction.

The Parliamentary Assembly, the deliberating body of the Council of Europe, today comprises 301 members and an equal number of substitutes representing the parliaments of the Council's 43 states. Each parliamentary delegation reflects the strength of political configurations in national parliaments. Once in Strasbourg they affiliate themselves with the Political Groups of the Assembly which at present, in order of size, are the Socialist Group; the European Peoples Party; the European Democratic Group; the Liberal Democratic and Reformers Group and the Unified European Left Group. Also the parliamentarians are associated with one of the, currently, ten Committees such as Legal Affairs and Human Rights, Monitoring, Political Affairs, Culture, Science and Education, Migration, Refugees and Demography. The first three are the "heavyweights" in terms of political significance since they influence with their reports and opinions two of the most sensitive functions

of the Assembly: its reaction to new applications for membership and the monitoring of commitments that member-states have made to the organization.

The Assembly meets four times a year in plenary session and debates the reports prepared *inter alia* at the level of Committees, adopts Opinions, Resolutions and Recommendations addressed to the Committee of Ministers. Major political assets are its pan-European character and the openness of its deliberations and actions as well as its prerogative to select the two highest elected officials of the organizations: the Secretary General, who traditionally comes from its ranks and, of course, its own President.

On the other hand governments have so far been reluctant to entrust it with any real decision-making authority in political matters or even discuss in depth and react to its recommendations within a reasonable period of time. During the period that Greece held the Vice-Presidency of the organization, (in January 1998), a Resolution of the Committee was adopted despite objections by some of the "Great Powers", setting a 9-month limit for the Committee to respond to Recommendations of the Parliamentary Assembly.

The Secretary-General is elected for a five-year renewable term, and is given the power to energize with ideas, proposals, and initiatives the statutory organs so as to promote the objectives of the Council of Europe. Also he/she supervises and coordinates the work of hundreds of experts representing national ministries in various committees operating under the auspices of the organization as well as the staff, currently about 1700 persons, of which 30% are temporary employees. The personalities chosen in recent years to serve this office have, generally speaking, provided reasonably good leadership. However, the practice of the Assembly to limit the selection to its own parliamentarians (as well as the tradition to alternate between conservatives and liberals and to take into account geographical and other criteria) has deprived the Council of Europe of candidates with a true pan-European posture and tested leadership qualities on the global scene.

Real-life needs have upgraded into one of the most important elements of the entire statutory structure of the Council of Europe, the right of the Committee of Ministers to conclude "conventions or agreements" (Art. 15). More than 170 such conventions have been put into effect in the 50 years since the establishment of the Council of Europe, the largest-scale operation the European continent has

ever witnessed for the harmonization of law and legal and administrative practices over a great variety of subjects.

Beyond doubt, the first of these Conventions, the European Convention for the Protection of Human Rights and Fundamental Freedoms, better known as the European Convention of Human Rights (hereafter: ECHR), remains the greatest achievement of the Organization. The Convention was signed in Rome in November 1950, during the 6<sup>th</sup> Session of the Committee of Ministers. Unlike a similar UN Convention it is a binding legal instrument equipped with a supranational supervisory mechanism accessible not only to states but also to individuals, whose rights have been transgressed by the actions of one of the states, contracting parties.

Originally it consisted of a Commission of Human Rights, which, failing a friendly settlement, expressed an opinion and, then for states having accepted its jurisdiction, referred the matter to the Court of Human Rights for a binding final decision. After the amendment of the original text by Protocol 11, there is now only a Single European Court of Human Rights dealing both with state and individual petitions that meet the criteria of admissibility that is, exhaustion of available and effective local judicial remedies and violation of one of the rights protected by ECHR or one of its Protocols. Protection is accorded to the right to life; freedom from torture and *inhuman* treatment; freedom of thought, religion and expression; due judicial process and fair trial; right to own property; etc. Today over 800 million people enjoy the protection of the Convention and the privilege to bring cases to the Strasbourg Court. Still the supervision of the implementation of judgments by a political, intergovernmental, body like the Committee of Ministers has caused long delays and even implicit refusals to comply.

### **3. Political and Institutional Adjustments to the Challenges of a New Era: 1990-1999**

The disintegration of the Eastern bloc, the ultimate collapse of the Soviet Union itself and the defeat of state socialism as practiced until 1989 led to a totally new era of domestic and international politics. In that new era the principal concerns were not deterrence, credible second-stake capabilities and the strife among incompatible models of politics and economics at all levels of society. Instead, at least in the early years of the era, the major objectives (or, to put it

in the familiar terminology, the subject-matter of “high politics”), were the consolidation of the peaceful transformation of formerly state-controlled societies and centrally planned economies into genuine democracies and open markets.

For the Council of Europe this could imply considerable upgrading of its role: from an ideological bastion of a segment of one of the two antagonistic blocs with little input in international politics to an institution that would address the major security concerns of the new era and make irrevocable the transition to a new global reality, where human and minority rights and freedoms, the rule of law and pluralist democracy were dominant features.

The Council of Europe had always been consistent in excluding from its ranks states which have failed to uphold at least the formal appearances of a democracy. Greece, under the Colonels (1967-1974) was forced to withdraw (December 1969) as a result of the combined pressures of the Assembly, the European Commission of Human Rights and finally the Committee of Ministers itself.<sup>2</sup> Portugal, a member of NATO, was admitted to the Council after the fall of the Salazar Dictatorship (22.9.76) and Spain after the end of the Franco regime (24.11.77). Certainly tolerance towards Turkey and its “military supervised democracy” remains an embarrassment<sup>3</sup> of the Council.

Nevertheless given its more or less consistent record and a Statute that sets as prerequisites for membership neither the performance of the economy nor security considerations but democracy and human rights, it was rational that the Council of Europe would be the first formerly “Western European” organization that the formerly “Eastern Europeans” would turn their attention. First the unification of Germany on October 1990 “enlarged” overnight the Council with 17 million East Germans. Then, on November 1990, Hungary became the first former Warsaw Pact and Comecon member to join the Council of Europe. Poland was admitted on November 1991; then Bulgaria (7.5.1992), Estonia, Lithuania and Slovenia (14.5.1993); the Czech Republic and Slovakia (30.6.1993), Romania (7.10.1993);

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<sup>2</sup> D. Conostas, *The “Greek Case” before the Council of Europe 1967-69* (Athens, Papazissis, 1976) – in Greek.

<sup>3</sup> See D. Conostas ““The Turkish Affair”: A Test Case for the Council of Europe”, *Legal Aspects of European Integration* (1982) 69,70.

Latvia (10.2.1995); Moldova (13.7.1995); Albania, the Former Yugoslav Republic of Macedonia and Ukraine (9.11.1995), the Russian Federation (28.2.1996) and Croatia (6.11.1996). Andorra, a small state with a much different background joined the Council in October 1994.

Thus in the course of seven years, the membership of the organization more than doubled: from 23 to 40. Enlargement proceeded one more step with the addition of the Caucasian Republics, first Georgia (27.4.1999) and then Armenia and Azerbaijan (25.1.2001) and finally membership reached a total of 43 members. Should the accommodation of so many new states lead to the weakening of the system of the Council of Europe the benefit both for older members and newcomers would be questionable. Therefore, the challenge for everyone was and remains to combine admission with strict, well-defined, prerequisites to complete whatever domestic reforms were necessary to adjust to Council of Europe standards within a specified period of time.

To respond to this challenge a procedure known as "monitoring" of obligations was introduced to the vocabulary and working methods of the organization. Official stipulation of this new policy first took the form of an Order of the Assembly (June 29, 1993) providing that specific commitments on issues related to the Council of Europe basic principles entered into by candidate states should, in the future, become a condition for the participation of parliamentary delegations of the new member states to the Assembly's work. The Political Affairs and the Legal and Human Rights Affairs Committees should monitor closely and report to the Bureau of the Assembly every six months until all obligations had been honored (10.11.1994). A little more than a year later, the Committee of Ministers with its "Declaration on Compliance with Commitments Accepted by Member States of the Council of Europe" provided the legal basis for a permanent, intergovernmental procedure of monitoring.

Both the parliamentary and intergovernmental procedures became crystallized in April 1995. First, on April 20, the Committee of Ministers decided it would conduct its monitoring through factual reports on all member-states of the Council of Europe prepared by the "monitoring unit" of the Secretary General, in pre-selected areas of concern. The whole procedure would be confidential, conducted in special closed-door meetings. However, on 26 April 1995, the Assembly adopted a new Order, supplementing that of 1993 in two



important aspects: the Assembly, as the Committee of Ministers, would monitor *all*, not just new member states; and the Committees on Political Affairs and on Legal Affairs and Human Rights would report directly in plenary session. Thus, a state's compliance would become a matter of public debate.<sup>4</sup>

On 8-9 October 1993 an unprecedented event took place in Vienna: the first Summit of 32 Heads of State and Government of the Council of Europe. Besides its symbolic significance, the Summit took three concrete steps to make the Council more relevant to the needs of a "new Europe". First, it decided to open for signature, in May 1994, Protocol N°11 to the ECHR, setting up a single Court. Second, it set up an ad hoc Committee to draft a framework Convention for the Protection of National Minorities, also open to non-member states. The Convention adopted in November 1994 was opened for signature on 1 February 1995 and came into force on 1 February 1998. As a "framework" the Convention is not directly applicable in internal law. Contracting states must implement its principles, either through bilateral or multilateral agreements with other states or through legislation or appropriate national policies.<sup>5</sup> These principles include among others the prohibition of assimilation or discrimination; freedom to use and be educated in one's own language; freedom to preserve one's culture and uninhibited in international and transfrontier cooperation; freedom to participate in economic, cultural, community and public life. A peculiar feature of the Convention is the striking absence of a definition of a national minority, none having received the approval of all member states.

Despite shortcomings the framework Convention is a unique international instrument in a particularly sensitive aspect of domestic and international life and the monitoring of its implementation through the Committee of Ministers could add to its effectiveness.<sup>6</sup> As of August 2001, 34 states had ratified the Convention including two non-members: Bosnia-Herzegovina and Yugoslavia and 8 more have signed but not ratified it. Andorra,

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<sup>4</sup> Denis Huber *A Decade which made History The Council of Europe 1989-1999* (Strasbourg; Council of Europe Publishing, 1999).

<sup>5</sup> F. Capoterti "The first European Legislation on the Protection of National minorities" in *Challenges of a Greater Europe* supra n. 1, pp. 147-151 at 147.

<sup>6</sup> *Ibid* p. 150.

France and Turkey are the only three members of the Council of Europe yet to sign it. Greece signed on 22 September 1997 but ratification is still pending.

The third step was incorporated in the Action Plan of the Summit: the decision to set up a European Commission against Racism and Intolerance (ECRI). The Commission, which began its work on March 1994, has as objective to stimulate action to combat racism, xenophobia, anti-Semitism and intolerance at local, national and European level as well as to formulate policy recommendations for member states and to study ways of strengthening wherever appropriate, relevant international legal instruments.<sup>7</sup> Among the various methods and practices employed by ECRI to promote its objectives, the most influential has been the country-reports it produces concerning racism and intolerance in each member state. At the end of 1999 ECRI finished the first round of country-by-country reports and prior to the conclusion of a second report on each member state it decided to organize country visits for ECRI rapporteurs. Thus on-the-field experience has strengthened the findings of ECRI, exerted a considerable amount of political pressure on the responsible national authorities and will most likely enhance the efficiency of the whole process.<sup>8</sup>

Unrelated to the first Summit but nevertheless responding to an unfortunately ever pressing need, the supervisory mechanism of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment represents another example of "on-the-field" monitoring by an institution of the Council of Europe. That institution is the European Committee for the Prevention of Torture (CPT), created by the above Convention, which came into force on February 1, 1989.<sup>9</sup>

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<sup>7</sup> F. Orton, "Racism and Intolerance: Ensuring the Implementations of Existing Texts" in *Challenges of a Greater Europe*, supra n. 6, pp. 155-158 at 155.

<sup>8</sup> See e.g. European Commission against Racism and Intolerance *Second Report on Turkey Adopted on 15 December 2000* (Strasbourg, 3 July 2001) where Turkish authorities feeling uncomfortable with the findings of the Report expressly asked to reproduce as an Appendix their own observations.

<sup>9</sup> R. Morgran, "A European Committee for the Prevention of Torture" in *Challenges of a Greater Europe*, supra n. 6, pp. 85-92, at 85.

The Convention has been ratified by 41 member states while procedures are moving for the accession of the remaining two: Armenia and Azerbaijan. CPT is the only international body within the territory of the Council of Europe that is entitled to visit any place where persons are deprived of their liberty by a public authority. In addition to its regular visits, CPT can also carry out visits either upon the urgent request of a member state or in response to pressing matters brought to its attention through other channels. The reports drafted, following these visits and after a dialogue with the authorities of the state visited, are in principle confidential but, fortunately, there is a general trend to make them public. It is worth noting that CPT has not limited itself to conventional activities but has recently exchanged letters with the International Tribunal for the Former Yugoslavia in order to exercise its monitoring functions with regard to the conditions of imprisonment and treatment of certain persons convicted by that Tribunal!<sup>10</sup>

The Second Summit of the Council of Europe took place on 10-11 October 1997. Forty-six heads of state and government accepted the invitation of French President Jacques Chirac to convene in Strasbourg where, besides taking an indeed extraordinary “family photo”, they were to accomplish some, specific and substantive common tasks incorporated in the two official texts of the Summit: the Final Declaration and the Plan of Action. The texts were prepared by the Working Group on the Second Summit over a long period of time with the participation of the heads of the 41 diplomatic missions in Strasbourg. Specific pledges became part of the Action Plan. These were a commitment to set up the Single Court of Human Rights by November 1 1998; the formal endorsement of the Finnish proposal to create an office of the Commissioner of Human Rights who would complement the work of the Court; a confirmation of the monitoring function of the Committee of Ministers entrusted to the Committee of Permanent Representatives (CPR) and the decision to “instruct the Committee of Ministers to carry out the necessary structural reforms” for an enlarged Council of Europe which led to the set up of the so-called “Committee of Wise Persons”.

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<sup>10</sup> “Statement of Mr. Pierre-Henri Imbert, Director General of Human Rights at the Council of Europe” *57<sup>th</sup> Session of the U.N. Commission of Human Rights Geneva, 19.3-27.4.2001* (29 March 2001) p. 3.

Perhaps, the most interesting debate at the level of CPR was the one that led to the formulation of the first paragraph of Chapter II of the Plan of Action entitled "combating terrorism". The original sponsor of this paragraph was France, who found the Summit an appropriate occasion to upgrade the conclusions of a Ministerial Conference on Terrorism held in Paris on July 30, 1996. The debate evolved into a confrontation between states facing secessionist movements resorting to terrorist practices, primarily Spain, Turkey and France and those who felt that the Council of Europe was not the appropriate institution to meet this challenge. The latter group headed by the United Kingdom, Belgium, the Netherlands and the Scandinavian countries claimed that emphasis on terrorism would weaken the Council's emphasis on the protection of human rights. They also pointed out that existing structures and staff were inappropriate to cope with this new activity. The latter group opined that reference to terrorism should be made in the Final Declaration not in the Action Plan. Turkey, a country where "terrorism" often acquired a generic meaning, felt that this could become a "safety-valve" allowing occasional deviations from commitments with the Summit's blessings.

The final compromise was modest, stressing the need to strengthen international cooperation, (rather than, as some states desired, taking action in each member state to prevent use of its territory) to avert terrorist activities, against another. At the same time it was stressed that anti-terrorist measures should conform with provisions of international law "including international standards on human rights". A parliamentary conference was to be held to study the phenomenon of terrorism in democratic society. At the same time the Final Declaration, in addition to a strong condemnation of terrorism, stated the determination of member-states to make full use of existing (not additional) machinery to combat terrorism "while ensuring respect for legality and human rights".

Greece, shared the concern that excessive emphasis on anti-terrorist policies could jeopardize the principal mission of Council of Europe in the field of "democratic security" and human rights thus aligning itself from the start with the group of countries objecting to a prominent role for the Council of Europe in the fight against terrorism. Greece also worked to improve the text of the Final Declaration in two other matters. The first, was the inclusion of a reference to international law and the Council of Europe's role in

promoting respect for its provisions. This was in line with Greece's position both as a status quo country as well as a state opting for international adjudication for the settlement of bilateral disputes, especially those with Turkey. A reference to "respect for humanitarian international law and the knowledge of its rules at national level, in particular among the armed forces and the police" in connection with the victims of international conflicts, was finally included in the Final Declaration on the insistence of France, United Kingdom, Switzerland, Greece and a few more countries. The origin of this amendment is a meeting between the President of the International Red Cross (IRC) and the Bureau of CPR who had asked the support of the Council in the exercise of pressure against Turkish authorities in South-Eastern Turkey. The latter refused to cooperate with IRC in observing minimal humanitarian standards, in the campaign against Kurdish insurgents. Turkey initially objected to such a reference to the text but was soon isolated and had to acquiesce.

Finally, on a Greek initiative, the reference to the development of new information technologies was qualified with the addition "while ensuring a proper balance between the right of information and respect for private life" to demonstrate Council of Europe sensitivity to public sentiment over the situation which arose following Princess Diana's death a few weeks earlier.

The first of the few specific commitments of the Summit, the inauguration of the New Single Court for Human Rights, was realized, as scheduled, on 3 November 1998. This was indeed a special moment for the Council of Europe and its greatest achievement, the European Convention. Hence, ceremonies were fitting with the occasion. However, in his short speech, as President of the Committee of Ministers, the Greek Deputy Minister of Foreign Affairs, the late Yannis Kranidiotis, drew attention to the "Achilles' heel" of the entire structure that is ensuring compliance with the Court's judgments:

*"the adoption of measures that enable applicants to be restored to their rights and prevent further similar violations from taking place is for the Committee of Ministers a fundamental duty, which in no case shall remain an empty letter".*

The second major undertaking of the Second Summit, a Report by a Committee of "Wise Persons" to adjust an enlarged Council of Europe to the realities of a new era, became public in October.

1998.<sup>11</sup> However, the outcome of year long deliberations of this Committee was more or less pre-determined by its composition and mandate. Two entirely different profiles for the Committee were debated within the Working Group assigned the follow-up to the Second Summit under the chairmanship of the French Ambassador, Jacques Warin.

The first, sponsored primarily by Finland but also Hungary and most Scandinavian countries, proposed personalities of a pan-European posture, able to carry out a radical restructuring of the organization. The work of this "grand" committee would be assisted by a "Technical Committee" made up of personalities from the main organs and divisions of the Council of Europe. The second concept suggested a unified Committee that would include experts on an equal status with personalities equipped with a concrete mandate "to amend and improve existing procedures". The rationale of this second proposal, was that the Committee of Wise Persons should reorient the organization's resources and accomplish the new tasks *without budget increases*. Needless to say, this was the version favored by the large contributors, the "great European powers", Germany, Italy, United Kingdom, Russia and France. They all succeeded, in the end, to place their nationals in the ten-member Committee either as full members (Russia) or as representatives of the Parliamentary Assembly (Germany), the Venice Commission (Italy), the European Union Presidency (U.K.), or of the host country's authorities (France). The chairmanship of Mario Soares – a favorite of the Franco-Italian group – secured a smooth handling of delicate issues with minimal departure from established routines.

Regardless of such limitations, the end product of the Committee's work included a number of important suggestions both as regards internal functions as well as the Council's role in a new division of labor among European organizations, particularly the Organization for Security and Cooperation in Europe (OSCE), but also the European Union. In the latter category it suggested the conclusion of framework agreements with the organizations concerned delineating areas of specialization and procedures for cooperation

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<sup>11</sup> Committee of Wise Persons, *Final Report to the Committee of Ministers*, 103<sup>rd</sup> Session, Committee of Ministers (Strasbourg, 3-4 November 1998) cm (98) 178 Restricted.

in common objectives. Suggestions concerning decision-making, monitoring of compliance of member states with their obligations and improving the visibility of the Council of Europe were all very pertinent reflecting the long experience of the members of the Committee with the organization's shortcomings. Concerning the sensitive issue of the organization's strikingly inadequate financial resources, the Committee, although generally supportive of more generous contributions, rightly pointed out that "the allocation by member states of more financial resources, is a matter of political will which should take into account the increased role of the Council of Europe". Unfortunately three years after the publication of the Report such will is yet to manifest itself.

The 50<sup>th</sup> anniversary of the Council of Europe coincided with one of the worst crises in the post WW II Europe, definitely the most serious since the end of bipolarity: NATO's operation "Allied Force" against Yugoslavia. NATO which also celebrated its 50<sup>th</sup> anniversary with the Washington Summit on 23-25 April 1999 had – on 23 March of the same year – created a new precedent that could set its seal on future international politics: "military action without an explicit UN mandate, against a sovereign state which had committed no aggression outside its internationally recognized borders".<sup>12</sup> American and NATO's hegemonic "out-of-area" operation in Yugoslavia and the choice for "human rights" whenever in conflict with the "rule of law" created adverse circumstances for the anniversary of an organization devoted to both these values. So the glamour of the festivities in Strasbourg, in London and Budapest, could hardly gloss over the harsh reality: Europe's oldest institution created to address issues like the principal ones in the Yugoslav crisis: minority and human rights, "democratic security" and the rule of law confined itself to the role of an impotent observer of an ultimate military solution.

It is worth noting at this point an initiative, taken by Foreign Minister G. Papandreou during the Greek Presidency, in the form of a four-point action plan that could allow the Council a role in the de-escalation of the Kosovo conflict at a time (June 1998) when this was yet feasible. In his address, as Chairman of the Committee of

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<sup>12</sup> Huber; *a Decade which made History*, supra, n. 5, p. 185.

Ministers, to the Assembly he recommended an immediate cease-fire putting an end to both the "terrorist attacks" of the UCK and the "ethnic cleansing" practiced by Serbian security forces; monitoring of the Kosovo situation by the Council of Europe observers so that any action by the international community could be based on objective information; the examination of the situation beyond Kosovo given the gross violations of basic democratic rights especially freedom of information and free expression of opinion in the entire Yugoslavia; and finally, to draw up a list of measures which Belgrade must immediately take to align its laws and practices with Council's standards, prior to the consideration of its application for membership to the Council of Europe (submitted on 18 March 1998).

The initiative received sympathetic reaction both in the Assembly and the meetings of the Committee of Permanent Representatives where it was repeatedly debated. The Greek plan was to present officially the Council's conditions to Belgrade authorities and Milosevic himself on the occasion of a Seminar on the Freedom of Media to be organized, in early October, by Yugoslav radio stations and TV channels, with assistance from the Council of Europe. Papandreou's visit to Belgrade received a lukewarm backing in the Committee of Permanent Representatives, because of some governments, especially those of United Kingdom, Slovenia and Albania, reluctance to engage in any form of high-level interaction with Belgrade, while Milosevic remained in power. The entire project was finally given up when Yugoslav authorities refused to provide visas to some Council of Europe officials wishing to take part in the Free Media Seminar, a decision which, to the relief of some, forced Papandreou to call off his entire initiative.

A few days after the 50<sup>th</sup> anniversary the Parliamentary Assembly carried out the task of electing a new Secretary General for the Council of Europe to succeed the outgoing Swede Daniel Tarchys. There were three candidates for the post: Terry Davis, an outspoken British member of the Assembly from the Labor Party, with firm, occasionally innovative approaches to some of the major issues on the agenda of the organization; Walter Schwinmer, a conservative Austrian more inclined to preserve political balances and perpetuate existing practices and policies; and a, last minute, female candidate, the Polish Minister of Justice Hanna Suchocka, whose electability derived from a potential appeal to parliamentarians from the new member states. Two factors affected the final outcome. First a deal whereby the



conservatives would vote to elect a liberal, Sir Russel Johnston, as President of the Assembly while the Liberals would vote for the conservative candidate for the office of the Secretary General. Second, many members who silently disapproved of NATO's military intervention in Yugoslavia and British activism to that end but would normally vote for Terry Davis were alienated by the visit to Strasbourg of British Foreign Secretary Robin Cook, a leading proponent of the "military solution", to lobby for the British candidate. In the first round – Davis 122, Schwimmer 119, Suchocka 21 – the Polish candidate was eliminated and in the second round, held next day, 23 June 1999, Schwimmer was elected Secretary General with 138 votes against the 136 received by Davis. Early next year, following national elections, the People's Party, the party of the new Secretary General formed a coalition with the ultra-right Freedom Party headed by Jorg Harder, an anti-semitist ultra-nationalist, to form a new government in Austria. Although these circumstances have since changed, for a period of time, the Council of Europe experienced the embarrassment of having at the helm of the organization a personality with political affiliations contradicting its values and mission.

#### **4. The Road to the Future**

The future is in desperate need of inspiration by a famous idealist hypothesis namely, that the consolidation of democracy and institutions providing effective intra-state protection of human and minority rights, promotes peaceful inter-state relations. Although there is no universal acceptance of this hypothesis – neither undisputed evidence sustaining it – it is more than evident that the consolidation of democracy, along with the global reach of the free market capitalist system, constitute cornerstones of the grand strategy of today's status quo powers and foremost that of the United States, the world's hegemonic power. Consequently, an organization promoting such objectives, like the Council of Europe, should be strong and effective.

There are two reasons why this is not entirely true. The first is that there is another organization, the Organization for Security and Cooperation in Europe (OSCE) which, save for the Court, has gradually risen to duplicate the Council in the entire range of its principal objectives. The web site for the Office for Democracy Institutions and Human Rights (ODIHR) of OSCE states as one of

its main missions, the provision of “practical support in consolidating democratic institutions and the respect for human rights as well as strengthening civil society and the rule of law through targeted projects”. The United States is a member of OSCE not of the Council of Europe, and feels very much at ease with a highly political, purely intergovernmental organization, unrestricted by legal principles and procedures.

It is no wonder then that crisis management, even a good part of post-crisis rehabilitation duties, from Bosnia, to Kosovo, to Chechnya were assigned to the organization in Vienna not to the one in Strasbourg. The Committee of Wise Persons proposed in its Report methods to improve the interaction between the two institutions “on an equal footing” through “a general memorandum of understanding”. In reality such a prospect is not forthcoming.

One could recall at that point an awkward incident typical of the superpower’s image of the Council of Europe. In September 1997, the General Consul of the United States in Strasbourg in his capacity as his country’s Observer before the Council of Europe, submitted to the French Chairman of the Committee of Ministers a rather unusual demand that the organization start immediately procedures to expel Croatia for failure to comply with the commitments it made when admitted in its ranks!!! In other words, an Observer state chose as a convenient means to exercise pressure on another state the latter’s membership in an organization where the latter state was a full member! Even in the era of unipolarity that request led only to a critical debate on Croatia in the CPR but not to that country’s expulsion. Needless to say, no similar requests had been submitted by an American Counsel for much more serious offenders since, apparently, they served no tactical moves of American foreign policy.

The second reason why the Council of Europe is not the most popular international institution in some capitals has to do with its standard-setting and monitoring policies over sensitive “internal” matters. One wonders, for example, how a country like the United States in the unthinkable scenario that it applied for membership, could meet the Council’s standards in practices like the death penalty. Although over the years countries have learned to cope with Council of Europe monitoring and even comply with its requirements they do so with meager enthusiasm.

On the other hand this is the only function indicative of the Council’s comparative advantage among similar institutions which

also explains its continued direct appeal to the societies of member states especially to some of their most marginalized and – often – oppressed segments. It is the combination of social acceptance and self-interest of politically and socially developed European states that do not wish the process of integration to undermine their way of life that could justify some optimism that judicial and political monitoring will be strengthened. The former presupposes that more resources are made available to the Court to cope with the enormous additional burden expected once domestic judicial remedies in new states are exhausted and individual petitions start arriving in Strasbourg. But the most serious problem concerns compliance with the Court judgments.

Long delays – the record, nearly two years, having originally being set by Greece in the STRAN Shipyards case – have since been followed by outright refusals to comply on the grounds of practical and political difficulties. The now famous *Loizidou Case*<sup>13</sup> and the judgment delivered by a Grand Chamber on 10 May 2001 in the *Cyprus v. Turkey Case* following an inter-state petition by the Republic of Cyprus, pose the Court with, perhaps, its greatest challenge ever. Politically controversial judgments are not rare and mass movements of people due to civil conflicts in some of the new members will no doubt bring more petitions for violation of Art. 1 of Protocol 1 i.e. the right to own property. Tolerance for non-compliance could mean the beginning of the end of judicial monitoring.

Monitoring from the Parliamentary Assembly especially through the Committee on the Honoring of Obligations and Commitments by member states has been relatively successful due to publicity and the on-the-field visits by the Rapporteurs that normally “play well” with local and international media. Certainly Parliamentarians need not be objective, it is normal for them to be influenced by their national and political affiliation which, sometimes, becomes crucial in determining the outcome of this process. Still compared to the work in the same field by the Committee of Ministers, the Assembly is performing very well. For one thing, the desirable, according to

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<sup>13</sup> See Louis J. Klarevas “Turkey’s Rights. Might Dilemma in Cyprus: Reviewing the Implications of *Loizidou v. Turkey*, *Mediterranean Quarterly* 97-112 (Spring 1999) and The European Court of Human Rights Case of *Loizidou v. Turkey* (40/1993/435/514) Strasbourg, 28 July 1998.

the Report of the Wise Persons, “interaction of the two organs” is in practice far from visible due to the reluctance of several states to allow outside interference in their closed door (and ineffective) deliberations.

At least in the 1997-99 period – due the persistence of Ukraine, Russia and Turkey but also from time to time established democracies like France, Italy and Spain – the Committee objected to the use of findings by other bodies, in the deliberations of the Committee. Even a proposal by the Greek delegation to take into account the judgments of the European Court of Human Rights, was summarily rejected in connection with the practices of the police and other public security forces, along with the death penalty, the two areas of monitoring in 1998. The “educational” and “consensual” nature of the Committee’s work, the insistence of some that no names of countries be mentioned even in the Chairperson’s summary (an “internal”, therefore, confidential document) and the practice of delegations not to embarrass each other, all combine to make intergovernmental monitoring a largely ceremonial exercise.

It is not uncommon for some of the “established democracies” especially the “great powers” to use the occasion to return “favours” by treating softly or even publicly defending the “usual offenders”. These not-surprising phenomena stress even further the need to impose institutional parameters to the political discretion of the inter-governmental body of the Council of Europe in overseeing the implementation of the judgments of the European Court of Human Rights. Unless, sanctions for non-compliance come more or less automatically after e.g. a period of two years since a judgment was placed in the agenda of the Committee, tolerance for long delays will increase.

Greater synergy between the European Union and the Council of Europe could enhance the posture of the Strasbourg organization. In the foreseeable future many members of the Council will be waiting in line to join the European Union. Such a legitimate expectation of membership, a vital means of political and economic stability for these members, could be exploited to strengthen the role of the Council of Europe in the field of “democratic security”. The Report of Wise Persons<sup>14</sup> suggests the conclusion of a framework

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<sup>14</sup> See *supra*, n. 12, p. 11.

agreement between the two organizations and describes its objectives and possible content: The future potential of at least one of the five items proposed is perfectly clear: "such an agreement...should provide for the Council of Europe making available to the European Commission the results of its monitoring of member states' compliance with commitments when the latter assesses whether states applying for European Union membership fulfill the required political criteria".

Certainly it is the ultimate responsibility of the European Commission to assess the compliance of candidates with the political criteria for admission. Nevertheless, the use of a supplementary source like the Strasbourg's Court judgments themselves and each candidate's record of compliance with those judgments could strengthen the entire review process. Judicial as well as parliamentary and intergovernmental monitoring are processes accepted alike by members of the Council of Europe that also happen to be current members of the European Union and present and future candidates for membership to that organization. Should a framework agreement between the two European organizations be concluded, both groups will have to take more seriously their standard-setting functions in Strasbourg with mutually beneficial short and long term results.

Another cooperation option is even more readily available. Strasbourg is rightly called the "Parliamentary capital of Europe if not the entire world". Indeed 626 members of the European Parliament in addition to the 602 (301 regular and 301 alternate) members of the Parliamentary Assembly of the Council of Europe make a total of 1228 international parliamentarians in a city of 250.000 and set a ratio of 1 parliamentarian for every 201 citizens. But the interaction between the two groups is minimal. Up to 1999 there was a "technical" explanation why this could not happen, since both parliaments used the facilities of the same building, for their plenary sessions, thus making impossible their presence in the city at the same time. Today the European Parliament has a home all of its own, so this excuse is no longer applicable.

On the contrary, the reasons for cooperation are as pressing as ever. Greater involvement of national parliaments in the work of the EU has been repeatedly recognized in national capitals as well as in Brussels. National delegations to the Assembly of the Council of Europe are so composed as to reflect an accurate picture of

numerical strength of political parties in national parliaments. They represent, therefore, an appropriate counterpart to the European Parliament in any future institutional procedure entrusted with information and consultation functions designed to enhance the democratic legitimacy of European Union policies.

In the area of democratic security, the present state of striking indifference for the work of the Parliamentary Assembly characterizing relevant activities of the European Parliament is particularly regrettable. For instance, the six reports and the final text of the Resolution of the European Parliament on the occasion of the 50<sup>th</sup> Anniversary of the Universal Declaration of Human Rights hardly make any reference to the Council of Europe or the European Convention of Human Rights. It is reasonable therefore to suggest that on given time intervals, e.g. every three or six months, delegations from the two Parliaments meet in the context of an ad hoc Committee to exchange information and debate practical measures both regarding the monitoring functions of the Parliamentary Assembly of the Council of Europe as well as the work of the European Parliament on issues related to human rights and democracy standards including asylum, immigration, racism, xenophobia, etc.

Greater interaction between the Council of Europe and the European Union, through the above and similar measures, could allow the former to continue serving the community of states of "Greater Europe" for the still unspecified transition period to a fully integrated continent. In particular it would strengthen its role in providing an answer to a challenge concerning all Europeans across state frontiers i.e. the articulation of a multi-cultural identity based on the principles of democracy, the rule of law and human and minority rights: In the difficult period our world has entered after the tragic events of 11 September 2001 this would be an overwhelming but invaluable task.