

Discussion paper drawn up by Catherine Lalumière on the development of the Council of Europe (Strasbourg, 11 May 1994)

Caption: On 11 May 1994, Catherine Lalumière, Secretary-General of the Council of Europe, analyses the institutional and political repercussions of the gradual enlargement of the Council of Europe to include the countries of Eastern Europe now operating under a democratic system of government.

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The Council of Europe in the new Europe (Strasbourg, 11 May 1994)

Discussion paper by the Secretary General on the development of the Organization and on the implications of continued enlargement, particularly of the Russian Federation's accession

Preface

Six months after the Vienna Summit and a few weeks before the expiry of her own term of office, the Secretary General wishes to present the Committee of Ministers with a few thoughts on the present state of the Council of Europe and on prospects and conditions for its medium-term development in the interests of European construction.

That is the purpose of the present paper, written without prejudice to the thinking under way in the Parliamentary Assembly and the Committee of Ministers.

The paper begins by briefly analyzing the Council of Europe's development since 1989 as a result of its opening-up to central and Eastern Europe. With its strengths and weaknesses, this incomplete process is the basis on which future enlargement will rest.

The paper then goes on to evaluate in greater detail, from both the political and the institutional point of view, the impact of further enlargement in the previously mentioned context.

Introduction

After the events of 1989 the Council of Europe came to be seen in practice as the European institution best able to respond rapidly to the demand from the emerging democracies in central and Eastern Europe for dialogue and co-operation on an equal footing. Being designed to rally together the peoples of Europe around a set of values - democracy, human rights, rule of law, tolerance - respect for which is the foremost guarantee of stability and peace, the Council also offered the appropriate geographical dimension and flexibility of action.

By a process that was initially fairly spontaneous, then increasingly controlled, the Council thus involved these new partners in its parliamentary activities (special-guest status), set up large-scale programmes for assisting institutional reform and providing training (Demosthenes, Lode, Themis) and opened up its conventions. It progressively integrated as full members, with equal rights, the States fulfilling the basic conditions for membership. ⁽¹⁾

The Vienna Summit (October 1993) endorsed this process. It confirmed the Organization's political role, instructed it to contribute first and foremost to democratic security in Europe and accordingly took a series of decisions which it does not seem necessary to rehearse here in detail. It also expressed its support for the continuation of an open-door policy.

What has become of the Council of Europe in the meantime?

What would the implications of further enlargement be?

The Council of Europe five years on

With the accession of its 32nd member State, the Organization was virtually extended to cover the whole of central and eastern Europe ⁽²⁾ with the exception of the countries that belonged to former Yugoslavia (apart from Slovenia) and the former USSR. It is in fact the only organization in that position.

Its role and forms of action have significantly evolved.

Its role has become more dynamic: the Council is no longer concerned simply with helping its members to remain pluralistic democracies showing respect for human rights; it is often concerned with helping its members (as well as applicant States) to become democracies in that full sense of the term.

Its role is highly influenced by the renewed outbreak of armed conflicts on our continent and the difficulties and repercussions of the process of transition in several new partner States, as well as the emergence of new challenges (migration, rise of intolerance, social exclusion etc) and the welfare state crisis with which the longer-standing members are now confronted. These are prompting the adoption of new forms of action and a search for complementarity/consistency with the activities of other international institutions.

By comparison with the period 1949-89, the **Europe** of the Council of Europe is thus **less homogeneous and more unstable. The management of a set of arrangements that have, relatively speaking, been spared by social change is giving way to purposeful, hence political, action aimed at constructing in the face of difficulties a Europe more than ever based on the Organization's values.**

Many measures have already been taken in response to this situation.

Here are a few examples:

Political dialogue has considerably developed, even with the applicant States. However, an unwritten division of labour between institutions seems to be resulting in excessive faint-heartedness in the choice of the questions to be dealt with, especially as regards the Balkans.

The Assembly has laid stress on the honouring of the specific commitments entered into by the new members (the Hallonen Order). It has initiated a wider debate on the implementation by all members of their pledges in a context of solidarity (see below).

"Tailor-made" programmes for assisting institutional and legislative reform and training administrative personnel in the new partner countries are constantly being updated. They are also subjected to regular political evaluations. Their volume is comparable to that of the programme of activities common to all members. This programme is now being recast and placed under firm political guidance around three sets of objectives: democratic, social and cultural cohesion. The way in which the programme is managed should be simplified.

Questions concerning minorities and the combating of intolerance are being treated as matters of urgency.

The Organisation is developing new forms of action (counselling, technical assistance, good offices, conciliation etc) aimed at eliminating potential causes of tension, preventing abuses and settling conflicts of interest. It is increasing the number of confidence-building measures. It is becoming more and more active in the field.

The authority and effectiveness of the system for safeguarding human rights are being strengthened (Protocol No. 11).

The development of decentralized democracy, the representation of its organs in the European process (CLRAE) and the establishment of transfrontier co-operation between them are being strongly encouraged.

The pursuit of joint activities with the European Union (Albania, Baltic States), the search for greater complementarity with the CSCE and the anticipated contribution to the Stability Pact are supplementing this dynamic action aimed at enhancing democratic security.

In other respects, the full implications of the Organization's new role have not yet been taken into account.

Mention will be made here of only some aspects which the Secretary General considers to call for urgent attention. These are assuming increasing importance in the context of continued enlargement and will be discussed in the second part of this paper.

They include:

The monitoring of the fulfilment of member States' undertakings in a dynamic, positive and solidarity-based context;

- The role of the Secretary General;
- Further adaptation of the Organization's Statute and working methods;
- The provision of appropriate resources for the Organization.

On this last-named aspect the Secretary General considers it necessary to sound the alarm, even if no rapid continuation of enlargement occurs. So far, there has been no financial follow-up to the Summit's policymaking. The Organization is nearing breaking point, and its resources urgently need to be (at least) topped up.

Five years on, the Council of Europe may be considered to have been the pre-eminent political framework for dialogue and for a change of attitude, perspective and scale in Europe. In an institutional architecture that is still wide open, it has established its role as the promoter of democratic security. Its adjustment to this new role is well under way, but several important initiatives or measures which are urgent in the context of further enlargement still need to be taken. Its action has created a momentum that is now being substantially supported and even carried further by other institutions, particularly the European Union and NATO. In an unstable and, in many ways, multi-speed Europe, the Organization is confirming its usefulness.

How, on what conditions and with what effects could the Organization widen its role in future?

The impact of accession by the former Soviet republics, in particular the Russian Federation

I shall not directly comment here on the list and timing of further accessions, as these are matters for the Parliamentary Assembly and the Committee of Ministers. ⁽³⁾

Assuming that at some unspecified but fairly close date a policy decision to admit new members will be taken by the Committee of Ministers, I shall try to define its implications.

On account of its exceptional impact, I shall particularly have regard to the accession of Russia, the principle of which has been favourably envisaged both by the Ministers (at the time of the transmission of Russia's candidature) and by the Heads of State and Government themselves. This accession will probably go hand-in-hand with those of Ukraine, Moldova and Belarus. Its occurrence will place the question of the Council of Europe's relations with the countries of the Caucasus in a new light.

Political impact

1. The accession of Russia, like those of other former Soviet republics on the edge of our present European area, may be expected to have repercussions of an unprecedented magnitude.

When it happens, Europe will have attained its true dimension.

It will then be possible for the creation of an area of democratic security based on common dedication to the same values and rules of conduct to be initiated in practice on a continental scale.

The **Council of Europe's dynamic role**, as established over the past five years, should thus attain both its **full specificity and its permanence**, consisting in laying the foundations for a process of European construction and seeing to the continuous reinforcement of democracy and human rights, their underlying policies, the rule of law within States and in their mutual relations and a cultural entity rich in diversity. In becoming enlarged, **the Organization will enable its new members, particularly Russia, to shoulder jointly and severally their responsibilities in this process of construction.** It will be enhanced by their contributions.

With these new partners in a now pan-European framework, political dialogue would become more central: certain questions could no longer be evaded, others would at last be tackled on the right scale.

In an unstable and doubt-ridden Europe, the arrival of the new partners could have a stimulating effect. Joint thinking on the evolution of European co-operation in its multiple facets and on the future architecture, with the prospect of fuller control of developments, might constitute a driving force. Subordinately, it might be possible to envisage using the Council of Europe thus enlarged as a platform for examining certain pan-European questions for which there is at present no forum, along the lines of President Mitterrand's proposals at the Summit

2. In the short term this radical pursuit of an open-door policy will no doubt entail **increasing heterogenisation within the Organization. It may be accompanied by risks in the form of a lessening of member States' common resolve and a weakening of the Organisation.** ⁽⁴⁾ By virtue of its size, diversity and great-power status, Russia also raises special problems of integration.

These risks may be contained and these particular problems solved, as we shall see later.

3. Reinforcing as it will the Council of Europe's dimension, role and political weight, Russia's accession may also be expected to have **repercussions for the Organisation's external relations:**

- The Council of Europe will be the first - and, for the time being, only - true political institution whose membership includes Russia but not the United States. An appropriate form of political dialogue would then need to be initiated with the United States in order to lay new foundations for co-operation. It would be desirable for the Council to set up an outpost in Washington. The same may be said in respect of Canada and Japan.

- The Council of Europe will be in a position to supplement the CSCE's action more naturally.

- The Council of Europe will be justified in trying to obtain the grant of regional-organisation status by the United Nations, alongside the CSCE.

- The accession of Russia, the leading member of the CIS, will raise the question of the Council of Europe's relations with the CIS countries that are not among its members.

4. In more general terms, the Council of Europe, thus enlarged and confirmed in the political note assigned to it by the Summit, will have **increased responsibility in the process of European construction**, of which the European Union should continue to be the hard core. The two institutions' aims and programmes should increasingly complement one another. Within the Council of Europe the continent of Europe should, however, develop dialogue and co-operation with the **southern shore of the Mediterranean** as a matter of urgency.

The conditions for maintaining efficiency

That, then, is the probable political impact of further accessions, with their positive aspects, the risks they involve and their effects on external relations.

On what conditions can the Council of Europe become enlarged without watering down its role or indeed imploding? What are the implications for its functioning?

A. Political conditions

1. If it is to remain the pioneer of European construction, the Council of Europe must first of all enjoy political support at the highest level, signifying that the new phase of enlargement clearly reflects the policy of Europe. In due course a further summit meeting should evaluate the effects of this policy.

2. The Council of Europe will need to be provided with the appropriate resources - otherwise it would, as it were, be doomed to failure. ⁽⁵⁾ Obviously the advent of new members will necessitate a substantial increase in its budget. At all events the new members' contributions should be added to the resources currently available rather than deducted from the old members' contributions.

3. Even if it is accepted that the Council of Europe's role will increasingly be to place an unevenly established democracy ⁽⁶⁾ on a firmer footing or to renovate it in a difficult political and economic environment, rather than simply helping member States to remain democracies, its achievements will still need to be energetically protected. In particular, the credibility of its legal instruments will have to be preserved, beginning with that of the European Convention on Human Rights. The temptation to use the European conventions as mere declarations of intent should be denounced and held in check. Some instruments will need to be revitalised or supplemented.

4. The question of supervising and assisting the honouring of undertakings (monitoring) will become more important than ever. This does not only concern the new members' specific undertakings (cf the Hallonen Order).

Several proposals have been made to that end ⁽⁷⁾ and are now being studied. The suggestion to draw up national reports at regular intervals on the state of democracy seems particularly interesting.

It might also be envisaged assigning the Secretary General a more active role in this connection. The powers conferred on the Secretary General by Article 57 of the European Convention on Human Rights might only not be effectively exercised but also transposed to other fields.

5. Apart from supervision of and assistance with the honouring of member States' various undertakings, it should also be specified, for the benefit of those concerned, what the consequences are of failure to observe obligations deriving directly from the Organisation's Statute and what measures might be taken in the event of failure to meet financial commitments.

6. If political dialogue is to assume the scale outlined above, some improvements will need to be made to its functioning: choice of subjects to be discussed, introductory reports, extension of hearings, concern to arrive at a clear position.

7. The Council of Europe's dynamic role in respect of an expanding and less homogeneous circle of countries should lead to a new balance between the two types of action whose co-existence has been a feature in recent years: on the one hand, the intergovernmental action designed to strengthen cohesion between all members and, on the other, the "tailor-made" action aimed at rectifying and stabilising the situation in member or applicant States. Both types of action should be governed by the same political vision. Pluriannual objectives should be set for priorities. Within the annual programme-budgets a large measure of flexibility should be preserved.

8. In relation to such vast countries as Russia and Ukraine, now in the throes of political restructuring, it will be necessary for the sake of efficiency to develop forms of action which are complementary to intergovernmental and parliamentary activity and which have not been sufficiently used so far, with support for local democracy, regional co-operation, involvement of representatives of civil society via NGOs, networking etc. The same concern for efficiency should lead the Council of Europe to be active in the field and in the components of the Federation. The opening of one or more Council of Europe offices for the purpose of maintaining direct links with public authorities and civil society could be very useful in this connection ⁽⁸⁾.

9. Such is the specific weight of Russia that arrangements calculated to ensure any necessary rebalancing should be explored, such as increased involvement of the European Union ⁽⁹⁾, and the conclusion of enlarged agreements including the United States.

B. Institutional implications

For the 91st session of the Committee of Ministers, the Secretary General wrote an initial report on the implications of enlargement (CM (92) 198). Since then, some reforms have been carried out through statutory resolutions and decisions by the Committee of Ministers on its functioning. Some adjustments to structures and working methods to allow for the growing number of members are being studied in the context of the management of intergovernmental co-operation.

The Summit also instructed the Committee of Ministers "to adapt the Organisation's Statute as necessary for its functioning, having regard to the proposals put forward by the Parliamentary Assembly". This task, which will be influenced by the prospect of further enlargement, has not yet begun.

A non-exhaustive list of questions which Russia's accession throws in sharp relief is set out below. The question of the Organisation's budget and resources, already briefly referred to, will be examined in a supplementary paper in due course.

1. The principle of equality between members

This principle, by which member States set great store, will not be called in question. It will undergo some adjustments with regard to the financial contribution ⁽¹⁰⁾ - in so far as Russia's assimilation to the major contributors is confirmed - and the number of seats both within the Parliamentary Assembly and within the CLRAE. Should any further adjustments be envisaged?

2. The functioning of the Committee of Ministers

Some thinking is required, in particular, about:

- The composition and powers of the Bureau
- The application of the statutory rule requiring unanimity for public communications.

It is assumed that, despite the large number of members, the rotation of the chairmanship will be maintained.

3. Participation in institutions

whose organs have a reduced composition based on groupings of member States (EYC/EYF etc).

How can Russia be taken into account in the formation of groups?

4. The possibility available to any member of ratifying all conventions by a unilateral decision and acceding in the same way to any Partial Agreement (except the Partial Agreements on the Social Development Fund and on Eurimages).

Are any sensitive issues liable to arise with regard, for example, to the criminal-law conventions or the Pompidou Agreement?

As far as the Partial Agreements are concerned, the malfunctioning hitherto observed in the case of some are liable to proliferate as the number of new member countries rises and their diversity increases. A reform of the monitoring arrangements is more than ever necessary.

5. Anticipation of the effect of accessions on the functioning of the various control mechanisms in the human rights field.

The accession of such countries as Russia and Ukraine is liable to cause an immediate increase in the number of applications lodged under the European Convention on Human Rights. The implementation of Protocol No. 11 is, therefore, more than ever necessary.

6. Impact as regards the composition of the Secretariat

Reconciling the principle of proportional geographical distribution and the independence and efficiency of the Secretariat will be more than ever necessary. Enough new posts will need to be created at the appropriate levels to reflect the enlargement of the Organisation and the increase in its functions. As in the past, no post should be "reserved" for a specific nationality. The integrity and international character of the Secretariat should continue to be ensured by recruitment based on competitive examinations.

7. Languages

The question of the Organisation's ability to communicate to the outside world in a suitable number of languages and get its message across will arise on a new scale.

8. The Secretary General's role in the new Council of Europe

As the number of member States increases, so the Secretary General's function should acquire greater importance in order to avoid any dispersal and lack of cohesion.

Should the number of Deputy Secretaries General be increased? The idea has been mooted; it seems to entail more drawbacks than advantages, the risks being mainly of two kinds: co-ordination difficulties and the danger of conflicting political approaches arising within the Secretariat and paralysing the Organisation's action.

Should the Secretary General be given the status of a full organ? While the idea may be contemplated, it is probably premature, as it would entail altering the, at present, intergovernmental nature of the Organisation.

However, even without any change in the nature of the office of Secretary General, it would be useful if its incumbent could make full use of the various opportunities offered by the Statute to act alongside the Committee of Ministers, while enjoying its confidence and keeping it regularly informed. The increase in tasks facing the Organisation, the need to act speedily and the growing complexity of the political environment encourage this trend.

(1) The political advantages of full integration rapidly led to the rejection of any status other than full membership. Accession presupposes the fulfilment of several conditions, as reiterated by the Summit. It has to be followed by a phase involving the

deepening of democracy, for which the Council of Europe plays a dynamic role.

(2) Latvia and Albania have not yet acceded, however.

(3) Their approval of accessions will denote a political judgment that the applicants concerned have provided adequate evidence of a European will - will to turn towards Europe and share its values and rules of conduct - and that they offer reasonable prospects for medium-term stability.

(4) In 1989 the Europe of the Council of Europe comprised 23 countries and 400 million people. It now covers 32 countries and 485 million people. It might soon involve nearly 40 countries and more than 700 million people. In 1989, 40% of those countries and people had few contacts with the Europe of the then Council of Europe. It is superfluous to refer to the disparities in economic development, the increasing diversity in terms of culture and religion etc.

(5) New sources of funds might be envisaged, such as the depositing by governments of large sums yielding interest which would be used to finance programmes. A portion of bilateral aid might also be channelled through the Council of Europe.

(6) The term "democracy" will also cover the complementary concepts of human rights, rule of law, culture and tolerance.

(7) Non-paper of 28 March 1994 by Norway and the Netherlands on a system of "country reports"; Hungarian non-paper of 19 November 1993 on the role of the Committee of Ministers in supervising the honouring of specific undertakings given by member States.

(8) It is recalled that the Government of the Russian Federation offered to help the Council of Europe to set up a mission in Moscow. Such a mission would go far beyond what an information and documentation bureau can do.

(9) One naturally thinks of possible accession by the Community as such to the Council of Europe's Statute, while bearing in mind that this question needs further consideration within the Union and that misgivings exist both within the Union and among other Council of Europe member States.

(10) Much will depend on the outcome of the deliberations recently initiated on the reform of the scale of member States' contributions.