



Committee of Ministers
Comité des Ministres

Strasbourg, 20 April 1993

Restricted
CM(93)78

For consideration at the 493rd
meeting of the Ministers' Deputies
(May 1993)

DRAFT STATUTORY RESOLUTIONS

1. At their 491st meeting (April 1993, item 19), the Deputies asked the Working Party on the institutional role of the Council of Europe to re-examine the draft Statutory Resolutions approved at the 486th meeting of the Deputies (January 1993, item 11) in the light of Opinion No 165 of the Parliamentary Assembly and of the opinion adopted by the Standing Conference of Local and Regional Authorities of Europe (CLRAE) and to report back to the Committee of Ministers.

2. The Working Party on the institutional role of the Council of Europe met on 15 April 1993, reexamined and amended the three draft Statutory Resolutions. The texts approved by the Working Party are reproduced in Appendices I, II and III. Modifications with regard to the texts approved at the 486th meeting appear in bold.

APPENDIX I

**DRAFT STATUTORY RESOLUTION
ON OBSERVER STATUS**

The Committee of Ministers, under the terms of Articles 15.a and 16 of the Statute of the Council of Europe,

Having regard to the **Parliamentary** Assembly's proposals for institutional reforms within the Council of Europe;

Bearing in mind the changed political situation in Europe and the world;

Convinced that this situation requires increased co-operation between the Council of Europe and non-member States sharing the Organisation's ideals and values;

Considering that an institutional framework should be given by such co-operation;

Considering that the provisions hereinafter set out are not inconsistent with the Statute of the Council of Europe,

Resolves as follows :

I. Any State willing to accept the principles of **democracy**, the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms and wishing to co-operate with the Council of Europe may be granted by the Committee of Ministers, after consulting the **Parliamentary** Assembly, observer status with the Organisation.

II. States enjoying observer status shall be entitled to send observers to those of the Council of Europe Committees of experts which were set up under Article 17 of the Statute and to which all member States are entitled to designate participants.

III. States enjoying observer status shall be entitled, upon invitation by the host country, to send observers to Conferences of Specialised Ministers.

IV. Decisions on inviting States enjoying observer status to participate in the activities of Partial, Enlarged or Enlarged Partial Agreements shall be taken in accordance with the Rules applicable to the respective agreement.

V. Observer status gives no right to be represented on the Committee of Ministers or the **Parliamentary** Assembly **unless a specific decision has been taken by one of these organs on its own behalf.**

VI. States enjoying observer status may appoint a permanent observer to the Council of Europe.

VII. An International Intergovernmental Organisation willing to co-operate closely with the Council of Europe and deemed able to make an important contribution to its work, may be granted by the Committee of Ministers, after consulting the **Parliamentary** Assembly, observer status with the rights set out in Articles II, III and IV for States enjoying observer status.

VIII. The Committee of Ministers may suspend and, after consulting the **Parliamentary** Assembly, withdraw observer status.

EXPLANATORY REMARKS¹

ad II. The main consequences of observer status would be that representatives of these States would have the possibility to attend meetings of intergovernmental committees of experts without the need to go through the procedure foreseen in Resolution (76) 3. The rights of the observers would be as defined in Resolution (76) 3 and by present practice.

For committees established under Conventions, the text of the respective Convention would continue to apply. With respect to future Conventions, the existence of an observer status might however be taken into account when drafting relevant articles of a Convention.

ad III. With respect to conferences of specialised ministers, the granting of observer status would be considered as general consent of the Committee of Ministers as to the advisability of the invitation in the meaning of Resolution (71) 44.

ad IV. The granting of observer status would give no automatic right to participate in Partial, Enlarged or Enlarged Partial Agreements. Decisions with respect to each Agreement would be taken in accordance with the Rules applicable to the Agreement.

ad V. It is not envisaged to invite observer States to attend meetings of the Committee of Ministers in general. They may however be invited on an ad hoc basis.

With respect to the **Parliamentary** Assembly it has to be borne in mind that observer status (Rule 55 of its Rules of Procedure) and special guest status (Rule 55a) are already foreseen by its Rules of procedure.

¹ The text contains no provision on the European Community. It already enjoys a special relationship with the Council of Europe, including rights of participation in the Council's intergovernmental co-operation (cf. Arrangement of 16 June 1987). At the 4th Quadripartite meeting, even the possibility of its accession to the Council's Statute was raised.

ad VI. Several non-member States have already appointed high officials with special responsibility for relations with the Council of Europe. It might be considered whether it is advisable to formalise, in accordance with the procedures in other international organisations, this practice by providing the possibility of appointing a permanent observer.

It has to be pointed out that the permanent observers would not be covered by the General Agreement on Privileges and Immunities but that they would have free access to the seat of the Council as "other persons invited by the Council to assist its work" in the meaning of Article 5.d of the Special Agreement relating to the seat of the Council of Europe.

ad VIII. It seems prudent to foresee the possibility of suspending or revoking observer status. In principle the same procedure as for granting it should apply. With respect to suspension, **no obligation to consult the Parliamentary Assembly has been foreseen since this might lead to undesirable delays. It is nevertheless understood that the Parliamentary Assembly will be consulted if time permits.**

APPENDIX II

**DRAFT STATUTORY RESOLUTION
ON MAJORITIES REQUIRED
FOR DECISIONS OF THE COMMITTEE OF MINISTERS**

The Committee of Ministers, under the terms of Articles 15a and 16 of the Statute of the Council of Europe,

Having regard to the **Parliamentary** Assembly's proposals for institutional reforms within the Council of Europe;

Bearing in mind the increased membership of the Council of Europe and the need to strengthen the Organisation's capacity for action;

Considering it therefore desirable to reduce the number of cases where unanimity is required for decisions of the Committee of Ministers;

Considering that the provisions hereinafter set out are not inconsistent with the Statute of the Council of Europe,

Resolves as follows :

I. Opening of Conventions and Agreements for signature

Decisions on the opening for signature of Conventions and Agreements concluded within the Council of Europe shall be taken by a two-thirds majority of the Representatives casting a vote and a majority of the Representatives entitled to sit on the Committee, as set out in Article 20.d of the Statute.

II. Partial Agreements

In accordance with the Statutory Resolution on Partial and Enlarged Agreements decisions authorising certain member States to pursue an activity as a Partial Agreement shall be taken by a two-thirds majority of the Representatives casting a vote and a majority of the Representatives entitled to sit on the Committee, as set out in Article 20.d of the Statute.

EXPLANATORY REMARKS

I. In order to underline the fact that all decisions are part of a coherent approach, it is proposed to include both decisions in one draft Statutory Resolution.

II. The preambular paragraphs of the Statutory Resolution of August 1951 show that at that time Partial Agreements were treated like Recommendations. In practice they have had a completely different character. It is therefore possible to treat the authorisation to conclude a Partial Agreement as one of the cases where Article 20.d of the Statute is applicable. The general rules on Partial Agreements appear in the Draft Statutory Resolution on partial and enlarged agreements which is to replace the Statutory Resolution of August 1951.

In order to align the Rules of Procedure for the meetings of the Ministers' Deputies with the new rule, Article 11 of these Rules of Procedure will have to be deleted.

APPENDIX III

**DRAFT STATUTORY RESOLUTION
ON PARTIAL AND ENLARGED AGREEMENTS**

The Committee of Ministers,

Considering that the Statute of the Council of Europe gives the Organisation competence in a wide range of spheres, in which it pursues the aim of achieving a greater unity between its members;

Considering that Partial Agreements allowing members to abstain from participating in a course of action advocated by other members, as established in the Statutory Resolution adopted by the Committee of Ministers at its 9th Session on 2 August 1951, have proved fruitful;

Considering that in some cases the problems dealt with in the Council of Europe outstrip the geographical framework of the territory of its members and that the Organisation must be ready to examine any proposal emanating from non-member States for the joint carrying out of an intergovernmental activity;

Considering that provision ought therefore to be made for flexible and non-institutionalised arrangements whereby some or all members as well as non-members of the Council of Europe may pursue an intergovernmental activity together on an equal footing, within the framework of a Partial, Enlarged or Enlarged Partial Agreement;

Having regard to the Parliamentary Assembly's favourable opinion;

Resolves as follows:

I. Participation in activities

Activities or a series of activities which are not pursued as a joint effort of all member States of the Council of Europe or to which one wishes to associate non-member States of the Council of Europe may be carried out

- by some member States of the Council of Europe as a Partial Agreement;
- by some member States of the Council of Europe together with one or more non-member States as an Enlarged Partial Agreement;
- by all member States of the Council of Europe together with one or more non-member States as an Enlarged Agreement.

II. Decision on participation

The Committee of Ministers may, by the majority stipulated in Article 20.d of the Statute of the Council of Europe

- Authorise some member States to carry out an activity or a series of activities within the framework of the Organisation, the activity or series of activities being adopted only by the Representatives who vote in favour of it and being limited accordingly;
- In its composition restricted to Representatives of member States of a Partial Agreement, invite any non-member State to join the Partial Agreement or certain of its activities;
- Invite any non-member State to join the member States of the Council of Europe in carrying out an activity or series of activities.

III. Budget

The Partial Agreement, Enlarged Partial Agreement or Enlarged Agreement (hereinafter Agreement) shall be financed by a budget constituted by contributions from the member States and non-member States participating in it.

The scale according to which the contributions of non-member States are calculated shall be decided in agreement with the latter; as a general rule, that scale shall conform to the criteria for determining the scale of contributions to the General Budget of the Council of Europe.

The Budget shall be adopted annually by an organ composed of the Representatives on the Committee of Ministers of the member States participating in the activity and where appropriate of Representatives of the non-member States participating in the activity who shall thus be entitled to vote.

The Financial Regulations shall apply, mutatis mutandis, to the adoption and management of the Budget of the Agreement.

IV. Functioning of the Agreement

The decision setting-up the Agreement shall provide for its organs and lay down specific arrangements for the pursuit of its activities. Unless otherwise stipulated in the decision, the general rules in force in the Council of Europe concerning committee structures, terms of reference and working methods and, in particular, the Rules of Procedure for the meetings of the Ministers' Deputies shall apply mutatis mutandis to the organs of the Agreement.

Secretarial services for the organs of the Agreement shall be provided by the Secretary General of the Council of Europe.

V. Additional members and observers

Unless otherwise provided in the decision setting-up the Agreement,

- Any member State of the Council of Europe may join at any moment any Agreement by declaration to the Secretary General;
- Any non-member State of the Council of Europe may be invited to join an Enlarged or Enlarged Partial Agreement by decision of the Committee of Ministers, following consultation of the non-member States already participating;
- Any non-member State and any international intergovernmental organisation may be invited by the Committee of Ministers, following consultation of the non-member States already participating, to take part as an observer in the activities of a Partial, Enlarged Partial or Enlarged Agreement. No budget contribution shall be required from observers.

VI. European Community

The European Community may be invited by the Committee of Ministers to participate in a Partial, Enlarged Partial or Enlarged Agreement. The modalities of its participation shall be determined in the decision inviting it to participate.

VII. Transitory Provisions

This text replaces the Statutory Resolution on Partial Agreements adopted by the Committee of Ministers at its 9th Session on 2 August 1951.

Partial Agreements already established shall continue to function according to their own rules.

EXPLANATORY REMARKS

Throughout the text the term agreement is to be understood as a flexible arrangement allowing for co-operation in a limited field and not entailing any legal obligations going beyond the activity concerned and its financing.

I. Partial Agreements

The Draft Statutory Resolution takes up present practice as it has developed following the Statutory Resolution adopted by the Committee of Ministers on 2 August 1951. Only the unanimity requirement for the decision authorising individual member States to form a Partial Agreement has been dropped.

II. Enlarged Agreements

1. There is no provision in the Statute of the Council of Europe which envisages either to admit or to exclude the possibility of associating non-member States with the activities pursued by the member States on an equal footing as to rights and obligations.

Non-member States are often associated with the work of committees as observers, that is, in a legal position quite different from that of the member States.

2. On the margins of the statutory framework of the Council of Europe, non-member States can stand on an equal footing with members when they are invited by the Committee of Ministers to accede to a treaty concluded within the Council of Europe. Accession makes the non-member States parties to the treaty on the same footing as the member States; but this is conditional on the treaty in question being an "open" one.

Some differences do also remain. For example, the non-member States do not take part in the adoption of amending protocols in the Committee of Ministers; on the other hand, generally speaking the non-member States do not contribute to the operating budget of any committee set up under the treaty.

Finally, it must be stressed that the conclusion of a treaty is a slow and cumbersome process, poorly suited to providing a framework for activities which should be set in motion rapidly and for which participation by all the member States is desirable.

3. It is therefore necessary to create a new legal concept, still based on the Statute of the Council of Europe, in order to obviate the need for amending the Statute.

This new concept would be the "Enlarged Agreement", a decision whereby the Committee of Ministers would invite one or more non-member States to join the member States in carrying out an activity or series of activities.

4. The Rule on participation of the European Community has been drafted flexibly in order to allow for ad hoc arrangements, in particular concerning a possible budgetary contribution and the corresponding right to vote.

5. The applicable Rules within the Organisation as regards the recruitment of staff will have to be changed in order to generally allow the recruitment of temporary staff coming from the non-member States participating in the Agreement.