

The Committee of Ministers of the Council of Europe

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It was when holding this last post that Guy De Vel, author of several legal works and articles, wrote the present work, on the occasion of the 500th meeting of the Ministers' Deputies in 1993.

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Introduction

This work was written between May 1989 and October 1993, i.e. between the adoption by the Committee of Ministers on 5 May 1989, on the occasion of the 40th anniversary of the Council of Europe, of the Declaration on the future role of the Council of Europe in European construction, which gave a new political impetus to the Council of Europe's activities and to its opening-up to the countries of central and eastern Europe, and the Vienna Summit on 8 and 9 October 1993, which adopted the Vienna Declaration confirming the Council of Europe's role as "the pre-eminent European political institution capable of welcoming, on an equal footing and in permanent structures, the democracies of Europe freed from communist oppression".

Between 1989 and 1993 membership of the Council of Europe grew from 23 to 32 States, with the Organisation undergoing some radical changes while still remaining true to its vocation and its statutory principles.

Several times the publication of this work was delayed by new developments that threatened to render it obsolete. It may appear presumptuous to publish it so soon after the Vienna Summit, which should have far-reaching effects on the activities and functioning of the Council of Europe and, hence, of its Committee of Ministers. The Summit has shown the Council of Europe to be a dynamic institution. It constitutes a new departure for the Organisation.

However, as the Heads of State and Government "instructed the Committee of Ministers to adapt the Organisation's Statute as necessary for its functioning", it seems desirable, as such reforms are embarked upon, to have a "snapshot" of the Committee of Ministers and its

present *modus operandi* available, together with a recapitulation of its past and a look into its future.

It should also be borne in mind that the Heads of State and Government declared that they were “resolved to make full use of the forum provided by our Committee of Ministers and Parliamentary Assembly to promote, in accordance with the competencies and vocation of the Organisation, the strengthening of democratic security in Europe”, adding that “the political dialogue within our Organisation will make a valuable contribution to the stability of our continent”.

To foster this political dialogue, the working methods of the Committee of Ministers will have to be reviewed. This work appears as the Ministers’ Deputies are holding their 500th meeting and at a time when they have, in fact, embarked upon a reform of the Committee’s working methods to enable it to devote more time to substantive political discussions.

This is indeed an essential exercise if the Committee of Ministers is to rise to a position where it can carry out the immense tasks that the Vienna Declaration has entrusted to it.

Finally, this work is aimed at guiding the reader through the complex procedures of the Committee of Ministers taking substantial account, in a pragmatic way, of the practice that has been established over time, particularly in recent years which have been so full of changes.

Strasbourg, 18 October 1993

Preface to the second edition

A limited number of copies of the first provisional version of this work were published in October 1993, on the occasion of the 500th meeting of the Ministers’ Deputies. When the final version was about to go to press, the author realised that in less than a year many new developments had taken place; these have now been incorporated as far as possible. The new material relates essentially to follow-up action to the Vienna Summit and the reform of the working methods of the Ministers’ Deputies introduced in January 1994.

The Council of Europe is undergoing a radical transformation and there are prospects of considerable enlargement which will undoubtedly lead to further far-reaching changes. Since 1989, nine central and east European States have joined the Council of Europe, while eight others have applied for accession : so the Council could soon have a membership of 41 States !

Strasbourg, 1 September 1994

When the work was about to go to press, several interesting developments had just taken place on the occasion of the 95th Session of the Committee of Ministers. They are set out in an addendum which appears on page 137 onwards of the present work.

Strasbourg, 12 November 1994

Chapter I – Definition, membership and organisation

1. Definition

The Committee of Ministers is the Council of Europe's executive organ whose role and functions are defined in Chapter IV of the Statute. This organ represents the governments of the European States which are members of the Council of Europe.¹ "Its position is contradictory; the Committee of Ministers is in a situation of dependence *vis-à-vis* the member States and in a situation of pre-eminence *vis-à-vis* the Consultative Assembly, the second organ of the Council of Europe".²

2. Meetings at ministerial level

a. *Membership*

The Committee of Ministers is made up of one representative – the Minister for Foreign Affairs – of each of the Council of Europe's member States. "When a Minister for Foreign Affairs is unable to be present or in other circumstances where it may be desirable, an alternate may be nominated to act for him, who shall, whenever possible, be a member of his government".³ It is not unusual for a minister to be represented by

1. At the time of going to press the number of member States is thirty-four: Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom.

2. Lamoureux (F.) and Moliné (J.): *Un exemple de coopération intergouvernementale. Le Conseil de l'Europe* (An example of intergovernmental co-operation. The Council of Europe), Paris, 1972, Presses Universitaires de France, Collection Thémis.

3. Statute of the Council of Europe (European Treaty Series ETS No. 1) Article 14. See also Rules of Procedure of the Committee of Ministers, Article 10.

an alternate, be it another member of the government (a minister or secretary of state for European affairs, for example) or a high-ranking diplomat.

According to the Statute,¹ the representatives of member States to the Parliamentary Assembly may not, at the same time, be members of the Committee of Ministers. There have, however, been a few instances of a minister for foreign affairs having an alternate nominated to act for him who has also been a member of the Parliamentary Assembly.

Transfers between the Parliamentary Assembly and the Committee of Ministers may occur when a member of the Committee of Ministers relinquishes his/her governmental post and is then appointed as a representative to the Parliamentary Assembly, or conversely, when a representative to the Assembly is given a ministerial portfolio in his country. Such transfers naturally help to improve mutual understanding between the two organs of the Council of Europe.

b. *Frequency*

The Statute² stipulates that “The Committee shall meet before and during the beginning of every session of the Consultative Assembly³ and at such other times as it may decide”.

The Chairman fixes the exact date for the opening of each session after consulting the representatives on the Committee.⁴ In practice the date is generally proposed by the Chairman, fixed on a provisional basis by the Ministers’ Deputies (see below) and subsequently confirmed by the Ministers. At present the Committee of Ministers holds two “ordinary” sessions a year at ministerial level, one in the spring (usually in

1. Statute of the Council of Europe, Article 25.a.

2. Statute of the Council of Europe, Article 21.c. See also Rules of Procedure of the Committee of Ministers, Article 1.a.

3. At their 508th meeting, (February 1994), the Ministers’ Deputies decided to use, in future, the denomination “Parliamentary Assembly” in all Council of Europe documents in conformity with the practice already followed.

4. Rules of Procedure of the Committee of Ministers, Article 2.

April/May), and the other towards the end of the year (usually in November).¹

The Committee of Ministers may also meet at any time at the request of any of its members or of the Secretary General, if two-thirds of its members express their agreement.² Especially since 1989 and the upheavals in central and eastern Europe, the Committee has held several extraordinary or special meetings, generally in the Chairman's country and at his suggestion.³

c. *Venue*

The Statute⁴ also provides for the meetings to be held, unless otherwise decided by the Committee of Ministers, at the seat of the Council of Europe, i.e. in Strasbourg. In the past some "ordinary" meetings have been held elsewhere. This was the case until 1975, when the session at the end of the year was usually held in Paris. Sessions have also been held in Rome (November 1950, when the European Convention on Human Rights was signed), in London (May 1969, to commemorate the twentieth anniversary of the signing of the Organisation's Statute in that city), in Lisbon (April 1980) and again in Rome (November 1990, on the occasion of the fortieth anniversary of the signing of the European Convention on Human Rights). A number of special or extraordinary meetings have also been held elsewhere other than in Strasbourg (see above).

1. This scheduling of meetings before and during the beginning of every Assembly session (Article 21.c of the Statute) is no longer really relevant; it dates from a period when the Parliamentary Assembly held only one session a year instead of several part-sessions, as it does now, and when the Committee of Ministers met only at ministerial level and possessed certain powers under Article 23 of the Statute before it was amended in 1951, regarding the approval of items for inclusion in the Assembly's agenda. Although the Committee of Ministers continued until 1993 to hold its spring session during the spring part-session of the Parliamentary Assembly, this is no longer the case from 1994 as the Assembly has changed the timing of its sessions and part-sessions so that each session begins with the opening of the first ordinary part-session, in January/February, and finishes with the beginning of the first ordinary part-session the following year (January/February) (in the past the session began in April or May).

2. Rules of Procedure of the Committee of Ministers, Article 1.b.

3. List of special or extraordinary meetings: special ministerial meeting (Lisbon, 23-24 March 1990); extraordinary meeting of the Committee of Ministers (Madrid, 21 February 1991); special ministerial meeting (Istanbul, 10-11 September 1992).

4. Article 21.a.ii.

d. *Duration*

In the 1980s the meetings often began in the late afternoon with an informal meeting (restricted to the Ministers and the Secretary General) at which major international issues were discussed, continuing the following day with a formal meeting.

As from the 82nd session (May 1988), however, the overall duration of a session was reduced to one day, and the informal meeting was replaced by a restricted meeting also attended by the Permanent Representatives and the political directors of the foreign affairs ministries. These restricted meetings tended to disappear at the end of the 1980s, and the sessions were often reduced to one day, or even half a day. This has consequently created a number of problems, for in the same period and especially since 1989, the political role of the Council of Europe has increased, and the Ministers have had more important items on their agenda but less time in which to debate them.

Recently, at the 92nd session (14 May 1993), the British Chairmanship endeavoured to remedy this by limiting the number of items on the agenda and, moreover, by attempting, successfully, to make the debates less formal, mainly through a more active style of chairmanship. Furthermore, part of the session consisted of an informal meeting restricted to the heads of delegation accompanied by three individuals of their choice. This initiative was greatly appreciated, but the increasing number of delegations might well oblige the Committee to lengthen the duration of its sessions in the future. At the 94th session (10 May 1994) an informal meeting was however held without restricting the number of individuals.¹

3. Meetings of the Ministers' Deputies

a. *Institutional aspects*

Clearly the Ministers do not have sufficient time during the two or three sessions they hold each year to deal with all the questions that require consideration or a decision by the Committee of Ministers. For that reason the Committee of Ministers decided, in March 1952, that each

1. See the Addendum on page 137 onwards.

representative on the Committee could appoint a “Deputy” to act on his or her behalf in the intervals between sessions of the Committee. These Deputies would meet for the purpose of transacting business and taking decisions on behalf of the Committee of Ministers.¹ In keeping with this decision and with the Rules of Procedure for the meetings of the Ministers’ Deputies,² the Deputies are empowered to deal with all matters within the competence of the Committee of Ministers and to take decisions on its behalf. Decisions taken by the Deputies, in pursuance of the power vested in them by the Ministers who appointed them, are considered to have been taken on behalf of the Committee of Ministers and have the same force and effect as decisions taken by the Committee of Ministers meeting at ministerial level.

The Deputies do not, however, take decisions on any matter which, in the view of one or more of them, should by reason of its political importance be dealt with at ministerial level.³ Any Deputy may therefore request that a particular matter be submitted to the Committee of Ministers meeting for consideration at ministerial level, even if it does not require a unanimous decision of the Deputies.

It is important to note that from the institutional point of view there is no actual “committee of deputies”; there is simply a Committee of Ministers which meets either at ministerial level or at deputy level. All decisions taken by the Deputies are therefore decisions of the Committee of Ministers, including the adoption of legal instruments such as conventions and agreements, recommendations, resolutions and even replies to recommendations of the Parliamentary Assembly.

The Deputies deal with most of the matters referred to the Committee of Ministers, thus enabling the Ministers, who meet only twice a year, to concentrate on the most important international issues and those concerning European policy or the Organisation. Furthermore, the Deputies undertake a considerable amount of work in preparing the ministerial

1. Resolution (52) 24 adopted at the 10th session of the Committee of Ministers and Article 14 of the Rules of Procedure of the Committee of Ministers.

2. Article 2.

3. Article 2, paragraph 3 of the Rules of Procedure for the Meetings of the Ministers’ Deputies.

meetings and ensuring that the necessary follow-up they require is achieved.

b. *Ministers' Deputies – Permanent Representatives*

The Ministers' Deputies are usually their governments' Permanent Representatives to the Council of Europe. In order to maintain contact between the Council of Europe and the governments of its member States at a time when the workload of the Organisation was growing in volume, intensity and complexity, the Committee of Ministers adopted a resolution¹ in May 1951 inviting each member State to consider the possibility of appointing an official to act as its permanent representative at the seat of the Council of Europe. Since March 1952² each member has appointed a Permanent Representative to act as its Minister's Deputy. The Permanent Representatives are officially accredited to the Council of Europe and enjoy diplomatic status. At present the great majority reside in Strasbourg. However, several governments have appointed Representatives who combine this office with other functions and who, though not resident in Strasbourg, go there regularly to attend meetings of the Ministers' Deputies.³

Being resident in Strasbourg undoubtedly facilitates relations with the Organisation and influences the effectiveness of the Committee of Ministers' action, especially at a time when the role of the Organisation, and hence of the Committee of Ministers, is becoming more assured and the number of meetings has considerably increased. The Permanent Representatives are generally senior foreign ministry officials, often with the rank of ambassador. Most member States' Permanent Representations to the Council of Europe also include diplomatic and administrative staff, whose numbers vary but are tending to increase due to the ever-heavier workload.

1. Resolution (51) 26 adopted at the 8th session of the Committee of Ministers.

2. Resolution (52) 24 adopted at the 10th session of the Committee of Ministers.

3. In 1974 only ten out of the then seventeen member States had Permanent Representatives residing in Strasbourg.

In 1989 nineteen out of the then twenty-two member States had Permanent Representatives residing in Strasbourg.

In September 1994 twenty-nine out of the then thirty-two member States had a Permanent Representative or a Chargé d'Affaires residing in Strasbourg.

c. *Privileges and immunities*

Under the terms of Article 40.a of the Statute, “The Council of Europe, representatives of members and the Secretariat shall enjoy in the territories of its members such privileges and immunities as are reasonably necessary for the fulfilment of their functions”. The privileges and immunities of the representatives of the Committee of Ministers are defined in the General Agreement on Privileges and Immunities of the Council of Europe (European Treaty Series (ETS) No. 2) of 2 September 1949.¹ The First Additional Protocol (ETS No. 10) to this Agreement from 1952 extends enjoyment of these provisions to “representatives attending meetings of the Ministers’ Deputies”.²

d. *Meeting venue*

Meetings of the Deputies are held in Strasbourg, unless the Deputies decide otherwise by a simple majority.³ Meetings outside Strasbourg have been extremely rare and have been held in conjunction with other events (for example, a Joint Committee meeting with a delegation from the Parliamentary Assembly. See Chapter IV below).

e. *Frequency*

From 1952 to 1988 the Ministers’ Deputies held between eight and thirteen meetings a year, which lasted from six to ten days. From 1988 onwards the number of meetings increased considerably. For example, thirty-eight plenary meetings were held in 1991, and thirty-four in 1993. At present approximately two “ordinary” meetings are held a month (from September to June), according to a schedule adopted by the Deputies the previous year. In addition to these “ordinary” meetings a number of special and extraordinary meetings are held (see statistics on meetings in Appendix I).

f. *A level – B level*

To alleviate their workload, the Deputies decided in 1975⁴ that their ordinary meetings would in future be held in part at the level of deputies

1. Provisions of Part IV.

2. Article 2.

3. Article 3, paragraph 3, of the Rules of Procedure for the meetings of the Ministers’ Deputies.

4. 243rd meeting of the Ministers’ Deputies (March 1975).

to heads of delegation (“B level”). Needless to say, the “B level” meetings are an integral part of the ordinary meetings of the Ministers’ Deputies, so that any decisions taken there are also regarded as decisions of the Committee of Ministers. It should be noted, however, that each delegation always has the right to ask for an item scheduled for consideration at B level to be dealt with at A level.

Whereas these meetings dealt at the outset with a fairly limited number of uncontroversial items, they have become increasingly important over the years. At present many items – even substantive or controversial ones – are examined and decided on at B level, thus considerably alleviating the A level workload and enabling it to devote more time to more important questions, especially from a political point of view.

Meetings at B level are generally, but not necessarily, held before A level meetings. Officially they are scheduled to last one-and-a-half days. On average at least one-third of the items on the agenda are examined at B level (most relating to intergovernmental activities, reports by intergovernmental committees of experts, replies to texts adopted by the Parliamentary Assembly, administrative questions). A number of straightforward, uncontroversial items have, for some time, even been grouped together and adopted *en bloc*, without any debate, at the beginning of the meeting. The practical effect of all this has been to shorten the duration of A level meetings somewhat, or at least to obviate any need to prolong them (the monthly “ordinary” meetings – with the exception of “DH” meetings, which last two days – generally last three or four days).

As part of the reform of the working methods of the Ministers’ Deputies in January 1994,¹ the Deputies instructed their Bureau to continue efforts to assign more agenda items to B level. It is the Bureau which is responsible for making proposals to the plenary Committee regarding the distribution of items between A and B level. At the end of each ordinary meeting, the proposals for the next meeting are submitted to the plenary Committee, sitting at A level, for its approval. As part of the reform, the Deputies also authorised their Chairman to make the necessary adjustments to the Bureau’s choice in the days preceding a meeting.

1. 506th meeting of the Ministers’ Deputies, January 1994.

As a result of these reforms, the number of items assigned to B level has increased considerably.¹

g. *"Human Rights" ("DH") meetings*

Since 1989 one of the two monthly meetings at A level has generally been devoted to the functions incumbent on the Committee of Ministers under Articles 32 and 54 of the European Convention on Human Rights ("DH" meetings), and the other to all other matters the Deputies are required to examine. However, when the Human Rights (DH) meetings were introduced in September 1989,² it was expressly provided that other urgent matters could also be dealt with at them, particularly current political issues.

As part of the above-mentioned reform of the working methods of the Ministers' Deputies, the Deputies also decided to hold DH meetings, in addition to A level and B level meetings, without specifying their level. Starting in 1995, these meetings will be held in conjunction with B level meetings, between two monthly meetings at A level.

There will therefore be three types of meeting in future: A, B and DH.

1. At the 516th meeting (September 1994), for example, thirty-five items out of a total of forty-eight were dealt with at B level.

2. 428th meeting of the Ministers' Deputies.

Chapitre II – Action of the Committee of Ministers

1. Statutory powers

Article 13 of the Statute stipulates that “the Committee of Ministers is the organ which acts on behalf of the Council of Europe in accordance with Articles 15 and 16”. It is therefore the executive organ of the Organisation.

Article 15 sets forth the manner in which it shall fulfil this function :

a. On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters. Its conclusions shall be communicated to members by the Secretary General.

b. In appropriate cases, the conclusions of the Committee may take the form of recommendations to the governments of members, and the Committee may request the governments of members to inform it of the action taken by them with regard to such recommendations.”

Finally, Article 16 of the Statute stipulates that the Committee of Ministers shall “decide with binding effect all matters relating to the internal organisation and arrangements of the Council of Europe”, subject, of course, to the powers of the Parliamentary Assembly.¹

Although, as we have already seen, no institutional distinction is made between the sessions of the Committee of Ministers at ministerial level

1. As defined in Articles 24, 28, 30, 32, 33 and 35 of the Statute.

and the meetings of the Deputies, there is a considerable difference between them in terms of content and procedure.

2. Agenda and content of sessions at ministerial level

a. Regulatory provisions

Article 4 of the Rules of Procedure of the Committee of Ministers states that:

“a. For each session of the Committee the Secretary General shall draw up a provisional agenda, which he shall transmit to members.

b. This provisional agenda, which shall be given preliminary examination by the Deputies, shall include:

i. Any resolutions of the Consultative Assembly of the kind mentioned in Article 29, paragraphs i, iii and iv of the Statute;¹

ii. Questions, including any draft resolutions, put forward for consideration by a member or by the Secretary General;

iii. Intimation of the date and place of the next session of the Committee.”

b. Political dialogue

The Ministers focus, above all, on the most important political questions relating to European co-operation and international current affairs. In its Resolution (84) 21 on Council of Europe action in the political field,² the Committee of Ministers moreover expressed its determination to develop and increase the scope of political dialogue, in particular exchanges of views at Committee of Ministers' sessions and informal meetings of ministers. The objective of this dialogue should be:

“a. to consider the political aspects of European co-operation with a view to harmonising positions between all member States on the

1. In practice, texts adopted by the Parliamentary Assembly (see 3.h below) are mostly examined at the level of the Deputies. However, certain texts of particular political importance or relating to the Ministers' agenda are referred to the Ministers.

2. Adopted in November 1985 at the 75th session of the Committee of Ministers.

aims and means of this co-operation and its follow-up in the fields where the Council of Europe has acquired special experience or which are of interest to all member States;

b. to consult together on international problems of common concern and, if possible, to provide member States with pointers for the development of their foreign policies;

c. to discuss events which uphold or flagrantly violate the principles and ideals on which the organisation is based, in particular human rights, with a view to taking, if possible, a common stand on such events;

d. to facilitate the taking of practical measures to help deal with major issues facing European society and with threats to democratic ideals and European cohesion;

e. to contribute, as far as possible and in agreement with the parties concerned, to the solution of problems existing between member States."

In the Declaration on the future role of the Council of Europe in European construction, adopted and signed by the Ministers at the 84th session of the Committee of Ministers on 5 May 1989 on the occasion of the 40th anniversary of the Organisation, and in Resolution (89) 40, also adopted on that occasion, the Committee of Ministers expressed its determination to deepen the political dialogue referred to in Resolution (84) 21, highlighting the political aspects of European co-operation in general and of the Council of Europe's intergovernmental activities in particular. The declaration and resolution of 1989 provide specific guidance in this respect, most notably with regard to relations with the countries of eastern Europe and with the European Community (now the European Union), as well as the priority lines of intergovernmental action.

It is on the basis of these different texts that the Committee of Ministers has, over the past ten years, dealt with East-West relations, developments within the CSCE or the United Nations, relations between the Council of Europe and the United States of America and Canada, the North-South dialogue, the situation in the Middle East and in Central America, but, above all, in recent years, Council of Europe relations and

co-operation with the countries of central and eastern Europe, and the situation in some of those countries.

It may be said without exaggeration that since 1989 the ministerial meetings have been devoted principally to contacts and relations with the countries of central and eastern Europe, then on co-operation with and assistance to those countries, and finally on the process of the accession to the Organisation as regards some of these countries. This is hardly surprising when one considers that the Council of Europe's membership rose from twenty-two member States at the beginning of 1989 to thirty-four by February 1995,¹ and that nine other countries have requested membership.²

For a long time the Committee of Ministers has given its careful consideration to relations with other European organisations or institutions. Particular attention has been given to co-operation with the European Union. It is worth noting in this respect, that the Committee of Ministers may invite the Commission to participate in its discussions on the development of European co-operation as well as on any other question of mutual interest.³ In practice the President of the Commission has attended, or been represented at, most ministerial sessions for several years now (see Chapter III-8 below).

A new impetus was given to political dialogue by the Council of Europe Summit of Heads of State and Government that took place in Vienna on 8 and 9 October 1993. In the ensuing Vienna Declaration the Heads of State and Government affirmed: "The Council of Europe is the pre-eminent European political institution capable of welcoming, on an equal footing and in permanent structures, the democracies of Europe freed from communist oppression. For that reason the accession of

1. Even if decisions to invite new members to join are usually taken by the Ministers' Deputies, the membership ceremonies generally coincide with ministerial sessions.

2. Albania, Belarus, Croatia, "The Former Yugoslav Republic of Macedonia", Moldova, Russia, Ukraine.

3. This is confirmed in the Arrangement between the Council of Europe and the European Community concluded on 16 June 1987. The foundations for co-operation with the Community had already been laid in Resolution (85) 5 of the Committee of Ministers on co-operation between the Council of Europe and the European Community, adopted on 25 April 1985 at its 76th session.

those countries to the Council of Europe is a central factor in the process of European construction based on our Organisation's values. We are resolved to make full use of the political forum provided by our Committee of Ministers and Parliamentary Assembly to promote, in accordance with the competencies and vocation of the Organisation, the strengthening of democratic security in Europe. The political dialogue within our Organisation will make a valuable contribution to the stability of our continent. We will do so all the more effectively if we are able to initiate such a dialogue with all the European States that have expressed a desire to observe the Council's principles."

The entire Vienna Declaration is worth mentioning in this context and it seems essential to quote at least the following paragraphs: "We affirm our will to promote the integration of new member States and to undertake the necessary reforms of the Organisation, taking account of the proposals of the Parliamentary Assembly and of the concerns of local and regional authorities, which are essential to the democratic expression of peoples.

We confirm the policy of openness and co-operation *vis-à-vis* all the countries of Central and Eastern Europe that opt for democracy. The programmes set up by the Council of Europe to assist the democratic transition should be developed and constantly adapted to the needs of our new partners.

We intend to render the Council of Europe fully capable of thus contributing to democratic security as well as meeting the challenges of society in the 21st century, giving expression in the legal field to the values that define our European identity, and to fostering an improvement in the quality of life.

Fortified by our bonds of friendship with non-European States sharing the same values, we wish to develop with them our common efforts to promote peace and democracy.

We also affirm that the deepening of co-operation in order to take account of the new European situation should in no way divert us from our responsibilities regarding North/South interdependence and solidarity."

c. *Political orientation of intergovernmental activities*

On several occasions, particularly in its above-mentioned Resolutions (84) 21 and (89) 40 and in the Declaration on the future role of the Council of Europe in European construction, which it adopted on 5 May 1989, the Committee of Ministers has stated its determination to give intergovernmental activities a more political orientation. This determination has on many occasions taken on a practical form by the adoption at ministerial level of a number of important legal instruments, such as the Additional Protocol to the European Social Charter.¹ Furthermore, conventions or agreements are sometimes opened for signature by member States at a Committee of Ministers session in order to emphasise their political significance. This was the case for the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in 1987,² and in 1994 for Protocol No. 11 to the European Convention on Human Rights which aims at a fundamental reform of this Convention (the establishment of a single Court).³ On several occasions the Committee of Ministers has looked into aspects of intergovernmental activities that are also of manifest political significance, such as the combating of terrorism and equality of the sexes. Lastly, the Vienna Declaration provided the Committee of Ministers with valuable indications with regard to future activities, including those on the protection of national minorities, the reform of the European Convention on Human Rights, the fight against intolerance, cultural co-operation, transfrontier co-operation, social cohesion, the protection of the natural and built environment, migratory movements, etc.

d. *Institutional functioning of the Council of Europe*

The Committee of Ministers has adopted several important texts on the institutional functioning of the Council of Europe. On 5 May 1989, for example, it adopted a Political Declaration on the Future Role of the Council of Europe in European Construction, together with Resolution (89) 40; and more recently, at its 92nd session in May 1993, it

1. ETS No. 128.
2. ETS No. 126.
3. ETS No. 155.

adopted three Statutory Resolutions designed to remedy certain lacunae in the institutional functioning of the Council of Europe.¹ The Committee has also provided decisive momentum and guidance in connection with the reform of the supervisory machinery of the European Convention on Human Rights (see adoption of Protocol No. 11 to the Convention above).

Last, but not least, the Committee of Ministers played an important part in preparing the Council of Europe Summit of Heads of State and Government (Vienna, 8-9 October 1993), *inter alia* by proposing the Summit's agenda. The Summit should prove decisive for the future role and functioning of the Council of Europe in the new Europe that is emerging. The Vienna Declaration instructs 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".

Finally, at its 94th session (11 May 1994), the Committee of Ministers requested the Deputies to prepare a detailed report on the impact of the enlargement of the Council of Europe, for its meeting in November 1994. The Deputies have set up an *Ad hoc* Working Party to deal with this matter.

e. *Results and publicising proceedings*

The discussions at ministerial level are recorded in confidential minutes but give rise to the publication of a final communiqué. This communiqué, generally prepared by an 8- to 10-strong drafting group of the Ministers' Deputies, indicates, *inter alia*, the positions adopted by the Committee of Ministers on current political issues. It is a valuable tool for the subsequent activities of the Organisation, as well as serving to inform public opinion and the media about the Committee's work.

1. Statutory Resolution (93) 26 on observer status; Statutory Resolution (93) 27 on majorities required for decisions of the Committee of Ministers; Statutory Resolution (93) 28 on partial and enlarged agreements.

It should be noted that following the Summit, the Ministers' Deputies adopted in January 1994 (506th meeting) a new Statutory Resolution (94) 3, relating to the setting up of the Congress of Local and Regional Authorities of Europe (to replace the Standing Conference of Local and Regional Authorities of Europe – CLRAE).

In the case of some meetings, particularly special or extraordinary meetings,¹ the final communiqué has been replaced by Conclusions of the Chair (also made public).

On several occasions, moreover, declarations on important issues have been adopted.² Finally, whenever the Ministers meet, the Chairman and the Secretary General hold a press conference.

3. Agenda and content of meetings of the ministers' deputies

a. *Regulatory provisions*

Article 5 of the Rules of Procedure for the Meetings of the Ministers' Deputies states that:

"1. At each meeting of the Deputies, the Secretary General shall present a preliminary draft agenda for the following meeting which shall comprise:

- a. Opinions of the Consultative Assembly;
- b. Recommendations of the Consultative Assembly;³
- c. Other texts adopted by the Consultative Assembly;⁴
- d. Subject to the provisions of Article 13, items whose inscription has been requested by any member;⁵

1. Special ministerial meeting (Lisbon, 23-24 March 1990); Extraordinary meeting of the Committee of Ministers (Madrid, 21 February 1991); Special ministerial meeting (Istanbul, 10-11 September 1992).

2. See Appendix II.

3. By *recommendation* is meant a proposal by the Assembly addressed to the Committee of Ministers, the implementation of which is beyond the province of the Assembly, but within that of governments, either individually or collectively at the level of the organisation

4. These are mainly resolutions and orders: A *resolution* embodies a decision by the Assembly on a question of substance which it is empowered to put into effect, or an expression of view for which it alone is responsible; an *order* is concerned with a question of form, transmission, execution or procedure. It must relate to a question already placed on the Assembly's Register and may not deal with the substance of that question. Nevertheless, the examination of such texts may on occasion lead the Committee of Ministers to take up a position.

5. Article 13 of the Rules of Procedure sets forth the conditions on which a discussion may be re-opened.

e. Reports of committees of experts set up under Article 17 of the Statute;¹

f. Items whose consideration is requested by the Secretary General.

2. On the basis of the preliminary draft so established, the Deputies agree on the draft agenda for their next meeting. The agenda shall be adopted at the beginning of each meeting. Any supplementary items may be added only if the Deputies so decide. Decisions about the agenda shall be taken by a simple majority."

As we have seen, the allocation of agenda items between levels A and B is proposed by the Bureau. This allocation has to be approved at A level at the close of each meeting for the following meeting. Subsequently, each level formally adopts its agenda at the beginning of its respective meeting.²

As part of the reform of the Deputies' working methods in January 1994, intended to relieve pressure on the agendas of plenary meetings, especially at A level, so that the Deputies could devote more time to discussing substantial political matters by reducing the purely routine tasks, it was decided that in future a number of reports, including those by conventional committees (i.e. committees set up under the terms of certain Council of Europe conventions or agreements) as well as other bodies, would no longer be automatically placed on the agenda unless action by the Committee of Ministers was required or unless a delegation so requested. Reports will nevertheless be circulated to all delegations and marked to the effect that they will not be placed on the agenda unless a delegation so requests.

1. These are mainly reports by steering or ad hoc committees, i.e. intergovernmental committees of experts set up in various fields of activity of the Council of Europe.

2. It was not until the reform introduced in January 1994 (506th meeting of the Deputies) that the B level was authorised to adopt its own agenda for meetings at its level. Previously this was done at A level, which was illogical since the B level meeting frequently took place first.

b. *Political dialogue*

The Ministers' Deputies also deal with political issues, and were encouraged to intensify their action in this field by Resolutions (84) 21 and (89) 40, mentioned earlier, as well as by the Vienna Declaration (see 2.b. above). It was, moreover, agreed in 1985¹ that, in order to enable political dialogue to be launched in a pragmatic manner, the agenda of the Deputies should include an item entitled "Political aspects of European co-operation and current international events". This item presents an opportunity for the Chairman, each delegation and the Secretary General "to raise new matters for a preliminary examination of the question of whether they should be subject to a study on the substance and in what way they should be dealt with if possible, having regard to the objectives of Resolution (84) 21. This preliminary examination should be as informal as possible, and free from any procedural constraint".

In the context of political dialogue, of course, the Deputies, to some extent, address issues which are also examined at ministerial sessions, particularly in preparation for or as a follow-up to these sessions, but they also debate other subjects (sometimes leading to the adoption by the Deputies of a communiqué or declaration of the Committee of Ministers on an international current affairs issue). Moreover, they deal with various political aspects of intergovernmental activities (such as cultural co-operation in Europe, the right of refugees to asylum, etc.).

Still in the context of political dialogue, up to 1990, the Deputies regularly (about twice a year) held exchanges of views on the process of the Conference on Security and Co-operation in Europe (CSCE) with the participation of experts from national capitals. These exchanges served not only to make a general assessment of meetings held in the CSCE framework, but above all to examine issues and proposals in fields of interest to the Council of Europe and consider what contribution the Council might make in that context. The human dimension (human rights and humanitarian issues) was obviously very important here, but other questions were also looked at.

1. At the 77th session of the Committee of Ministers (November 1985).

It should be noted in this respect that in the Vienna Declaration, adopted at the Summit in October 1993, the Heads of State and Government included the following paragraph: "to foster democratic security we are in favour of intensifying functional co-operation in the human dimension sphere between the Council of Europe and the CSCE. Arrangements could usefully be concluded with the latter, including its Office for Democratic Institutions and Human Rights, and its High Commissioner on National Minorities". In 1994 the Ministers' Deputies set up an ad hoc working party on relations between the Council of Europe and the CSCE with a view to attaining pragmatic co-operation between the two institutions.

The Deputies also hold exchanges of views on the United Nations at least once a year, with the participation of appropriate experts from national capitals. The purpose of these exchanges is to assess the activities and prospects of the United Nations Commission on Human Rights or to consider certain political issues on the agenda of the forthcoming General Assembly. These exchanges have provided valuable material for the ministerial debates, especially as the Council of Europe's membership includes States belonging to different groups and circles.

Finally, fresh impetus was given to discussions within the framework of political dialogue by the opening-up of the Council of Europe towards central and eastern Europe. For some years the Deputies have held numerous exchanges of views with ministers or senior officials from central and eastern Europe under the "political dialogue" item. The exchanges concern not only relations or programmes of co-operation and assistance with these countries (see below), but also, in certain cases, prospects for membership, and even certain internal problems. They have proved a very useful addition to the examination by the Ministers' Deputies of relations with the countries of central and eastern Europe, a subject which has been on the agenda of every ordinary meeting of the Deputies since the end of 1990. Because of the importance of the subject, this item is prepared by a specific rapporteur group, the "Enlarged Rapporteur Group on Relations with the Countries of Central and Eastern Europe" (GREL), which is open to all delegations.

The Deputies also conduct exchanges of views with representatives of the European Union.¹

As well as examining these political issues, the Deputies perform most of the tasks incumbent on the Committee of Ministers in its capacity as executive organ of the Council of Europe:

c. *Conventions and agreements*

As previously explained, under Article 15.a of the Statute the Committee of Ministers, on the recommendation of the Parliamentary Assembly or on its own initiative, considers the action required to further the aim of the Council of Europe, including the conclusion of conventions and agreements.

In 1951 Article 15.a of the Statute was supplemented by a Statutory Resolution.² It states that “the conclusions of the Committee of Ministers may, where appropriate, take the form of a convention or agreement”.

The Statutory Resolution adds that such conventions or agreements shall be submitted by the Secretary General to all member States for ratification, and shall be binding only on such members as have ratified them.

The procedure for adopting conventions and agreements and opening them for signature will be examined later (see Chapter III).

Action by the Committee of Ministers under these provisions has led, in forty-five years of existence, to some 155 conventions or agreements being adopted and opened for signature by member States in the various spheres of competence of the Council of Europe.³ Amongst the most important of these instruments are the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the Additional or Amending Protocols thereto, the

1. See Chapter III, 9. Participants.

2. Statutory Resolution adopted at the 8th session of the Committee of Ministers in May 1951.

3. See *European Conventions and Agreements* (Volumes I to VI, Strasbourg, 1971 to 1994) and also *Chart showing signatures and ratifications of Conventions and Agreements concluded within the Council of Europe* – publication by the Directorate of Legal Affairs, Treaty Section, regularly updated.

Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the European Cultural Convention. Certain conventions or agreements are accompanied by an explanatory report, published with the authorisation of the Committee of Ministers.

d. *Recommendations to member States – Resolutions*

i. *Recommendations*

Under Article 15.b of the Statute, the Committee may, in the context of “the adoption by governments of a common policy with regard to particular matters”, address recommendations to the governments of member States. It is important to note that, to be adopted, these recommendations require a unanimous vote of the representatives casting a vote, and a majority of the representatives entitled to sit on the Committee of Ministers.¹ Their adoption then constitutes a joint expression of European governmental opinion on a given subject, which obviously lends them considerable weight, even though they do not have the binding force of conventions. For some recommendations, explanatory memoranda are published with the authorisation of the Committee of Ministers.

The Committee of Ministers may request governments to inform it of the action taken by them with regard to its recommendations.² In practice, however, and in view of the large number of recommendations already adopted,³ in 1987 the Committee of Ministers partially delegated this task to the steering and *ad hoc* committees, i.e. the main intergovernmental committees of experts in the various fields of activity of the Council of Europe.⁴

1. Article 20.a.i of the Statute. The procedure for the adoption of recommendations will be explained below, (Chapter III). See also the addendum on page 137 onwards.

2. Article 15.b of the Statute.

3. See the Collection of Resolutions and Recommendations of the Committee of Ministers published annually by the Council of Europe (Secretariat of the Committee of Ministers) since 1979. The recommendations are also published in separate booklets, together with their explanatory memoranda where appropriate.

4. Message to all steering committees and, where appropriate, to the relevant *ad hoc* committees of experts concerning the implementation of recommendations and resolutions of the Committee of Ministers to member States, adopted by the Ministers' Deputies on 20 March 1987 (405th meeting).

These committees were invited to make a regular selection of certain texts from among the recommendations on subjects within their spheres of competence, with a view to examining what action member States had taken on them and then to exchange views on those texts selected. The result of the exchange of views is subsequently brought to the attention of the Committee of Ministers in the report of the committee concerned, thus enabling the delegations to the Committee of Ministers to discuss any problem regarding the follow-up to a recommendation.

ii. *Resolutions*

The administrative decisions taken by the Committee of Ministers sometimes take the form of resolutions. The Committee also adopts resolutions when fulfilling its functions under Articles 32 and 54 of the European Convention on Human Rights, Article 75 of the European Code of Social Security and Article 29 of the European Social Charter (see below).

e. *Administrative and financial matters*

i. *Statutory provisions*

As we have seen, leaving aside certain powers reserved for the Parliamentary Assembly, the Committee of Ministers decides, with binding effect, all matters relating to the internal organisation and arrangements of the Council of Europe, adopting such financial and administrative arrangements as may be necessary for this purpose.¹

The functions of the Committee of Ministers in financial matters are defined in Article 38 of the Statute, which stipulates, *inter alia*, that in accordance with the financial regulations, the budget of the Council of Europe shall be submitted annually by the Secretary General, for adoption by the Committee of Ministers, which apportions the expenses of the Secretariat and all other common expenses between the member States.²

1. Article 16 of the Statute.

2. Article 38.a of the Statute also stipulates that "Each member shall bear the expenses of its own representation in the Committee of Ministers and in the Consultative Assembly".

As far as administrative matters are concerned, Article 37.b of the Statute provides that the Secretary General is responsible to the Committee of Ministers for the work of the Secretariat. The Committee is, therefore, the Organisation's supreme administrative and financial authority. Its most important decisions in this field often take the form of resolutions.¹

ii. *Implementation*

Without going into the details of how it exercises these statutory functions, it is worth noting that the Committee of Ministers has adopted a set of Financial Regulations that provides for an annual budget and contains rules relating to the proper management of the Organisation's expenditure and to the scales of member States' contributions to the different budgets.

In November or December of each year the Deputies adopt the annual budget and the intergovernmental programme of activities for the following year in the form of resolutions.²

The Committee of Ministers also adopts the Secretariat's Staff Regulations,³ the salary scales and (as an integral part of the annual budget) the establishment table and the organisational chart of the Secretariat.⁴

In fulfilling its budgetary functions, the Committee of Ministers is assisted by a Budget Committee, made up of nine independent experts appointed by the Committee of Ministers in such a way as to ensure equitable geographical representation. The Committee of Ministers also has the assistance of a Board of Auditors, whose members it elects.

1. See Resolution (71) 13, adopted by the Committee of Ministers on 17 June 1971. On the establishment of the scales for contributions by member States, see also Resolution (74) 25, adopted on 28 June 1974 and subsequently amended several times. Budgetary and financial texts are published in a collection entitled "Texts on budgetary and financial matters".

2. At their 472nd meeting (March 1992) the Deputies adopted a new procedure and timetable for the examination of draft budgets and draft intergovernmental programmes of activities.

3. Revised in the last instance by Resolution (81) 20, the Staff Regulations are regularly updated.

4. Article 24 of the Financial Regulations.

Finally, on questions of salary scales and pensions, it is helped by a Co-ordinating Committee on Remuneration (CCR), which reports to the Councils of the Co-ordinated Organisations.¹

The Secretary General is responsible to the Committee of Ministers for the work of the Secretariat. He conducts the administrative management of staff, and in this capacity makes appointments of staff; but, under the Regulations on Appointments the Secretary General makes an appointment of staff at the highest levels (grades A6 and A7) after an informal exchange of views with the Committee, during which he makes known his intentions and the reasons for his choice.² However, the appointment of the Financial Controller and the Secretary to the Committee of Ministers are subject to the approval by the latter Committee. Similarly, the Secretary General may terminate their appointments only after consulting that Committee.³

Furthermore, before appointing the Head of his Private Office, the Secretary General informs the Committee of Ministers of his intentions.⁴

For the appointment of the Secretary General, Deputy Secretary General and Clerk of the Assembly having the rank of Deputy Secretary General, a special procedure is followed.⁵ Without going into detail, suffice it to say that candidates for the three highest-ranking posts in the Organisation may be proposed by one or more member governments or by the Secretary General in respect of the posts of Deputy Secretary

1. North Atlantic Treaty Organisation (NATO), Organisation for Economic Co-operation and Development (OECD), Council of Europe, Western European Union (WEU) and European Space Agency (ESA) (Observers: European Patent Office and European Centre for Medium Range Weather Forecasts).

2. Article 25, paragraph 2 of the Regulations on Appointments. See also Article 25, paragraph 3, on certain posts in the Office of the Clerk of the Assembly and Article 26 on certain specific appointment procedures.

3. Article 25, paragraph 6 of the Regulations on Appointments.

4. Article 27, paragraph 1, of the Regulations on Appointments.

5. "Procedure for the appointment to the posts of Secretary-General, Deputy-Secretary General and Clerk of the Assembly, having the rank of Deputy Secretary-General", adopted by the Ministers' Deputies at their 43rd meeting (3-6 December 1956) and amended at their 107th meeting (13-20 March 1962). The Parliamentary Assembly, in a letter from the Private Office of its President dated 18 December 1956, expressed its agreement to this text. The amended text was approved by the Standing Committee on behalf of the Parliamentary Assembly on 30 March 1962.

General and Clerk of the Assembly.¹ Furthermore, with regard to the post of Clerk of the Assembly, proposals may be submitted to the Committee of Ministers by one or more groups of representatives to the Parliamentary Assembly; they should bear not less than five and not more than ten signatures.

The procedure provides that the Committee of Ministers shall examine the list of candidates and that the latter may be summoned to an interview by the Committee itself or by a sub-committee appointed for the purpose.² Before transmitting to the Assembly a recommendation for the appointment to one of these three posts, the Committee of Ministers consults the Assembly through the medium of the Joint Committee³ (see Chapter IV).

Finally, unless otherwise agreed after discussion in the Joint Committee, the Committee of Ministers draws up a list containing at least two names, which shall be submitted to the Assembly.

In the case of candidates for the posts of Secretary General and Deputy Secretary General, the Committee of Ministers is free to list the names in order of preference should it so desire (Article 5 of the Procedure). The final choice lies with the Assembly, which votes on the names submitted (Articles 6 and 7), but, once elected, the Secretary General and the Deputy Secretary General are sworn in (called "solemn declaration") before the Committee of Ministers (at ministerial level).⁴ The three senior officials are appointed for a period of five years, which may be renewed (Article 8 of the Procedure).

Finally, Article 36.f of the Statute states that "Every member shall respect the exclusively international character of the responsibilities of the Secretary General and the staff of the Secretariat and not seek to influence them in the discharge of their responsibilities".

f. *Intergovernmental activities*

The Committee of Ministers plans, programmes and supervises the Council of Europe's intergovernmental activities in pursuance both of its political powers and of its administrative and financial powers.

1. Article 1 of the Procedure.

2. Article 3 of the Procedure.

3. Article 4 of the Procedure.

4. See Article 36.e of the Statute.

i. Programming of intergovernmental activities

In 1974 the Committee of Ministers adopted Resolution (74) 33 on the planning and programming of the intergovernmental activities of the Council of Europe. This provides for the adoption every five years of a medium-term plan taking into account political developments, progress in European co-operation and achievements during the intervening period. In 1989 it was agreed, however, not to adopt any further medium-term plans (the third and last such plan covered the period 1987-91).

At the end of each year the Ministers' Deputies adopt an intergovernmental programme of activities linked to the annual general budget for the following year (Vote II of the Budget). This specifies the activities to be implemented and the budgetary resources to be allocated to each of the nine fields of activity of the Council of Europe.¹ It is prepared by the Secretary General on the basis, *inter alia*, of information supplied by the main intergovernmental committees of experts (steering committees), and in accordance with the priority lines of action of the Declaration of 5 May 1989 on the future role of the Council of Europe, in which the Committee of Ministers recommended that the Council of Europe's activities should develop along three priority lines:

- safeguarding and reinforcing pluralist democracy and human rights with reference to the European Convention on Human Rights and the European Social Charter;

1. The nine fields of activity covered by the 1994 Intergovernmental Programme of Activities were: I. Democracy, Human Rights and the Fundamental Rights of Human Beings "European solidarity at the service of the individual"; II. Media and Communication. "Broadening and guaranteeing the scope of freedom of expression and information"; III. Social and Economic Affairs. "Towards a European social area"; IV. Education, Culture, Heritage and Sport. "Europe's cultural identity and cultural diversity"; V. Youth. "Europe's future"; VI. Health. "European dimension of health"; VII. Management of Space and the Natural World. "A better environment for all Europeans"; VIII. Local democracy. "Democracy at the grass-roots"; IX. Legal co-operation. "A law to match Europe's future". It should be noted that these are areas in which intergovernmental activity is conducted in practice. In principle, under Article 1 of the Statute, only matters relating to national defence are excluded from the scope of the Council of Europe.

As a follow-up to the Vienna Declaration an overhaul of the programme of activities and its presentation in 1995 has been undertaken.

- fostering awareness of, and enhancing, European cultural identity ;
- seeking common or convergent responses to challenges confronting modern European society.

According to Resolution (89) 40, adopted on the same occasion, the Deputies are assigned to carry out the implementation of inter-governmental activities on the basis of the following criteria and priority guidelines as laid down by the Committee of Ministers :

- contribution to the process of European construction ;
- interest shown by a large number of member States in participating actively ;
- improvement of relations with European non-member countries.

Since then, the Vienna Declaration has given valuable indications as regards the future guidelines for the Council of Europe programmes: co-operation with the countries of central and eastern Europe, the protection of national minorities, the fight against intolerance, cultural co-operation, transfrontier co-operation, social cohesion, the natural and built environment, migratory flows, etc.

ii. *Implementation of intergovernmental activities*

The implementation of the annual programmes of activities is entrusted to committees of experts formed in pursuance of Article 17 of the Statute, which empowers the Committee of Ministers to set up advisory and technical committees or commissions for such specific purposes as it may deem desirable. A number of such bodies, composed of experts appointed by member governments, have been created in various fields of activity of the Council of Europe.

The *modus operandi* of these committees is governed by regulatory measures adopted by the Committee of Ministers.¹ Each committee is given specific terms of reference that define its tasks, its membership

1. In particular, Resolution (76) 3 on committee structures, terms of reference and working methods, which has been amended several times, notably by the decisions taken by the Deputies at their 455th meeting in March 1991.

and the duration of the terms of reference.¹ From time to time the committees may be given *ad hoc* terms of reference on new subjects. At present there are around thirty steering committees (responsible for implementing intergovernmental activities in one or more sectors of activities), or *ad hoc* committees (charged with specific tasks), assisted by a number of subordinate committees or working parties. The terms of reference of the steering and *ad hoc* committees are adopted by the Committee of Ministers, which, as a general rule, is also required to approve the creation of their subordinate committees.

At any time the Committee of Ministers may refer a matter to the appropriate committee of experts for examination or for an opinion. The work of the committees of experts may result in a draft convention, agreement or recommendation to the governments of member States, as well as in a report on the issue concerned; or it may be limited to an exchange of views on certain questions. In the context of the intergovernmental programme of activities, the Committees will also organise conferences, colloquies, symposia, etc.

Abridged meeting reports of the steering and *ad hoc* committees are placed on the agenda of the Ministers' Deputies, who take the appropriate decisions on any follow-up deemed necessary. They are accompanied by the draft legal instruments the Committees propose for adoption, or by the reports they propose publishing.²

In practice the Ministers' Deputies take most of the important decisions on the functioning of the committees of experts and the results of their work:

- adoption and amendments of the terms of reference of steering and *ad hoc* committees;
- approval of the terms of reference of subordinate committees;

1. These are published in a *Compendium of Terms of Reference of Intergovernmental Committees*, published by the Council of Europe's Research and Planning Unit and regularly updated. Furthermore, the Council of Europe publishes each year a report on the activities of the past year.

2. In the context of the reform of the working methods of the Deputies which took place in 1994 (506th meeting), it was agreed that in the future the steering and *ad hoc* committees should themselves decide as to the publication of technical reports.

- adoption of draft recommendations to the governments of member States, draft conventions and draft agreements prepared by these committees (with authorisation to publish the explanatory reports in the case of conventions and agreements and the explanatory memoranda in the case of recommendations);
 - admission of observers.¹
- g. *Council of Europe co-operation and assistance programmes with the countries of central and eastern Europe*²

i. *Objectives*

Since 1990 a very substantial part of the Council of Europe's activity has in fact been accounted for by its co-operation and assistance programmes with the countries of central and eastern Europe, which have developed considerably. These programmes are designed to provide the countries of central and eastern Europe with the Organisation's expertise in every aspect of the functioning of truly democratic institutions and societies. This exercise in "democratic engineering" is not designed to impose any pre-established models but to share experience and expertise with the partner countries concerned in order to help them progress along the path they themselves have chosen, namely that of the setting up of a system of pluralist democracy based on respect for human rights and the principles of the Rule of Law. It is indeed by progressing along this path that these countries will gradually become integrated into the structures of European construction, first and foremost the Council of Europe.

Strengthening democratic reforms and integration into the European structures are two activities that go hand in hand. In contributing to the former, the Council of Europe's co-operation and assistance programmes facilitate the latter.

1. See also Resolution 76 (3), paragraph 5, on the decision of the Ministers' Deputies taken at their 442nd meeting (June 1990), which confers certain powers to the steering and *ad hoc* committees in regard to the admission of international non-governmental organisations as observers.

2. The Directorate of Political Affairs of the Council of Europe publishes each year an information document (SG/Inf) containing that year's programme and prepares half-yearly reports on its implementation.

ii. *Lines of action*

The co-operation and assistance programmes are at present being conducted along three main lines:

- promotion of information, political dialogue and better mutual knowledge, as a *sine qua non* of successful co-operation;
- co-operation and assistance in promoting pluralist democracy, human rights and the Rule of Law in all aspects of the functioning of society. In addition to the legislative assistance and expert appraisal schemes that have been in operation under the Demosthenes programme, wider schemes were set in motion in 1993 to train officials responsible for implementing institutional reforms, be they parliamentary officials (interparliamentary co-operation programme, carried out by the Parliamentary Assembly), elected regional councillors and other officials (Lode programme), or members of the legal professions (Themis programme).
- gradual integration into the programmes, institutions and structures of the Council of Europe.

iii. *Beneficiaries*

The countries for whose benefit these programmes are intended are:

- Council of Europe member States in central and eastern Europe;
- non-member States in central and eastern Europe;
- republics which have emerged from the former Soviet Union, for which a special programme called “Demosthenes-bis” has been set up.

All these programmes are financed by a special vote of the general budget of the Council of Europe (Vote IX). Additional funding in the form of voluntary contributions from member States enables some schemes to be intensified. Moreover, since 1993 the Council of Europe has concluded certain agreements with the Commission of the European Communities on the implementation of joint co-operation programmes.

It should be added that in the Vienna Declaration, the Heads of State and Government confirmed “the policy of openness and co-operation

vis-à-vis all the countries of Central and Eastern Europe that opt for democracy”, adding that “the programmes set up by the Council of Europe to assist the democratic transition should be developed and constantly adapted to the needs of our new partners”.

Further on, the Declaration continues: “Convinced that the setting up of appropriate legal structures and the training of administrative personnel are essential conditions for the success of the economic and political transition in central and eastern Europe, we attach the greatest importance to the development and coordination of assistance programmes for this purpose in liaison with the European Community.”

iv. Role of the Committee of Ministers

The Ministers’ Deputies make the requisite appropriations to Vote IX of the budget, for financing the co-operation and assistance programmes, and regularly monitor the progress of the programmes, particularly when examining the recurring agenda item at every ordinary meeting concerning relations with the countries of central and eastern Europe, as well as within their Enlarged Rapporteur Group on relations with these countries (GREL – see below).

h. Follow-up to Assembly recommendations

The Statute¹ states that the Committee of Ministers, “on the recommendation of the Consultative Assembly or on its own initiative”, considers “the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements and the adoption by governments of a common policy with regard to particular matters”. Under the Rules of Procedure of the Committee of Ministers² and for the meetings of the Ministers’ Deputies³ the examination of texts adopted by the Parliamentary Assembly (recommendations,⁴ resolutions, opinions, orders⁵) is placed on the agenda of the Deputies’

1. Article 15.a.

2. Article 4.b.i.

3. Article 5-1.

4. See Footnote 3 p. 32.

5. See Footnote 4 p. 32.

first meeting following the Assembly's part-session at which they were adopted¹.

During this first examination, a preliminary exchange of views should, as far as possible, be held on the political aspects of the Assembly's recommendations. Sometimes the Deputies will obtain the opinion of a committee of experts on certain technical aspects before, if appropriate, taking the action recommended by the Assembly and/or giving the Assembly a reply. As a general rule the Committee replies to the Assembly, although sometimes the reply will be interim (provisional) or partial, indicating, for example, that it cannot yet respond to the recommendation concerned or to part of it, but is still examining the matter or replying to certain points in the recommendation whilst reserving its opinion on others.² Before adopting a reply to a recommendation, the Ministers' Deputies or their appropriate Rapporteur Group will sometimes hear the Chairman or the Rapporteur of the competent Assembly committee.

Under the Rules of Procedure of the Committee of Ministers,³ written questions submitted by representatives to the Parliamentary Assembly in pursuance of the Rules of Procedure of the Consultative Assembly⁴ – which do not constitute texts adopted by the Assembly – are examined by the Ministers' Deputies, who decide what action should be taken.

It should be noted that replies both to recommendations adopted by the Assembly and to written questions submitted by parliamentarians require the unanimous support of the Committee of Ministers,⁵ the effect of which is often to delay, and sometimes to preclude, a reply. In

1. See also the Decision taken by the Deputies at their 69th meeting in 1959.

2. Article 15 of the Rules of Procedure of the Committee of Ministers, which reads "Where a recommendation of the Consultative Assembly is only partially acceptable to the Committee of Ministers, the latter shall refer it back to the President of the Assembly for further consideration and shall at the same time append its comments", has not been applied for the past ten years at least.

3. Article 16.

4. Article 54, paragraph 1.

5. This is a somewhat broad interpretation of the unanimity rule applicable to decisions on the information to be published regarding the discussions and conclusions of Committee of Ministers meetings held in private (Article 20.a.iii in conjunction with article 21.b of the Statute). On this matter, see also the addendum on page 137 onwards.

recent years, however, efforts have been made to reply, more rapidly and more substantively to these texts.

i. *Other powers*

i. *Granting and withdrawal of membership*

Amongst the most important statutory powers of the Committee of Ministers is having the authority to invite European States to become members or associate members of the Council of Europe.¹ Similarly, the Committee may decide to suspend a member from its rights of representation and request it to withdraw from the Organisation.² A Statutory Resolution adopted by the Committee of Ministers in 1951³ provides that the Committee will consult the Parliamentary Assembly before inviting a State to become a member or an associate member of the Council of Europe, or before inviting a member to withdraw. The final decision, however, lies with the Committee of Ministers.

The Committee of Ministers requests the Assembly to express its opinion in the form of a resolution. Such resolutions used to be considered a formality in the past, always following, more or less, the same pattern; but recently, since the request to the Assembly for its opinion on the accession of Russia,⁴ they have become more substantive and often contain messages to the Assembly relating to problems or questions of particular concern to the Committee of Ministers.

Once the Assembly has given its opinion, the Committee of Ministers adopts, if appropriate, a resolution inviting the applicant State to become a member and instructing the Secretary General to address the invitation to its government. In pursuance of Article 6 of the Statute, the resolution specifies the number of representatives to which the future member will be entitled in the Assembly, and its proportionate financial contribution to the budget. The most recent resolutions also contain

1. Articles 4, 5 and 6 of the Statute.

2. Article 8 of the Statute.

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

4. Resolution (92) 27 adopted by the Ministers' Deputies on 25 June 1992 at their 478th meeting.

more substantive passages concerning certain aspects of the implementation of democratic reforms.¹ The State concerned becomes a member as soon as its instrument of ratification has been deposited with the Secretary General. This is done at a ceremony – often, but not always – held during a meeting of the Committee of Ministers at ministerial level.

The powers vested in the Committee of Ministers regarding the admission of new members may be exercised – as indeed they are in most cases at present – by the Ministers' Deputies. A decision to invite a State to join the Organisation, however, requires, at ministerial level, a majority of two-thirds of the representatives entitled to sit on the Committee, while at Deputies' level a unanimous vote is required (see Chapter III below, Procedure – Majorities required).

The conditions that a State must fulfil in order to become a member or associate member are set forth in Articles 3 and 5 of the Statute. Other conditions have been added to them in practice over the years, at least for full membership – the main example being an obligation to sign the European Convention on Human Rights when acceding to the Statute and an undertaking to ratify the Convention within a reasonable period.

Finally, it should be added that, without modifying the membership criteria set forth in the Statute, the Declaration adopted at the Summit of Heads of State and Government in Vienna on 9 October 1993 states that “accession presupposes that the applicant country has brought its institutions and legal system into line with the basic principles of democracy, the rule of law and respect for human rights”. The Heads of State and Government added: “The people's representatives must have been chosen by means of free and fair elections based on universal suffrage. Guaranteed freedom of expression and notably of the media, protection of national minorities and observance of the principles of international law must remain, in our view, decisive criteria for assessing any application for membership. An undertaking to sign the European Convention on Human Rights and accept the Convention's supervisory machinery in its entirety within a short period is also fundamental. We

1. See namely Resolution (93) 37 inviting Romania to become a member of the Council of Europe, adopted by the Committee of Ministers on 4 October 1993 at the 498 *bis* meeting of the Ministers' Deputies.

are resolved to ensure full compliance with the commitments accepted by all member States within the Council of Europe."

These different stipulations are in fact the result of recent practice, not only of the Parliamentary Assembly but also of the Committee of Ministers, which is reflected notably in its resolutions requesting the Assembly's opinion on certain membership applications.

In October 1993¹ the Deputies adopted and decided to transmit to the Assembly a "Memorandum on the role of the Committee of Ministers in the procedure for the accession of new member States/relations with the Parliamentary Assembly" which, *inter alia*, proposed the following:

I. Before adopting resolutions forwarding applications for membership to the Parliamentary Assembly for opinion, the Deputies might – via the GREL Rapporteur Group – identify, in greater detail than hitherto, the points which, in the light of the Vienna Declaration, give them cause for concern and which would warrant more thorough examination by the Parliamentary Assembly when the applications are considered.

To proceed to this identification, the Enlarged Rapporteur Group on Relations with the Countries of Central and Eastern Europe might wish to meet the Assembly's competent body which will be designated by the Bureau of the Assembly.

II. After an application for membership has been forwarded to the Parliamentary Assembly for opinion, the points giving the Committee of Ministers cause for concern could be raised in regular informal discussions with representatives of the Parliamentary Assembly, in order to ensure that they are taken into consideration during visits made to the country concerned by Assembly bodies or rapporteurs.

Such discussions could be held between the GREL and the Chairmen and rapporteurs of the three relevant Assembly committees (Political Affairs, Relations with European Non-Member

1. 500 *bis* meeting of the Ministers' Deputies (October 1993).

Countries, Legal Affairs and Human Rights). This modality should receive the agreement of the Assembly to become operational.

III. Moreover, it is recalled that the Permanent Representatives can participate in meetings of Assembly committees in accordance with the Standing Committee's decision of 25 November 1987, which could be particularly useful when the Assembly's competent committees examine an application for membership.

IV. The foregoing arrangements are proposed without prejudice to possibilities of recourse to existing consultation machinery between the Parliamentary Assembly and the Committee of Ministers, particularly the Enlarged Joint Committee (Colloquy) at ministerial level, the Joint Committee at Ministers' Deputies level and the Joint Working Party comprising a delegation from the Bureau of the Assembly and the Bureau of the Committee of Ministers or the Ministers' Deputies, who may be joined on an *ad hoc* basis by other participants, such as – on the Ministers' Deputies' side – the Chairman of the GREL.”

This memorandum, which was approved by the Bureau of the Assembly on 10 January 1994, was for the first time applied in January 1994 with regard to the request for membership by “The Former Yugoslav Republic of Macedonia”.

Finally, in the context of the Assembly, it is worth mentioning certain initiatives, such as Order No. 488 on the honouring of commitments entered by member States. For its part, at its 94th session in May 1994, the Committee of Ministers “took note of ideas expressed by certain delegations concerning the monitoring of the obligations which membership of the Council of Europe entails”. The Ministers declared that they were determined to follow closely the respect for these obligations and instructed the Ministers' Deputies to pursue the matter, which is at present being studied within an *ad hoc* working party of the Deputies.¹

1. See also the addendum on page 137 onwards.

ii. *Observer status*

On 14 May 1993 the Committee of Ministers adopted a statutory resolution on observer status, which provided as follows:

"Any State willing to accept the principles of democracy, the rule of law and 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."

Countries granted the status provided for in this resolution are entitled to send observers, *inter alia*, to intergovernmental committees of experts and to conferences of specialised ministers. They are not, however, entitled to be represented either on the Committee of Ministers or in the Parliamentary Assembly, unless it is specifically decided by one of these organs on its own behalf. Observer status also entitles a State to appoint a permanent observer to the Council of Europe.

Observer status may also be granted by the Committee of Ministers, after consultation with the Parliamentary Assembly, to international intergovernmental organisations willing to co-operate closely with the Council of Europe and deemed able to make an important contribution to its work.

Finally, the Committee of Ministers may suspend, and after consultation with the Parliamentary Assembly, withdraw observer status.

iii. *Other functions*

Not all the many other functions performed by the Committee of Ministers need be examined here. One important function that does deserve mentioning, however, is that of electing or appointing individuals to certain duties within the Organisation. For example, the Committee of Ministers elects the members of the European Commission of Human Rights,¹ the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or

1. Article 21 of the European Convention on Human Rights.

Punishment¹ and the Committee of Independent Experts of the European Social Charter.² It also participates formally in the Parliamentary Assembly's election of judges to the European Court of Human Rights,³ by transmitting the candidatures to the Assembly. It is involved, moreover, in appointments to the posts of Secretary General, Deputy Secretary General and Clerk of the Assembly having the rank of Deputy Secretary General.⁴ Finally, it presides over the appointment of members of the Budget Committee⁵ and the Board of Auditors.⁶

j. *Convention-based powers*

The Committee of Ministers also has specific tasks to perform under certain conventions. The Convention for the Protection of Human Rights and Fundamental Freedoms, for example, vests the Committee with important quasi-judicial functions.⁷ Article 32 of the Convention makes it responsible on certain conditions – if there has been no friendly settlement, if the case has not been referred to the European Court of Human Rights, and on the basis of a report by the Commission – for deciding whether there has been a violation of the rights and freedoms protected by the Convention.

When the Committee of Ministers exercises these powers under the Convention, it sits in its usual composition, but its decisions require a two-thirds majority of the members entitled to sit on the Committee.

If the Committee of Ministers decides that there has been a violation of the Convention, it prescribes a period during which the State concerned must take the requisite measures. If the State fails to do so, the Committee must then decide what “effect” is to be given to its original decision. Article 32 gives no details regarding the nature of such “effect”. In fact, the Convention mentions only one kind of penalty: publication

1. Article 5 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

2. Article 25, paragraph 2 of the European Social Charter.

3. Article 39 of the European Convention on Human Rights.

4. See chapter I.3.e.

5. Article 29 of the Financial Regulations.

6. Article 80 of the Financial Regulations.

7. There is extensive literature on the subject of the role of the Committee of Ministers under the European Convention on Human Rights. See the Bibliography.

of the Commission's report. Generally speaking, however, the State concerned may be expected to try to implement the Committee of Ministers' decision as required, and in fact the Contracting Parties have undertaken to do so.

Numerous resolutions have been adopted by the Committee of Ministers under Article 32 of the Convention. In certain recent cases the Committee of Ministers has ruled that the State at fault must pay financial compensation to the injured party.¹

It should also be noted that at the Summit in Vienna on 8 and 9 October 1993 the Heads of State and Government adopted Appendix I to the Vienna Declaration, relating to the reform of the control mechanism of the European Convention on Human Rights in which they expressed their resolve "to establish, as an integral part of the Convention, a single European Court of Human Rights to supersede the present controlling bodies", and mandated the Committee of Ministers to finalise a draft protocol amending the Convention for the Protection of Human Rights and Fundamental Freedoms, with a view to adopting a text and opening it for signature at its ministerial meeting in May 1994. Such a Protocol (No. 11)² was in fact opened to signature on the occasion of the 94th Session of the Committee of Ministers on 10 May 1994 and signed by thirty-one member States. Under this reform the system will be rationalised and should facilitate access to the machinery by individuals, expedite proceedings and enhance efficiency. All alleged violations of individuals' rights will be submitted directly to the new Court. When the protocol comes into force, the Committee of Ministers will no longer have the power to decide on the merits but will retain an important role in supervising the enforcement of the Court's judgments.

Apart from exercising the powers conferred upon it by Article 32 of the Convention, the Committee of Ministers is also informed, under Article 54, of the judgments of the European Court of Human Rights and is responsible for supervising their execution. A series of decisions have been taken by the Committee of Ministers under Article 54

1. See *Collection of Resolutions adopted by the Committee of Ministers in application of Articles 32 and 54 of the European Convention on Human Rights, 1959-1989* and supplements for 1990-1991 and 1992.

2. ETS No. 155.

since 1968. Since 1976 these decisions have also taken the form of resolutions.

Other legal instruments, such as the European Social Charter (ETS No. 35, Article 29) and the European Code of Social Security (ETS No. 48, Article 75) also entrust the Committee of Ministers with tasks regarding the monitoring of their application.

Under many conventions, finally, the Committee of Ministers is responsible mainly for inviting non-member States or the European Union to accede to them, setting up and operating the committees provided for them, etc.

Chapter III – Procedure

1. Sources

The *modus operandi* of the Committee of Ministers is regulated by a complex set of statutory and regulatory measures (Statute of the Council of Europe, Rules of Procedure of the Committee of Ministers, Rules of Procedure for the Meetings of the Ministers' Deputies, *ad hoc* decisions of the Committee), as well as by conventional provisions when the Committee exercises its functions of monitoring the implementation of certain conventions and agreements (see Chapter II above). Parallel to these texts, a number of practices have been established over the years. Indeed, the texts have sometimes been overtaken by what one might call custom. While the development of such practices may render the study and application of procedure more difficult, it nevertheless reflects a certain flexibility, as well as a marked pragmatism on the part of the Committee, permitting better adaptation to circumstances and the avoidance of any sclerosis or rigidity.

While the regulations are complicated, they are not really, as some authors believe, “needlessly” complicated.¹ Here, attention will be confined to the main procedural rules in force.

2. Statutory provisions

Article 18 of the Statute authorises the Committee of Ministers to adopt its Rules of Procedure. Several points of procedure, are however, governed directly by Articles 20 and 21 of the Statute: the majorities required for voting, the venue and privacy of meetings, including the

1. Burban (J.-L.), *Le Conseil de l'Europe*, Paris, Presses universitaires de France, Collection «Que sais-je?», 1985, p. 32.

question of what information is to be published on meetings held in private. Inclusion in the Statute lends weight to these measures, which cannot be modified without amending the Statute itself.¹

a. *Majorities required*

As already mentioned, Article 14 of the Statute stipulates that each member is entitled to one representative on the Committee of Ministers and that each representative is entitled to one vote.

The provisions of Article 20 of the Statute relating to the majorities required are rather complex.² They envisage four different types of decision :

- i. Decisions on six categories of important matters, which require the unanimous vote of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee (see below) ;
- ii. Decisions on questions arising under the Rules of Procedure or under the Financial and Administrative Regulations, which may be taken by a simple majority vote of the representatives entitled to sit on the Committee ;
- iii. Decisions on the admission of new members or associate members, which require a two-thirds majority of all the representatives entitled to sit on the Committee ;³
- iv. All other decisions, including the adoption of the budget, the Rules of Procedure of the Committee of Ministers and for the Meetings of the Ministers' Deputies, and the Financial or Administrative Regulations, require a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

1. A unanimous vote is required to amend Article 20, which deals with majorities required in voting (Article 20, paragraph a.v). Article 21, on the venue, privacy and information on meetings, can be amended only by a two-thirds majority of the votes cast and by a majority of the representatives entitled to sit (Article 20, paragraph d).

2. The voting rules in the Statute apply both to ministerial meetings and to meetings of the Deputies. They are reproduced, explained and supplemented in Article 9 of the Rules of Procedure for the Meetings of the Ministers' Deputies.

3. If such decisions are taken by the Ministers' Deputies, the unanimity of those casting a vote is required (Article 9 paragraph 1.f of the Rules of Procedure for the Meetings of the Ministers' Deputies).

We may conclude from this brief summary of Article 20 of the Statute that, apart from procedural questions (where a simple majority is sufficient, i.e. half the Deputies entitled to vote plus one),¹ decisions normally require a majority of two-thirds of the votes cast² and a majority of the representatives entitled to sit on the Committee.

Unanimous votes are required for only a limited number of more important matters, which are listed in Article 20.a of the Statute:

- a. recommendations to the governments of member States under Article 15.b of the Statute;
- b. decisions relating to the communication to the Assembly, in the reports of the Committee of Ministers, of information concerning the Committee's activities, under Article 19 of the Statute;³
- c. decisions relating to the privacy of meetings and the publication of information regarding the Committee's decisions and conclusions (Article 21.a.i and b of the Statute);
- d. decisions on the holding of sessions of the Assembly elsewhere than Strasbourg (Article 33 of the Statute);
- e. recommendations for the amendment of certain articles of the Statute (Articles 1.d, 7, 15, 20 and 22);⁴
- f. any other question which the Committee decides, by a two-thirds majority of the votes cast and by a majority of the representatives entitled to sit, should be subject to a unanimous vote on account of its importance.

Most of the above-mentioned questions requiring unanimous decisions arise fairly seldom encountered in the course of the day-to-day business of the Committee of Ministers or the Deputies, with the exception of the

1. On 1 September 1994, on which date the Council of Europe comprised 32 members, 17 (16 + 1) votes composed the majority.

2. Only affirmative and negative votes (not abstentions) count in calculating the number of votes cast (Article 10, paragraph 5 of the Rules of Procedure for the Meetings of the Ministers' Deputies).

3. This is a reference to the Statutory Report of the Committee of Ministers, which has long been disseminated by the Secretariat without any examination by the Committee of Ministers.

4. At the Deputies' level a unanimous vote is required for any amendment to the Statute (Article 9, paragraph 1.e of the Rules of Procedure for the Meetings of the Ministers' Deputies).

adoption of recommendations to governments of member States. Moreover, contrary to what certain authors have maintained,¹ a vote may be regarded as unanimous even if some representatives abstain, as is clear from the Rules of Procedure for the Meetings of the Ministers' Deputies.²

Most decisions may therefore be reached by a two-thirds majority of the votes cast and a majority of the representatives entitled to sit on the Committee, including the question – in case of doubt – of which type of majority is required to decide an issue.³

It is true, that apart from certain procedural questions or the exercise of its functions under the European Convention on Human Rights, the Committee often endeavours to avoid taking decisions by a majority vote, or even to avoid voting altogether. The custom has grown up of seeking a consensus on important questions of substance. While this practice may slow down the Committee's proceedings, it nevertheless contributes to intergovernmental harmony by avoiding "the imposition of the will of the majority on a reluctant minority".⁴

It should be added that, even if a vote is held, the practice of an indicative vote⁵ or an (informal) "show of hands" also facilitates discussions by avoiding the guillotine-effect of a hard-and-fast negative vote and encouraging members to reach a common position. However, the considerable increase in the number of members will probably oblige the Deputies to resort more often to voting.

At the ministerial level sessions, votes are an extremely rare occurrence, since most of the political questions addressed seldom require formal decisions. Should the Committee nevertheless be required to take a formal decision or adopt a legal instrument, the ground will have been

1. Article 10.2.d.

2. See Ducloux (P.), *Le Conseil de l'Europe*, Paris, 1965, Presses universitaires de France, Collection "Que sais-je?", No. 885, p. 49. See also Burban, *op. cit.*, p. 33.

3. Article 9, paragraph 4 of the Rules of Procedure for the Meetings of the Ministers' Deputies.

4. Robertson (A.H.), *The Council of Europe: its structure, functions and achievements*, London 1956, Stevens & Sons, p. 40.

5. Explicitly authorised in Article 10, paragraph 7, of the Rules of Procedure for the Meetings of the Ministers' Deputies.

carefully prepared by the Deputies, so that the Ministers may act by consensus without any actual vote.

Finally, at their 443rd meeting (September 1990), the Deputies agreed upon a “gentlemen’s agreement” to the effect that their delegations would endeavour, whenever possible, not to abstain when voting on the inclusion of activities in the intergovernmental programme of activities.

b. *Privacy of meetings – Information on discussions and conclusions*

Article 21 of the Statute provides that, unless the Committee of Ministers decides otherwise, its meetings are held in private (a), and that the Committee determines what information should be published regarding the conclusions and discussions of meetings held in private (b). As already seen, decisions not to hold a meeting in private or to publish information on meetings held in private require a unanimous vote.

Furthermore, any delegation has a right, as does the Secretary General, to propose that an item be discussed in restricted session. The restriction on the number of participants may apply to the delegations (presence being restricted to heads of delegation only) but also to the Secretariat (the number of staff being designated by the Secretary General).¹

While the minutes of ministerial sessions are confidential in practice, a fairly substantive final communiqué is nevertheless made public (sometimes replaced by conclusions of the Chair). Furthermore, declarations by the Committee on this or that particular matter are sometimes appended to the final communiqué or to the conclusions of the Chair. And at the end of each ministerial session the Chairman and the Secretary General give a press conference.

As for meetings of the Ministers’ Deputies, their “Conclusions” as provided for in Article 16 of the Deputies’ Rules of Procedure were replaced in January 1993² by “Decisions and Records”, to which we shall return later (see “Records of the Committee of Ministers” below).

1. Decision adopted by the Deputies at their 243rd meeting (1975).

2. Decision taken at the 486th meeting of the Ministers’ Deputies.

Suffice it to say here that, whereas the “Records” relating to discussions remain confidential, the decisions are no longer classified as “confidential” but as “restricted”,¹ which enables the Secretariat to divulge the content of certain specific decisions to the press without revealing the exact text.²

Furthermore, when the Deputies take an important decision (such as the adoption of a legal instrument) a press communiqué is usually issued under the responsibility of the Secretariat. As for the various agenda items – which, without leading to results falling in the public domain, may be of interest to the press – the Secretariat will consult the Chairman of the Ministers’ Deputies (and, where appropriate, the Bureau) on whether or not they should be published. In case of doubt, the Chairman shall consult the full meeting of the Deputies.³

Information concerning the proceedings of the Committee of Ministers is also communicated to the Parliamentary Assembly in the Committee’s Statutory Report (see Chapter IV-1) at each Assembly part-session.

It should be added that, under a documents classification system adopted by the Deputies in 1963,³ three classifications may appear on documents :

- i. “Restricted” : all documents intended for the Committee of Ministers are classified according to subject and are normally marked “Restricted”. Documents so classified are for the internal use of the Council of Europe and member governments and are not published ;
- ii. “Confidential” : certain documents are marked “Confidential” subject to the approval of the Secretary to the Committee of Ministers ;
- iii. “Secret” : certain documents may be so classified at the request of the Secretary General or of member governments.

1. The decisions taken at the “Human Rights” meetings (DH) under Articles 32 and 54 of the European Convention on Human Rights remain confidential, except for when a resolution (public) is adopted by the Committee. On this matter see also the addendum on page 137 onwards.

2. Decision adopted by the Ministers’ Deputies at their 463rd meeting (October 1991).

3. At their 123rd meeting (September 1963).

Almost all working documents of the Ministers' Deputies are classified "Restricted". Few documents are classified "Confidential" and only exceptionally is a document marked "Secret".

In 1981, moreover, the Deputies adopted a "Procedure for granting public access to Council of Europe official documents".¹ Under this procedure, documents relating to the creation of the Council of Europe and those of the Committee of Ministers and of its subordinate committees and the Secretariat held in the archives of the Council of Europe become open to public access after a period of thirty years, unless an embargo for exceeding thirty years has been imposed by the Committee of Ministers or the Secretary General or is requested by a member State's government. In the year before the period of thirty years is completed, the Secretary General brings to the attention of the Deputies information concerning the categories of documents he intends to make open to public access. If no objection is raised, the list proposed by the Secretary General is tacitly adopted. Exceptions to this rule have been foreseen in the case of personal files of staff members and former staff members, and in the case of files of the Recruitment and Promotions Panels.

In an age in which the media have assumed such importance, one may wonder whether this virtually systematic confidentiality of documents is still relevant; it certainly does nothing to foster the general public's knowledge of the Organisation, and perhaps the time has come to relax this confidentiality rule. A further relaxation was introduced recently; in May 1994² the Deputies authorised the Council of Europe's Director of Information, in liaison with the Secretariat of the Committee of Ministers and, where appropriate, the Chairman of the Ministers' Deputies, to brief the press regularly about the agendas of forthcoming Deputies' meetings and about the salient discussions and results after the meetings. The Deputies' Rapporteur Groups on Administrative Questions and on Information Policy are currently considering further

1. Decision adopted by the Ministers' Deputies at their 337th meeting. See also the addendum, 1.i.

2. 513th meeting of the Deputies.

measures to relax the confidentiality rule with a view to greater openness about the work of the Committee of Ministers.¹

3. Rules of Procedure of the Committee of Ministers and Rules of Procedure for the Meetings of the Ministers' Deputies

The Rules of Procedure of the Committee of Ministers, adopted in pursuance of Article 18 of the Statute, regulate various other procedural matters. The Committee approved the original version at its 9th session, in 1951, and subsequently adopted several revised versions, the fourth and last of which dates back to 1964.² These Rules stipulate (Article 14.b) that the powers of the Deputies are exercised and the procedure for their meetings determined by their own Rules of Procedure.

Originally adopted by the Committee of Ministers at its 16th session, in July 1955, the Rules of Procedure for the Meetings of the Ministers' Deputies were subsequently amended by the Deputies on several occasions. The present version, the 3rd revised edition, dates from 1971.³

The provisions of the Rules of Procedure of the Committee of Ministers apply, where appropriate, to the meetings of the Ministers' Deputies in matters not covered by the latter's own Rules of Procedure.⁴

Finally, subject to the provisions of the Statute, the Rules of Procedure for the Meetings of the Ministers' Deputies may be amended by the Deputies by a two-thirds majority, except Article 2, which establishes the powers of the Committee of Ministers meeting at Deputy level and Article 9, which concerns voting; these two Articles may be amended only by a unanimous vote (Article 17 of the Rules of Procedure for the Meetings of the Ministers' Deputies).

1. See the addendum, 1.i.

2. Text adopted by the Committee of Ministers at its 9th session (August 1951) and amended at its 10th, 16th and 23rd sessions (March 1952, July 1955 and December 1958 respectively), and at the 75th and 133rd meetings of the Ministers' Deputies (June 1959 and July 1964).

3. Adopted by the Deputies at their 201st meeting (September 1971). Article 6 was recently amended at the 472nd meeting of the Deputies (March 1992).

4. Article 18 of the Rules of Procedure for the Meetings of the Ministers' Deputies.

4. Procedure governing the adoption and opening for signature of conventions and agreements

As explained earlier, the Committee of Ministers considers the action required to further the aim of the Council of Europe, including the conclusion of conventions or agreements.¹

It should be remembered, however, that the Council of Europe conventions and agreements concerned are not really legal instruments of the Organisation as such, but owe their existence to the consent of those member States that sign and ratify them. Under a statutory resolution adopted by the Committee of Ministers in May 1951,² any agreement or convention shall be submitted by the Secretary General to all members for ratification, and is binding only on those members as have ratified it. This explains why the conclusion of such conventions and agreements was not made the subject of procedural provisions in the Statute of the Council of Europe or in other regulatory texts which, in procedural matters, concern only the acts of its organs.

The Organisation's moral standing is nevertheless affected by any treaty drawn up in its framework; moreover, the entry into force of a treaty, even in respect of a limited number of States, may have consequences of a political, administrative and financial nature for the Council of Europe as a whole (constitution of conventional committees, invitations from the Committee of Ministers to non-member States to accede, etc.).

For that reason the adoption and opening for signature of conventions and agreements are regulated by a more flexible procedure based on practice and recently supplemented by Statutory Resolution (93) 27:

a. *Adoption*

The adoption of a treaty text by the Committee of Ministers requires a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee, in accordance with Article 20. *d.* of the Statute.

1. Article 15 of the Statute.

2. At its 8th session.

b. *Opening for signature*

Until 1993 it was considered that, once the aforesaid majority had been obtained, there was unanimous agreement in favour of opening the treaty for signature unless any representative expressly objected.

Such a practice nevertheless had the disadvantage of allowing a State to stand in the way of the opening of a convention for signature, even if this rarely happened in practice. For this reason, the Committee of Ministers adopted Statutory Resolution (93) 27 on 14 May 1993 "on majorities required for decisions of the Committee of Ministers", according to which "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".

c. *Explanatory report*

When an agreement or a convention is accompanied by an explanatory report, the Committee of Ministers may authorise the publication of the latter by a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee.

d. *Opinion of the Parliamentary Assembly*

In certain cases, under Article 23.a of the Statute, the Committee of Ministers has sought the opinion of the Assembly on draft conventions or agreements before adopting them. It was agreed in April 1985¹ that, as a general rule, the Assembly should be given an opportunity to express its opinion on such drafts.

e. *Decisions to be taken by the Committee of Ministers regarding existing conventions*

Numerous conventions confer tasks on the Committee of Ministers of the Council of Europe. For instance, most treaties are open to accession by non-member States, and several to the European Union as well.

1. Conclusions of the Ministers' Deputies on working methods in the Council of Europe, approved by the Committee of Ministers in April 1985 (76th session).

Usually such treaties make the Committee of Ministers responsible for inviting non-member States or the European Union to accede to them. The majority required for these decisions is in certain cases stipulated in the treaty concerned. Otherwise the majority required is a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee as laid down in Article 20.d of the Statute (see above). Certain conventions also provide for the constitution of special committees called "conventional committees", made up of representatives of the Contracting Parties and responsible for certain functions relating to the implementation of the treaties concerned. In some cases, however, the Committee of Ministers itself fulfils these functions, or at least some of them, hence the need for the Committee of Ministers to take certain decisions in this respect. To examine all these functions treaty by treaty would, however, go well beyond the scope of this study.

It was, moreover, agreed,¹ with regard to follow-up to conventions once adopted, that the competent steering committees should hold regular exchanges of views on the ratification of texts within their spheres of activity.

5. Provisions regulating the creation of partial agreements, enlarged agreements or enlarged partial agreements

a. Various types of partial agreements, enlarged agreements or enlarged partial agreements

It is sufficient to mention here that as from 1951 by means of a statutory resolution,² the Committee of Ministers, "desirous, whenever possible, of reaching agreement by unanimous decision of the Committee, but recognising, nevertheless, that in certain circumstances individual Members may wish to abstain from participating in a course of action which represents the wishes of other Members", agreed to the principle of "partial agreements", whereby a limited number of member States

1. Conclusions of the Ministers' Deputies on working methods of the Council of Europe, approved by the Committee of Ministers in April 1985 (76th session).

2. Adopted at the 9th session of the Committee of Ministers in August 1951.

may agree on joint measures with the consent, but without the participation, of the others.

This arrangement, designed to enable certain members to conduct European co-operation activities in which other members are unable to participate, has been applied in several ways. There is even a revival of interest in such arrangements as demonstrated by the integration into the Council of Europe in 1980 of the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group)¹ and the creation since then of several new partial agreements.²

Following a review of the working methods of the Council of Europe, the Deputies adopted some conclusions in April 1985 in which they expressed the view that "Although intergovernmental co-operation within the Council of Europe should as far as possible involve the participation of all member States, more frequent recourse should be made to the partial agreement system in cases where a certain course of action is only of interest to a restricted number of member States".³

It is likely, in view of the increasing number of member States, that further use will be made of the partial agreement technique in the future. Needless to say, this arrangement may constitute a transition to – and a preparation for – joint action by all member States, as additional States gradually accede to a partial agreement. These agreements may also help to solve a particular budgetary problem, in so far as the cost of implementing them is borne solely by the States members thereof.

For that reason the Committee of Ministers – considering that the partial agreements had proved fruitful but also 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" –

1. By Resolution (80) 2, adopted at the 317th meeting of the Ministers' Deputies (March 1980).

2. The existing partial agreements are listed in Appendix III.

3. Conclusions adopted by the Ministers' Deputies at their 283rd meeting (April 1985) and submitted to the 76th session of the Committee of Ministers.

adopted Statutory Resolution (93) 28 on partial and enlarged agreements at its 92nd session on 14 May 1993. This replaces the Statutory Resolution on partial agreements adopted by the Committee of Ministers at its 9th session on 2 August 1951. The existing partial agreements continue to operate, however, according to their own specific rules.

Statutory Resolution (93) 28 stipulates that “activities or a series of activities which are not pursued as a joint effort by all member States of the Council of Europe or to which one wishes to associate non-member States of the Council of Europe may be carried out :

- by some member States of the Council of Europe as a partial agreement ;
- by some member States of the Council of Europe together with one or more non-member States as an enlarged partial agreement ;
- by all member States of the Council of Europe together with one or more non-member States as an enlarged agreement.”

b. *Procedure governing their creation*

A partial, enlarged or enlarged partial agreement is created in several stages.¹ Initially a decision must be taken by the Committee of Ministers in its normal composition (all delegations entitled to take part in the decision). This means that the Committee must give its permission for the partial agreement, the enlarged partial agreement or the enlarged agreement envisaged to be concluded by a limited number of its members only. This prior decision is taken by a majority of two-thirds of the votes cast and a simple majority of the representatives entitled to sit on the Committee.²

The second stage of the procedure determines which delegations are prepared to conclude the agreement ; only those delegations then vote on the text of the resolution instituting the new partial agreement.

1. See Statutory Resolution (93) 28, Chapter II.

2. The 1951 resolution provided for a unanimous vote in the case of partial agreements.

Finally, the Committee, in its composition limited to the representatives of the member States that are members of a partial agreement, may:

- 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 a series of activities.

Statutory Resolution (93) 28 also contains provisions regarding the budget and functioning of an agreement, on inviting new members and observers as well as on the participation of the European Union.¹

The Committee of Ministers is sometimes called upon to take decisions within the framework of existing partial agreements. When so doing, its confirmation is restricted to the parties to the partial agreement concerned.

6. Specific provisions

In March 1992,² the Deputies adopted a new procedure and a new timetable for the adoption of annual budgets (including programmes) of the Council of Europe. It does not seem necessary to provide full details of these matters in the present work.

With regard to the order to be followed when several budgetary proposals have been put forward, the Rules of Procedure for the Meetings of the Ministers' Deputies,³ provide that the highest total shall be put to the vote first and that each time a particular sub-head is voted, this entails the final grant of the corresponding appropriations.

With regard to the annual Intergovernmental Programmes of Activities, in 1980⁴ the Deputies adopted a specific, detailed procedure for examining items and voting. In practice, this procedure has been applied in whole or in part since then.

1. See Chapters III, IV, V and VI of Statutory Resolution (93) 28.

2. 472nd meeting of the Ministers' Deputies.

3. Article 12, paragraph 4.

4. 326th meeting (November 1980).

Lastly, the Deputies agreed in 1990¹ to endeavour whenever possible not to abstain when voting on the inclusion of activities in the annual programmes.

7. Quorum

Both at ministerial level and at Deputy level the Committee's proceedings are not valid unless two-thirds of the members are present or represented.²

8. Voting procedure

The voting procedure is governed as follows by Article 10 of the Rules of Procedure for the Meetings of the Ministers' Deputies:

"1. In every vote it shall be open to a Deputy:

a. to record his approval, opposition or abstention, which may be accompanied by an explanatory statement;

b. to agree a text or decision *ad referendum*; in that case he shall inform the Secretariat at a later date whether he is able to give his final agreement. Should his vote have been necessary in order to obtain the statutory majority or to achieve the required unanimity, the adoption of the text or the application of the decision shall be suspended; once the final agreement has been given, the text or decision shall take effect as of the date on which the vote was taken in the meeting of the Deputies.³

1. 443rd meeting (September 1990).

2. Article 11 of the Rules of Procedure of the Committee of Ministers and Article 7 of the Rules of Procedure for the Meetings of the Ministers' Deputies.

3. At their 231st meeting, in 1974, the Deputies adopted the following rules concerning the *ad referendum* procedure:

a. Where, in accordance with Article 10, paragraph 1.b of the Rules of Procedure for the Meetings of the Ministers' Deputies, a Deputy agreed a text or decision *ad referendum*, the Chairman shall ascertain whether that Deputy's vote is necessary in order that the decision may be regarded as having been taken according to the relevant voting rules;

b. if so, the Committee shall fix a time-limit, normally expiring at the beginning of one of the Deputies' forthcoming meetings, within which the Deputy having voted *ad referendum* shall be asked to inform the Secretariat of his government's final position (in accordance with the practice, the Deputy having voted *ad referendum* is often asked to state his final position before the end of the current meeting);

(continued over)

2. Where unanimity is required, a Deputy may :
 - a. record his opposition, in which case the proposal shall be rejected ;
 - b. require that the decision be deferred ; in that case the question is included in the agenda of a subsequent meeting ;
 - c. approve the adoption of a text but reserve the right of his government to comply with it or not ;¹
 - d. record his abstention which may be accompanied by an explanatory statement, which shall not prevent the Deputies from reaching a decision in accordance with Article 9 of the present Rules."

Furthermore, Article 12 of the Rules of Procedure for the Meetings of the Ministers' Deputies regulates as follows the question of the order to be followed in the examination of proposals or amendments :

"1. When several proposals relate to the same subject, they shall be put to the vote in the order in which they were tabled. In case of doubt as to the degree of priority the Chairman shall give a ruling.

2. When an amendment is moved to a proposal, the amendment shall be voted on first. When two or more amendments are moved to a proposal, the Deputies shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom, and so on, until all the amendments have been put to the vote. Where, however, the adoption of one amendment necessarily implies the

(continued)

c. if, on expiry of this time-limit, the Deputy in question has given his final agreement or has not contacted the Secretariat, the decision shall be deemed to have been taken at the date on which the vote was taken in the meeting of the Deputies ;

d. if, before the expiry of the time-limit, the Deputy in question informs the Secretariat that he is unable to give his final agreement, the matter shall again be placed on the agenda of the Committee of Ministers, for consideration at the earliest possible meeting of the Deputies.

The procedure for "informing" the Secretariat under *d* above should be oral during meetings of the Deputies and in writing between the two meetings.

1. This reservation is often used by the delegations when adopting recommendations of the Committee of Ministers to the governments of member States, making it possible to adopt these texts, which require a unanimous decision.

rejection of another amendment, the latter amendment shall not be put to the vote. The proposal shall then be put to a final vote subject to any amendments which may have been carried. In case of doubt as to the degree of priority the Chairman shall give a ruling.

3. The parts of a proposal or of an amendment may be put to the vote separately.¹

4. In the case of proposals of a budgetary nature, the highest total shall be put to the vote first. Each vote relating to a particular sub-head entails the final grant of the corresponding appropriations.”

Finally, Article 13 of the Rules of Procedure for the Meetings of the Ministers' Deputies provides that “On a proposal which has been rejected, a Deputy may subsequently ask for the re-opening of the debate and for a second and final vote. The Deputies shall decide thereon by a simple majority”. Occasions on which debates have been re-opened have been extremely rare.

9. Participants

a. *Delegations*

Earlier, in Chapter I, the membership of the Committee of Ministers at both ministerial and Deputy level was described. Suffice it to add here that at ministerial level the membership and size of delegations may vary from one delegation and session to another.²

As for the Ministers' Deputies, Article 4 of their Rules of Procedure states that a Deputy may be aided by one or more assistants whose names and titles shall be notified to the Secretary General. An assistant may represent the Deputy and vote in his absence at meetings of the Deputies.

1. When the Deputies vote on the parts of the texts under examination, they first take an indicative vote, which requires only a simple majority of the members present and voting, on the understanding that members who abstain are considered not to have voted. This practice has been regularly followed in the past, but differences of opinion arose at the 210th meeting of the Deputies.

2. In addition to the Minister, they often comprise the Permanent Representative as well as the Political Director.

A Deputy may also be accompanied by advisers or experts who may speak at his request and with the Chairman's permission.

b. *Secretary General and Secretariat*

Article 19 of the Rules of Procedure of the Committee of Ministers stipulates that "The Secretary General shall be present at meetings of the Committee, except during the discussion of any particular question when the Committee has decided otherwise, and shall take part in the debates in an advisory capacity". "The Committee may also instruct the Secretary General to prepare a report on any question. He shall assemble the material required by the representatives on the Committee and shall distribute it to them."¹Moreover, the Secretary General is the channel of communication between the Committee and the Parliamentary Assembly.² It should also be noted that Article 14 of the Rules of Procedure for the Meetings of the Ministers' Deputies states that "The Secretary General or his representative may, at any time, make a written or oral statement on any subject under discussion." It is customary at each "ordinary" meeting of the Ministers' Deputies (except DH meetings) for the Secretary General to make a "Communication" concerning his salient activities since the previous meeting and the major projects envisaged.

Finally, Article 23 of the Rules of Procedure of the Committee of Ministers establishes that "The Secretary General shall provide the Committee with the necessary staff, who shall form part of the Secretariat". The Committee of Ministers is assisted by the Secretariat of the Committee of Ministers.

c. *Other participants*

Over the years, at both ministerial and the Deputy level, the Committee of Ministers has pragmatically developed certain customs with regard to the inviting of prominent individuals to its meetings. Thus, for example, the President of the Parliamentary Assembly has been invited to attend certain ministerial meetings, particularly special or extraordinary ones. And on several occasions the Ministers have held informal exchanges of

1. Article 21.b of the Rules of Procedure of the Committee of Ministers.

2. Article 22 of the Rules of Procedure of the Committee of Ministers.

views with prominent individuals from non-member States. At their 80th session, in May 1988, for instance, to mark their political support for the European Public Campaign on North-South Interdependence and Solidarity, the Ministers had a meeting with eminent political figures from the South. On several occasions since then, in particular at their special meeting in Lisbon on 24 March 1990 and at their extraordinary meeting in Madrid on 21 February 1991, the Ministers held informal exchanges of views or "enlarged sittings" with their counterparts from the countries of central and eastern Europe.

At their 89th session, on 26 November 1991, the Ministers held an exchange of views with the Ministers for Foreign Affairs of Estonia, Latvia and Lithuania. At their 90th session, on 7 May 1992, they held an informal exchange of views with the Minister for Foreign Affairs of the Russian Federation, Mr A. Kozyrev. Furthermore, on the occasion of the special ministerial meeting held in Istanbul on 11 September 1992, an exchange of views took place with political figures from the republics of the Commonwealth of Independent States (CIS) and from Georgia.

As already noted in connection with the political dialogue carried on by the Ministers' Deputies, the Deputies regularly exchange views with figures from non-member States, particularly from central and eastern Europe.

It should be recalled here that the observer status with the Council of Europe recently instituted by Statutory Resolution (93) 26 does not entitle observers to be represented on the Committee of Ministers, unless otherwise decided by the Committee.

To complete the picture, mention should be made of an exceptional case in the history of the Committee of Ministers. On 23 October 1990,¹ the Committee invited Poland to join the Council of Europe, immediately after acknowledging the country's intention to hold free legislative elections (which were to take place a few months later) as well as its compliance with all the conditions set forth in the Statute. Pending Poland's formal accession, however, the Deputies decided at the same time to invite representatives of the Government of the Republic of Poland to

1. Resolution (90) 18, adopted at the 446th meeting of the Ministers' Deputies on 23 October 1990.

attend meetings of the Committee of Ministers and their own meetings. Poland did not actually become a member of the Council of Europe until 25 November 1991, but in the interim it was invited to take part in ministerial meetings as well as meetings of the Deputies (at least for some of the items on the agenda).

d. *European Union*

In its Resolution (85) 5 of 24 April 1985 on co-operation between the Council of Europe and the European Community,¹ the Committee of Ministers, after expressing "its determination to promote closer co-operation between the Council of Europe and the European Community with the aim of achieving progress in co-operation within the largest possible European framework while fully respecting the differences in their nature and procedures", instructed the Secretary General to initiate contacts with the competent bodies of the European Community to elaborate with them concrete proposals of co-operation in accordance with the general objectives set out in the resolution. Thus, on 16 June 1987 an exchange of letters took place between the President of the Commission of the European Communities, Mr Jacques Delors, and the then Secretary General of the Council of Europe, Mr Marcelino Oreja.

This exchange of letters contains an arrangement between the Council of Europe and the European Community, drawn up with the agreement of the Committee of Ministers, governing participation by the Community, *inter alia*, in intergovernmental committees of experts and in Conferences of Specialised Ministers, the accession of the European Community to Council of Europe conventions or agreements, and relations between the Committee of Ministers and the Commission of the European Communities. Under this arrangement the Committee of Ministers may invite the Commission to participate in discussions on the development of European co-operation, as well as on any other question of mutual interest. In practice the Commission is represented at almost all ministerial sessions, often by its President.

The arrangement also stipulates that the Commission may be invited to be represented at and to participate in meetings of the Ministers'

1. Now the European Union.

Deputies on subjects of mutual concern, and that, when the Community has participated in the the drawing up of a draft European convention or agreement, the Commission will be invited to be represented at meetings of the Ministers' Deputies at which the draft is discussed. The Commission has on several occasions been invited to discussions of the Ministers' Deputies, particularly on draft conventions and agreements. Recently the European Union was even invited to sit in on a working party set up under the Ministers' Deputies to study a draft convention.

Once a year, as a general rule, the Secretary General of the Commission takes part in a highly fruitful exchange of views with the Ministers' Deputies for the purpose of reviewing progress in co-operation between the Council of Europe and the Union. These exchanges of views are based, *inter alia*, on Secretariat reports concerning relations between the Council of Europe and the European Union during the past period (see also point 14.c below, concerning quadripartite meetings of the Council of Europe and the European Union). In May 1994 the Deputies held an exchange of views with the European Commissioner responsible for external political relations. Also in 1994, they held two informal exchanges of views with the successive chairmen of the high-level groups set up within the European Union on the subject of work relating to the European Stability Pact.

It should be added that in the Vienna Declaration adopted by the Heads of State and Government of the Council of Europe on 9 October 1993, the Heads of State and Government recommended "fuller co-ordination of the Council of Europe's activities with those of other organisations involved in the construction of a democratic and secure Europe, thus satisfying the need for complementarity and better use of resources."

The following paragraph is also to be found in the Declaration: "In this connection, we welcome the co-operation established – in the first instance, on the basis of the 1987 Arrangement – with the European Community, particularly the development of joint projects, notably in favour of the countries of Central and Eastern Europe. We consider that such a partnership in increasingly varied fields of activity reflects the specific and open-ended institutional relationship existing between the two institutions."

10. Languages

The Statute stipulates¹ that the official languages of the Council of Europe are English and French, and that the Rules of Procedure of the Committee of Ministers and the Parliamentary Assembly are to determine the circumstances and conditions in which other languages may be used.

The Rules of Procedure of the Committee of Ministers² and the Rules of Procedure for the Meetings of the Ministers' Deputies³ confirm that the official languages are English and French. They add, however, that any representative may speak in another language but in that case he must himself provide for his interpretation into one of the official languages.

In practice, at ministerial level interpretation is usually provided into German, and often into Italian and Spanish, at the expense of the delegations concerned. At the level of the Ministers' Deputies, requests for interpretation into languages other than the official ones are extremely rare.⁴ It should be added that at both levels, the documents of the Committee of Ministers are written in the official languages only.⁵

11. Order of Business

The agenda does not necessarily reflect the order in which its different items will be dealt with during the meeting. For all meetings of the Ministers' Deputies, the latter, after adopting the agenda, adopt an order of business covering the whole meeting, based on a draft proposed by the Chair.

1. Article 12 of the Statute.

2. Article 12 of the Rules of Procedure of the Committee of Ministers.

3. Article 8 of the Rules of Procedure for the Meetings of the Ministers' Deputies.

4. At certain meetings of the Ministers or their Deputies, however, Russian has been used for exchanges of views with Russian-speaking personalities.

5. In a speech delivered on 2 February 1993 to the Parliamentary Assembly, Mr Helmut Kohl, Chancellor of the Federal Republic of Germany, declared: "... both the Bundestag and the Federal Government are very much concerned that Germany should have equal status in the Council of Europe". The question of official languages (and the introduction of new working languages) is currently being examined by the Ministers' Deputies *Ad hoc* Working Party on the Effects of Enlargement of the Council of Europe.

For ministerial sessions there is no actual order of business, but a few days before the meeting the Chairman of the Committee of Ministers will send his colleagues a message stating, *inter alia*, how he proposes to organise the proceedings and deal with the items on the agenda.

12. Documentation

Article 21 of the Rules of Procedure of the Committee of Ministers stipulates that the Secretary General assembles the material required by the representatives on the Committee and distributes it to them. All documents intended for the meetings of the Committee of Ministers at ministerial or Deputy level, must be distributed in the two official languages of the Council of Europe, English and French.¹

In practice, in addition to the draft agenda and the draft order of business, the Secretariat prepares several types of document for meetings of the Deputies:

- i. basic documents required for discussion of a question, usually bearing the reference "CM" (Committee of Ministers), "SG" (documents prepared by the Secretary General) or "Misc" (miscellaneous);
- ii. for each item on the agenda, Notes on the Agenda, which briefly recall the background to and issue at stake the item concerned and in most cases include an appendix containing draft decisions for adoption by the Deputies at the end of the meeting.

The basic documents ("CM") must be distributed at least four weeks before the opening of the meeting at which the question is to be examined.² The Notes on the Agenda must be distributed not later than the Friday preceding the week immediately prior to the start of the meeting.

For ministerial sessions the Secretary General prepares a draft agenda (the order of business is reflected, as we have seen, in a message from the Chair), an annotated draft agenda, basic documents and a list of the heads of delegation participating in the meeting.

1. Article 12 of the Statute of the Council of Europe.

2. See decisions taken by the Ministers' Deputies at their 40th meeting, in 1956, and at their 243rd meeting, in 1975.

13. Records of the Committee of Ministers

a. *Ministerial level*

The Rules of Procedure of the Committee of Ministers¹ specify that the Secretary General “shall prepare a list of the decisions taken by the Committee and distribute it to Members”.

For many years the practice has been to draw up (confidential) minutes of ministerial sessions. The minutes contain a summary of the participants’ speeches, together with the conclusions of the Chair and the decisions taken. The Final Communiqué and the other texts adopted are appended thereto.

b. *Level of the Ministers’ Deputies*

The Rules of Procedure for the Meetings of the Ministers’ Deputies² provide for a system of “Conclusions of the meeting”. These “Conclusions” contained until 1992 “narratives” of the discussions and the decisions taken. This arrangement became, however, largely obsolete as a result of the decisions taken by the Deputies in January 1993.³ The “Conclusions” have in fact been replaced by the “Decisions and Records”.

In practice, at the end of each meeting (whether at A level or B level) the Secretariat of the Committee of Ministers distributes the decisions taken by the Deputies for adoption. After adoption, these “decisions” are distributed within a few days in the form of a provisional volume. A definitive volume including the “Records” is distributed thereafter.

It should be recalled that as regards the Records the narratives are no longer routinely drawn up for each item on the agenda, but that the Deputies have decided that:

- i. when preparing, drafting and interpreting conventions or agreements, narratives of the discussions are prepared;
- ii. upon adoption of recommendations, statements made by delegations such as those provided for under article 10.1 and 10.2 of the Rules of

1. Article 20 of the Rules of Procedure of the Committee of Ministers.

2. Article 16 of the Rules of Procedure for the meetings of the Ministers’ Deputies.

3. 486th meeting of the Ministers’ Deputies.

Procedure for the Meetings of the Ministers' Deputies will be noted in a narrative ;

- iii. for other items, statements made by the delegations or by the Secretariat can, if requested, be noted in the "Records" (in French "Actes"). However, in some cases delegations as well as the Secretary General or the Secretariat may request that the texts of their statements be distributed rapidly in the original language, without necessarily being subsequently included in a record ;
- iv. the results of formal votes will always be recorded in the decisions ;
- v. the Deputies' meetings will be recorded on tape and the recordings kept for a period of six months, so that delegations or the Secretariat may consult them if need be.

These decisions apply *mutatis mutandis* to "Human Rights" items (Articles 32 and 54 of the European Convention on Human Rights). The delegations' statements, in particular those of the respondent State, and statements by the Director of Human Rights will be mentioned or summarised in the Notes on the Agenda regarding the item concerned for the next meeting at which the matter is to be discussed.

In certain cases the "Summings-up of the Chair" may obviate the need to draft narratives.

14. Chairmanship

a. *Ministerial level*

The chairmanship of each session of the Committee of Ministers is held in turn by the representatives of the members in the English alphabetical order adopted for the signature of the Statute of the Council of Europe. However, as soon as the date of the next session has been fixed, any (special or extraordinary) meeting of the Committee of Ministers held before that date is chaired by the Chairman-in-Office.¹ During the session the Chairman may be replaced by another member of his government. However, if the Foreign Minister concerned is unable to attend

1. Rules of Procedure of the Committee of Ministers, Article 6.

and his place is taken by an alternate who is not a member of his government, the chairmanship passes to the representative of the next member State in the English alphabetical order.¹ Similarly, if the Minister who is entitled to take the Chair waives this right, the chairmanship does not revert to him at the subsequent session, but passes on in the above-mentioned English alphabetical order.²

At the present rate of two “normal” ministerial sessions a year (in the spring and the autumn), a chairmanship lasts approximately six months. Thus the Bulgarian chairmanship, for example, began at the end of the 94th session of the Committee of Ministers (10 May 1994) and ended at the close of the 95th session (10 November 1994), when the chairmanship passed to Cyprus.

The Rules of Procedure of the Committee of Ministers state that “the Chairman shall guide the discussions, put proposals to the vote and announce decisions. He may speak and vote, but shall have no casting vote”.³ In practice, votes are rarely taken at ministerial level.

b. *Deputy level*

i. *“A level”*

At the level of the meetings of the Ministers’ Deputies, the Deputy to the Chairman of the Committee of Ministers is the Chairman of the Deputies. The Deputy who will next succeed to the Chair is the Vice-Chairman of the Deputies. If the Chairman is absent, the Chair is taken by the Vice-Chairman or, in his absence, by the previous Chairman, then by the next full member present in the English alphabetical order, then by the last Chairman but one.⁴ The Chair passes to a new Chairman at the meeting of the Deputies immediately following the opening of a new session of the Committee of Ministers.⁵

1. Rules of Procedure of the Committee of Ministers, Article 7.

2. Rules of Procedure of the Committee of Ministers, Article 8.

3. Rules of Procedure of the Committee of Ministers, Article 9.

4. Modified on 4 November 1994. See the addendum on page 137 onwards.

5. Rules of Procedure for the Meetings of the Ministers’ Deputies, Article 6 as amended at the 472nd meeting of the Ministers’ Deputies (March 1992).

In practice the new Chairman of the Deputies assumes his functions immediately after the end of the meeting at ministerial level chaired by the Minister of the country preceding his own for the chairmanship. The Deputy for Cyprus, for example, took over the chairmanship of the Ministers' Deputies immediately after the end of the 95th session of the Committee of Ministers, chaired by the Bulgarian Minister (10 November 1994), and will remain in the Chair until the end of the 96th session (May 1995).

ii. "B level"

It is interesting to note that, when instituting meetings of the Ministers' Deputies at B level (deputy heads of delegation)¹ the Deputies decided that, since they were a part of the ordinary meetings of the Deputies, they should be chaired in the conditions laid down in the Rules of Procedure for the Meetings of the Ministers' Deputies, i.e. by the Deputy of the Chairman of the Committee of Ministers. However, it has now become the established practice for the Chairman of the Deputies to hand over the Chair to the Vice-Chairman. To take a concrete example, if, as we have seen, the first meeting of the Deputies (A level) after the 95th session of the Committee of Ministers is chaired by the Deputy for Cyprus, the first sitting at B level will be chaired by the Deputy for the Czech Republic. This arrangement has proved excellent since it allows the future Chairman at A level to prepare for his task by chairing meetings at B level for six months beforehand. In the absence of the Chairman at B level, the Chair is taken – automatically, as it were – by the Chairman of A level. If the Chairman of A level is also absent, the rules of Article 6 of the Rules of Procedure of the Ministers' Deputies, as amended in 1992, are applied *mutatis mutandis* (see above).

c. *Role of the Chair*

In recent years, in view of the increasing number of Council of Europe member States and hence of representatives on the Committee of Ministers, as well as the operational difficulties inherent in such a large committee, the role of the Chair has taken on a new dimension,

1. At the 243rd meeting of the Deputies (March 1975).

particularly with regard to the preparation of discussions, in terms of both procedure and substance, for example through informal soundings and consultations, with the active support of the Bureau of the Deputies, the Secretary General and the Secretariat.

It is worth noting here that Resolution (84) 21 on Council of Europe action in the political field confers a special role on “the Chairman of the Committee of Ministers, with the participation of the Secretary General”, in strengthening political dialogue. Accordingly, the Chair now issues statements (communiqués) on certain aspects of current European or international affairs.

The Chair has also provided impetus and guidance in connection with the profound changes that have taken place in Europe since 1989 and the new tasks incumbent on the Council of Europe, as well as in pursuance of the mandate conferred on the Council of Europe by the Political Declaration on its future role in European construction¹ and by Resolution (89) 40 (especially with regard to relations with eastern Europe). As a result, several Chairmen have, with the Secretary General, made visits or contact tours in the countries of central and eastern Europe.

Still pursuant to Resolution (89) 40, the Chairman and the Secretary General hold quadripartite meetings, in principle at least once a year, with the President of the Council of the European Union and the President of the Commission in order to give all due forms of political impetus to co-operation with the European Union.²

Finally, the Chair plays a privileged role in relations with the Parliamentary Assembly and with the Congress of Local and Regional Authorities of Europe (CLRAE) (see Chapters IV and V below).

In fulfilling these various duties, of course, the Chairman acts in close collaboration with the Committee.

This collaboration is fostered by the exchanges of views that now take place between the Chairman of the Committee of Ministers at

1. Adopted by the Committee of Ministers on 5 May 1989.

2. See paragraph 5 of Resolution (89) 40.

ministerial level and the Ministers' Deputies, which in recent years have tended to take place as soon as a new Chairman takes up office.

15. Bureau

a. *Background, membership and powers*

The institution of a Bureau in 1975 has also helped to improve the efficiency of the Ministers' Deputies.¹ Initially the Bureau was made up of the Chairman, the Vice-Chairman (and future Chairman) and the preceding Chairman. The Chairman may convene the Bureau on his own initiative "to prepare the discussion on items for which he considers such a procedure would be helpful to the work of the Committee, possibly with the participation of the Secretary General or Deputy Secretary General". The Bureau has no decision-making power on questions of substance and may not substitute itself for the full Committee.

In 1985 the role of the Bureau was reinforced,² particularly with regard to the preparation of meetings, the apportionment of agenda items between A level and B level and the functioning of the Rapporteur Groups.

In its Resolution (89) 40 on the future role of the Council of Europe in European construction, adopted by the Committee of Ministers on the occasion of the 40th anniversary of the Council of Europe (5 May 1989), the Committee, "considering that it is necessary to improve implementation of the Committee of Ministers' tasks in respect of:

- the political dialogue ;
- orientating the intergovernmental activities and the monitoring of their implementation ;
- co-operation with the European Community ;
- relations with third countries,"

1. 243rd meeting (March 1975).

2. Following the adoption of the Conclusions of the Ministers' Deputies on the working methods of the Council of Europe, submitted to the Committee of Ministers at its 76th session (April 1985). On the same occasion it was stipulated that if the outgoing Chairman is replaced by a new Permanent Representative, the latter is entitled to sit on the Bureau.

requested its Chairman to provide impetus and guidance in that connection and agreed that "for the sake of continuity in the Chair's efforts, it will be assisted by a Bureau comprising, in addition to the Chairman, the preceding Chairman and following Chairman. To ensure the participation in the Bureau both of member States of the European Community and of other member States, the Bureau will be enlarged, if it proves necessary, by the addition of an outgoing member of the previous Bureau".¹

Paragraphs 4, 13 and 14 of this resolution also entrust the Chairman and the other members of the Bureau with certain functions concerning contacts with the European Union and the Parliamentary Assembly. The provisions of Resolution (89) 40 apply to the Bureau in principle at both ministerial and Deputy level.

Finally, in 1992,² the Deputies agreed to enlarge the Bureau to five members: the Chairman, the two previous Chairmen and the two future Chairmen. This was done by a modification to paragraph 1 of Chapter I of Resolution (89) 40 (see above). At the same time they endorsed the conclusions of a Rapporteur Group that had examined the tasks of the Bureau, and decided that, in addition to the tasks described in the above-mentioned decision of March 1975 together with those set out in Resolution (89) 40 (paragraphs 1, 4, 13 and 14), which in practice apply mainly at ministerial level, the Bureau should be entrusted, *inter alia*, with the following tasks:

- providing guidance to the Chairman and the Secretariat on handling Committee business;
- preparation of the meetings of the Committee of Ministers, and in particular – with respect to the meetings of the Deputies – division of agenda items between A and B levels and indication of items where no debate is envisaged;
- contacts with the Parliamentary Assembly, in particular representing the Committee of Ministers at the joint Working Party with

1. Chapter I, paragraph 1, of Resolution (89) 40, modified since then by Resolution (92) 6 which was adopted by the Deputies during their 472nd meeting (March 1992).

2. 472nd meeting (March 1992).

representatives from the Bureau of the Parliamentary Assembly, and the preparation of the Joint Committee/Colloquy (see Chapter IV below);

- representing the Committee of Ministers in certain other meetings and exchanges of views (Liaison Committee with Management and Labour (LCML), meetings with the Secretary General, etc.);
- at the request of the Chair or the full Committee, receiving visitors on behalf of the Committee of Ministers and, if appropriate, holding an exchange of views with the visitors;
- advising the Chairman at his request on urgent political statements to be issued by the Chairman in his own name, without the Bureau assuming the responsibility for any such texts;
- carrying out consultations about the nominations of Chairmen of Rapporteur Groups and Working Parties;
- examination of requests for the use the Committee of Ministers' meeting room and ante-room.

Within the framework of the reform of the working methods of the Ministers' Deputies which took place in January 1994, another task should be added:

- selection, with a view to each meeting of the Deputies, of the items to be considered beforehand by Rapporteur Groups or Working Parties (see paragraph 16 below).

In practice the Bureau at Deputy level meets at irregular intervals but at least once on the occasion of each ordinary meeting of the Deputies. Meetings of the Bureau at ministerial level are extremely rare, but an historic meeting took place on 6 July 1989 between the Bureau and the President of the Soviet Union, Mr Mikhail Gorbachev.

Within the framework of the *Ad Hoc* Working Party on the Effects of Enlargement of the Council of Europe, created in May 1994, the question of the membership of the Bureau is once again under consideration.¹

1. See the addendum on page 137 onwards.

b. *Procedure*

In 1992 the Deputies also adopted rules of procedure for the Bureau. They are simple and mainly concern the quorum and voting.

i. *Quorum*

For the Bureau to deliberate or take decisions validly, three of its five members must be present or be represented as provided for in Article 4, paragraph 1, of the Rules of Procedure for the Meetings of the Ministers' Deputies. The Chair is always supposed to be occupied by a Permanent Representative.

ii. *Voting*

The Bureau generally takes its decisions by consensus. If no consensus is reached, a decision may be taken by a simple majority, and the Chairman should have a casting vote.

16. Rapporteur Groups, Working Parties and other bodies

a. *Rapporteur Groups*

i. *Background and functions*

When examining the working methods of the Committee of Ministers in 1985,¹ the Deputies decided to introduce a system of Rapporteur Groups. Since then nine such groups have been set up (see list in Appendix IV), covering the different fields of activity of the Council of Europe and responsible for preparing the Deputies' debates on certain subjects of particular importance.² They also prepare the general exchanges of views held by the Deputies on the work done in each sector of the intergovernmental programme of activities. In particular, at the end of each year they examine the draft programme of activities for the following year in their respective fields, so as to help the plenary Committee define priorities and assess the results achieved.

1. 387th meeting of the Deputies (June 1985).

2. See also Chapter II, paragraph 3.b above: information on the Enlarged Rapporteur Group on Relations with the Countries of Central and Eastern Europe (GREL).

The importance of the Rapporteur Groups of the Ministers' Deputies was enhanced by Resolution (89) 40 on the future role of the Council of Europe in European construction¹. The Committee of Ministers, *inter alia*, instructed the Deputies:

- to develop contacts with the Assembly committees and with their chairmen and rapporteurs through their rapporteur groups or working parties;
- (assisted by their rapporteur groups), in co-operation with the Secretary General and in consultation with the committees of experts concerned, to monitor regularly the progress and results of major projects and of other programme elements, making such adjustments as prove necessary;”

Furthermore, when the Rapporteur Group system was introduced, the Ministers' Deputies considered that the Committee of Ministers' debate on the progress of preparations for the Conferences of Specialised Ministers and on the Conferences' conclusions should be facilitated by recourse to the Rapporteur Groups (see Chapter V below).

It should be borne in mind that Chapter III of Resolution (89) 40 instructed the Ministers' Deputies:

- a. to ensure, with the assistance of the Secretary General – in consultation with the preparatory committee and the host country – that the work of conferences of specialised ministers is co-ordinated with that of the Council of Europe, particularly with regard to the choice of subjects dealt with and the convening and preparing of each conference;
- b. to endeavour to ensure, in liaison with such conferences and their preparatory committees, that their proceedings concentrate on the political aspects of European co-operation in each one's area of responsibility; ...”

ii. *Membership*

The membership of the Groups is reviewed every two years, and the number of full participants is variable (all the Groups are, however, open

1. See Chapters II and IV of Resolution (89) 40.

to delegations which are not members but wish to attend them). The Groups are made up of Permanent Representatives,¹ who, assisted by the Secretariat (and if necessary by the Chairman or members of committees of experts), prepare reports for submission to the Deputies.

iii. *Functioning*

In practice the way in which the Groups function varies from one to another. Some adopt a very pragmatic approach, meeting whenever a concrete problem arises, while others tend – or have tended in the past – to institutionalise or formalise their action, which was not the initial aim as it is liable to complicate the work of the Committee of Ministers and increase the number of meetings.

iv. *Recent developments*

The fact is that the Rapporteur Groups can do much in their respective fields to prepare questions for examination by the Ministers' Deputies by clearing the ground and conducting internal contacts with intergovernmental committees of experts, Parliamentary Assembly committees, the Congress of Local and Regional Authorities of Europe (CLRAE), their chairmen or rapporteurs, etc.

Clearly, with the prospect of a membership of 35 to 45, ways must be found to reduce the workload of the plenary Committee. Without being formally delegated powers, the Rapporteur Groups or Working Parties could be given more responsibilities. This is the reason why the reform of the working methods, which took place in January 1994,² dealt mostly with the functioning of the Rapporteur Groups. It is worth mentioning the following significant and rather detailed decisions:

"The Deputies

- decided that the work of their Rapporteur Groups and Working Parties should as far as possible result in draft decisions ready for adoption as they stand by the Ministers' Deputies. These draft decisions will be included in the Notes on the Agenda with a comment to the effect that they have been prepared and, if appropriate,

1. Who in practice are often replaced by their deputies.

2. At the 506th meeting of the Ministers' Deputies.

agreed to by a Rapporteur Group or Working Party. Wherever possible, they may be proposed for adoption without debate at the start of the Deputies' plenary meeting.

In taking this decision, the Deputies pointed out that this adoption without debate procedure does not prevent a delegation or the Secretariat from making a statement for inclusion in the "Decisions adopted and Records" of the Ministers' Deputies.

Furthermore, a delegation will always have the possibility, if need be, of re-opening the discussion in a plenary meeting. However, if the question is not urgent, the item could be referred back to the competent Rapporteur Group or Working Party for further consideration ;

- it being understood that all the Rapporteur Groups remain open to all delegations wishing to take part in their work, decided that, to enable all delegations to avail themselves of this possibility, they should be kept regularly informed of the work in progress in each Group through the circulation of copies of convocations and synopses ;

- with a view to pragmatic selection of the items to be prepared by the Rapporteur Groups without prolonging the decision-making process, instructed their Bureau, when considering the distribution of items between A level and B level for meeting (n), (which is done during meeting (n -1), to put forward, with the Secretariat's assistance, proposals regarding the preliminary consideration of certain items by Rapporteur Groups or Working Parties, so as to enable the plenary committee, when approving at the end of the meeting (n -1) the preliminary draft agenda for meeting (n), to ratify the Bureau's proposals, which will give the Rapporteur Groups concerned time to conduct a preliminary consideration of the items before meeting (n) and to :

- either prepare draft decisions (for adoption without debate where appropriate) ;

- or, if the question is not yet ready for decision, propose postponement of the item to a forthcoming meeting of the Deputies. This proposal could be adopted – tacitly if this is preferred – with the adoption of the agenda at the beginning of meeting (n) ;

- reminded their Rapporteur Group of the possibility of holding general policy discussions concerning their particular sectors of activity and that under Resolution (89) 40 of the Committee of Ministers Rapporteur Groups may develop contacts with Assembly Committees, their chairmen and rapporteurs and also with Steering Committees, their bureaux and chairmen, Conferences of Specialised Ministers and their preparatory committees;
- instructed the Groups to intensify dialogue with the Steering Committees (working in their fields of activity), particularly through hearings of their chairmen, whilst avoiding systematic recourse to this, which would degenerate into routine. However, where contacts with the Parliamentary Assembly are concerned, the Rapporteur Groups and Working Parties should if possible seek prior approval from the plenary Committee or, in urgent cases, by the Bureau of the Deputies; ...”

It is not necessary, however, for all the items on the Deputies' agenda to be subjected to prior examination by the Rapporteur Groups. This might lead to a highly bureaucratic system that would be all the less justified as many items need no such preliminary examination and are disposed of very quickly in plenary sessions, especially at B level.

b. *Working Parties*

In recent years the Ministers' Deputies have often resorted to setting up *ad hoc* working parties to find solutions to specific problems. These are often enlarged, i.e. open to all Deputies who wish to join them. Such an arrangement has demonstrated its worth, and the efficient preparation carried out by Working Parties – sometimes assisted on technical points by outside experts – has enabled the Committee of Ministers, *inter alia*, to adopt delicate legal instruments such as the Additional Protocol to the European Social Charter,¹ without delay.

In comparison with the Rapporteur Groups, the Enlarged Working Parties offer the advantage of greater flexibility, but above all they provide a framework for the Deputies with a real interest in the issues with which they are concerned. They also obviate the creation of new

1. Adopted at the 81st session of the Committee of Ministers (November 1987).

permanent structures. When adopting the above-mentioned reform of working methods of the Ministers' Deputies, it was moreover decided that "when a problem arises at a plenary meeting of the Ministers' Deputies, especially one of drafting, to have recourse more frequently to setting up a Working Party or Drafting Group of a genuinely short-term nature, formed on a pragmatic basis according to the delegations which have shown an interest in the question under consideration in plenary, in such a way as to help find a speedy solution". Several *ad hoc* Working Parties or Groups have been set up recently: on budgetary procedure, on the revision of the method of calculating scales of contributions to the budgets, on the effects of enlargement, on compliance with commitments accepted by member states, on relations with the CSCE, etc.

c. *Other bodies*

i. *The Council of Europe/OECD Liaison Committee*

The Arrangement concluded between the Council of Europe and the Organisation for Economic Co-operation and Development¹ instituted Liaison Committees between the two organisations (one in each organisation). These Liaison Committees are made up of members appointed by the OECD's Council and by the Council of Europe's Committee of Ministers. Representatives of the Parliamentary Assembly of the Council of Europe may also attend the meetings.

It is customary for the Ministers' Deputies to appoint the members of the Liaison Committee annually. At present its membership comprises seven representatives of the Committee of Ministers (Permanent Representatives). The committees meet on a regular basis.

At joint sessions of the Liaison Committees of the Council of Europe and the OECD, proposals are made on the best procedure for co-ordinating the activities of the two organisations. Since the changes in central and eastern Europe, new tasks of considerable scope have been entrusted to these Liaison Committees which should provide fresh impetus for their work.

1. Approved by the OECD Council on 9 January 1962 and by the Committee of Ministers of the Council of Europe on 1 February 1962 (Resolution (62) 4). See Articles 8 to 10 of the Arrangement in particular.

The Liaison Committees report back to the OECD Council and the Council of Europe Committee of Ministers, respectively, whenever the need is felt.

ii. *Liaison Committee between the Council of Europe and Management and Labour (LCML)*

This Committee was instituted by the Ministers' Deputies in 1984.¹ Its purpose is threefold :

- to keep management and labour regularly informed of the Council of Europe's intergovernmental activities in the socio-economic and migration fields, including their legal, cultural and educational aspects;
- to enable management and labour to express their views on these activities and put forward proposals concerning the Council of Europe's future activities in these fields;
- to draw up an outline programme of hearings of management and labour by intergovernmental committees for the current year and ensure the smooth conduct of the hearings procedure.

The Liaison Committee is comprised of representatives of the European Trade Union Confederation (ETUC), representatives of the Union of Industrial and Employers' Confederations of Europe (UNICE) and, for the Council of Europe, representatives of the Committee of Ministers (*viz.* the members of the Bureau of the Ministers' Deputies), a representative of each of the intergovernmental steering committees particularly concerned by the items on the agenda, as well as the Secretary General or his representative. Ministers' Deputies who are not members of the Liaison Committee are free to attend its meetings.

The meetings of the Liaison Committee are chaired by the Chairman of the Ministers' Deputies. The Liaison Committee meets at the beginning of each year in Strasbourg. The agenda for the meetings is drawn up by the Committee of Ministers of the Council of Europe on a proposal

1. The decision of principle was taken at the 363rd meeting of the Deputies in October 1983. The *modus operandi* of the LCML and its terms of reference were agreed at the 366th and the 368th meeting (January and March 1984).

made by the Secretary General, after consultation with ETUC and UNICE.

The Secretary General provides secretarial services for the meetings of the LCML. After each meeting a list of decisions and a summary report are addressed to the Committee of Ministers, to the steering committees concerned and to ETUC and UNICE. At the end of the year the Secretary General also submits a short report on the conduct of the hearings to the Committee of Ministers, ETUC and UNICE.

It should be noted that recently, in 1994, a specific hearing attended by representatives of management and labour was held under the aegis of the Ministers' Deputies on the subject of a draft additional protocol to the European Social Charter providing for a system of collective complaints.

iii. *Ad hoc Working Party on Modalities of the Relations between the Council of Europe and International Non-Governmental Organisations*

In the past, relations between the Council of Europe and international non-governmental organisations (NGOs) were governed by Committee of Ministers Resolution (72) 35. In October 1993,¹ the Deputies adopted Resolution (93) 38 to which were appended "Revised Rules for Consultative Status" replacing those established under Resolution (72) 35.

Without describing these rules in detail, it may be said that they govern:

- the conditions to be met by international non-governmental organisations in order to obtain consultative status;
- the modalities of co-operation;
- the procedure for the granting of consultative status.

The decisions to grant or withdraw consultative status are taken by the Secretary General. However, these decisions are submitted for tacit approval to the Committee of Ministers and the Parliamentary Assembly. To this end the Secretary General has to inform the Committee of Ministers and the Parliamentary Assembly at least once a year of the organisations concerning which he wishes to grant or

1. 500th meeting of the Deputies.

withdraw consultative status, together with the reasons underlying the proposed granting or withdrawal. In the absence of any opposition, the organisations concerned are added to, or removed from the list three months later. During the three-month period, a member of the Committee of Ministers or three members of the Assembly of different nationalities may request that an examination be made of the file of any applicant organisation. In the former case, the examination shall be made and the relevant decision taken by the Committee of Ministers. In the latter case, the Committee of Ministers shall defer its decision until it has received a recommendation from the Assembly acting on a report from its competent committee.

When adopting Resolution (93) 38, the Deputies decided at the same time “that their *ad hoc* Working Party on the modalities of the relationships between the Council of Europe and NGOs should continue to function, notably for the purpose of holding at least one meeting annually with the NGOs Liaison Committee. The Working Party was instructed to report back to the Ministers’ Deputies whenever necessary”.

17. Special procedural arrangements when the Committee of Ministers performs its functions under certain conventions

As we have seen, the Committee of Ministers is also required to perform specific functions under certain conventions, particularly the European Convention on Human Rights, the European Social Charter and the European Code of Social Security.¹

The quasi-judicial functions vested in the Committee of Ministers by the European Convention on Human Rights are not analysed in this study, as they are already the subject of extensive literature (see Bibliography). Suffice it to mention here that they are governed from the procedural standpoint by Articles 32 and 54 of the Convention, as well as by the “Rules adopted by the Committee of Ministers for the application of Articles 32 and 54 of the European Convention on Human Rights”.²

1. See Chapter II, 3. *j* above: Convention-based powers.

2. Text adopted at the 181st meeting of the Ministers’ Deputies (June 1969) and subsequently amended on several occasions, most recently on 15 December 1991.

At all events, as explained above, the powers of the Committee of Ministers under Article 32 will disappear when Protocol No. 11 to the Convention (ETS No. 155) creating a single Court enters into force.

The Social Charter and the European Code of Social Security also contain special procedural provisions regarding the functions they confer on the Committee of Ministers.¹

1. Article 29 of the Social Charter (ETS No. 35) and Article 5 of the Amending Protocol thereto (ETS No. 142, not yet in force but already applied by the Committee of Ministers) and Article 75 of the European Code of Social Security, (ETS No. 48); the revised European Code of Social Security (ETS No. 139) is not in force.

Chapter IV – Relations between the Committee of Ministers and the Parliamentary Assembly

Ever since the inception of the Council of Europe, the Parliamentary Assembly and the Committee of Ministers have sought procedures and other means for improving relations and facilitating communication between them. Progress has been made, but procedural devices will probably never suffice to surmount inevitable difficulties of functioning between a parliamentary organ and an intergovernmental organ, which are inherent in the Statute of the Council of Europe. On the one hand, it should be remembered that under Article 15 of the Statute the right of initiative lies with both the Committee of Ministers and the Parliamentary Assembly: "On the recommendation of the Consultative Assembly or on its own initiative, the Committee of Ministers shall consider the action required to further the aim of the Council of Europe, ...". On the other hand, the Committee of Ministers is the executive organ of the Council of Europe. This can be a source of friction, especially as, although the right of initiative was exercised almost exclusively by the Assembly in the 1950s, since then the Committee of Ministers has played an increasingly active role, particularly by planning and programming intergovernmental activities, but above all by conducting political dialogue following the adoption of its Resolution (84) 21 on Council of Europe action in the political field, as well as the Political Declaration and Resolution (89) 40 on the future role of the Council of Europe in European construction, both adopted on 5 May 1989. Furthermore, relations between the two organs have taken on considerable importance in respect of relations with the countries of central and eastern Europe, particularly with regard to the role each organ plays in the examination of applications by those countries to join the Council of Europe (see Chapter II. 3).

In 1984¹ the Committee of Ministers expressed its readiness to promote more thorough exchanges of views on political issues of mutual interest between representatives of the Parliamentary Assembly and itself at both ministerial and Deputy level. And in 1989² the Ministers declared that they were “counting on the promotional and initiatory action of the Assembly”, which being “composed of members of national parliaments is in constant touch with the public’s wishes and concerns and provides the essential link with national democratic institutions”.

Also relevant is the Vienna Declaration adopted by the Heads of State and Government on 9 October 1993, particularly the following paragraph: “We are resolved to make full use of the political forum provided by our Committee of Ministers and Parliamentary Assembly to promote, in accordance with the competences and vocation of the Organisation, the strengthening of democratic security in Europe. The political dialogue within our organisation will make a valuable contribution to the stability of our continent. We will do so all the more effectively if we are able to initiate such a dialogue with all the European States that have expressed a desire to observe the Council’s principles.”

The Statute and the Rules of Procedure of the Committee of Ministers, as well as those for the meetings of the Ministers’ Deputies and the Assembly, all contain provisions on relations between the two organs. We have already dealt above with those concerning the examination by the Committee of Ministers of texts adopted by the Assembly or of Written Questions put by members of the Assembly (see Chapter II.3). But there are also other important provisions governing these relations which are summarised below.

Finally, a long practice of co-operation between the two organs has often made it possible to make up for the shortcomings and deficiencies of statutory texts or regulations.

1. Resolution (84) 21 on Council of Europe action in the political field.

2. Declaration on the future role of the Council of Europe in European construction, of 5 May 1989, paragraph 4. See also Section II of Resolution (89) 40 on the same subject.

1. Statutory report of the Committee of Ministers and presence of the Ministers in the Parliamentary Assembly

a. Written report

The Statute¹ stipulates that, at each session of the Assembly, the Committee of Ministers shall furnish the Assembly with statements of its activities, accompanied by appropriate documentation. These “statutory reports” are all the more important as the Committee of Ministers – at both ministerial and Deputy level – meets in private,² and unless expressly decided otherwise, no information is published on its discussions. The statutory report is therefore the only comprehensive document to be published on the activities of the Committee of Ministers. It informs the Assembly of the Committee’s activities and enables it to see what progress has been made on the intergovernmental side during a given period.

Since 1968 the annual statutory report has been replaced by communications to the Assembly on the activities of the Committee of Ministers at each of its part-sessions (three times a year until 1992 and, since 1993, four times a year). These communications summarise the activities and decisions of the Committee of Ministers. They also cover recent political developments and contain information concerning the main developments, not only on the implementation of the intergovernmental programme of activities, but also on the application of certain important legal instruments, such as the European Convention on Human Rights and the European Social Charter.

There are also sections on the activities within the framework of the Partial Agreements, the Congress of Local and Regional Authorities of Europe (CLRAE) and the Conferences of Specialised Ministers.

Finally, the communications contain a list of replies by the Committee of Ministers to the texts adopted by the Assembly as well as information on signatures and ratifications of the conventions and agreements concluded within the Council of Europe. The main political texts adopted by

1. Article 19 of the Statute.

2. Article 21 of the Statute.

the Committee of Ministers as well as a list of conventions, agreements, recommendations to the Governments of member States and other texts which the Committee of Ministers has adopted are also appended to the communications. All these texts are furthermore published separately.

In practice, these communications have long been prepared by the Secretariat and are no longer formally examined by the Committee of Ministers. In 1993 a major effort was made to make the reports less detailed and more readable. In addition to these communications presented at part-sessions of the Assembly, the Committee of Ministers occasionally sends ad hoc communications to the Assembly when it feels that an issue should be dealt with in a separate document.

Finally, the Secretary General is authorised to address succinct reports on the work of the intergovernmental committees of experts to the Assembly's committees,¹ on the condition that these reports do not contain any confidential information and do not disclose the position taken by the respective delegations.

b. *Oral presentation*

Article 27 of the Statute states that "The conditions under which the Committee of Ministers collectively may be represented in the debates of the Consultative Assembly, or individual representatives on the Committee or their alternates may address the Assembly, shall be determined by such rules of procedure on this subject as may be drawn up by the Committee after consultation with the Assembly".

The question of addresses to the Assembly by ministers is governed by Articles 17 and 18 of the Rules of Procedure of the Committee of Ministers.

Under Article 17, the Committee may authorise one or more of its members or any other minister of a member Government to make a statement to the Assembly presenting its views on any matter, whether

1. Decision taken by the Deputies at their 169th meeting in April 1968, and communicated to the President of the Assembly by a letter of 9 April 1968 from the Chairman of the Deputies.

or not it is on the agenda of the Assembly. The member or other minister thus chosen must limit himself to a statement previously approved by the Committee, unless the Committee authorises him to take part in the Assembly's debate on the matter in question. In pursuance of this provision, it is normally the Chairman in person or, in his absence, another minister that orally introduces the statutory communications on the activities of the Committee of Ministers to the Assembly at the latter's part-sessions.¹ In practice the introduction by the Chairman of the Committee of Ministers of the statutory communication to the Assembly is no longer submitted to the approval of the Committee.

c. Parliamentary questions for oral answer

It has been customary since 1965, for questions to be put to the Chairman of the Committee of Ministers for oral answer after he had addressed the Assembly. The President of the Assembly decides what questions are admissible, and these questions are communicated to the Chairman of the Committee of Ministers in advance (in practice, around 24 hours prior to the presentation of the communication) and distributed before the opening of the debate in a single document, the order being established by the President of the Assembly. The President can also group together questions concerning the same topic. The number of questions is limited to one per member or substitute.² The Chairman of the Committee answers the questions orally. Each author of a question is allowed one supplementary question, which permits some kind of spontaneity.

In March 1990, the Standing Committee of the Assembly adopted the following guidelines for questions to guest speakers :

- i. A time-limit of half a minute each shall be applied to questions and supplementary questions.
- ii. The President shall ensure that supplementary questions fall within the competence and sphere of responsibility of the Council of Europe and are interrogatory in form.

1. Ever since 1957 a person at ministerial level has represented the Committee of Ministers for this introduction.

2. See Rule 54 of the Rules of Procedure of the Parliamentary Assembly.

- iii. Any questions tabled in advance but not called for lack of time shall be answered in writing. The replies shall be appended to the verbatim report of the debate.

At the meeting of the Ministers' Deputies immediately following the Assembly's part-session at which the questions were put to and answered by the Chairman of the Committee of Ministers, there is an agenda item calling for an examination of the questions and of the Chairman's oral replies; but this item seldom gives rise to a discussion and the Deputies usually limit themselves to taking note of the questions and replies.

- d. *Right of an individual minister to address the Parliamentary Assembly in his own name*

Article 18 of the Rules of Procedure of the Committee of Ministers allows any representative on the Committee of Ministers who is a member of the Government he represents, or any other minister of a member government to speak in the Assembly, not as a spokesman of the Committee of Ministers but as an individual and in his own name, on any items on the Assembly's agenda. In practice the two capacities are sometimes combined when the statutory communication is presented, as the Chairman of the Committee of Ministers will devote part of his address to the Assembly to the activities of the Committee of Ministers and the rest to a political statement made on behalf of his government. Similarly, he may reply to questions for an oral answer from members of the Assembly in his capacity as Chairman of the Committee of Ministers, or as a member of his government, or else in a personal capacity. It is sometimes difficult in practice to determine in which capacity the minister is being asked a question.

It is also frequent for ministers, particularly Heads of Government, to address the Assembly in a personal capacity, in pursuance of the afore-said Article 18,¹ and they will often accept to reply to oral questions.

1. See also Rule 50 of the Rules of Procedure of the Parliamentary Assembly.

e. *Access of government representatives to the Assembly's committees*

This question is regulated in Rule 50 of the Rules of Procedure of the Parliamentary Assembly which is worded as follows :

“Access to the Assembly and committees¹

1. Any representative on the Committee of Ministers or any other Minister of the Government of a member State shall have the right of access to the Assembly and its committees. He shall be given the right to speak whenever he wishes. He may not vote.

2. Any Ministers may, on the same basis, be represented by a deputy at meetings of an Assembly committee subject to agreement with that committee.”

However, in 1987 the Assembly opened the meetings of its committees more widely to the government representatives by a decision of the Standing Committee taken on 25 November 1987 which stipulates :

“a. Permanent Representatives/Ministers’ Deputies (including *chargés d’affaires* duly notified to the Secretary General) may attend plenary meetings of committees with the right to speak.

b. Should a Permanent Representative be unable to attend, and provided that the competent committee has been previously informed, this right of access shall be extended to his first deputy, the right to speak remaining subject to the provisions contained in paragraph 2 of Rule 50 of the Rules of Procedure of the Assembly.

c. Every committee shall reserve the right to sit, in specific cases, without the presence of any person not a member of the Assembly or its Secretariat.

d. Wherever possible, Permanent Representatives should give the chairmen of the committees concerned advance notice, through the Secretariat, of their intention to attend a meeting or to have their place taken by their deputy.

1. In an Opinion of 10 January 1957, Doc. 613, the Committee on Rules of Procedure gave a strict interpretation of this Rule regarding access to the Assembly. Paragraph 1 may not therefore be stretched to apply to a person who is not a member of the government.

e. The attendance of other national officials of member States at committee meetings shall be governed by the provisions of paragraph 2 of Rule 50 in the case of “deputies” within the meaning of that rule, or, otherwise, by the general rule contained in the third sub-paragraph of paragraph 16 of Rule 45.

f. In return, the Assembly expects meetings of the Committee of Ministers/Ministers’ Deputies, as well as Conferences of Specialised Ministers, to be more systematically open to attendance by members of the Assembly (in particular, committee chairmen or rapporteurs), and especially when its adopted texts come up for detailed discussion.”

2. Joint Committee – Enlarged Joint Committee (Colloquy)

The Joint Committee is the organ of co-ordination of the Council of Europe;¹ its function is to co-ordinate the activities of the Committee of Ministers and the Parliamentary Assembly, and in particular:

- a. to examine the problems common to the two organs;
- b. to draw the attention of the two organs to such questions as appear to be of particular interest to the Council of Europe;
- c. to make proposals for the draft agendas of the sessions of the Committee of Ministers and the Parliamentary Assembly;
- d. to examine and promote means of giving practical effect to the recommendations adopted by either of the two organs.

a. Membership

The membership of the Joint Committee is also governed by the Statutory Resolution of 1951, but in practice this text has been largely superseded. In principle, since 1957,² the Committee has comprised: one representative of each member government and an equal number of representatives of the Assembly, including its President. For the

1. Instituted by the Statutory Resolution adopted by the Committee of Ministers in 1951, at its 8th session.

2. Resolution 129 of the Parliamentary Assembly, of which the Committee of Ministers took note at the 55th meeting of the Ministers’ Deputies (16-17 December 1957).

discussion of a particular question, the number of members may be increased by agreement.¹

The Committee of Ministers and the Assembly are each free to choose their own methods of selecting their respective representatives,² but in practice they are appointed in a fairly pragmatic manner. The President of the Assembly is the Chairman of the Joint Committee and convenes its meetings.³

The Secretary General attends the meetings of the Joint Committee in an advisory capacity.⁴

b. *Procedure*

The Joint Committee meets in private.

It does not take any votes⁵ and has no decision-making powers. Its meetings do not result in the drawing up of a record or a set of minutes.

The Statutory Resolution of May 1951 also stipulates⁶ that meetings of the Committee are convened by its Chairman and take place as often as is necessary “and, in particular, before and after the sessions of the Committee of Ministers and of the Assembly”.

At the outset, however, it proved very difficult to organise meetings of the Joint Committee at times convenient both to the Ministers and to the Assembly. The Committee of Ministers and the Assembly would normally meet simultaneously only once a year (until 1993), and it was seldom possible to persuade the members of the Joint Committee to go to Strasbourg or Paris to attend additional meetings.

1. Rule 51 of the Rules of Procedure of the Assembly.

2. Article ii.b of the Statutory Resolution of May 1951. The Rules of Procedure of the Assembly, for their part, provide for the representatives of the Assembly to be appointed by the Standing Committee from among its members. Members of the Assembly's committee(s) concerned by the different items on the agenda may be added to them for the Colloquy (see below).

3. Article iii.a and d of the Statutory Resolution of May 1951.

4. Article ii.c of the Statutory Resolution of May 1951.

5. Article iii.c of the Statutory Resolution of May 1951.

6. Article iii.d of the Statutory Resolution of May 1951.

c. *Joint Committee/Enlarged Joint Committee (Colloquy)*

To overcome this difficulty, it was decided in 1956 that the Joint Committee should also be able to meet at the level of the Ministers' Deputies. At present the custom is for the Joint Committee to meet once a year, on the occasion of the autumn session of the Committee of Ministers, with an enlarged composition, in the form of a "Colloquy" or "Enlarged Joint Committee" attended by the Ministers themselves and members of the Assembly, as well as at irregular intervals, once or twice a year, as the need arises, at the level of the Ministers' Deputies. Until 1992, a meeting of the Joint Committee (Deputy level) was usually held on the occasion of the summer session of the Assembly. On this occasion the delegation of the Ministers' Deputies was sometimes led by the Chairman of the Committee of Ministers at ministerial level. In 1993 and 1994 meetings were held in March, coinciding with the spring meetings of the Assembly. The number of meetings of the Joint Committee at Deputy level is in an upward trend due to the number of applications for membership of the Council of Europe. Thus, in 1994 the Joint Committee held four meetings.

The Colloquy – or Enlarged Joint Committee – attended by the Ministers themselves takes the same form as the Joint Committee, i.e. it is held on a very informal basis and in private, thus enabling the participants to express their opinions freely, either individually or collectively.¹

d. *Agenda*

The items on the agenda are jointly chosen by common accord by the Committee of Ministers and the Bureau of the Assembly. In 1989² the Committee of Ministers invited its Chairman and the other members of its own Bureau, in contact with the President of the Assembly, to make proper preparations for meetings of the Enlarged Joint Committee/Colloquy between Ministers and representatives of the Parliamentary Assembly, by drawing up sufficiently in advance the agendas of the meetings, which should cover a limited number of topics relating in particular to the political aspects of European co-operation.

1. See Recommendation 271 (1961) of the Assembly.

2. Resolution (89) 40 on the future role of the Council of Europe in European construction.

At these meetings of the Joint Committees and the Enlarged Joint Committees (Colloquies) alike, important political issues are addressed, such as relations with the countries of Central and Eastern Europe and applications for membership of the Council of Europe, as well as other major problems relating to the intergovernmental activities and institutional reforms or structures of the Organisation, or even its resources.

Among the questions of mutual interest to the two organs which are examined by the Joint Committee are candidatures for the posts of Secretary General, Deputy Secretary General and Clerk of the Assembly. Under the procedure for appointments to these posts as adopted by the Committee of Ministers and approved by the Assembly¹ the Committee of Ministers is required to consult the Assembly through the Joint Committee before transmitting to the Assembly a recommendation with a view to the appointment of any of the three highest-ranking posts in the Secretariat General. Unless otherwise agreed, this consultation takes place not less than thirty days before the date of the opening of the part-session of the Assembly at which the election is foreseen.

While meetings of the Joint Committee and the Enlarged Joint Committee (Colloquy) have helped to facilitate relations between the Committee of Ministers and the Assembly, it has occasionally been observed in the past that, on the Committee of Ministers' side, the Deputies have experienced some difficulty in expressing themselves at meetings of the Joint Committee; they are reluctant to speak in an individual or personal capacity, even though the informal nature of the meetings permits this, and are seldom able to speak as representatives of a collegiate body – except through their Chairman – unless there has been prior consultation. According to the participants, however, the latest meetings of the Joint Committee have been much more lively and have given rise to a very open discussion, in particular on the applications for membership of the Council of Europe.

1. Article 4 of the "Procedure for appointment to the posts of Secretary General, Deputy Secretary General and Clerk of the Assembly having the rank of Deputy Secretary General", adopted by the Ministers' Deputies at their 43rd meeting (December 1956) and amended at their 107th meeting (March 1962). See Chapter II.3.e above.

3. Joint Working Party

The importance of the issues currently dealt with both by the Committee of Ministers and by the Parliamentary Assembly, as well as the difficulty of organising Joint Committee or Enlarged Joint Committee (Colloquy) meetings, have led the two organs to seek a more flexible means of consultation. In 1989 they thus decided to set up a Joint Working Party composed of Ministers' Deputies and members of the Assembly.¹ The Bureau of the Ministers' Deputies has usually represented the Committee of Ministers at these meetings, while the Assembly's delegation generally consists of members of its Bureau, equal in number to those of the Bureau of the Committee of Ministers (five at present). It has been agreed that the representation of the Committee of Ministers may be enlarged to include the Chairman of a Rapporteur Group or Working Party, depending on the topics on the meeting agenda. For example, the Chairman of the Enlarged Rapporteur Group of the Ministers' Deputies on Relations with the Countries of Central and Eastern Europe (GREL) has attended these meetings on several occasions. Several meetings of the Joint Working Party have taken place, at one of which the Committee of Ministers was represented by its Bureau at ministerial level. The Working Party has proved to be a flexible and practical instrument capable of being convened at short notice.

4. Other contacts between the Committee of Ministers and the Parliamentary Assembly

There are also various other arrangements which foster relations between the Committee of Ministers and the Assembly. Thus the Ministers' Deputies regularly hold exchanges of views with the President of the Assembly; at some stage during his term of office, the Chairman of the Committee of Ministers generally meets the Assembly's Committee on Political Affairs for an informal exchange of views; chairmen or rapporteurs of the Assembly's committees may be invited to exchanges of views with the Deputies or their Rapporteur Groups, for example when they are examining recommendations adopted by the

1. Decisions taken by the Ministers' Deputies at their 428th meeting (September 1989) and by the Bureau of the Parliamentary Assembly on 4 September 1989.

Assembly; and the Secretary General and the Clerk of the Assembly regularly inform the Deputies of the current and future activities of the Assembly.

It should be added that the Secretary General maintains liaison between these two organs of the Council of Europe.¹

a. *Opinions*

Article 23 of the Statute, it will be remembered, authorises the Committee of Ministers to request the Assembly's opinion on any matter.

In 1985 it was reiterated that "the Assembly shall as a rule be given the possibility of expressing an opinion on draft conventions through its committees concerned".² In practice the Committee of Ministers often refers matters to the Assembly for an opinion, particularly on such draft texts.

b. *Other forms of co-operation*

It was confirmed by the Ministers' Deputies in the same context in 1985² that the question of participation by the Assembly in the work of the intergovernmental committees of experts should continue to be dealt with on a case-by-case basis.³

In 1989⁴, the Committee of Ministers invited its Chairman and the other members of its Bureau to extend the contacts with the Assembly's bodies, notably on the occasion of the presentation of the Committee of Ministers' statutory report and at meetings with the Political Affairs Committee. It also instructed the Ministers' Deputies to develop contacts with the Assembly committees and with their chairmen and rapporteurs through their Rapporteur Groups or Working Parties.

1. Article 22 of the Rules of Procedure of the Committee of Ministers.

2. Conclusions of the Ministers' Deputies on working methods in the Council of Europe, approved at the 76th session of the Committee of Ministers (April 1985).

3. On the strength of these "case-by-case" decisions, the Assembly is in fact represented on certain *ad hoc* or steering committees.

4. Resolution (89) 40 on the future role of the Council of Europe in European construction.

In the decisions taken by the Ministers' Deputies in January 1994¹ in connection with the reform of their working methods, attention was drawn to the possibility offered under Resolution (89) 40 of developing such contacts. It was specified, however, that the Rapporteur Groups or Working Parties should seek prior approval from the plenary committee or, in urgent cases, from the Bureau.

In October 1993,² the Ministers' Deputies adopted a "Memorandum on the role of the Committee of Ministers in the procedure for the accession of new member States/relations with the Parliamentary Assembly" (see above chapter II.3.i).

In recent years significant efforts have been made to improve relations between the two organs of the Council of Europe, even though tensions have occasionally arisen over important political issues – an inevitable phenomenon considering the different natures of the two organs of the Council of Europe, as well as each one's specific dynamism.

1. 506th meeting of the Deputies.
2. 500th meeting of the Deputies (October 1993).

Chapter V. Relations between the Committee of Ministers and other bodies

1. The Congress of Local and Regional Authorities of Europe (CLRAE)

a. *Background and definition*

At the Vienna Summit, the Heads of State and Government approved the principle of “creating a consultative organ genuinely representing both local and regional authorities in Europe”, to replace the Standing Conference of Local and Regional Authorities of Europe which had existed on an *ad hoc* basis since 1957 and as a permanent institution since 1961. On 14 January 1994,¹ the Ministers’ Deputies adopted Statutory Resolution (94) 3 setting up the Congress of Local and Regional Authorities of Europe (CLRAE), as well as the Charter of the Congress; the first session was held in Strasbourg from 31 May to 3 June 1994.

The Congress of Local and Regional Authorities of Europe is the organ representing local and regional authorities. Its membership and functions are regulated by the above-mentioned Statutory Resolution and Charter, and by the Rules of Procedure to be adopted by the CLRAE.²

The biggest change in relation to the former Standing Conference of Local and Regional Authorities of Europe is the fact that the Congress exercises its powers with the assistance of two chambers, one

1. 506th meeting of the Ministers' Deputies.

2. Article 1 of Statutory Resolution (94) 3. At its first session, the Congress adopted its Rules of Procedure (Resolution 1 (1994) of the Congress).

representing local authorities (Chamber of Local Authorities) and the other representing regional authorities (Chamber of Regions).

b. *Objectives*

Article 2 of Statutory Resolution (94) 3 states that:

“The CLRAE shall be a consultative body the aims of which shall be:

a. to ensure the participation of local and regional authorities in the implementation of the ideal of European unity, as defined in Article 1 of the Statute of the Council of Europe, as well as their representation and active involvement in the Council of Europe’s work;

b. to submit proposals to the Committee of Ministers in order to promote local and regional self-government;

c. to promote co-operation between local and regional authorities;

d. to maintain, within the sphere of its responsibilities, contact with international organisations as part of the general external relations policy of the Council of Europe;

e. to work in close co-operation, on the one hand with the national, democratic associations of local and regional authorities and, on the other hand with the European organisations representing local and regional authorities of the member States of the Council of Europe.”

c. *Procedure*

Article 4 of Statutory Resolution (94) 3 states that:

“1. The CLRAE shall meet in ordinary session once a year. Ordinary sessions shall be held at the seat of the Council of Europe unless the Congress and the Committee of Ministers decide by common consent that the session should be held elsewhere.

2. The CLRAE shall exercise its functions with the participation of two Chambers: one representative of local authorities (hereinafter referred to as “Chamber of Local Authorities”) and the other representative of regional authorities (hereinafter referred to as “Chamber of Regions”). The CLRAE may set up the following bodies: a

Bureau, a standing committee and *ad hoc* working groups, which are necessary to perform its mission."

Article 2 (paragraphs 2 and 3) provides that:

"2. The Committee of Ministers and the Parliamentary Assembly shall consult the CLRAE on issues which are likely to affect the responsibilities and essential interests of the local and regional authorities which the CLRAE represents.

3. Recommendations and opinions of the CLRAE shall be sent as appropriate to the Parliamentary Assembly and/or the Committee of Ministers. Resolutions and other adopted texts which do not entail possible action by the Assembly and/or the Committee of Ministers shall be transmitted to them for their information."

It will therefore be for the Committee of Ministers to follow up the resolutions and texts as necessary.

At the time of sending this work to press, the first recommendations and resolutions adopted at the first session of the Congress have been forwarded to the Committee of Ministers and it is difficult to ascertain what procedure the Committee of Ministers will adopt for these texts. However, the Deputies' Rapporteur Group on the Environment and Local Authorities has examined the matter and the following solutions will probably be adopted:

- for the chapters of recommendations addressed directly to the Committee of Ministers, the Ministers' Deputies could adopt a "reply" to the Congress;
- for the chapters of CLRAE recommendations addressed directly to the Parliamentary Assembly, the Assembly will be required to respond appropriately;
- should a recommendation be addressed to both the Committee of Ministers and the Parliamentary Assembly, the Committee of Ministers could wait for the Assembly's response before giving its own.

With regard to the former Standing Conference of Local and Regional Authorities of Europe, it had become customary for the chairmanship of the Committee of Ministers (represented by a person of ministerial rank or a State Secretary) to present a statement at the annual sessions on

behalf of the Committee of Ministers on its activities, as is done for the Parliamentary Assembly, followed by questions for oral answer. At the first session of the Congress, it was not possible to organise such a presentation, but the Chairman of the Ministers' Deputies took part in a round table with other personalities. The question is whether future congresses will return to a practice that has been tried and tested for the Standing Conference of Local and Regional Authorities of Europe.

Article 11 of the Charter of the Congress stipulates that:

“The conditions under which the Committee of Ministers and the Parliamentary Assembly may be collectively represented in the debates of the CLRAE or of the chambers and those under which their representatives may, in an individual capacity, speak therein shall be drawn up by the Committee of Ministers after consultation with the CLRAE and inserted in the Rules of Procedure of the latter.”

In this context, at its first session, the Congress submitted to the Committee of Ministers a proposal worded as follows: “... The Representatives of the Committee of Ministers or the Parliamentary Assembly when the discussion concerns a request for an opinion of the CLRAE made by one of these organs, shall be allowed to speak whenever they wish”.¹ At the time of sending this work to press, the Committee of Ministers had not yet taken a stand on this proposal.

The President of the Congress has expressed his desire to continue with the practices established in the past by the Presidents of the Standing Conference of Local and Regional Authorities of Europe to hold regular exchanges of views with the Ministers' Deputies.

2. Conferences of Specialised Ministers

a. Background and legal system

In recent decades a number of European Conferences of Specialised Ministers have arisen within the ambit of the Council of Europe. They have helped to define and pursue the goals of the intergovernmental activities undertaken within the Council of Europe in their respective

1. See Resolution No. 1 (1994) of the Congress containing its Rules of Procedure (Rule 24, paragraph 6).

fields of competence. A list of the nineteen Conferences of Specialised Ministers with which the Council of Europe maintains special working relations appears in Appendix V.

The relations established over the years by the Council of Europe with the Conferences of Specialised Ministers are of great importance. The usefulness of these Conferences has repeatedly been confirmed by the Committee of Ministers, especially when their preparation and follow-up are incorporated as efficiently as possible into the activities and procedures of the Council of Europe. The active participation in these Conferences of the ministers responsible for specific sectors of governmental activity, and the incorporation of the Conferences in the Council of Europe's intergovernmental co-operation system help to ensure continuous and coherent action. The Conferences also have the advantage of fostering the concentration of the Council of Europe's activities on matters of immediate interest to its member States.

The principles governing relations between the Council of Europe and the Conferences of Specialised Ministers are set out in Resolution (71) 44 on the Conferences of Specialised Ministers and in the appendix thereto.¹ The resolution provides for a series of links between the Conferences and the Council of Europe, particularly as regards their preparation, provision of the Secretariat's assistance and their follow-up. The principles enshrined in the resolution are notable for their flexibility. On several occasions the Committee of Ministers has examined the *modus operandi* of the Conferences of Specialised Ministers, but its deliberations have not led to any significant changes in the system introduced by Resolution (71) 44.²

b. *Role of the Committee of Ministers*

The part played by the Committee of Ministers regards:

- the establishing of particular working relations with a Conference;

1. Adopted by the Committee of Ministers on 16 December 1971, at its 49th session.

2. See Conclusions of the Ministers' Deputies on working methods in the Council of Europe, approved at the 76th session of the Committee of Ministers in April 1985. The functioning of the Conferences of Specialised Ministers was also re-examined during the preparation of Resolution 89 (40) on the future role of the Council of Europe in European construction (see section III of the resolution).

- the preparation of the Conference of Specialised Ministers ;
- the participation by non-member States and international organisations ;
- the agenda ;
- the follow-up to the Conferences.

i. *Convocation*

The holding and convening of the Conferences are regulated by Articles 1 to 3 of the appendix to Resolution (71) 44, which read as follows:

“1. Every Conference of Specialised Ministers covered by this resolution shall meet on the basis of an invitation by the government of a member State of the Council of Europe accepted by the governments of the other States participating as full members in the conference.

2. When the government of a member State of the Council of Europe contemplates the convening of a Conference of Specialised Ministers which has never met before and with which the Council might be called upon to establish a special working relationship, having regard to the objective of such conference and to the fact that it is of such a nature as to assist the activities of the Council, that government shall so inform the representatives of the governments of the other member States of the Council in order to seek, within the Committee of Ministers, general agreement for the establishment of such a relationship.

3. In exceptional cases where no government of a member State of the Council of Europe is able to act as host, the Secretary General of the Council may, with the authorisation of the Committee of Ministers, invite the conference to meet at the headquarters of the Council of Europe.”

Article 5 of the Appendix to the Resolution authorises the Secretary General of the Council of Europe to provide secretarial services for all the conferences with which the Council already has, or will in the future have, by virtue of paragraph 2, special working relationships.

Finally, certain Conferences have taken up the practice of holding “informal meetings” which are convened according to the principles mentioned above.

ii. Preparation

In principle, according to Article 6 of the appendix to Resolution (71) 44, the preparation of Conferences of Specialised Ministers is entrusted to the relevant (existing) permanent committees of governmental experts¹ set up under Article 17 of the Statute of the Council of Europe whose composition might be modified if necessary, or, in the absence of such a committee, to a committee of governmental experts to be set up on the basis of Article 17 of the Statute. Certain Conferences are, however, prepared by committees of senior officials specially created to prepare a Conference, and the Committee of Ministers has always shown a certain pragmatism in this respect.²

In Resolution (89) 40,³ the Committee of Ministers instructed the Ministers' Deputies:

- a. to ensure, with the assistance of the Secretary General – in consultation with the preparatory committee and the host country – that the work of the conferences of specialised ministers is co-ordinated with that of the Council of Europe, particularly with regard to the choice of subjects dealt with and the convening and preparing of each conference;
- b. to endeavour to ensure, in liaison with such conferences and their preparatory committees, that their proceedings concentrate on the political aspects of European co-operation in each one's area of responsibility;
- c. to examine pragmatically and flexibly the possibility of delegating the Committee of Ministers' powers on an *ad hoc* basis to this or that

1. In practice, to steering committees.

2. See Conclusions of the Ministers' Deputies on working methods in the Council of Europe submitted to the Committee of Ministers in 1985 (76th session of the Committee of Ministers). The functioning of the Conferences of Specialised Ministers was also re-examined during the preparation of Resolution 89 (40) on the future role of the Council of Europe in European construction.

3. On the future role of the Council of Europe in European Construction.

conference, especially with regard to the choice of priorities for the intergovernmental activities of the Council of Europe;¹

d. to try to establish, with the assistance of the Chair and the Bureau of the Committee of Ministers, appropriate forms of liaison with meetings of specialised ministers within the framework of the European Union.

iii. *Participants*

The appendix to Resolution (71) 44² provides that “the group of States whose Ministers are to participate as full members in a conference to which this resolution applies shall as a general rule coincide with that of the States participating as full members in the intergovernmental activities undertaken in the Council of Europe in the field covered by their conference. Before inviting the Minister of another State to take part in the work of the conference as an observer, the host government shall consult the representatives of the governments of the other member States of the Council in order to obtain, within the Committee of Ministers, general consent as to both the advisability and the conditions of the invitation. Such consent shall be deemed to have been given in the case of non-member States already participating as observers in the Council of Europe’s activities in the field covered by such conference. Moreover, the representatives of the governments of member States shall be consulted within the Committee of Ministers if the host government considers that it is unable to invite the Minister of a State participating as a full member in the activities concerned of the Council”.

1. So far the Committee of Ministers has delegated such powers only once. At their 442nd meeting in June 1990, the Deputies agreed to delegate formal adoption of a draft recommendation on the European conservation strategy to the 6th Ministerial Conference on the Environment (Brussels, 11-12 October 1990). It is interesting to note that they also agreed on the following formula for the beginning of the first sentence of the draft recommendation: “The European Ministerial Conference on the Environment, by delegation from the Committee of Ministers of the Council of Europe, in conformity with paragraph 17.c of Resolution (89) 40 of 5 May 1990 and under the terms of Article 15.b of the Statute of the Council of Europe ...”. See Recommendation R ENV (90) 1 adopted on 12 October 1990 at the 6th European Ministerial Conference on the Environment (Brussels, 11-12 October 1990).

2. See paragraph 4 of the appendix to Resolution (71) 44.

With regard to inviting international organisations, the same rules apply in practice by analogy. In the case of the European Union, however, the "Arrangement between the Council of Europe and the European Community" concluded on 16 June 1987 provides as follows: "the European Community, represented by the Commission, will be invited to participate in the work of mutual interest of conferences of specialised ministers with which the Council of Europe has established a special working relationship, without prejudice to the decisions which might be taken by the competent authorities of those conferences".

Lastly, it was decided that the Parliamentary Assembly should be invited to send a representative to all such conferences.¹

iv. *Agenda*

The appendix to Resolution (71) 44 stipulates that "the Committee of Ministers of the Council of Europe shall, at a suitable stage and on the basis of a text drawn up by the committee responsible for the preparation of the Conference, discuss its draft agenda as well as any other aspect of its preparation, it being understood that in the last resort the Specialised Ministers retain full control over the agenda of the conference".²

In 1985 it was also agreed that "the Committee of Ministers shall examine the draft agendas of the Conferences in order to make sure that the themes proposed for a given Conference have the necessary political character and that they fit into the general thrust of the Council of Europe's activities. The Committee of Ministers should also make sure that there is no overlapping with the themes of another Conference and that it is not proposed to deal with too many subjects at the same Conference. In so doing, the Committee of Ministers will not lose sight of the fact that, in the last resort the Specialised Ministers retain full control over their Conference agenda. The Committee of Ministers shall be kept informed about the state of preparation of different Conferences; in appropriate cases a hearing with the chairman of the committee

1. See Conclusions of the Ministers' Deputies on the working methods of the Council of Europe submitted to the 76th session of the Committee of Ministers (April 1985).

2. *Ibid.*

responsible for the preparation of a Conference shall be arranged" (see also above Chapter III.16).

v. Follow-up to the Conferences

The appendix to Resolution (71) 44 stipulates¹ that "the Secretary General of the Council of Europe shall present to the Committee of Ministers a report on each of the conferences for which he provides secretarial services and, in particular, shall inform the Committee of all resolutions, decisions and other texts produced by those conferences. Resolutions and decisions are normally addressed to the Committee of Ministers which shall, as appropriate, transmit them for action to its own competent bodies or to other international organisations. It shall also refer them to the Consultative Assembly of the Council of Europe for information".

At every ordinary meeting of the Ministers' Deputies an item entitled "Conferences of Specialised Ministers" is entered on the agenda in order to enable the Committee to keep abreast of preparations for forthcoming conferences and to take the appropriate decisions accordingly.²

1. See Article 8 of the appendix to Resolution (71) 44.

2. The Secretariat of the Committee of Ministers also prepares a monthly document containing the dates of forthcoming conferences, their themes, etc.

Chapter VI. Revision of the Statute – Statutory Resolutions

In the Vienna Declaration, adopted by the Council of Europe Summit on 9 October 1993, the Heads of State and Government of Council of Europe member States 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”.¹

In the same Declaration the Heads of State and Government affirmed their will “to promote the integration of new member States and to undertake the necessary reforms of the Organisation, taking account of the proposals of the Parliamentary Assembly and of the concerns of local and regional authorities, which are essential to the democratic expression of peoples”.

a. *Procedure for amending the Statute of the Council of Europe and majorities required*

Proposals for amendments may emanate either from the Committee of Ministers or from the Consultative Assembly.² The Committee of Ministers recommends and causes to be embodied in a protocol these amendments which it considers desirable.³ Recommendations made by the Committee of Ministers with a view to amending the Statute are adopted by the following majorities:

- i. unanimity of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee: amendments to Articles 1.d, 7, 15, 20 and 22 of the Statute;⁴

1. See, *inter alia*, Recommendation 1212 (1993) of the Parliamentary Assembly.

2. Article 41.a of the Statute.

3. Article 41.b of the Statute.

4. Article 20.a.v of the Statute.

- ii. a two-thirds majority of the representatives casting a vote and a majority of the representatives entitled to sit on the Committee: amendments to the other articles of the Statute,¹ unless the Committee decides to submit them, because of their importance, to the unanimity rule (in pursuance of this principle, the Rules of Procedure of the Meetings of the Ministers' Deputies opted for unanimous voting in respect of recommendations concerning amendments to any article of the Statute.² This rule does not, however, apply to meetings at ministerial level).

After adoption of the recommendation, the amendment is embodied in a Protocol to the Statute.³ The amending Protocol comes into force when it has been signed and ratified by two-thirds of the member States.⁴ Articles 23 to 35, 38 and 39 of the Statute may be amended by a simplified procedure: approval by the Committee of Ministers and by the Assembly, followed by the drafting of a certificate by the Secretary General.⁵

b. Procedure for the adoption of statutory resolutions

Rather than engaging in the cumbersome and complicated procedure of amending the Statute, the Committee of Ministers has preferred in recent months to follow the precedent of the two resolutions of a statutory nature adopted in 1951, as being a more flexible formula for making good any shortcomings or gaps in the Statute.

These resolutions concern statutory matters and contain measures which are not incompatible with the Statute in force⁶ – i.e. provisions which supplement the Statute without affecting its existing provisions.

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1. Article 20.d of the Statute.
 2. Article 9 of the Rules of Procedure for the Meetings of the Ministers' Deputies:
"1. The following decisions shall require a unanimous vote of the Deputies casting a vote, and a majority of all the Deputies entitled to vote:
[...]
e. Recommendations for the amendment of the Statute; ..."
 3. Article 41.b of the Statute.
 4. Article 41.c of the Statute.
 5. Article 41.d of the Statute.
 6. The Statutory Resolution of May 1951 clearly stresses in its preamble: "Considering that the measures mentioned below are not incompatible with the provisions of the present Statute."

So far the Committee of Ministers has adopted six statutory resolutions :

- a resolution adopted at its 8th session in May 1951, on the admission of new members, on the powers of the Committee of Ministers, on the Joint Committee, on specialised authorities and on relations with international organisations, both intergovernmental and non-governmental;
- a resolution adopted at its 9th session in August 1951, on Partial Agreements (superseded by Resolution (93) 28 below);
- Resolution (93) 26 adopted at its 92nd session in May 1993, on observer status;
- Resolution (93) 27 adopted at its 92nd session in May 1993, on majorities required for decisions of the Committee of Ministers;
- Resolution (93) 28 adopted at its 92nd session in May 1993, on Partial and Enlarged Agreements.
- Resolution (94) 3 adopted by the Ministers' Deputies at their 511th meeting (April 1994) and relating to the setting up of the Congress of Local and Regional Authorities of Europe.

Appendix I – Frequency of meetings of the Committee of Ministers and of the Ministers’ Deputies from 1988 to 1994

Ministerial level

<i>Year</i>	<i>Meetings</i>
1988	2
1989	3 (incl. 1 extraordinary)
1990	3 (incl. 1 special)
1991	3 (incl. 1 extraordinary)
1992	3
1993	3
1994	2

Ministers’ Deputies

<i>Year</i>	<i>Meetings</i>	<i>Number of items on the Agenda</i>
1988	13	485
1989	24	513
1990	25	601
1991	38	676
1992	32	662
1993	34	831
1994	25	1098

Rapporteur Groups and Ad hoc Working Parties

1990	31
1991	46
1992	65
1993	86 (including meetings of the preparatory group for the Vienna Summit)
1994	102

Appendix II – Declarations adopted at ministerial sessions of the Committee of Ministers

Declaration on human rights (adopted by the Ministers of Foreign Affairs of the member States of the Council of Europe meeting in the Committee of Ministers on 27 April 1978 at its 62nd session)

Declaration on terrorism (adopted by the Committee of Ministers on 23 November 1978 at its 63rd session)

Declaration on balanced development in Europe (adopted by the Committee of Ministers on 16 October 1980 at its 67th session)

Declaration regarding intolerance – a threat to democracy (adopted by the Committee of Ministers on 14 May 1981 at its 68th session)

Declaration on the freedom of expression and information (adopted by the Committee of Ministers on 29 April 1982 at its 70th session)

Declaration on equality of women and men (adopted by the Committee of Ministers on 16 November 1988 at its 83rd session)

Declaration on the future role of the Council of Europe (adopted by the Committee of Ministers on 5 May 1989 at its 84th session on the occasion of the 40th anniversary of the Organisation). This declaration was signed by all the participating Ministers

Declaration on East Timor (adopted by the Committee of Ministers on 26 November 1991 at its 89th session)

Declaration on the conflict in the former Yugoslavia (adopted by the Committee of Ministers on 11 September 1992 at the special ministerial meeting in Istanbul)

Declaration on the situation in the former Yugoslavia (adopted by the Committee of Ministers on 5 November 1992 at its 91st session)

Declaration on compliance with commitments accepted by member States of the Council of Europe (adopted by the Committee of Ministers on 10 November 1994 at its 95th session).

Appendix III – List of partial agreements¹

Council of Europe Resettlement Fund for National Refugees and Over-population in Europe, created by Resolution (56) 9, adopted by the Committee of Ministers on 16 April 1956 at its 18th session (now called the Social Development Fund)

Partial Agreement in the Social and Public Health Field, instituted by Resolution (59) 23 on extension of the activities of the Council of Europe in the social and cultural fields, adopted by the Ministers' Deputies on 16 November 1959 at their 77th meeting (several European treaties have been concluded under this Partial Agreement, including the Convention on the Elaboration of a European Pharmacopoeia, ETS No. 50 (1964))

European Card for Substantially Handicapped Persons, adopted on 4 November 1977 at the 277th meeting of the Ministers' Deputies

Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group), set up by Resolution (80) 2, adopted by the Ministers' Deputies on 27 March 1980 at their 317th meeting and amended by Resolution (80) 15, adopted by the Ministers' Deputies on 17 September 1980 at their 322nd meeting

Co-operation Group for the Prevention of, Protection against, and Organisation of Relief in Major Natural and Technological Disasters, instituted by Resolution (87) 2, adopted by the Ministers' Deputies on 20 March 1987 at their 405th meeting

European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual Works (EURIMAGES), created by Resolution (88) 15, adopted by the Ministers' Deputies on 26 October 1988 at their 420th meeting and amended by Resolution (89) 6, adopted by the Ministers'

1. The Directorate of Legal Affairs of the Council of Europe regularly publishes an "information document concerning the partial agreements" (state of membership, etc.).

Deputies on 15 June 1989 at their 427th meeting and by Resolution (92) 3, adopted by the Ministers' Deputies on 10 February 1992 at their 470th meeting

European Centre for Global Interdependence and Solidarity, created by Resolution (89) 14, adopted by the Committee of Ministers on 16 November 1989 at its 85th Session. On 21 October 1993, at their 500th meeting, the Ministers' Deputies adopted Resolution (93) 51 confirming the continuation of the European Centre for Global Interdependence and Solidarity and containing the revised statute of the Centre

European Commission for Democracy through Law, created by Resolution (90) 6, adopted by the Committee of Ministers on 10 May 1990 at its 86th session

Partial Agreement on the Youth Card to Promote and Facilitate Mobility for Young People in Europe, created by Resolution (91) 20, adopted by the Ministers' Deputies on 13 September 1991 at their 461st meeting

European Audiovisual Observatory, created by Resolution (92) 70, adopted by the Ministers' Deputies on 15 December 1992 at their 485th meeting

European Centre for Modern Languages created by Resolution (94) 10 on an Enlarged Partial Agreement establishing the European Centre for Modern Languages, adopted by the Ministers' Deputies on 8 April 1994 at their 511th meeting

Appendix IV – List of the Rapporteur Groups of the Ministers' Deputies

Enlarged Rapporteur Group on Relations with the Countries of Central and Eastern Europe

Rapporteur Group on Human Rights

Rapporteur Group on Social and Health Questions

Rapporteur Group on Education, Culture and Sport

Rapporteur Group on Youth

Rapporteur Group on the Environment and Local Authorities

Rapporteur Group on Legal Co-operation

Rapporteur Group on Administrative Questions

Rapporteur Group on Information Policy

Appendix V – List of conferences of specialised ministers with which the Committee of Ministers maintains “a special working relationship”¹

Standing Conference of European Ministers of Education (since 1959)

Conference of European Ministers responsible for Family Affairs (since 1959)

Conference of European Ministers of Justice (since 1961)

European Conference of Ministers responsible for the Cultural Heritage (since 1969)

European Conference of Ministers responsible for Regional Planning (CEMAT) (since 1970)

European Ministerial Conference on the Environment (since 1970)

Conference of European Ministers of Labour (since 1972)

Conference of European Ministers responsible for Sport (since 1975)

Conference of European Ministers responsible for Local Government (since 1975)

Conference of European Ministers responsible for Cultural Affairs (since 1976)

Conference of European Ministers responsible for Migration Affairs (since 1980)

Conference of European Ministers responsible for Social Security (since 1979)

Conference of European Health Ministers (since 1981)

Conference of European Ministers responsible for Research (since 1984)

European Ministerial Conference on Human Rights (since 1985)

Conference of European Ministers responsible for Youth (since 1985)

1. In the sense of paragraph 1 of Resolution (71) 44 of the Committee of Ministers.

European Ministerial Conference on Equality between Women and Men (since 1986)

European Ministerial Conference on Mass Media Policy (since 1986)

Conference of European Ministers responsible for Combating Terrorism (1986)

Addendum concerning new developments as the present work was going to press

Introduction

It is recalled that at their 94th session (May 1994), "the Ministers took note of the discussion paper by the Secretary General on the adaptation and reinforcement of the Council of Europe's action, five years after the events of 1989. They discussed the enlargement of the Organisation and its impact, as well as the increasing involvement of the Council of Europe in establishing a more stable democratic Europe. They will follow this evolution closely and, in this connection, have called for a detailed report for their next session in November 1994".

Furthermore, at the same session, "the Ministers took note of ideas concerning the monitoring of obligations which membership of the Council of Europe entails. They are determined to follow closely the respect for these obligations and instructed their Deputies to pursue the matter" (see page 52).

At their 95th Session (10 November 1994), "the Ministers considered a first report of their Deputies on the political and institutional effects of the enlargement which the Council of Europe will experience, as well as the growing involvement of the Organisation in the establishment of a more stable democratic Europe. They welcomed the first results achieved, and invited the Deputies to accomplish their work, in particular on the more political aspects of these effects, which were discussed at the present session, before the May 1995 Ministerial meeting".

The Ministers also adopted a "Declaration on compliance with commitments accepted by member States of the Council of Europe" during the same session.

1. Report of the Ministers' Deputies on the effects of the enlargement of the Council of Europe

The following aspects were among those dealt with in the above-mentioned report of the Deputies :

a. Principle of equality between member States

The Deputies took the view that :

"With the prospect of further enlargement, equality of the member States, which constitutes one of the basic principles of the Council of Europe Statute, embodied for example in Article 14 of the Statute, should be firmly upheld. Member States, whatever their geographical area or the size of their population and irrespective of their political, economic or other influence, are equal in rights and duties. Each one is entitled to one representative with one vote. There were nevertheless a number of agreed departures from this principle, particularly with regard to the membership of delegations to the Parliamentary Assembly (Article 26 of the Statute) and the Congress of Local and Regional Authorities of Europe (CLRAE), and to the scale of member States' contributions to the budgets of the Organisation (see paragraph g below)."

b. Membership and powers of the Bureau of the Ministers' Deputies (see pages 85 to 88)

Assuming that membership of the Council was likely in the medium term to include around forty States, the Deputies examined the role which the Bureau of the Ministers' Deputies would be required to play and, consequently, whether there was cause to change its composition in order to ensure more balanced representation among the Deputies.

The Deputies decided in favour of confirming the present role and composition of the Bureau as fixed most recently by the decisions of March 1992 (472nd meeting, Resolution (92) 6; see page 86).

It was felt that an increase in the number of members would not improve the effectiveness of action by the Bureau of the Deputies.

Without increasing its political power, the Deputies agreed to confine the Bureau to essentially administrative tasks (preparation of sessions of

the Deputies), and other tasks relating to protocol (welcoming VIPs or distinguished guests). They confirmed the existing practice when receiving distinguished visitors, according to which the Bureau may, depending on circumstances, allow the participation of chairpersons of Rapporteur Groups. The fact remains, of course, that the Committee of Ministers is the sole decision-making body.

Lastly, the Deputies amended their decision of March 1992, and consequently Article 6, paragraph 2, of their Rules of Procedure as follows:

“2. The Deputy who will next succeed to the Chair shall be the first Vice-Chairman of the Deputies. The outgoing Chairman will become the second Vice-Chairman. If the Chairman is absent, the Chair shall be taken by the first Vice-Chairman or, in his absence, by the second Vice-Chairman, then by the next full member present, in the alphabetical order adopted for the signature of the Statute of the Council of Europe, then by the last Chairman but one.”

They added that this decision could be applied *mutatis mutandis* to the Bureau at ministerial level.

c. Official languages and working languages

The Deputies had not yet concluded work on this question, which they considered required further examination.

d. Question regarding the majorities required for decisions of the Committee of Ministers (see page 58 onwards)

The Deputies considered that, owing to the increase in the number of member States, the unanimity rule should be restricted to a limited number of cases in order to avoid the situation where one single country could block a decision.

Bearing in mind the previous deliberations on the revision of the Council of Europe Statute and the fact that any change in the voting procedures laid down in Article 20 would require an amendment of the Statute, the Deputies stressed the need to render the current voting procedures more flexible in order to reduce the number of cases where unanimity was necessary.

They decided to make certain changes in the current system forthwith :

- firstly, for the adoption of Committee of Ministers recommendations to governments of member States (where unanimity is currently required in application of Article 20.d of the Statute) ;
- secondly, for replies by the Committee of Ministers to Parliamentary Assembly recommendations and written questions (for which the practice has consistently been to apply the unanimity rule in application of Article 20.a.iii of the Statute).

Accordingly, the Deputies adopted, on 4 November 1994,¹ the following decision :

“The Deputies agreed upon a Gentleman’s Agreement amongst themselves to the effect that no delegation should request the application of the rule of unanimity provided for under Article 20.a.i of the Statute to block the adoption of recommendations to the governments of member States, if the majority foreseen in Article 20.d of the Statute has been attained.”

The Deputies furthermore adopted the following decisions :

- “– The Deputies, noting that no binding decision on this subject exists in the Statute, agreed to adopt replies to the Parliamentary Assembly henceforth by the majority provided for in Article 20.d of the Statute, considering that every effort will be made to reach a consensus within a reasonable period of time ;
- the Deputies agreed to specify, at the beginning of the text of an answer of the Committee of Ministers to the Parliamentary Assembly, if a delegation should request it, that this answer was adopted by a majority as provided by Article 20.d of the Statute.”

e. *Partial Agreements and Enlarged Agreements* (hereinafter called “Agreements”) (see page 67)

The Deputies recommended that new operational rules should be drawn up for future Agreements. The matter is to be pursued in the coming months.

1. 519 *bis* meeting of the Ministers’ Deputies.

f. *Duration of Committee of Ministers' sessions* (see page 18)

Having regard to the increase in the number of member States and the consequences for the speaking time assigned to Ministers, the Deputies felt that it was important to enable a maximum number of delegations to express their views during ministerial sessions.

They believed it was necessary to uphold the principle of two annual sessions of the Committee of Ministers and stressed the importance of the informal meetings for which no minutes were recorded. They expressed their preference for ministerial sessions lasting a full day, which might be organised as follows:

- first variant: informal meeting (afternoon), dinner and formal meeting the following morning;
- second variant: meeting lasting one full day (morning + afternoon).

The matter is under consideration.

g. *Method used to calculate member States' contributions to Council of Europe budgets* (see page 38 onwards)

The Deputies adopted Resolution (94) 31 on the method of calculating the scales of member States' contributions to the Council of Europe budgets on 4 November 1994.¹

The new system put in place achieves a more equitable sharing of budgetary contributions among the member States.

h. *Questions concerning the Secretariat* (see page 38 onwards)

The question of the effects of enlargement at administrative level is being further examined.

i. *Transparency of the work of the Committee of Ministers* (see page 63)

Page 63 of the present work mentions the efforts made to relax the rule concerning the confidentiality of Committee of Ministers documents in order to make the Ministers' work more transparent. In this connection the Deputies decided at their 519 *bis* meeting (4 November 1994) that in future "their decisions will not be classified restricted, unless the

1. 519 *bis* meeting of the Ministers' Deputies.

Committee explicitly decides otherwise in a specific case. It is understood that the decisions concerning the application of Articles 32 and 54 of the European Convention on Human Rights which are currently classified confidential would be continued to be classified as such".

They also encouraged the "Secretariat to make more frequent use of the unclassified category for documents which pose no particular problem".

Finally, the "Procedure for granting public access to Council of Europe documents" mentioned on page 63 and dating from 1981 was replaced by the following procedure:

"1. Documents of the Committee of Ministers¹ and the Secretariat held in the archives of the Council of Europe shall be open to public access after a period of one year. This rule will not, however, apply to:

a. documents on which an embargo for a period exceeding one year has been imposed by the Committee of Ministers or the Secretary General;

b. documents classified as secret, Records of meetings of the Ministers' Deputies and minutes of ministerial sessions, which shall be declassified after a period of 10 years (except Records of meetings concerning human rights);

c. documents contained in the personal files of staff members and former staff members and in the files of the Recruitment and Promotions Panels, the disclosure of which would affect the respect for private life as protected under the European Convention on Human Rights and the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. The other documents contained in these files can be made public after a period of 70 years from the date of the last document in the file. Confidential addenda to the Decisions and Records relating to the same subjects shall be subject to the same restrictions;

1. Initially, the application of this new procedure has been limited, on an experimental basis, to Committee of Ministers' documents (CM, SG, Misc, Notes on the Agenda) which contain the bulk of information, provisionally excluding documents of the Rapporteur Groups. The system to be applied to documents of Committees of experts which are not submitted to the Committee of Ministers might be examined separately at a later date.

d. documents concerning the application of Articles 32 and 54 of the European Convention on Human Rights.

Any embargo imposed in accordance with sub-paragraph a would be reviewed annually.

2. The Secretary General will regularly submit for the attention of the Committee of Ministers lists of documents which it is proposed to open to public access, in order to enable it to perform the task provided under paragraph 1.a.

3. The present procedure will enter into force on 7 November 1994."

j. *Application of Article 9 of the Statute*

Under the terms of Article 9 of the Statute "the Committee of Ministers may suspend the right of representation on the committee and on the Parliamentary Assembly of a member which has failed to fulfil its financial obligation during such period as the obligation remains unfulfilled".

At its 95th session, on 10 November 1994, the Committee of Ministers adopted the following decision :

"The Committee of Ministers agreed that, apart from exceptional circumstances having prevented a member State from fulfilling its obligation, Article 9 of the Council of Europe's Statute will be applied to any State which has failed to fulfil all or a substantial part of its financial obligation for a period of two years."

2. Declaration of the Committee of Ministers on compliance with commitments accepted by member States of the Council of Europe

At the 95th Session of the Committee of Ministers, "conscious of the vocation of the Council of Europe to contribute to the reinforcement of democratic security in Europe, and of the importance of full respect for commitments accepted by all member States concerning democracy, human rights, the protection of national minorities and the rule of law," adopted the following declaration :

Declaration on compliance with commitments accepted by member States of the Council of Europe

(adopted by the Committee of Ministers on 10 November 1994)

The Committee of Ministers,

Bearing in mind

- the vocation of the Council of Europe to promote the reinforcement of democratic security in Europe, as stressed by the Vienna Summit (October 1993), where Heads of State and Government also resolved to ensure full compliance with the commitments accepted by all member States within the Council of Europe;
- the commitments to Democracy, Human Rights and the Rule of Law accepted by the member States under the Council's Statute, the European Convention on Human Rights and other legal instruments;
- the importance of the strict compliance with these commitments by every member State;
- the statutory responsibility incumbent upon itself for ensuring full respect of these commitments in all member States, without prejudice to other existing procedures, including the activities of the Parliamentary Assembly and conventional control bodies;
- the need to facilitate the fulfilment of these commitments, through political follow-up, carried out constructively, on the basis of dialogue, co-operation and mutual assistance,

Decides as follows:

1. The Committee of Ministers will consider the questions of implementation of commitments concerning the situation of Democracy, Human Rights and the Rule of Law in any member State which will be referred to it either
 - by member States or
 - by the Secretary General or
 - on the basis of a recommendation from the Parliamentary Assembly.

When considering such issues the Committee of Ministers will take account of all relevant information available from different sources such as the Parliamentary Assembly and the CSCE.

2. The Secretary General will forward to the Committee of Ministers to this end information deriving from contacts and co-operation with member States that are liable to call for the attention of the Committee of Ministers.
3. The Committee of Ministers will consider in a constructive manner matters brought to its attention, encouraging member States, through dialogue and co-operation, to take all appropriate steps to conform with the principles of the Statute in the cases under discussion.
4. The Committee of Ministers, in cases requiring specific action, may decide to :
 - request the Secretary General to make contacts, collect information or furnish advice ;
 - issue an opinion or recommendation ;
 - forward a communication to the Parliamentary Assembly ;
 - take any other decision within its statutory powers.
5. The Committee of Ministers will continue to seek greater efficacy in its procedures with a view to ensuring compliance with commitments, in the framework of a constructive dialogue.

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