

‘European Conventions’ from the Council of Europe News (July 1949)

Caption: This article, published in a supplement to the Council of Europe News in July 1955, outlines the procedure for the drafting and adoption of European agreements through the combined action of the Committee of Ministers and the Consultative Assembly, as well as the procedure for implementation carried out by national authorities of the Member States.

Source: Supplement to the "Council of Europe News". July 1955, n° 7, 5th year. Strasbourg: Council of Europe - Directorate of Information.

Copyright: (c) Council of Europe

URL: http://www.cvce.eu/obj/european_conventions_from_the_council_of_europe_news_july_1949-en-1aa756b4-a605-432a-a519-d6568b354787.html

Last updated: 28/04/2015

European Conventions

By signing the Statute of the Council of Europe on 5th May 1949, ten European Governments entered into an association to achieve a precise aim : to bring about a greater unity between their countries in order to safeguard and realise the ideals and principles which are their common heritage and to facilitate their economic and social progress. Since that time, five further countries have associated themselves with the pursuit of this aim.

To achieve it, various methods are possible, of which perhaps the most important is the conclusion of agreements.

The adoption of agreements through the combined action of the Committee of Ministers and of the Consultative Assembly, has been sought by the Council since 1949. It may indeed be said that in this respect the two organs of the Council have acted after the manner of a true legislative body.

Machinery and procedure

The Consultative Assembly is the deliberative organ of the Council. By two-thirds majority vote it may adopt Recommendations which the Committee of Ministers may, in its turn, approve, reformulate and address to Governments.

At its First Session the Assembly recommended the conclusion of a European Convention for the protection of Human Rights and Fundamental Freedoms and suggested the principles on which such a Convention might be based. The Committee of Ministers accepted the idea and decided that the actual text should be drawn up by committees of experts and senior officials. Very soon it became apparent however that the drafting could only be done in agreement with the Assembly. The text was shuttled back and forth between the two organs of the Council much as may happen in a bicameral legislature ; in the interval between adoption of the original Recommendation by the Assembly and the signature of the Convention the Assembly was consulted four times. The Convention was discussed at both the First and Second Sessions of the Assembly, and at each of the first six sessions of the Ministers. Finally, even after the Convention had been signed, the shuttle service continued and led eventually to the signature of the Supplementary Protocol to the Convention.

In the case of other Conventions and Agreements the procedure has been different. Sometimes it is the Ministers who have taken the initiative ; on other occasions, the Assembly has adopted a Recommendation conceived in general terms and requesting the conclusion of a Convention in a particular field and with this or that precise aim. If the Committee of Ministers approves the suggestion it convenes a Committee of Experts to prepare a draft. This draft then goes back to the Committee, meeting either at the level of Foreign Ministers or at deputy level, and is either adopted on first reading or sent back to the Experts. Following its adoption it then goes to the Consultative Assembly for an Opinion. The text as finally approved by the Ministers takes account of any amendments proposed by the Assembly.

Putting the Convention into force

Council of Europe procedure is not more lengthy than that current in national parliaments. Nonetheless, this procedure entails several stages, some of which give the impression that one and the same decision is being taken several times over. In fact, however, it will be seen that each of these stages is necessary and has a different significance.

(a) Assembly Recommendation. The members of the Consultative Assembly are completely free and do not speak or act under instructions from their Governments. They sit in alphabetical order, not as national delegations. Their sole responsibility is towards their own consciences — and, it may be, towards their electors. Since they are appointed by their national parliaments or according to a procedure decided by the latter it is obvious that in practice Representatives bear also a certain responsibility towards the national assemblies of which they are members, but the fact remains that the position taken by a member of the

Assembly can never be regarded as committing his fellow countrymen or even any section of them.

A Recommendation adopted by a two-thirds majority of the European Assembly may be regarded as the expression of a wish by European public opinion. The debate and the vote may throw light on the various national positions but even if the Representatives of all the Government parties from each Member country vote in favour of a measure, those Governments are not automatically committed thereby.

(b) Adoption by the Committee of Ministers and Reference to Experts. The reception given by the Committee of Ministers to an Assembly Recommendation is no indication of the position and commitments which the various Governments will finally assume. The reservations and objections made by the representative of one or another Government when the draft first comes up for examination are not made public. Generally the communiqué issued by the Ministers announces merely that the principle of the Convention proposed by the Assembly has been approved and that a Committee of Experts will be convened to draft the text. To date there is no instance of the Ministers purely and simply rejecting the proposal. In the event of an absolute difference of opinion between the two organs the Ministers' comments and objections may for example be transmitted to the Representatives of the Assembly in the Joint Committee where an exchange of views allows positions to be clarified and, in all probability, agreement to be reached.

(c) Adoption of a draft by Experts. The Experts work behind closed doors and the positions assumed by the various delegations are not published. In principle the outcome of their work is a draft adopted unanimously. In practice it is possible that reservations have been made in regard to certain points, various political decisions have yet to be taken or that certain delegations maintain their opposition to certain clauses. All the public hears is that the text has been adopted, together with a very general indication of the more important clauses on which unanimity has been reached. And even at this stage there is no final commitment. It should be added however that this description of the decision followed has purposely been simplified and very often there will have been contacts and exchanges of views between the Experts, the Ministers' Deputies and the appropriate Committees or working parties of the Assembly.

(d) Vote in the Committee of Ministers. After the draft has been prepared by the Experts and, possibly, amended by the Ministers' Deputies, it is finally adopted by the Committee of Ministers. This vote is not legally binding on Member countries. Rather is it a recommendation to Governments that they should sign the text adopted. The Statute of the Council provides that any Resolution by the Ministers which entails approval of a draft Convention and its submission for signature, must be approved by « *the unanimous vote of the representatives casting a vote and of a majority of the representatives entitled to sit on the Committee* ».

(e) Signature by Plenipotentiaries. Council of Europe Conventions, Agreements and Protocols must be signed by representatives of the Governments concerned on whom appropriate powers have been conferred. These plenipotentiaries are generally the Ministers for Foreign Affairs themselves and signature takes place on the occasion of a session of the Committee of Ministers. The original of the Convention (drawn up in French and English, the two official languages of the Council, both texts being equally authentic) is signed on behalf of the Governments and then deposited in the Council Archives, the Secretary-General sending a certified copy to each signatory Government. It may happen that certain Governments decide not to sign a particular text or postpone signature for one or another reason. All Conventions are open for signature by all Member countries and some of them may be adhered to by non-Members also.

The signature of the Convention does not entail its entry into force. Despite the solemnity of the occasion a country is not bound by its representative's signature until ratification has taken place according to constitutional practice.

(f) Ratification. The constitutional law of the various Member countries of the Council lays down the procedure governing the ratification of international Conventions and Agreements. As a general rule Governments are required to submit to Parliament a ratification bill. In Great Britain however a Treaty is considered adopted if it « lies on the table » for three weeks without any objection being raised thereto.

As a general rule again the instrument of ratification is signed by the Head of the State and countersigned by the Minister for Foreign Affairs.

(g) Deposit of the Instrument of Ratification. From the Council of Europe's point of view it is not ratification that counts so much as deposit of the Instrument of Ratification with the Secretary-General. The deposit is attested by a *procès-verbal* and it is the date borne by this document which determines the date of ratification and thus the date of the Convention's entry into force.

The deposit of an Instrument of Ratification is binding on the ratifying country but has no practical effect until the Convention comes into force.

(h) Entry into force. In each Convention or Agreement there is a clause specifying the number of ratifications necessary before the instrument takes effect. For the Convention on Human Rights the deposit of ten instruments of ratification was necessary : for the European Convention on Social and Medical assistance, on the other hand, two only. Thus the deposit of an instrument of ratification may have one of three consequences.

1. The necessary number of ratifications not having been attained, the depositing country will be bound only when the Convention takes effect ;
2. The deposit brings the number of ratifications to that required under the Convention. The Convention enters into effect both for the depositing country and for all countries which have previously deposited Instruments of Ratification ;
3. The Convention having already taken effect, the depositing country is bound immediately.

Thus as regards the Convention on Human Rights the deposit of Instruments of Ratification by the United Kingdom, Norway, Sweden, the German Federal Republic, the Saar, Ireland, Greece, Denmark and Iceland had no immediate consequences. When however Luxembourg deposited its Instrument of Ratification on 3rd September 1953, bringing the number to ten, all these countries became bound by the Convention. Turkey, the Netherlands and Belgium, which ratified subsequently, were bound the moment they deposited their Instruments.

Certain Conventions prescribe entry into force not on the day when the requisite number of deposits has been made but on the first day of the month following.

(i) Reservations. States which feel they cannot accept, wholly or in part, certain clauses of the Convention may make reservations at the moment either of signature or of the deposit of their Instruments of Ratification. In some cases reservations are expressly sanctioned by the Convention itself. In all cases a country which has entered a reservation on a particular clause can insist on the application of this clause by another contracting party only to the extent that itself accepts the clause in question.

(j) Optional clauses. Some Conventions contain clauses which require express acceptance by means of a declaration to that effect. Furthermore, it may be laid down that a certain number of acceptances are necessary before an optional clause comes into force as regards those contracting parties which accept it. As an example : by virtue of the European Convention on Human Rights the European Commission of Human Rights cannot be seized of a petition by private persons or non-governmental organizations unless and until six signatories have expressly recognized the Commission's competence to receive such petitions.