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Theme 2

National parliaments and the Council of Europe: together promoting democracy, human rights and the rule of law

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Introduction

National parliaments and the Council of Europe regularly pledge to “co-operate”. Few would disagree that “working together” is a good thing, but the devil is in the detail: work together *how* exactly, to what end, and with what result?

The Parliamentary Assembly of the Council of Europe (PACE) will be most parliaments’ natural partner within the Council of Europe, and the institution they know best. The Council of Europe, however, has many other bodies, each focusing on a different area, and each with its own mandate and working methods. This background paper seeks to cut through institutional complexities and spell out – briefly, in simple language, with examples where possible – some specific ways in which national parliaments and the Council of Europe can work together to promote the trio of values that all have pledged to uphold: democracy, human rights and the rule of law.

The European Convention on Human Rights – the foundation stone

The values of democracy and human rights shared by parliaments and the Council of Europe are embodied, most vividly and most immediately, in the European Convention on Human Rights. The Convention and its protocols have hitherto been regarded as the “guiding light” for the continent, a shared set of values that underpins everything else. How can parliaments ensure that Convention standards continue to be upheld, not just in their own countries and for their own citizens, but across the continent?

Getting it right in the first place – vetting draft laws for “Convention-compliance”

Some parliaments scrutinise draft laws before they are adopted to ensure they are compliant with the Convention. If done thoroughly, this is the most effective way to avoid problems later.

When things go wrong – pressing governments to abide by rulings of the Strasbourg Court

Yet no State is perfect, and all Council of Europe member countries face adverse rulings from the Strasbourg court from time to time. Parliaments can play a role – either through existing committees or through the creation of specialised panels – in pressing governments to abide by such rulings, for example by questioning ministers on the reasons for delay or scheduling debates to air the issues. On politically difficult or unpopular rulings, parliaments can help broker the political compromises needed to move forward. In

States where a deep-seated structural problem is driving repeat cases to Strasbourg – such as poor prison conditions or clogged-up courts – parliaments, working with the executive, can be the key to effectively addressing the underlying issue.

Fostering support for Convention rights – what more can parliaments do?

Parliaments may also have a role in countering waning public support for the Convention in some countries. At national level, they can “raise awareness” among decision-makers and parliamentarians – as well as in the media – about the Convention and its case-law, and dispel myths or misunderstandings. They can be conduits for human rights defenders and civil society to air concerns or influence legislators. They can follow the work of national human rights institutions. They can support reform and increased resources for the Court and its supporting machinery. More widely, they can help to generate a positive climate around human rights and reaffirm – both in political circles and in the country at large – the notion that certain fundamental freedoms should be beyond question.

The Council of Europe as a “law-factory” – the other 200-plus conventions

The Convention is the “jewel in the crown” of the Council system. But it is only one of more than 200 conventions agreed by the Organisation’s governments since 1949. It is possible, therefore, to think of the Council of Europe as a “law-factory”, offering a constantly-evolving palette of potential legislation – with parliaments as its crucial partners for enacting these new laws.

PACE can influence the convention-drafting process in three ways. Firstly, it can act as a “prime mover”, calling for the elaboration of a Council of Europe convention in a given area. Secondly, it can follow the drafting process, for instance questioning the Committee of Ministers on the state of play of negotiations or, occasionally, when its representatives are invited, as observers, to attend the meetings of drafting committees. Finally, the Assembly gives Opinions on draft conventions and can propose amendments to them.

How could national parliaments contribute more to this process? They can conduct “audits” of which Council of Europe legal instruments their country has ratified, how well they are operating and how effectively they are enforced. They can scrutinise government compliance with Council of Europe texts and react to the conclusions of the monitoring mechanisms associated with these treaties.

Constructive criticism – triggering parliamentary debates and inquiries

When functioning well, national parliaments play a vital role in holding their governments to account – but sometimes, because of political deadlock or other forms of internal resistance, it requires an “outside influence” to get the ball rolling. Credible criticism from an international body, constructively delivered, can sometimes be the “catalytic material” needed to trigger a parliamentary debate. In more serious cases, or where governments are reluctant to squarely face an issue, a parliamentary inquiry may be necessary.

Council of Europe credible and constructive criticism can come from many quarters: the Assembly itself, the Committee of Ministers, the Secretary General of the Council of Europe, Council of Europe monitoring mechanisms, the Venice Commission, the Commissioner for Human Rights, and many other bodies.

How are parliaments to react to this tide of well-meant advice? One starting-point could be improving the way it is communicated. Could the recommendations flowing from the Council of Europe’s many different bodies, insofar as they relate to one country, be made more accessible to parliamentarians, officials and researchers? Could its many messages be streamlined or even “centralised”?

The Assembly’s Monitoring Committee has already made a start on this through its new practice of conducting “periodic reviews” of the 34 member states not already subject to monitoring or post-monitoring dialogue. Each of these reports, drawn up over a four-year cycle, gathers together information from the Council of Europe’s various monitoring mechanisms to arrive at an overall evaluation of how far a member State is meeting the Organisation’s human rights and democratic standards. The remaining 13 member states are already subject to either the Assembly’s monitoring procedure or post-monitoring dialogue, which involve a deeper assessment. Importantly, parliamentarians from the country concerned –from both the majority and the opposition – are given an opportunity to challenge and discuss the Assembly’s drafts before they are finalised.

Whether marshalled together in this way or not, the Council’s assessments can provide valuable “raw material” for a national conversation. Member States are not ordered in a “league table”, but such

evaluations – quoted in parliamentary debates and reports, cited by political parties or NGOs, and picked up in the media – do enable States to gauge their relative progress (or lack of it) compared to others.

PACE investigations that kick-start probes

When fresh evidence of serious human rights violations is presented in an international forum, the pressure to react can become overwhelming.

The Assembly's "Marty reports" of 2006 and 2007, which brought to light convincing evidence of CIA torture on European soil, drove headlines worldwide and kicked off parliamentary probes in several member States. These varied widely in their effectiveness but they nevertheless helped to open the black box of "state secrecy" and made impunity for torture less likely in the future.

Other well-known examples of the Assembly's "investigative" capacity were its reports on allegations that journalists and others in Belarus were killed on the orders of high-level government officials, or that the organs of captured prisoners had been trafficked in Kosovo*. In the latter case, the Kosovo* Assembly gave its green light to the setting up of a special court to try those accused of these crimes, partly on the basis of the evidence revealed in PACE's report.

Heading off or easing conflict – encouraging parliamentarians from different sides to talk

"Jaw-jaw is better than war-war" advised Winston Churchill, nicely summing up in four words the essence of the Council of Europe. When soldiers face each other across barbed wire, with passions high and fingers on triggers, conversations between parliamentarians on each side can help to calm spirits and be a first step to "détente". Sometimes the Assembly is the only place where such a dialogue can take place.

Sometimes, long-standing conflicts require a more nuanced approach than confrontational public debate. Where the political will exists, PACE can work directly with national parliaments from nations at loggerheads. When entrenched positions preclude "official" government-to-government contacts, parliamentarians – able to act with greater independence and flexibility – can sometimes fill the gap.

Even when formal structures prove impossible, due to the refusal of one side or the other to take part, informal contacts can still play an important role. PACE provides a forum for these exchanges. On a human level, if nothing else, these contacts can play a small part in developing mutual understanding.

A window over pan-European challenges and trends

When it meets in plenary session, the Assembly is neither more nor less than 47 parliaments gathered in one room. Thanks to its composition, which must reflect the political forces elected to national parliaments, the Assembly reflects the variety of views of 820 million Europeans. The discussions that take place in the chamber enable members to identify trends and perspective challenges that go beyond the national dimension.

Taking a campaign Europe-wide – the multiplying power of one member in each parliament

Another good example of practical co-operation with parliaments is the Assembly's recent practice of promoting continent-wide campaigns via networks of parliamentarians – normally involving at least one from each parliament. Individual parliamentarians are able to mobilise their national legislatures' resources to serve the goal of the campaign, acting as its "ambassador", and adapting its message to local needs and concerns. One of the most successful of these is the "Women free from violence" Parliamentary Network, which has been a driving force in ensuring ratification of the Istanbul Convention, the Council of Europe's pioneering treaty to protect women from violence.

When election observation really matters

The legitimacy of elections is one of the cornerstones of representative democracy and the Council of Europe can play an important role in ensuring compliance with the standards set out by the Venice Commission, in partnership with the OSCE/ODIHR.

* All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Cross-party and cross-country teams of observers from the Assembly – and, in the case of local elections, from the Congress – evaluate the legal framework, the conduct of the campaign, the balance of the media coverage and the arrangements for voting, drawing on their own experience and expertise.

Their assessments provide a valuable litmus test of democratic practice on the ground. In cases where the result is tight the observers' final conclusions can have far-reaching political consequences, including triggering fresh elections.

Helping parliaments to function better

The Assembly offers several instruments to parliaments and their staff to work more effectively.

Stamping out corruption

Parliaments need to inspire public trust to do their job, a quality swiftly undermined by corruption. The Council of Europe – through its anti-corruption body GRECO and the Assembly's anti-corruption platform – has led the way, proposing measures such as transparency in party funding, codes of conduct for MPs, and creating the space to exchange good practice.

Enabling parliamentary staff to expand their horizons

Staff of a parliament serve the duly elected parliamentarians and make the wheels of democracy turn day-by-day. The Assembly holds regular seminars for the staff of national parliaments on key topics, run by its Parliamentary Projects Support Division. These cover, for example, knowledge of the European Convention on Human Rights, or of Council of Europe mechanisms and standards, as well as more technical questions of procedure and organisation.

Staff return to their home parliaments with enhanced policy knowledge, new tools, ideas and contacts which they can feed into speeches, debates and legislation. They are introduced to a wider perspective, as well as fresh working methods and the "good practice" of their colleagues in other parliaments.

A widening pool of parliamentary practice

Together with the European Parliament, the Assembly has also been instrumental in creating a forum for information exchange between parliaments, the European Centre for Parliamentary Research and Documentation (ECPRD). Since 1977, any member parliament can put a question – ranging from the technical to the political – to all the others. The responses are collated and shared among the members, generating a pool of invaluable knowledge about parliamentary practice which all can draw on.

Optimising interaction between PACE and national parliaments

This paper has described a number of ways in which the Assembly can enrich the work of national parliaments. However, for this to happen effectively, two conditions are necessary: that what is done in Strasbourg finds an echo at national level and that the Assembly and national parliaments have a two-way interaction.

From Strasbourg to national parliaments

The Assembly communicates about its activities through press releases, the website, social media and documents. But members of the Assembly are the best placed to ensure that Council of Europe work is known at home. Most parliaments publicise the Assembly's work by drawing up a progress report of the delegation or a report on the Assembly's activities, either annually or after each part-session. In some parliaments, information is published and made available to the public on the parliament's website, or through social media and newsletters. Some delegations disseminate the texts adopted by the Assembly by transmitting the resolutions to the competent parliamentary committees, or organising a presentation or communication by members of the delegation in the competent committees. Very few parliaments organise a debate in plenary on the activities of the Assembly and the Council of Europe.

For this process to have a real impact, it cannot be a mere transmission of information but must lead to a substantive discussion. Here there is still a long way to go: members of the Assembly could make better use of the opportunity to put questions to their governments in order to draw their attention to the Assembly's proposals or decisions. There are, however, very good examples of how proposals launched by the

Assembly have inspired parliamentary initiatives at national level, for instance the creation of a commission to study the phenomena of xenophobia, hate and intolerance, set up by the President of the Italian Chamber of Deputies, Ms Boldrini.

Better reflecting the interests and concerns of national parliaments in PACE's work

Also the Assembly has a long way to go to improve its awareness of the interests and needs of national parliaments. Improved interaction would help it tailor its priorities and direct its action in such a way as to ensure European-level debates on issues helpful to national legislators in their day-to-day work.

Possible ways to achieve this result include reinforcing the tailor-made and demand-driven character of seminars for national parliamentarians and staff of national parliaments; promoting direct exchanges between Assembly committees and their counterparts in the national parliaments; inviting relevant national parliamentary committees to the meetings of Assembly committees taking place in a given member State; and organising meetings with the participation of the Chairpersons of national parliamentary committees on a given topic.