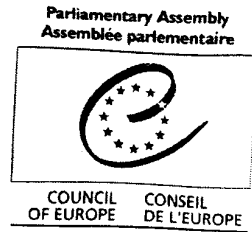


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REPORT

Sixteenth sitting

Friday 29 April 2005 at 10 a.m.

In this report:

1. Speeches in English are reported in full.
2. Speeches in other languages are summarised.
3. Speeches in German and Italian are reproduced in full in a separate document.
4. Corrections should be handed in at Room 1059A not later than 24 hours after the report has been circulated.

The contents page for this sitting is given at the end of the verbatim report.

Mr Schreiner, Vice-President of the Assembly, took the Chair at 10.05 a.m.

THE PRESIDENT (Translation). – The sitting is open.

1. Adoption of the minutes

THE PRESIDENT (Translation). – The minutes of proceedings of the twelfth, thirteenth, fourteenth and fifteenth sittings have been distributed.

Are these minutes agreed to?

The minutes are agreed to.

2. References to committees

THE PRESIDENT (Translation). – Before we start the first debate, I must inform the Assembly that, at its meeting this morning, the Bureau proposed a number of references to committees. Details of the references can be found in a document which is available in the document centre.

These references are subject to ratification by the Assembly under Rule 24.2 of the Rules of Procedure.

Does the Assembly agree these references?

The references are agreed to.

3. Written declaration

THE PRESIDENT (Translation). – In accordance with Rule 53 of the Rules of Procedure a written declaration, No. 364, on respect for the rights of the Timok Romanians (Eastern Serbia), Document 10533, which has been signed by twenty-three members, has been printed.

Any Representative or Substitute may add his signature to this written declaration in the Table Office, Room 1083. If any names are added, the declaration will be distributed again two weeks after the end of the part-session, with all the accumulated signatures.

4. Referendums

THE PRESIDENT (Translation). – The first item of business this morning is the debate on the report, "Referendums: towards good practices in Europe", presented by Mr Elo on behalf of the Political Affairs Committee, Document 10498.

The list of speakers closed at 5.30 p.m. yesterday. Fourteen names are on the list, and one amendment has been tabled with two sub-amendments.

I call Mr Elo, rapporteur. He has eight minutes.

Mr ELO (*Finland*). – When I agreed to be rapporteur for the report on "Referendums: towards good practices in Europe", I took up a difficult task. No responsible politician or citizen could ever say, "I am against democracy," but many can say, "I am against referenda." Referenda cause division. They have supporters and opponents and it is difficult to find a compromise between those polarised positions.

Whatever we think of referenda, they exist. Not only that, but they are held very often. Since 1960, there have been no fewer than 250 national referenda in the forty-six member states of the Council of Europe, excluding Switzerland and Liechtenstein. Since 1990, the number has almost doubled in western Europe and it has increased by a factor of seven in eastern Europe.

The upward trend will continue in the next two years. The national referenda on the ratification of the EU Constitution may be the largest European popular vote of all time – 250 million people in at least ten countries will be asked to express their agreement or disagreement with the most ambitious project of European integration conceived so far. The political weight of this popular vote will be unprecedented because a negative stand by the electorate of one country may affect the ratification of the constitution in all the others.

As I have already said, referenda have supporters and opponents. I shall not reveal to which group I belong because my main point is that it does not matter whether we support or oppose referenda;

what matters is that we ensure that they are used to improve democracy. Referenda can play a role in that by reinforcing the democratic legitimacy of political decisions and enhancing the accountability of representative institutions. They can also increase the openness and transparency of decision making and stimulate the direct involvement of the electorate in the political process.

However, we must be vigilant so that referenda are not misused as an alternative to parliamentary democracy and other means of undermining the legitimacy and primacy of parliaments as legislative bodies. That is why the Council of Europe, in its role as the guardian of democracy, should take a lead in codifying rules on holding referenda and promoting good practice. It should rely on the expertise of the Venice Commission as well as its previous work on elaborating guidelines for member states. It should also collect and disseminate examples of good practice in referenda and, when necessary, set up assistance and co-operation programmes to aid member states to implement good practice in referenda.

I want to draw attention to one fundamental issue among all the others that the Council of Europe should address which is vital for the functioning of democracy. Citizens must be able to form their own opinions. To do so, they should have access to the fullest information. They should be free to discuss ideas and form associations to promote them. Direct democracy requires the recognition of freedom of opinion, expression and association and the existence of a pluralist media.

The role of the Council of Europe should not be conservative. We should modernise democracy in response to the modernisation of our society. One of the main challenges we face is granting voting rights, at least in local elections and referenda, to immigrants who are legally resident in Council of Europe member states. Representative and direct democracy is flawed unless we have the political will to let legal residents participate fully in the political life of the country in which they live.

I call on the members of the Assembly to vote in favour of the draft recommendation. Whether you are in favour of or against referenda, you are certainly in favour of enhancing democracy. That is what the text wants to achieve.

THE PRESIDENT (Translation). – Thank you. The chairperson of the committee is not present and we will therefore progress to the list of speakers. Ms Papadimitriou wishes to speak later, so I call Mr Čekuolis to speak on behalf of the Liberal, Democratic and Reformers' Group.

Mr ČEKUOLIS (*Lithuania*). – First, I thank our rapporteur, Mr Elo, for doing such a good job in preparing the report. The Liberal, Democratic and Reformers' Group fully accepts the rapporteur's position that referenda, despite their positive use in some countries, cannot be used as an alternative to parliamentary democracy and should not be misused to undermine the primacy of parliaments as legislative bodies.

In general, the Liberal, Democratic and Reformers' Group takes a positive view of referenda, but we want to stress one important and evident but sometimes forgotten factor. Referenda can be used only in a fully democratic environment. The criteria must include free media, active participation of non-governmental organisations and citizens in a public debate, political tolerance and free and fair voting. Those are necessary preconditions for referenda. Otherwise, they can be used by authoritarian regimes simply to justify their policies. The best example of such a negative development is Belarus – the only European country that is not a member of the Council of Europe – where referenda are common practice, but where, as we know well, opponents of the regime have no say in the press or through other means. Referenda are used to legitimise some unconstitutional and undemocratic steps taken by the regime. The environment and the atmosphere in which referenda take place are therefore of major importance from the point of view of the Liberal, Democratic and Reformers' Group.

For that reason, the guidelines on referenda which our rapporteur proposed are important. He placed particular emphasis on the necessity for rules of participation for non-citizens. We would like to emphasise the need for clear and transparent mechanisms. The Council of Europe should not only draw up the guidelines but establish a strict monitoring mechanism to control their implementation in practice in the national legislation of the countries that wish to hold referenda. Probably such a mission could be carried out by either the Political Affairs Committee or the Monitoring Committee.

Our rapporteur mentioned two major proposals – the extension of the right to vote in local referenda to immigrants and also the possibility of holding referenda at all levels, be it local, regional or national. The Liberal, Democratic and Reformers' Group supports those proposals and we would also like a clear distinction between advisory referenda and decision-making referenda. We hope that when the guidelines are drawn up, our proposal will be taken into account.

Again, I thank the rapporteur for a careful and very well done job.

THE PRESIDENT. – Thank you. I call Mr Einarsson to speak on behalf of the Group of the Unified European Left.

Mr EINARSSON (*Sweden*). – Referenda have become an integral part of the democratic political system today, even if they are not universally used, and there is a great variety of referenda institutions. The rapporteur is therefore perfectly right to call on the Council of Europe to codify rules on holding referenda and promote models of good practice to make referenda a tool to strengthen political democracy and popular sovereignty.

There are, as the rapporteur said, many different views on referenda. Some see them as a threat to representative democracy. Others see them as a convenient instrument to solve political stalemate or to avoid party splits. And some see referenda as a more genuine expression of democracy than indirect representative democracy, which is imperfect.

As a left-wing, red-green, socialist and feminist, I am expected to be an enthusiastic advocate of direct democracy and referenda – well, I am not. From a genuinely democratic standpoint of popular sovereignty and political equality, one can argue against the excessive use of referenda. That does not mean that I am against referenda as such. On the contrary, for some types of political decisions referenda are not just useful, but indispensable, and I shall return to that point.

However, we must admit that there are, or at least can be, democratic problems with referenda, and I shall discuss two of them. The first problem is accountability. If the people make a decision, no one else is responsible for it. That would not be a big problem, if it did not affect the accountability of elected representatives. No political issue is isolated: every decision in a referendum has consequences for future decisions made by parliamentarians and governments, who are accountable for those decisions. If the people decide to lower taxes and increase spending in a referendum, would it then be reasonable to hold the parliament responsible for exceeding its budget? That example is extreme, but referenda always undermine accountability to some degree.

The second problem concerns the political agenda. Democracy rests on political equality when it comes not only to taking a decision – one person; one vote – but to deciding the political agenda. A popular initiative might give politically and economically resourceful groups in society an unequal influence over the political agenda that makes it less probable that the will of the people guides the political process.

Nevertheless, there are situations in which referenda are indispensable. As parliamentarians, we have borrowed our legislative and other political powers from our citizens. On election day, our citizens lend us political powers that belong to them. At the next election, the people reclaim those powers, evaluate how we have used them and redistribute them, perhaps to other parties and politicians. What if parliamentarians give less power back to the people than the amount that they originally received? What if we parliamentarians were to embezzle some of that power and hand it over to someone else – for example, the European Union?

The people entrust us, as parliamentarians, with power for a limited period, but we do not have the right to give it away without consulting its owners, the people. That is why the Treaty on the European Constitution should not be ratified by parliaments without the permission of the people in a referendum. I regret that the majority in my own parliament, the Swedish Riksdag, has rejected all proposals on holding a referendum, but there is still time.

THE PRESIDENT (Translation). – Thank you, Mr Einarsson. I call Ms Papadimitriou, on behalf of the Group of the European People's Party.

Ms PAPANIMITRIOU (*Greece*). – With the escalating European public debate about the new Constitutional Treaty, the political question of direct or representative votes is on the agenda of all European political bodies.

I congratulate the Council of Europe on sending out its strong message on referenda at this moment of public insecurity and Mr Elo on his truly excellent report. Professor Auer's research paper is attached to the report, and it provides the technocratic background for our political calculations.

In the past year, politicians have faced the great challenge of the ear-piercing popular demand for a balance between direct and representative democracy. We all agree with our Parliamentary Assembly's conviction that referenda should not be considered as an alternative to parliamentary decision-making. They should be used wisely to avoid any misuse or undermining of the legitimacy of our parliaments, which are our democracies' legislative bodies. Complementarity is the key word, but it is not a panacea.

In the mature democracies of northern Europe – and perhaps in southern Europe – the public are accustomed to exert their right of direct decision-making on crucial and precisely defined questions. In some countries, things are different. Some countries do not even have constitutional provisions to hold referenda. The problem is often that direct democratic votes are used to obtain internal political gains. We all know our duty to establish a firm framework for reliable referenda, which involves education and immediate access for all citizens to information and knowledge. In some countries, the establishment of such a framework involves access to reliable media not only to provide objective information, but to ensure that all politicians, citizens and parties have their right to express their points of view and to present their ideas.

We are all in a dilemma on the Constitutional Treaty. In Greece, we have examined European polls carefully. How does one choose between a referendum and a parliamentary vote in a country in which 82% of people are in favour of the treaty? In our most recent European elections, however, turnout was only 17%. It appears that those 17% have a variable knowledge of European issues, and it is our role to be teachers.

We must all decide whether to ratify the treaty. Many countries have decided to take a parliamentary decision, which, I am happy to say, is what has happened in my country, Greece.

THE PRESIDENT (Translation). – Thank you, Ms Papadimitriou. I call Mr Gross.

Mr GROSS (*Switzerland*) thanked the rapporteur for his excellent report. It was important to set in place a clear design for the procedure involved in carrying out referendums. It was also necessary to change the way in which the date of referendums was set. Currently politicians decided dates; potentially that could lead to a manipulation of the vote. Citizens themselves should decide when they wanted to hold a referendum. It was also important to abolish quorums, because those who did not want to see change could refuse to participate, thereby affecting those who did seek change and so undermine the spirit of democracy. Above all it was crucial that the people themselves held power. A successful government would encourage the participation of citizens in political decisions because that would lead to integration and bring together diverse groups of people in a common goal. It was in the interests of everyone that the public should be both involved and informed.

He did not believe that the media regularly provided false information, although it was undeniably true that standards in the media varied. The media would of course be crucial in informing citizens. It was also important that equal budgetary resources were given to both sides to ensure a fair, balanced campaign. He believed people became frustrated when they felt they were being excluded from the political decision-making process. Citizens should always take decisions with their parliament and referendums could help to make this happen. It was very important that a good framework was put in place to regulate the process of holding a referendum.

THE PRESIDENT (Translation). – Thank you, Mr Gross. I call Mr Šami.

Mr ŠAMI (*Serbia and Montenegro*) was glad that the Assembly was discussing this important issue. He expressed his thanks to the rapporteur for his informative report. Serbia and Montenegro had been an undemocratic country in the past and referendums had been manipulated to produce the desired results. The organisation of a referendum was crucial to its success or otherwise. Everything should be regulated at every stage of the process. It was important to note that referendums in democratic countries might be used to legitimise undemocratic policies. However standards must be set to ensure that the referendum process was fair and democratic. To this end a referendum should be called on a short question which did not contain any additions or ambiguity and which, in its wording, did not seek to manipulate the voter. The media should be regulated and the behaviour expected of them defined. It was crucial that the media had an impartial stance and gave an equal share of coverage to both sides. A referendum should be valid if more than 50% of citizens voted and a suitable qualified majority must be defined. He suggested that this majority should be two thirds of those who voted. He hoped that answers to the problems surrounding the referendum process could be found.

THE PRESIDENT (Translation). – Thank you, Mr Šami. I call Ms Radulović-Šćepanović.

Ms RADULOVIĆ-ŠĆEPANOVIĆ (*Serbia and Montenegro*). – Esteemed colleagues, I come from Montenegro, which is the state where a lot of work is under way to achieve the standards that represent the conditions for accession to the European Union. Still, before joining the EU, we have to solve some important issues. One, which I believe is the most important for a country, is that of status in respect of government.

The citizens of Montenegro, like all citizens in the world, have the individual and collective right to choose whether they would like to live in a union with someone or whether they want a sovereign, independent Montenegro. Montenegro is preparing to hold its referendum in February 2006. We adopted a new referendum law in 2001. The Organization for Security and Co-operation in Europe participated in developing this law and evaluated its compliance with European standards. Its provisions are much stricter than is the case in other countries. It is a requirement that a simple majority – 50% plus one – of the registered voters take part in the referendum and that the decision is passed with 50% plus one of the total number of those who voted.

The answer to the question whether a resident or citizen should vote is absolutely clear and is given in the Constitution of Montenegro, which says that a resident of Montenegro who has turned 18 has the right to vote and to be voted for – that is, a resident, not a citizen. That is also the international practice. Requirements that demand the registering of all citizens' names are contrary to the position of the Organization for Security and Co-operation in Europe. In its evaluation of law on referenda, the OSCE underscored the fact that the participation of citizens born in Montenegro, but who reside permanently in Serbia, is not recommended, as they would have a double right to vote within the common state.

Creating a voting list following the Montenegrin diaspora is a process that requires diligence. It might never be complete, thus leading to the possibility that the outcome of the referendum would be contested. Does that mean that the citizens of Montenegro belong to the only nation in the world that does not have the right to choose its own destiny, which is conditional on the choices of people who do not live in Montenegro?

The efforts that have gone into drafting the texts are highly appreciated, and help to support good practice in European referendums. I am convinced that the international community, including all the European institutions and the Council of Europe, will defend the notion that human rights should apply to all people, including us Montenegrins.

THE PRESIDENT (Translation). – Thank you, Ms Radulović-Šćepanović. I call Mr Kocharyan.

Mr KOCHARYAN (*Armenia*). – I congratulate Mr Elo, the rapporteur, on his excellent report. The referendum is a means of achieving direct and representative democracy. It is an important mechanism that enables the people to exercise power.

I agree with previous speakers that referenda only serve their objective in countries where the results of voting are not falsified. In authoritarian countries, referenda can be used for anti-democratic purposes such as imposing an anti-democratic constitution on the people, as happened in Armenia in 1995. A referendum can also be used to overturn the prohibition of a new term of office for authoritarian leaders. Recently, that tactic was deployed by Lukashenko in Belarus. The general guidelines on referenda that are being drafted by the Venice Commission should state clearly that such tactics are not acceptable among Council of Europe member countries. The right to hold a referendum should not simply be a provision in a country's constitution. Both its constitution and its laws should provide concrete mechanisms for people to hold referenda.

The resolution that states that the electorate should be adequately informed about matters that will be decided by referendum is of the utmost importance. If an issue that the authorities decide should be put to a referendum has a number of different solutions, voters should be provided with the opportunity to choose one of those solutions. The authorities should not try to predetermine the most beneficial solution for them by making it the only option on the referendum. Before the constitutional referendum in Armenia in 2003, two drafts were submitted to parliament, one by the President and the other by the opposition. Only the draft proposed by the President was submitted to the referendum, but following the vote it was not adopted.

The draft resolution deserves to be approved by the Assembly. Its approaches are important for established democracies as well as for member states that are not yet democratic but are on the way to democratisation and European integration. The people of Armenia are striving for democracy and should have the right to express their will, but not via falsified elections and referenda.

THE PRESIDENT (Translation). – Thank you, Mr Kocharyan. I call Mr Bojović.

Mr BOJOVIĆ (*Serbia and Montenegro*) welcomed Mr Elo's report and said that it made a very significant contribution to the debate. By adopting proper standards for referendums in the countries of the Council of Europe we would strengthen the democratic process. Turning to Serbia and Montenegro, he felt that recognition by the European Union would lead to greater integration of his country in western Europe. That was essential for the stabilisation of the whole region. After the Dayton Agreement the

situation had become much more settled in Serbia and Montenegro. Over 65% of the population had declared themselves as Serbian language speakers. It was important that arrangements for referendums should be harmonised throughout Europe. He supported the right of legal immigrants to vote at the local level. In constitutional referendums a two thirds majority was essential.

THE PRESIDENT (Translation). – Thank you, Mr Bojović. I call Mr Torosyan.

Mr TOROSYAN (*Armenia*) congratulated Mr Elo on his excellent report. He was right to draw attention to the increase in number of referendums in Europe. It was right that non-citizens who had lived in a country for more than five years should participate in local referendums and this had been guaranteed in Armenia since 2002. Referendums should be used to give greater weight to democratic decision making and the Council of Europe could do much by establishing common principles. There was a role for citizens' initiatives and participation at the local level. Many had voted in Nagorno-Karabakh in 1994 and a majority was in favour of independence. There was a case for having another referendum along the lines recommended by the Council of Europe to confirm the earlier decision.

THE PRESIDENT (Translation). – Thank you, Mr Torosyan. I call Mr Žižić.

Mr ŽIŽIĆ (*Serbia and Montenegro*) gave his support to the use of referendums in the member states of the Council of Europe. This important report set out the principles that should be followed. There were occasions in the life of a nation when the national representatives could not necessarily come to a decision and therefore a referendum of the people was appropriate. In his area of Montenegro the government had sought a referendum to change the constitution of Serbia and Montenegro and bring about greater stability. It was extremely helpful to have standards to follow when holding a referendum in transitional circumstances. There were a number of Montenegrins living in Serbia and they must also be allowed to express their views. He felt that a qualified rather than a simple majority should be secured. He welcomed the report and hoped that matters would be resolved in Montenegro as soon as possible.

THE PRESIDENT (Translation). – Thank you, Mr Žižić. I call Mr Kalezić.

Mr KALEZIĆ (*Serbia and Montenegro*) said that Montenegro would be holding a referendum in the first half of 2006 following standards agreed with the European Union. Mr Elo's report had shown the extent to which arrangements varied in the various Council of Europe member states and how important it was to establish good practice. Montenegro was one of the states which, with Serbia, remained within the former Yugoslavia. There was a movement for the independence of Montenegro and in 2001 a new law on referendums in the area had been adopted. Montenegro welcomed the Council of Europe's support for common standards for referendums. He hoped that Montenegrins in Serbia would be able to vote in any referendums held in Montenegro, but it was not right that they should vote in both areas.

THE PRESIDENT (Translation). – Thank you, Mr Kalezić. I call Mr Severin.

Mr SEVERIN (*Romania*). – Not for the first time, Mr Elo is a rapporteur on a very special and important topic and has presented us with an excellent report. I commend him for the excellent job that he has done.

Many views that I share have already been expressed. The referendum is indeed just one democratic instrument among others; nobody thinks that it is all that there is to democracy. Referenda should not be seen as procedures that are opposed to parliamentary representative democracy – they are a complementary instrument, not an alternative. I agree with my colleagues that it is important that referenda cannot be considered valid within an inappropriate democratic environment. Without any ideological connotation, one needs a liberal democracy before being able to take the approach of a referendum.

There is another problem with referenda – that of the distinction between representativity and representation. One can be a representative without being truly representative – in other words, one can speak on behalf of others although those others do not represent a genuine group that is asked to make an important decision. The word "self-determination" is there in the background. We should further consider the dichotomy between representativity and representation, which presents certain difficulties. Should we consider referenda as the best way towards self-determination? Theoretically, perhaps yes; practically, perhaps no.

I should like to make two more points. First, democracy is about decision-making, but it is also about power-sharing. It is important to look to the possibilities for a fair debate, a fair negotiation and a fair procedure in order to share power in the best possible way so as to leave democracy to work in favour of a constructive approach, not as a recipe for divorces or splits.

Secondly, democracy is about participation, and we have to look to referenda as a way of increasing participation at a time when people show a certain apathy vis-à-vis their participation in political life. There cannot be real democracy without "demos", and there is no "demos" without real participation. Democracy without the participation of the people is a virtual democracy, not a real democracy. We should therefore look towards ways to increase participation in order to consolidate the democratic mechanism, and the referendum is one of them.

But democracy is not only about participation – it is about cohabitation. We must not only think about the rights that some would like to promote by referenda but about how we can ensure that people live together in a harmonious and peaceful way. Whenever referenda are a recipe for separation and not at the same time a way for people to express a certain opinion or choice, we should be extremely cautious in using them. That is the way in which the report should be read; certainly, it is the way in which I read it.

THE PRESIDENT (Translation). – Thank you, Mr Severin. I call Mr Brajović.

Mr BRAJOVIĆ (*Serbia and Montenegro*) acknowledged the efforts of the rapporteur and committee which deserved the support and respect of the Assembly. The present debate had aroused significant interest in Montenegro. The Belgrade Agreement stated that Montenegro would be entitled to organise a referendum on independence in the first half of 2006. This was in the framework of recognised democratic standards and with the European Union acting as observer. The European peoples had no good common standards for referendums and the practice varied between different states. Montenegro remained in Yugoslavia after a referendum in 1992 which was held within seven days of its announcement, and was held without the supervision of the Council of Europe.

There was a growing wish for independence in Montenegro. A new law on referendums had been adopted which contained strict democratic conditions. Montenegrins who had emigrated to Serbia would be granted the right to vote in Montenegro which was not a democratic standard. The Council of Europe was the body best placed to create standards for referendums in Europe. He understood the distinctions between direct and representative democracy. He was behind the amendment which had been tabled. Referendums could be a means to reinforce democratic legitimacy. Nevertheless, it was important that referendums should be seen not as alternatives to democracy but complementary to it. Montenegro was faced with organising a referendum in the very near future. He welcomed the work of standards which should be the same for everyone.

THE PRESIDENT (Translation). – Thank you, Mr Brajović. That concludes the list of speakers. I call Mr Elo, rapporteur, to reply.

Mr ELO (*Finland*). – I thank all those who participated in the debate. Our discussion has been lively, interesting and many sided. All the speakers showed a fundamentally positive attitude towards holding referenda. However, many mentioned the risks associated with referenda. Mr Čekuolis, who spoke first in the debate, pointed to the risk of misusing referenda and he cited Belarus as an example. Perhaps Belarus is the worst example of flagrant misuse of referenda. There are genuine risks of people in power misusing that power when organising referenda. Mr Einarsson also pointed to the dangers and I totally agree with his comments.

Ms Papadimitriou spoke about the balance between direct and indirect democracy. One of the most difficult tasks in deciding whether to hold a referendum is taking account of that balance. However, as I said in my introductory remarks, referenda should not be viewed as an alternative to parliamentary democracy.

Mr Gross provided a good analysis of the arguments for holding referenda. He comes from a country where referenda are part of the political system. That country is a good example of the use of referenda and of giving citizens the possibility of power-sharing. Mr Severin also referred to that.

It was interesting to hear so many speakers from Serbia and Montenegro. I totally understand their interest because, as they all said, a referendum will probably be held next February on independence. I have spoken to journalists from Serbia and Montenegro in the past and it is interesting to note their interest in that referendum. They are right to show such interest. I wish you luck with your referendum and hope that you will achieve a good result.

Again, I thank all the participants in the debate.

THE PRESIDENT (Translation). – Thank you, Mr Elo. I call Mr Toshev.

Mr TOSHEV (*Bulgaria*). – First, I commend the work of our distinguished rapporteur, Mr Elo, who is one of the most experienced members of the Political Affairs Committee. I thank him for dealing with such an important issue.

I express my gratitude to all those who took part in the debate, especially Mr Kocharyan, who said that the citizen has no direct means of participation other than referenda. Mr Gross made an important distinction between the referendum and the plebiscite.

I pay tribute to Ms Papadimitriou and thank her for her presence today. For Eastern Orthodox Christians, today is Good Friday, so it is not easy for her to be in the Chamber. She said that referenda cannot be considered as alternatives to parliamentary democracy but should complement it.

Mr Severin pointed to the importance of participation. He referred to antiquity in his use of the word “demos”. I remind you all that, in ancient times, in the town of Miletus, it was decided that the number of citizens should not exceed 5 000 because otherwise participation would be difficult. That is why Miletus produced so many communists.

The concept of a state of citizens could be strengthened through the use of referenda but they should be well prepared and not misused. Once again, I thank our rapporteur, Mr Elo.

THE PRESIDENT (Translation). – Thank you, Mr Toshev.

The debate is closed.

The Political Affairs Committee has presented a draft recommendation in Document 10498 to which one amendment has been tabled with two sub-amendments.

I remind you that speeches on amendments are limited to one minute.

We come to Amendment No. 1, tabled by MM Luc Van Den Brande, Lluís Maria De Puig, Ms Hanne Severinsen, MM Göran Lindblad, Lachezar Toshev and Bernard Schreiner, which is, in the draft recommendation, after paragraph 1, insert the following paragraph:

“The Parliamentary Assembly considers referendums as one of the instruments enabling citizens to participate in the political decision-making process and recognises the essential contribution of organised civil society in the framework of participative democracy.”

I call Mr Toshev to support the amendment.

Mr TOSHEV (*Bulgaria*). – The amendment does not substantially change the report or the draft recommendation. It is a very reasonable amendment.

THE PRESIDENT (Translation). – Mr Elo has proposed two sub-amendments which can be considered together but will be subject to two votes. Sub-amendment No. 1 is tabled by Mr Elo, on behalf of the Political Affairs Committee. It is in Amendment No. 1, after the words “decision-making process”, replace the word “and” with the following words:

“; it also”.

Sub-amendment No. 2 is tabled by Mr Elo, on behalf of the Political Affairs Committee. It is in amendment 1, replace the word “participative” with the following word:

“participatory”.

I call Mr Elo to support the oral sub-amendments.

Mr ELO (*Finland*). – If Sub-amendment No. 1 is adopted, the words “decision-making process” in Amendment No. 1 will be followed by “; it also recognises”. Sub-amendment No. 2 is linguistic and simply replaces the word “participative” with “participatory”.

THE PRESIDENT (Translation). – Does anyone wish to speak against oral Sub-amendment No. 1?

That is not the case.

What is the opinion of the committee?

Mr TOSHEV (*Bulgaria*). – The committee is in favour.

THE PRESIDENT (Translation). – The vote is open.

Oral Sub-amendment No. 1 is adopted.

Does anyone wish to speak against oral Sub-amendment No. 2?

That is not the case.

What is the opinion of the committee?

Mr TOSHEV (*Bulgaria*). – The committee is in favour.

THE PRESIDENT (Translation). – The vote is open.

Oral Sub-amendment No. 2 is adopted.

Does anyone wish to speak against the amendment, as amended?

That is not the case.

What is the opinion of the committee?

Mr TOSHEV (*Bulgaria*). – The committee is in favour.

THE PRESIDENT (Translation). – The vote is open.

Amendment No. 1, as amended, is adopted.

We will now proceed to vote on the whole of the draft recommendation contained in Doc. 10498, as amended.

The vote is open.

The draft recommendation in Doc. 10498, as amended, is adopted.

(Ms Papadimitriou, Vice-President of the Assembly, took the Chair in place of Mr Schreiner.)

5. Sea pollution

THE PRESIDENT. – The last item of business this morning is the debate on the report on sea pollution presented by Mr Lengagne on behalf of the Committee on the Environment, Agriculture and Local and Regional Affairs, Document 10485.

The list of speakers closed at 5.30 p.m. yesterday. Eight names are on the list, and two amendments have been tabled.

I call Mr Lengagne, rapporteur.

Mr LENGAGNE (*France*) said that the title of the report itself indicated the vast scope of the topic. The sea was essential to all life and was threatened daily in its internal equilibrium by various forms of pollution. There were two ways in which to think about that problem. Firstly, there was pollution that stemmed from the land, a form of indirect pollution, occurring when waste was dumped in rivers and ended up in the sea. He did not wish to discuss that particular form of pollution in detail but said that many countries were aware of the problem and were taking steps to resolve it. Secondly, there was the problem of ship-source pollution which often made the headlines. Rightly, many countries were very concerned about that too. The problem would seem to be getting worse as ship traffic was increasing, particularly in the Adriatic Sea. Legislation aimed at resolving the problems caused by this form of pollution could not keep up with increases in maritime traffic.

There were two ways in which to address the issue. Firstly, when an accident occurred the situation clearly had to be dealt with. It was up to individual countries to bear the brunt of the work necessary to clean up after such accidents. Countries were often treated unfairly when it came to compensation. For example the *Prestige* accident had resulted in €1 billion worth of damage for which the communities involved had not received full compensation to date. There was also the problem of sanctions. Although some incidents of pollution were accidental, 80 % of such cases could be attributed to

waste discharge and suitable sanctions must be provided to deal with those cases. The nature of the sanctions must be decided to ensure that the responsible parties were penalised appropriately. Too often the responsible parties escaped sanctions, which were instead imposed on scapegoats. For example, the captain of the *Prestige* had been blamed for that accident and, although he did not want to criticise the Spanish authorities, he felt that this was wrong.

It was clear that sanctions needed to be imposed on the country responsible for a ship that polluted, the so called "flag state", that is, the country whose flag was on the ship. This country should be held liable for accidents from a civil point of view and should be made to compensate victims accordingly.

It was also important to ensure that ship crews received proper and full training as 80% of accidents were caused by human failings. Such accidents could be likened to road accidents. In France improved sanctions had recently been imposed on drivers who took to the wheel under the influence and this had led to a drop in the number of road accidents.

There was also a political element to ship source pollution. He cited again the case of the *Prestige* accident which partly stemmed from the recommendations of the European Capital Commission not being adopted. Sometimes drastic action needed to be taken by countries to deal with "rogue" ships. In 1985 France had sunk a ship that was on fire in international waters and posed a threat. Such action was necessary and appropriate.

It was important that the European Union should take on a pioneering role in finding solutions to the problem of sea pollution, anticipating in some instances the work still to be undertaken by the International Maritime Organisation. The report had made reference to European Union initiatives in that area. The one issue where international co-operation was essential was in combating the problems involved in international shipping. Members of the Assembly should be active in encouraging their countries to ratify the relevant conventions, as many had not done so to date. Human beings were entitled to live in a clean and safe environment. It was necessary to preserve the seas as a space of freedom and to prevent pollution from interfering with the most basic source of life.

THE PRESIDENT. – Thank you, Mr Lengagne. I call Mr Dupraz who will speak on behalf of the Liberal, Democratic and Reformers' Group.

Mr DUPRAZ (*Switzerland*) said that it may seem that he was a strange choice of speaker because Switzerland had no coast and did not engage in shipping activities to any great extent. But the issue of sea pollution was a problem for everybody, as water, along with air and soil, was essential to life and to maintaining the equilibrium of our planet. It was scandalous that the environment was not being respected. The question arose about what sort of a world would be left to subsequent generations. Politicians must not allow the needs of global trade to triumph over the needs of the earth. The sea was a free, natural resource that had always been important for communications and trade. Excessive and unsafe shipping should not threaten those who depend on the sea for their livelihood. There should never again be an accident like the one involving the *Prestige*.

The prevalence of oil discharges and ballast flushing must be combated. Penalties for such practices should be severe and dissuasive. Less scrupulous countries which sent unsafe vessels into the water should bear the consequences of their actions. Too often the victims of pollution were not thought of and after complicated legal procedures the compensation they received was inadequate. Member countries should be encouraged to be cautious and responsible.

The Assembly should be grateful to Mr Lengagne, the rapporteur, for his exemplary report and its excellent resolution. On behalf of the LDR party he invited the Assembly to accept the resolution wholeheartedly in the interests of the future of all.

THE PRESIDENT. – Thank you, Mr Dupraz. I call Mr Mirzazada who will speak on behalf of the European Democratic Group.

Mr MIRZAZADA (*Azerbaijan*) said that his country bordered the Caspian Sea and was therefore affected by the same problems as faced other maritime nations. All were affected by oil pollution and this had been ignored in the past and must be tackled much more effectively now. This was not the last generation to need clean seas. Our children and grandchildren would expect a safe environment and we could not get to the situation where the next generation asked, "What is a clean sea?" It was essential to reduce the exploitation of the sea. It was not possible to go on extracting material without thinking of the consequences. We should limit the use we make of the sea's resources. International organisations had a role to play in enforcing the existing rules and this report was an important contribution to the debate.

THE PRESIDENT. – Thank you, Mr Mirzazada. I call Mr Schreiner on behalf of the Group of the European People's Party.

Mr SCHREINER (*France*) congratulated Mr Lengagne on his report. Greater strengthening of the rules had led to a drop in the number of maritime accidents, but there were the two recent examples involving the *Erika* and the *Prestige*. The French Parliament had set up an inquiry after the *Prestige* disaster. So much depended on whether the arrangements were bilateral or at the European Union or international. He welcomed the passing of the United States Oil Pollution Act. Wider protection was now necessary within the EU, but it was important to prevent the eviction effect whereby the risk could be transferred to other countries where the coasts were most vulnerable. There had been a number of initiatives such as the London Convention of 1954 and the Montego Bay Convention of 1982, but the picture was a patchy one and more needed to be done. The Montego Bay Convention had, however, involved port, flag and coastal states. One hundred and sixty-two countries now belonged to the International Maritime Organisation and a plan had recently been adopted to phase out the use of single-hull tankers. Neither the IMO nor its member states could carry out inquiries or apply sanctions to carriers who broke the law. The French Parliament's report on the *Prestige* disaster was published in July 2003 and had shown how liability had not been accepted by those responsible. The Council of Europe must do it all it could to prevent such accidents and protect those affected in the future. He very much welcomed Mr Lengagne's report.

THE PRESIDENT. – Thank you, Mr Schreiner. I call Mr Steenblock.

Mr STEENBLOCK (*Germany*) welcomed the report and said how much we depended on the sea. However, care was needed to ensure the safety of all. Eight hundred million tonnes of oil passed through European Union ports according to the most recent figures available and many tankers sailed through the waters of the Council of Europe countries. He congratulated the European Union for adopting a requirement three weeks ago that oil could no longer be carried in single-hull tankers. Profits were made by private companies, but the damage caused by accidents affected everyone and the state bore the brunt of dealing with the aftermath. In 1992 a system of international oil pollution compensation had been established and that had been updated in 2003. He called for higher insurance premiums to be charged on the "polluter pays" principle. All flag and port states were liable but it was essential that individual ship owners bore the responsibility for the safety of their vessels. He regretted that in 2004 only six EU states had signed up to the international oil pollution compensation arrangements and called on Greece, Cyprus and Malta to withdraw their opposition. The report set out the necessary action to be taken and he congratulated the rapporteur.

(*Mr van der Linden, President of the Assembly, took the Chair in place of Ms Papadimitriou*)

THE PRESIDENT (Translation). – Thank you, Mr Steenblock. I call Mr Gardetto.

Mr GARDETTO (*Monaco*) welcomed the report and described how maritime accidents could affect coasts, fauna and flora. There had been a whole series of such incidents, including *Exxon Valdez*, *Erika* and the *Prestige*. Many resolutions had been passed such as Resolutions 1229 and 1370 of the Assembly. The seas were increasingly treated as a dumping ground and it was crucial that any irresponsibility and criminality involved was tackled appropriately. Just as the Kyoto agreement had sought to tackle the problem of greenhouse gases, the Council of Europe should set standards to protect the maritime environment. Negligence only led to further problems. Monaco was well aware of the risks of marine pollution and had joined with its neighbours, France and Italy, to take steps to protect their coasts. Monaco was committed to greater inspection and control of vessels and common rules must be adopted. If flag of convenience ships broke the law, firm treatment should be administered. He congratulated Mr Lengagne on his excellent report.

THE PRESIDENT (Translation). – Thank you, Mr Gardetto. I call Mr Jakavonis to speak on behalf of the Liberal, Democratic and Reformers' Group.

Mr JAKAVONIS (*Lithuania*) congratulated the rapporteur who had identified the problem and put forward practical solutions. In his area, the Baltic had suffered from the dumping of chemical weapons during the Second World War. Unesco had protected certain areas, but Russia had so far failed to agree to a system of compensation and Lithuania felt very vulnerable to accidents involving oil tankers and the consequent pollution. He urged the Council of Europe to take action.

THE PRESIDENT (Translation). – Thank you, Mr Jakavonis. That concludes the list of speakers. I call the rapporteur, Mr Lengagne.

Mr LENGAGNE (*France*) said that he had little to add. He congratulated his friend Mr Dupraz on his seafaring experience. The speaker from Azerbaijan had referred to the Caspian Sea, but the committee had been unable to deal with inland seas. All the recommendations of the committee in respect of oceans and seas applied even more strictly to such inner seas. Reference was made to the problem of the D6 oil rig facing the Kola peninsula which was a Unesco world heritage site. He would be happy to discuss that problem which would, however, be the subject of a separate report.

THE PRESIDENT (Translation). – Thank you.

Does the Chairperson of the Committee on the Environment, Agriculture and Local and Regional Affairs, Mr Schmied, wish to speak?

Mr SCHMIED (*Switzerland*) said that history was soon forgotten – for example, when everyone had watched television pictures of ships like the *Prestige* sinking. Solutions to such catastrophes were now available. A great effort had to be made to avoid the sea becoming an open sewer. In order to save itself the sea regurgitated its waste. There were many other forms of catastrophe; many ships sank, and the statistics for that were known to insurers and underwriters. He had been impressed by the standard of the important debate on a subject which affected everyone in the world.

THE PRESIDENT (Translation). – The debate is closed. The Committee on the Environment, Agriculture and Local and Regional Affairs has presented a draft resolution in Document 10485 to which two amendments have been tabled. The amendments will be taken in the order 2, 1.

I remind members that speeches on amendments are limited to one minute.

We come to Amendment No. 2 tabled by Mr Toomas Alatalu, Mr Saulius Bucevičius, Mr Andris Bērziņš, Mr Oskars Kastēns, Ms Ingrīda Circene, Ms Anta Rugāte, Mr Rudolf Bindig, Mr Kimmo Sasi, Mr Marko Mihkelson, Mr Andres Herkel, Mr Egidijus Vareikis, Mr Gediminas Jakavonis, which is, in the draft resolution, at the end of paragraph 7, add the following words:

“and single-hull oil tankers should be forbidden.”.

I call Mr Jakavonis to support the amendment.

Mr JAKAVONIS (*Lithuania*) said the amendment was to restrict access of single hulled tankers to ports.

THE PRESIDENT (Translation). – Does anyone wish to speak against the amendment?

That is not the case.

What is the opinion of the committee?

Mr SCHMIED (*Switzerland*). – The committee is in favour.

THE PRESIDENT (Translation). – The vote is open.

Amendment No. 2 is adopted.

We come to Amendment No. 1; tabled by MM Guy Lengagne, John Dupraz, György Frunda, Adrian Severin, Renzo Gubert, which is, in the draft resolution, after paragraph 12.vi, insert the following sub-paragraph:

“sign and/or ratify the International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention) and the Council of Europe Convention on the Protection of the Environment through Criminal Law (CETS No 172);”.

I call Mr Lengagne to support Amendment No. 1.

Mr LENGAGNE (*France*) said the amendment was to seek the ratification of conventions. He would not give the Assembly a list of the culprits. There were two conventions. The first was the HNS Convention, which was an IMO convention from 1996, which only two states had ratified. The second stemmed from a Council of Europe agreement dating from 1998. Although thirteen states had signed that convention only one, Estonia, had ratified it. That was shameful.

THE PRESIDENT (Translation). – Does anyone wish to speak against the amendment?

That is not the case.

What is the opinion of the committee?

Mr SCHMIED (*Switzerland*). – The committee is in favour.

THE PRESIDENT (Translation). – The vote is open.

Amendment No. 1 is adopted.

We will now proceed to vote on the whole of the draft resolution contained in Document 10485.

The draft resolution in Document 10485, as amended, is adopted.

6. End of the part session

THE PRESIDENT (Translation). – We have now come to the end of our business.

I would like to thank all members of the Assembly, particularly rapporteurs of committees, for their hard work during this part-session. I would also like to thank the staff, both permanent and temporary, who have worked hard to make the part-session a success. I can assure you that many of them worked through a great deal of the night last week.

The Third Part of the 2005 Ordinary Session will be held from Monday 20 June to Friday 24 June 2005.

I declare the Second Part of the 2005 Ordinary Session of the Parliamentary Assembly of the Council of Europe closed.

The sitting was closed at 12.05 p.m.

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Amendment No. 1, as amended, adopted.

Draft recommendation contained in Document 10498, as amended, adopted.

5. Sea Pollution

Presentation by Mr Lengagne of report, Document 10485, on behalf of the Committee on the Environment, Agriculture and Local and Regional Affairs

Speakers:

Mr Dupraz (Switzerland)
Mr Mirzazada (Azerbaijan)
Mr Schreiner (France)
Mr Steenblock (Germany)
Mr Gardetto (Monaco)
Mr Jakavonis (Lithuania)

Amendments Nos. 1 and 2 adopted.

Draft resolution contained in Document 10485, as amended, adopted.

6. End of the part session

