

Special Representative

To:

PA President

and

PA Secretary General

Permanent Council Brief Week 13, 2007

This week, meetings of the Permanent Council, the Preparatory Committee and the Advisory Committee for Management and Finance, as well as a Supplementary Human Dimension Meeting (SDHM) on "Freedom of Assembly, Association and Expression: Fostering Full and Equal Participation in Pluralist Societies", took place.

The Permanent Council took two decisions, namely on the agendas, timetables and organizational modalities of the OSCE Expert Conference on Fighting the Threat of Illicit Drugs and on the agenda, and of the OSCE Political Conference on Public-Private Partnership in Countering Terrorism. The other main points on the Permanent Council agenda were reports by the Heads of the OSCE Missions to Serbia and to Georgia, Amb. Urstad and Reeve, and the regular report by the Representative on the Freedom of the Media, Miklos Haraszti. It became clear once again that all sides hold the work of all three in high esteem. Under "Current Issues", the Permanent Council discussed the recent demonstrations in Russia, the bicentenary of the abolition of the slave trade in the British Empire, and the recent accomplishment of power sharing in Northern Ireland. The Ambassador of Iceland informed the Council that the next Parliamentary elections in Iceland will be held on 12 May 2007.

As I reported last week, the search for a successor to Amb. Rolf Ekeus as High Commissioner on National Minorities is in full swing. The candidates had an opportunity to make presentations to the members of the Permanent Council. There were no questions from the floor, instead, any ambassador who wanted to could engage in private bilateral consultations afterwards. But even in the absence of any recognizable tendency among the delegations, it seems most likely that the three former Foreign Ministers are in the lead. As a next step, all delegations are to send the Chair of the PC a confidential list with up to three candidates (in order of preference). Once all delegations' preferences are collected, the Chair will create a list with a ranking reflecting what the delegations have expressed.

The SDHM had no particular highlights. Three things might be worth while mentioning, though: At the start of the meeting, the U.S. Delegation frontally attacked Russia on the issue of the last demonstrations in St. Petersburg and in Nizhniy Novgorod, to which Russia replied at the end of the conference by explaining that nobody in Russia was denied the right to demonstrate peacefully, but that it was not up to them to always determine where and when. This was subject to a regular procedure by municipal authorities, regulated by law and upheld by the highest courts. Russia itself started out by complaining about the participation of the Russian-Chechen Friendship Society in the meeting, which had been prohibited in Russia because of its alleged support for terrorism. In his closing statement, the Chairman-in-Office's Special Envoy and Former President of the EP Josep Borell said, among other things, that the topic of the meeting must be of particular interest to the PA membership, especially in light of the fact that the PA's upcoming Summer Session will deal with the implementation of commitments. He added that it would be very helpful if the deficiencies discussed at the meeting, as well as its recommendations were discussed by the parliamentarians, not only because they are the legislators that elaborate the required legislation, but also because their mandate as representatives of the people made them the most natural defenders of public liberties, including those discussed at the meeting.

I attach another note on the issue of Legal status and immunities of the OSCE, because it requires some support by national delegations.

Weeks 14 and 15 constitute the Easter Recess without any meetings.



Andreas Nothelle
Ambassador
April 19, 2007

Expert Level Working Group on International Legal Personality, Legal Capacity and Privileges and Immunities

In one of my last reports I provided some information about the work this group, which works on the basis of a 2001 text for a draft convention. I had reported that I had quickly drafted up a “preliminary food for thought”-paper, which I handed out to Amb. Veldhuizen, and that I had reserved our right to come back to the issue in the next round (end of April). Its aim was to make sure that the Parliamentary Assembly is recognized as being an integral part of the OSCE, that Parliamentary Assembly members enjoy the same degree of protection as other OSCE officials when they travel to foreign countries on behalf of the OSCE, and that with respect to privileges and immunities the Parliamentary Assembly staff is situated on the same level as other OSCE staff. I attach the text that I handed in.

The group also had before it a draft from 2002, but it decided not to use it as a basis for discussions. This draft, which of course was drafted before the Vienna Liaison Office was opened and could therefore not relate to it, is also attached to this.

An argument frequently used against giving immunities to Parliamentary Assembly members is the parliamentary immunity that many of them enjoy in their home countries. But this of course does not protect them when they act on behalf of the OSCE in foreign countries.

In the meantime, I had a conversation with the group’s chairperson, in which she announced that a revised draft of the convention would soon be published – without any reference to the Parliamentary Assembly. She said that according to the group’s reading of the OSCE’s Rules of Procedure she could not include anything that had not been put forward by a national delegation. This is why I approached several delegations requesting their support. However, I am afraid that not much will happen without some pressure from national Parliaments.

This is all the more true since I have heard very concrete rumors that some delegations – and the OSCE Secretariat – want to use this opportunity to put into a legal instrument their conviction that the Parliamentary Assembly is not fully part of the OSCE, comparable to other “institutions”. This also has to be seen in the context of our ongoing discussions about the cooperation with the ODIHR. There is a clear danger that the outcome of this might do damage to the status of the Parliamentary Assembly within the organization.



Andreas Nothelle
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Text that I proposed:

“Under definitions (Article 1), I suggest to amend the text on „Institutions“ as follows:

In (f) after “(FOM)” insert “, “the Parliamentary Assembly (PA)”

In (i) at the end add: “It also refers – mutatis mutandis and in line with its character as an autonomous body, whose members and staff are subject only to the internal PA Rules of Procedure – to the Members when they act on behalf of the OSCE and to the staff of the OSCE PA.”

Under “OSCE Officials” (Art. 14 of old draft):

No 3 at the end: After “shall apply to” insert “the PA President, when acting on behalf of the OSCE, and the PA Secretary General as well as the Head of the Vienna Liaison Office of the PA”

No 4 second sentence after “Heads of Mission”: insert “and the PA Standing Committee with respect to the PA Secretary General”

No 4 last sentence: at the end add: “and the PA Secretary General with respect to staff of the OSCE PA”.

Reasons:

PA Members operate in many cases jointly with other OSCE Officials to achieve a common purpose, for instance on election observation missions. On the other hand, nothing should be interpreted as affecting the special and autonomous status of parliamentarians or the fact that the PA Secretary General as head of the executive side of the PA (the Parliamentary Assembly as an OSCE Institution) is subordinate only to the governing bodies of the OSCE PA, and that other PA staff is subordinate only to the PA Secretary General. Also, PA staff currently enjoy diplomatic privileges and immunities in Denmark and in Austria. There is no reason why they should not be given the same rights as other OSCE officials elsewhere as well. In spite of special host country agreements, the draft should make the extent of the privileges and immunities clear. In the case of the Vienna Office, whose Head, in his capacity as Special Representative, is head of a permanent OSCE mission like all other Ambassadors, the Austrian High Court has already made an attempt to limit the privileges resulting from the Austrian OSCE law through a restrictive interpretation with the help of international agreements. Such apparent contradictions should be avoided in future.”

Text contained in the 2002 draft convention, which is not used by the group (it contains no reference to the Vienna Liaison Office nor to the Special Representative, since it was drafted before the office came into existence):

Article 16: OSCE Parliamentary Assembly

- 1. Members of Parliaments of the participating States attending OSCE meetings or taking part in the work of the OSCE on behalf of the OSCE Parliamentary Assembly, and their assistants accompanying them, shall enjoy, while exercising their functions, including the time spent on journeys in connection with their functions, the privileges and immunities set forth in Article 13 of the present Convention.**
- 2. Officials of the Secretariat of the OSCE Parliamentary Assembly, including the Secretary General of the OSCE Parliamentary Assembly, and experts on missions for the OSCE Parliamentary Assembly, shall enjoy the privileges and immunities set forth in Articles 14 and 15 of the present Convention mutatis mutandis.**
- 3. The right and duty to waive the immunity granted by this Article above shall be exercised by the President and the Secretary General of the OSCE Parliamentary Assembly. With respect to the President and the Secretary General of the OSCE Parliamentary Assembly, such a right and duty shall be exercised by the Standing Committee of the OSCE Parliamentary Assembly.**