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Report

drawn up on behalf of the Political Affairs Committee

on the creation of a framework for dialogue to foster observance of internationally accepted standards of human rights in the European Community and those countries with which it has close ties

Rapporteur: Mr N. J. HAAGERUP

PE 80.243/fin.
Or. It.

English Edition

At its sitting of 9 July 1981 the European Parliament referred the motion for a resolution tabled by Mr ISRAEL, pursuant to Rule 47 of the Rules of Procedure, on human rights in the European Community and in those countries that have concluded preferential agreements with the European Economic Community (Doc. 1-394/81) to the Political Affairs Committee as the committee responsible and at its sitting of 11 October 1982, it authorized the Committee on Development and Cooperation to deliver an opinion on the matter.

At its meeting of 27 to 29 January 1982 the Political Affairs Committee decided to draw up a report. At its meeting of 25 February 1982 the Political Affairs Committee appointed Mr VAN MIERT rapporteur.

At its sitting of 15 November 1982, the European Parliament referred the motion for a resolution in question to the Legal Affairs Committee for an opinion.

The Political Affairs Committee considered the draft report at its meetings of 25-27 January 1984 and 28 February - 1 March 1984.

At the latter meeting the Political Affairs Committee adopted an amendment replacing the text of the motion for a resolution as a whole, by 16 votes to 8 with no abstentions. Mr Van Miert resigned as rapporteur and Mr HAAGERUP, first vice-chairman and acting chairman, took over the task of presenting the report.

The following took part in the vote: Mr HAAGERUP, acting chairman, first vice-chairman and rapporteur; Mr CHARZAT, second vice-chairman; Mr FERGUSSON, third vice-chairman; Mr CARIGLIA, Mr CROUX (deputizing for Mr DESCHAMPS), Lady ELLES, Mr ESTGEN (deputizing for Mr ANTONIOZZI), Mr FELLERMAIER (deputizing for Mr B. FRIEDRICH), Mr GEROKOSTOPOULOS (deputizing for Mr BOURNIAS), Mr HABSBURG, Mr von HASSEL, Mrs van den HEUVEL, Mr ISRAEL (deputizing for Mr de la MALENE), Mr KLEPSCH, Mrs LENZ, Mr MOMMERSTEEG (deputizing for Mr SCHALL), Mr NORMANTON (deputizing for Lord O'HAGAN), Mr d'ORMESSON, Mr PENDERS, Mr RIPA DI MEANA (deputizing for Mr ZAGARI), Sir James SCOTT-HOPKINS, Mr SEITLINGER (deputizing for Mr RUMOR), Mr J.D. TAYLOR (deputizing for Lord BETHELL), Mr VAN MIERT and Mr WALTER.

The opinions of the Legal Affairs Committee and the Committee on Development and Cooperation are attached.

The report was tabled on 6 March 1984.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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A

The Political Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the creation of a framework for dialogue to foster observance of internationally accepted standards of human rights in the European Community and those countries with which it has close ties.

The European Parliament,

- having regard to the motion for a resolution tabled by Mr ISRAEL on human rights in the European Community and in those countries that have concluded preferential agreements with the European Community (Doc. 1-394/81),

- having regard to the report of the Political Affairs Committee and the opinions of the Committee on Development and Cooperation and the Legal Affairs Committee (Doc. 1-1533/83),

A. whereas the links established by association, preferential and cooperation agreements between the European Community and third countries are far broader in scope than purely commercial ties,

B. convinced that these agreements are a factor for peace and stability in international relations,

C. convinced that the European Community must both be vigilant with regard to respect for fundamental human rights and advocate respect for the different pacts and conventions on human rights to which the whole international community has acceded,

D. convinced that the international agreements concluded by the Community would be more meaningful if they made specific reference to a common commitment by all parties to observe the minimum standards laid down in international legislation on human rights to which the whole international community has acceded, based on the Universal Declaration of Human Rights,

E. convinced of the need to initiate a dialogue between the Community and its close partners to review the human rights situation in their respective countries,

1. Calls on the Community to propose to the countries which have concluded association and preferential agreements with it widening consultations aimed at monitoring and examining the evolution of the situation with regard to fundamental human rights and freedoms in all the countries involved;

2. Believes that for this purpose a reference to the protection of human rights must be inserted into association, preferential and cooperation agreements with third countries;

3. Believes that such consultations can be carried out by the joint bodies set up under the agreements already concluded;

4. Recommends that the Community's proposals be drawn up with reference to the Universal Declaration of Human Rights and the pacts and conventions of the United Nations (most notably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights);

5. Stresses that from the outset it must be made clear that principles of strict reciprocity must be observed and that all the states involved are placed on an equal footing;

6. Considers that among the commitments associated countries would make should be a commitment to provide information and give the Community's representatives free access to their territory;

7. Proposes that regular reports on the state of human rights in the countries involved should be made to the governments and parliaments of the countries concerned and to the European Parliament;

8. Calls on the Community Foreign Ministers meeting in political cooperation to provide the necessary impetus for the establishment of such consultations and to report back to the European Parliament within one year on the progress achieved;

9. Calls on the Commission of the European Community to submit proposals to the Council of Ministers along the lines described in this resolution;

10. Instructs its Political Affairs Committee and the Working Party on Human Rights to carry out preliminary studies with a view to developing the consultations advocated in this resolution;

11. Instructs its President to forward this resolution to the Council and Commission of the European Community, the Community Foreign Ministers meeting in political cooperation and to the parliaments and governments of the countries that have signed association and preferential agreements with the European Community.

EXPLANATORY STATEMENT

Although the European Community is primarily an economic community, it is also united by a common commitment to the principles of democracy and the protection of the fundamental rights and freedoms of the individual.

The preamble to the EEC treaty states that applicant countries must 'share the ideals' of the six original members.

These shared ideals have been most specifically defined in:

- The Copenhagen Declaration on the European identity of 1973
- The Joint Declaration on Fundamental Rights, signed in April 1977 by the Parliament, the Council and the Commission
- The Declaration on Democracy made by the European Council in Copenhagen in April 1978

Furthermore there are certain specific provisions in the EEC treaty - particularly in Part Two Title III (free movement of persons, services and capital) and Part Three Title II (Social Policy) - and in the secondary legislation derived from these provisions which also seek to guarantee respect for fundamental human rights.

It should also be recalled that, as stated in 1977 Luxembourg Joint Declaration, the Court of Justice has recognised that law comprises, over and above the rules embodied in the treaties and secondary Community legislation, the general principles of law and in particular the fundamental rights, principles and rights on which the constitutional law of the Member States is based. It is also pointed out that all Community Member States are signatories to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

In so far, therefore, that the countries of the European Community have a clearly expressed common commitment to certain ideals of democracy and human rights and that adherence to these ideals is a condition of membership, the Community clearly has an interest in encouraging third countries to share those ideals - particularly those third countries with which it has ties through association and preferential trading agreements.

The Community's determination to promote respect for human rights and fundamental freedoms throughout the world has been clearly expressed in numerous reports and resolutions adopted by the European Parliament over the years and in written and oral questions put down by members. It has also led to the constitution by Parliament's Political Affairs Committee of a Working Group on Human Rights. In addition human rights issues have on occasion been raised at meetings of Parliament's inter-parliamentary delegations and at the Political Affairs Committee's quarterly colloquies with the President-in-office of the Foreign Ministers meeting in political cooperation.

There is, however, no clearly defined Community policy on human rights in respect of its agreements with third countries, although, on occasion, the Community has taken steps to limit cooperation with countries where it was felt that fundamental human rights were being violated, or where aid was not reaching those for whom it was destined. (The point is frequently made, of course, that such sanctions can hurt most those people on whose behalf they are imposed.)

The reasons for the absence of a Community human rights policy as part of its external relations policy are clear and understandable. It is difficult to envisage a way in which human rights considerations can be easily incorporated into negotiations of an economic nature, which are, in themselves, extremely complex.

Third countries are extremely sensitive to any criticism of their record on human rights and frequently consider such criticism to be an unwarranted interference in their internal affairs (indeed chapter I, Article 2, paragraph 7 of the UN Charter is frequently cited in defence of this position.)

A particularly significant example, in this connection, were the negotiations for Lomé II, when the Commission proposed the insertion of a clause in the preamble to the Convention, pledging respect for human rights. (Some Community countries, notably the UK and the Netherlands, wished to go further and sought an article in the convention itself which would allow for suspension of contractual arrangements in instances of gross violations.) However it was not possible to reach agreement and no such reference exists in the final text. Nor was it even possible to arrive at a joint declaration, to be annexed to the convention, as had been hoped.

One difficulty in any such discussions is the differences of view as to what constitute fundamental human rights, with many third countries wishing to lay more stress on economic and social rights than on political and civic rights.

Nevertheless there do exist internationally accepted codes of conduct, which many or most of the Community's close trading partners have endorsed or to which they have adhered, notably:

- the Universal Declaration of Human Rights
- the International Covenant on Civil and Political Rights
- the International Covenant on Economic, Social and Cultural Rights

There are also various regional Conventions, such as the one recently instituted by the Organisation of African Unity, (created, partly, it is felt, in response to the debate on human rights issues during the Lomé II negotiations.)

A principal problem in the dialogue between the Community and third countries has been the latter's objection to what they saw as Community attempts to link economic ties and human rights objectives, thus using economic leverage in ways for which there is very little precedent in international agreements.

This report envisages therefore a system for monitoring human rights violations by means of a framework for dialogue which would be juridically independent of economic ties. Participation, however, would be open to those countries with which the Community has close links, on an entirely voluntary and reciprocal basis.

Moreover, to avoid problems of definition, the framework for dialogue could initially limit itself to monitoring a very limited category of human rights violations - namely that of physical violations against the human person, generally held to be most fundamental.

In the Broeksz report (doc.1-487/78) adopted by the European Parliament in 1978 whi ch called for human rights provisions in Lomé II, these were defined as:

- political assasination or causing political opponents to disappear,
- torture,
- long periods of imprisonment without trial

However the precise remit, institutional structure, legal status and modus operandi of the framework for dialogue would have to be worked out jointly in consultations between participant countries, presumably drawing in part on the experience of those international models which already exist.

It is difficult to judge at this stage what rights and obligations participant countries might be prepared to subscribe to as members of the framework for dialogue. It would be a significant achievement, however, if participant countries would commit themselves to 'give information' and permit free access by representatives of this body for investigative purposes. The body might also be able to make 'recommendations', when agreed to by an appropriate majority (perhaps 2/3). Although these recommendations would probably be non-binding they could be a significant instrument of pressure. National sovereignty would of course have to be respected but expulsion from the body might be envisaged as a possible sanction.

It is also difficult to anticipate the size and composition of such a framework for dialogue. Clearly the 50-50 ACP-EEC numerical balance which is the rule in, for instance, Lomé bodies might not be feasible in this instance. Each participant country might wish to be able to have a 'representative', though he or she would be required to serve impartially and be independent of national instructions. This might, however, result in too large and unwieldy a body, and might render it less effective as a consequence.

The object of this resolution, however, is not to set out possible models for the framework for dialogue but to bring into being discussions and negotiations which would lead to its creation. Participants in the negotiations would be those countries with which the Community has close ties through association and preferential trading agreements (most notably the Lomé Convention countries, Magreb and Mashrek countries, Israel, the EFTA countries, Spain, Portugal, Turkey, Cyprus, and Malta).

It is proposed therefore that the Commission submit proposals to this effect to the Council of Ministers and that discussions be initiated with the governemtns of the countries in question.

It is also proposed that this matter be pursued by the Foreign Ministers meeting in Political Cooperation, where there has been scant attempt to date to coordinate the human rights policies of Community Member States with respect to third countries. Clearly much would depend on the willingness of the Foreign Ministers to provide the necessary political impetus if this proposal is to be brought to fruition.

OPINION OF THE COMMITTEE ON DEVELOPMENT AND COOPERATION

Draftsman: Mr ENRIGHT

On 1 December 1982 the Committee on Development and Cooperation appointed Mr Enright draftsman of the opinion.

The committee considered the draft opinion at its meeting of 24 March 1983 and adopted it unanimously.

The following took part in the vote under the chairmanship of Mr Poniatowski: Mr Enright, draftsman; Mrs Cassanmagnago Cerretti, Mr Cohen, Mr de Courcy Ling, Mrs Dury, Mr Irmer, Mr Israel, Mr Klinkenborg (deputizing for Mr Fellermaier), Mr Lomas (deputizing for Mr Lezzi), Mr Narducci, Mrs Pruvot (deputizing for Mr Sable), Mr Sherlock, Mr J. D. Taylor (deputizing for Mr Plumb) and Mr Wedekind.

A. OPINION OF THE COMMITTEE

The Committee on Development and Cooperation

1. Believes that the European Community as a regional grouping of countries which express a common attachment to certain ideals in the field of Human Rights and whose attachment is a condition for membership of this Community, should be firmly committed to the upholding of the principles laid down in the European Convention for the protection of Human Rights and Fundamental Freedoms and in the Universal Declaration of Human Rights ;

2. Believes that an increase in development aid by the Community and its Member States can by relieving starvation and desperation lead to a strengthening of Human Rights ;

3. Notes the existence of different views regarding the scope of Human Rights and stresses that the developing countries should not be expected to share precisely the same approach as the Community, keeping as guideline the Universal Declaration on Human Rights;

4. Welcomes the initiatives already taken in certain regions of the world such as the adoption of the African Declaration on Human Rights; also notes the motion for a resolution adopted by the ACP-EEC Joint Committee on 24 February 1982[1] on the functioning of ACP-EEC cooperation;

5. Emphasises that in cases of violations of Human Rights any action to be taken by the Community should be linked with the defence of the interests of the local populations concerned ;

6. Welcomes the precedents already set by the Community in cases of violation of human rights and expresses the hope that the Community will continue to react to such violations in consultation with Parliament in accordance with the following principles :

   - the Community should not continue to provide any form of cooperation or development assistance which could be construed as providing support for a

[1] Doc. CA/CP/358/fin.

government which is in clear breach of its obligation on the respect of human rights ;

- in the event of flagrant and persistant violations of human rights, aid should be continued only if it is ensured that it reaches the sections of the population for whom it is intended;

- the Community should avoid, as far as possible, all partnership with governments which have been found wanting in respect of human rights and should seek to conduct its activities through the agency of non-governmental organizations ;

7. Considers that these principles should especially apply to all countries with which the Community either has concluded or is intending to conclude preferential and non-preferential agreements ;

8. Considers that any preferential agreement to be concluded by the Community should make a clear and specific reference to the joint protection of Human Rights in the regional groupings to which each partner belongs ;

9. Believes that such a reference made in a legally binding Convention would :

   a) contribute to strengthen the situation of Human Rights in the respective parties to the Convention

   b) constitute a clear political and legal basis for the establishment of a community policy in that respect

10. Considers in view of the existing different approaches to Human Rights that the scope of its concept and protection should be defined by each partner

11. Underlines the important contribution that the Consultative Assembly should make in the examination and assessment of the situation in the field of Human Rights within the context of the future ACP-EEC relationships ;

12. Underlines equally in the same context the greater role that should be played by the strengthening of contacts between the European Parliament and the representatives of the Maghreb-Mashreq countries in the framework of a new Mediterranean policy ;

13. States again its belief that emergency food aid and emergency aid should be granted notwithstanding the political internal situation of the beneficiary country concerned;

The Committee on Development and Cooperation invites the Political Affairs Committee to incorporate these points in its report.

B. EXPLANATORY STATEMENT

1. INTRODUCTION

Human rights have been and still are violated in many developing countries.

Against such violations, the European Community as a regional grouping composed of democratic states which are expressing a common attachment to certain ideals in the field of Human Rights - whose attachment is furthermore a condition for membership of this Community - and which are all parties to the Universal Declaration of Human Rights, cannot avoid reacting.

The European Community has, as a matter of principle, to take a stand in a field where the principle of non-interference in the internal affairs of sovereign states cannot be referred to.

The Community - and especially the European Parliament - condemned publicly on several occasions violations of Human Rights in various developing countries.

In dealing with problems relating to the safeguard and promotion of Human Rights, it should however be kept in mind that different views can and indeed do exist regarding the concept of Human Rights. Such differences can be explained e.g. by the different levels of economic development and by different political philosophies.

2. THE ATTITUDE OF THE EUROPEAN COMMUNITY TOWARDS THE COUNTRIES WITH WHICH PREFERENTIAL AGREEMENTS HAVE BEEN CONCLUDED

At the time of negotiating the second Lomé Convention, the Community made great endeavours to include a Human Rights reference in the agreement.

The European Parliament - following a resolution adopted by the ACP-EEC Consultative Assembly (1) - expressed itself in favour of such a reference and stated that "the question of a reference to Human Rights in the future Convention will, at the appropriate time, need to be approached with great care and a high sense of responsibility, and that such a reference will undoubtedly apply just as much to the EEC as to the ACP states"(2).

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(1) OJ No. C18, 19.1.1979, para. 23

(2) OJ No. C6, 8.1.1979, Resolution on the negotiations for the renewal of the Convention of Lomé, para. 9.

After that it was proved that it was not possible to include such a reference in the new Convention, the European Parliament followed the opinion of its committee on development and cooperation (3) and expressed its "regrets that it was not possible to include in the preamble to the new Convention, along the lines of earlier resolutions of Parliament and the ACP-EEC Consultative Assembly, some reference to human dignity and the protection of Human Rights" (4).

At the signing ceremony of the Convention, however, the President of the EEC Council stressed the importance which the Council attached to respect for human rights and the President of the ACP Council of Ministers made a clear declaration of faith in human rights,referring to the United Nations Charter as well as the Monrovia resolution of the Heads of State of the O.A.U. and the Lusaka resolution of the Heads of State of the Commonwealth (5).

Although such declarations are politically significant, it is still doubtful whether they can be referred to by the European Community as an undisputable political and legal basis to react against violations of human rights and to deviate from the obligations laid down in the Convention which are legally binding.

Up to now the declaration made by the EEC Council on 21.6.1977 concerning the situation in Uganda (6) constitutes the guidelines for the action of the European Community in cases of violations of human rights.

It lays down the principle according to which any assistance given by the Community to a state under the Lomé Convention should under no circumstances help to intensify or prolong the deprivation of fundamental rights of the people of that country.

This principle has been even more clearly restated and underlined by the European Parliament when dealing with the situation in Central Africa (7) and giving its opinion on the conclusion of the second Lomé Convention (8).

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(3) Report made by M. WAWRZIK on the conclusion of the second ACP-EEC Convention of Lomé, Doc. 1-559/80.

(4) OJ No. C327, 15.12.1980, Resolution on the conclusion of the second ACP-EEC Convention of Lomé, para. 72.

(5) The Courrier, no. 58, November 1979, declaration of the President of the ACP Council of Ministers, p. 5.

(6) Report made by M. Jaquet on the situation in Central African Rep., doc.1-149/80, p. 7.

(7) OJ No. C175, 14.7.1980, para. 1 and 2.

(8) See (4), para. 74.

Furthermore, it has to be recalled that the Council took in November 1979 an internal decision in the context of the second Convention of Lomé concerning the Community's attitude in cases of flagrant violations of human rights, but the text of this decision has never been officially notified to the European Parliament (9).

While the above mentioned principle should continue to apply in future, it appears that the need for a reference to human rights which was already strongly felt at the time of the negotiation of the Second Convention of Lomé still exists and that any new ACP-EEC agreement should include a clear and specific reference to human rights.

Only such a reference can provide the adequate political and legal basis for a clear policy of the European Community in this field as opposed to its past behaviour.

In that context the ACP-EEC Consultative Assembly should be given an important role in the examination and assessment of the situation of human rights.

As far as the Maghreb and Machrek countries are concerned, the cooperation agreements they have concluded with the Community - and which are of unlimited duration - provide no reference to the question of human rights.

In the context of the definition and implementation of a new Mediterranean policy by the future enlarged Community the question of human rights should be dealt with in a similar way as with the ACP countries.

3. THE EUROPEAN COMMUNITY AND THE OTHER DEVELOPMENT INSTRUMENTS

The European Community has concluded and still intends to further conclude non-preferential agreements with other developing countries. The Community has on occasions taken steps to limit its cooperation with countries where human rights were violated , as was recently the case when the negotiations with the Andean Pact have been suspended because of the situation in Bolivia.

In that context there should be repeated and applied the basic principles laid down in the resolution already mentioned relating to the conclusion of the second Lomé Convention (10) :

- aid should be continued only if it is ensured that it reaches the sections of populations for whom it is intended
- the Community should avoid, as far as possible, all parthership with governments which have been found wanting in respect of human rights and should seek to conduct its activities through the agencies of non-governmental organisations.

(9) See (3) p. 66

(10) See (4), para. 74

Concerning Food-Aid - and Emergency Aid - the principle which has been constantly underlined in the resolutions of the European Parliament should continue to apply, according to which "notwithstanding the duty of the Community to promote respect for human rights wherever possible, food aid should not be made conditional on the political situation in the recipient countries and that every effort must be made to ensure that food aid reaches those sections of the population for which it is intended" (11).

(11) OJ No. C125, 17.5.1982, Resolution concerning Food Aid programme in 1982, para. 20.

OPINION OF THE LEGAL AFFAIRS COMMITTEE

Draftsman: Mr TYRRELL

On 24 November 1982, the Legal Affairs Committee appointed Mr TYRRELL draftsman.

The Committee considered the draft opinion at its meeting of 18 and 19 October and 1 and 2 December 1983. It adopted the draft opinion at the latter meeting by 16 votes to one.

The following were present for the vote: Mr Luster, Vice-Chairman and acting Chairman; Mr Turner and Mr Chambeiron, Vice-Chairmen; Mr Tyrrell, draftsman; Mr Alber, Mrs Cinciari Rodano, Mr D'Angelosante, Mr Del Duca, Mr Geurtsen, Mr Janssen van Raay, Mr Kaloyannis, Mrs Macciocchi, Mr Malangré, Mrs Tove Nielsen, Mr Sieglerschmidt, Mr Vetter and Mr Vié.

1. The motion for a resolution tabled by Mr. Israel (Doc. 1-394/81) proposes the establishment of a permanent Joint Committee to examine, on a strictly reciprocal basis, the respect for human rights in the member States of the Community and in those countries with which the Community has concluded preferential agreements: this has been extended by the Committee responsible to include all countries with which the Community has close ties (see draft report drawn up by Mr. van Miert, PE 80.243/Rev.)

2. The EEC Treaty does not contain a complete catalogue of human rights, though certain of its provisions embody principles which may be regarded as fundamental for the individual, such as the principle of non-discrimination on the grounds of nationality (Article 7), the freedom of movement of persons and the freedom to provide services (Articles 48-66), and the right to equal pay for equal work without discrimination based on sex (Article 119). Though not itself a legally binding instrument, the Joint Declaration of the European Parliament, the Council and the Commission, signed on the 5 April 1977 clearly recognizes the "prime importance" the Community institutions "attach to the protection of fundamental rights, as derived in particular from the constitutions of the member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms". [1]

3. For its part the Court of Justice has developed an important body of case law illustrating the importance of the respect for human rights in the application of Community law. In particular the Court has held that "respect for fundamental rights forms an integral part of the general principles of law, the observance of which it ensures. In safeguarding these rights, the Court is bound to draw inspiration from constitutional traditions common to the member States, and it cannot, therefore, uphold measures which are incompatible with fundamental rights recongized and protected by the constitutions of the States." [2]

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1. 1978 edition of the Treaties, page 214

2. Nold (1974) ECR 507