Conference on the establishment of a Council of Europe: extract concerning voting in the Committee of Ministers (London, 3 and 4 May 1949)

Caption: Extract from the minutes of the Conference on the establishment of a Council of Europe, held at St James's Palace in London from 3 to 5 May 1949, concerning the issue of voting in the Committee of Ministers.

Source: Archives historiques du Conseil de l'Europe - Historical Archives of the Council of Europe, Strasbourg. Conference for the establishment of a Council of Europe, 0120.

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http://www.cvce.eu/obj/conference_on_the_establishment_of_a_council_of_europe_extract_concerning_voting_in_the_committee_of_ministers_london_3_and_4_may_1949-en-98c4f851-3628-42ca-acda-b86102eef82d.html

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Conference on the establishment of a Council of Europe (London, 3-5 May 1949)

Minutes of the Conference held at St. James's Palace, beginning at 10:30 a.m. on Tuesday, 3rd May

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19. Article 20

Mr. Bevin (*United Kingdom*) referred to the United Kingdom Delegation's proposal set out in C.E. (MIX) P.3 which had been seen by the Legal and Drafting Committee and was in a form which could be adopted by the Conference if the Conference were prepared to accept the principle of the United Kingdom proposals. These proposals were designed to make the draft simpler, shorter and more flexible; it was important to remember that they should not lay down too many positive rules in advance. In any event sub-paragraph (*a*) (vi) empowered the Committee of Ministers to decide that any particularly important question should be settled by unanimous vote.

M. Unden (*Sweden*) emphasised that Article 20 was one of the fundamental provisions of the whole Statute, since it regulated the principles for taking decisions in the Committee of Ministers which was the decisive organ of the Council. In the statement of principles sent out by the Brussels Treaty Powers with the original invitation to the Conference, it was stated that the Committee of Ministers should work on the principle of unanimity. Subsequently this principle of unanimity had not been challenged, although it had been found possible to make exceptions to it, which had been transferred to an Annex. In this situation he understood the motives behind the United Kingdom proposal which in effect turned the Article inside out, thus making the guiding principle that of majority vote. He felt, however, that this went very much too far. Even amendments to the Statute itself could be carried by two-thirds majority, and this would lead to the paradoxical situation that a Government would sign the Statute and submit it to its parliament for ratification; that Government could not, however, be sure that the Statute would not be subsequently changed by a majority vote which would become valid, under the present proposals, without ever being submitted to that particular parliament again. It was, therefore, an important point for his Delegation that Article 20 should remain as drafted by the Preparatory Conference.

As regards the three alternatives for the calculation of the vote, he recognised that on the one hand it was desirable for members of the Committee of Ministers not to be forced against their will to cast a vote, and on the other hand that it was important that decisions should not be taken by a very small number of votes. This could be overcome, he thought, by taking alternative A, "representatives casting a vote," with the addition "provided that the number of votes cast was one more than half of the number of members entitled to sit on the Committee."

Mr. Bevin (*United Kingdom*) pointed out that the first point made by M. Unden would mean that any amendment of the Statute would require the unanimous vote of the Committee of Ministers and that therefore it was a reaffirmation of the principle of the veto in a form even worse than at the United Nations. There was such opposition in the United Kingdom Parliament to the principle of the veto that he could never get this Statute accepted if it contained this provision. He was also most anxious not to reaffirm the principle of the veto in the Council of Europe on the question of the admission of new members. His Majesty's Government and other Governments had stated at the United Nations that they would not use their power of veto on the admission of new members, but would regard as accepted any country which got seven favourable votes. He could not now agree to introduce into this new organisation a principle which His Majesty's Government had been combating at the United Nations.

M. Lange (*Norway*) did not think that the parallel with the United Nations was accurate, since the United Nations was a universal organisation, whereas the Council of Europe was limited to a geographically determined group of nations. He did not think that the phrase "not more than two votes against" was unreasonable. It was on the basis of the original invitation, which had stated the principle of unanimity, that his Government had discussed the Statute with their parliament. If it were to be changed now, it would cause him considerable difficulty, particularly as Norwegian public opinion was not prepared to go so far as the

United Kingdom proposals made necessary. He though, however, that a satisfactory compromise could be found.

The meeting adjourned at 1:15 p.m.

The Conference reassembled at St. James's Palace at 2:45 p.m. on Tuesday, 3rd May

20. Article 20 (Continuation of the Discussion (see Item 19 above))

The Conference considered a proposal put forward by the Danish, Norwegian and Swedish Delegations (C.E. (MIN) P.5).

Mr. Bevin (*United Kingdom*) thought that, on the question of additional members, if they could get rid of the formula "not more than two cast negative votes" and accent a two-thirds majority decision for point 2 in the Danish, Norwegian and Swedish proposal, a compromise might be found.

M. Unden (*Sweden*) thought that it was quite unreasonable to have a two-thirds majority decision for amendments which might change the whole structure of the organisation and its voting procedure, &c. The only possible form of compromise would be to say that all important questions should be decided by a unanimous vote.

Mr. Bevin (*United Kingdom*) said that it would always be open to a country to withdraw if it felt so strongly that it would not agree to being overruled, but that he could not really see ten responsible Foreign Ministers bringing matters to such a pass. They all knew that unless they remained united, the future for Europe was dark. In three or four years the Council of Europe would have to take a step forward when Marshall Aid came to an end and Europe had to recast her economic structure. That would mean that amendments would have to be made to the Statute and it would really not be possible to allow one, perhaps small, country to veto such legitimate changes. If, on the other hand, a decision by a two-thirds majority could be accepted for amendments, he thought that the Council would not disregard, without the most serious thought, any fundamental objection to an amendment put forward by a particular country. They must not put into the Statute a clause showing that Europe did not trust itself. As the United Kingdom representative, he wanted to emphasise that his task of bringing the United Kingdom effectively into true co-operation in European affairs was not easy; he must move step by step. If the veto were now to be accepted, feeling in the United Kingdom would be affronted. After all the majority vote was the traditional way of settling questions in all the countries represented, and the procedure outlined in the United Kingdom draft provided for very serious debate, then for a vote, and then for ratification by two-thirds of the parliaments concerned. If it were not accepted, he would be accused of playing Big Power politics; whereas he thought it was the contribution which each country could make to the common cause rather than the size of that country which was of importance, and the United Kingdom draft favoured smaller countries.

M. Unden (*Sweden*) expressed his surprise at this change at the last moment in a fundamental provision of the original draft Statute. He had told his Government, and the Foreign Affairs Committee of his parliament, of the line taken by the final report of the Preparatory Conference which was the same as that proposed by the Brussels Treaty Powers, and he had been authorised to agree to that line. He could not defend so radical a change as the new proposals represented on such an important question.

Vicomte Obert de Thieusies (*Belgium*) said that the Brussels Powers had never had the intention of laying down a set of rigid proposals which could not be amended. His Foreign Minister felt that they were setting up a new organisation which would inevitably be imperfect in certain respects and that therefore it would be very difficult to agree to the power of veto of an amendment by one State out of what might possibly become fifteen or twenty States. He would revert later to the question of calculating the majority vote.

M. Schuman (*France*) supported the United Kingdom amendment, although slight modifications might be necessary. The Security Council could wield sanctions and therefore the power of veto was provided, whereas in the Assembly, where there were no sanctions, the vote was by two-thirds majority; there were no

sanctions in the Council of Europe and it therefore followed that the vote on most questions should be by two-thirds majority. It was certain that, without violating the basic principles, it would be necessary to adjust the text of the Statute in the light of experience, otherwise there would be a risk of the Council's work being paralysed.

M. Stikker (*Netherlands*) well understood the Swedish difficulty and that some of the Delegations might be hesitant and reluctant to go too far. Thought had, however, been developing in Europe since the discussions had begun, and by 1952 he agreed that minor alterations might well be necessary. He could agree with the United Kingdom proposals, but suggested that in order to meet the difficulties of the Scandinavian Delegations, provision should be made that certain fundamental Articles, such as, for instance, Articles 15 (*a*) and 22, could not be amended except by unanimous vote. Admissions should be settled by three-fourths majority, thus avoiding the veto.

M. Lange (*Norway*) said he could accept the formula suggested by M. Stikker. He could also accept the three-fourths majority for new admissions.

M. Rasmussen (*Denmark*) said that he had been impressed by the remarks of Mr. Bevin, M. Schuman and Vicomte Obert de Thieusies, and that, with M. Lange, he could support M. Stikker's proposals.

Mr. Bevin (*United Kingdom*) agreed to accept amendment by unanimous vote for Articles 15 (*a*) and 22, but could not accept three-fourths majority for new admissions.

M. Unden (*Sweden*) thought M. Stikker's suggestion would be acceptable to him, but before deciding, it was necessary to go very carefully through the Statute to see whether any other Articles should be listed as requiring a unanimous vote for amendment, for instance, Article 1.

Mr. Bevin (*United Kingdom*) said that it would be very difficult for him to include Articles in addition to Articles 15 (*a*) and 22 in this way. He could not accept that all Articles of the Statute should be so treated, or even many of them, and the matter must be faced immediately, since the whole establishment of the Council of Europe was at stake.

Signor Sforza (*Italy*) said that he could agree with M. Schuman and Mr. Bevin; the agreement of the Statute was an important task before them, but still more important was the necessity for avoiding anything which might detract from the tremendous moral wave of optimism throughout Europe, which had resulted from the signature of the Atlantic pact.

M. Unden (*Sweden*) asked whether the British proposals meant that Article 1 (*d*) (the exclusion of matters relating to national defence from the scope of the Council of Europe) could be amended by two-thirds majority.

Mr. Bevin (*United Kingdom*) agreed that unanimity might be required for amendment to Article 1 (*d*).

M. Schuman (*France*) said he would like to emphasise with the same gravity as had Mr. Bevin that they were building for the future; and although he did not want to see the Statute made too weak, they were at present running the risk of being retrograde. He was prepared to accept the suggestion that amendments to Articles 1 (*d*) and 22 should be by unanimous decision, but that unanimity was not required for all the other questions. The main thing was that the sovereignty of each State should be safeguarded; and they would be showing excessive anxiety if they went further than that. The phrase "questions under article 15 (*a*)" included, of course, amendments to Article 15 (*a*), but he suggested that the point might be more clearly drafted.

Mr. MacBride (*Irish Republic*) agreed with much of what M. Unden had said because he had the same difficulties. He felt, however, that it was necessary to give way, especially on the veto question, in order to reach agreement and to avoid shaking the public confidence. If a decision were taken which would make it impossible for any country to continue in the organisation, then, of course, that country would have to

withdraw; but it should be emphasised that the other countries would not allow this to happen unless the decision was of fundamental importance, and it would be given the most serious thought. He therefore did not think that the danger foreseen by M. Unden was so very serious.

It was agreed—

(*a*) that the Legal and Drafting Committee should prepare a redraft of Article 20 to take into account the points made in discussion, basing this on the acceptance by the Conference of the principle that there should be some differentiation between those Articles which were fundamental and the amendment of which therefore required a unanimous vote in the Committee of Ministers, and those others the amendment of which could be recommended by two-thirds majority of the Committee;

(*b*) that decisions on the admission of new members should be taken by two-thirds majority;

(*c*) that as regards the method for determining a majority, the Legal and Drafting Committee should prepare a redraft on the lines of the proposal of the Danish, Norwegian and Swedish Delegations.

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37. Article 20 as redrafted by the Legal and Drafting Committee (see Items 19 and 20 above)

M. Unden (*Sweden*) thought that the Conference had agreed the previous day to include in sub-paragraph (*a*) (vi) a reference to Articles 15 (*a*) and 20, thus making an unanimous vote necessary for their amendment. He certainly thought this desirable. He also emphasised his opinion, referring to Article 20 (*a*) (i), that real recommendations under Article 15 (*a*) should be taken by unanimous vote.

Mr. Bevin (United *Kingdom*) referring to Article 20 (*a*) (i), expressed his regret at having put forward on the previous day the proposal that questions under Article 15 (*a*) must be decided by unanimous vote. The United Kingdom Cabinet held the view very strongly that it would be entirely wrong for the Statute to contain a clause which would enable one Member to prevent a recommendation of the Committee of Ministers going forward to Governments, thus preventing Governments from even considering such recommendations. This point had played a prominent part in recent United Kingdom debates on the subject, and it would not be possible for him to sign the Statute if it could not be met. It was necessary to instil the spirit of co-operation into governmental policy and to convince Governments that without co-operation the future of Europe would be dark. For the same reasons, he could not agree that amendments to Article 15 (*a*) should require an unanimous vote, although he would be prepared to allow this procedure for amendments to Article 20 (*a*). He begged his Swedish colleague not to insist upon his point and thus prevent agreement being reached.

Mr. MacBride (*Irish Republic*) thought that Article 15 could well be redrafted so that it would be possible for the Committee of Ministers to present its conclusions either in the form of definite Recommendations, which in Article 20 could be shown to require unanimous vote, or alternatively as expressions of opinion, which could be by two-thirds majority vote.

Mr. Bevin (*United Kingdom*) recalled that in the International Labour Office there were three forms of expressing the I.L.O.'s opinion : first, there were Conventions which were binding; then there were Recommendations, which had considerable strength but were not binding; and then there were Resolutions, which were less strong. In the Council of Europe, it might be possible to make a similar distinction between Recommendations and Resolutions.

M. Schuman (*France*) pointed out that Article 15 (*a*) assured the advisory character of the Committee of Ministers as did Article 22 for the Assembly; that was the indispensable point which should only be

amended by unanimity. He could therefore agree to the suppression of Article 20 (*a*) (i), retaining, however, the reference to Article 15 (*a*) in Article 20 (*a*) (vi). He agreed with Mr. MacBride (Irish Republic.) and with Mr. Bevin (United Kingdom) that it might be possible to distinguish between the various methods by which the Committee of Ministers could present its conclusions, and suggested that one such method might be to use the word " voeux." As an additional safeguard there was in any case sub-paragraph (*a*) (vii) in the redrafted Article which enabled the Committee of Ministers to decide that a particular question should be subject to an unanimous vote.

M. Schuman (*France*), *Signor Sforza* (*Italy*) and *Mr. MacBride* (*Irish Republic*) agreed, however, that if a distinction were to be made, the Committee of Ministers would tend to adopt the easier course of presenting their conclusions by the method which did not require an unanimous vote.

M. Rasmussen (*Denmark*), emphasising that the question under discussion, concerned the rules for the Committee of Ministers and not the Assembly, thought that it would be too rigid to require unanimity in every case laid down in sub-paragraph (*a*) of the redraft. He agreed with the suggestion put forward by M. Schuman (France) that it might be possible to delete the reference to Article 15 (*a*) in Article 20 (*a*) (i) but to maintain it in Article 20 (*a*) (vi), thus making proposals for amending Article 15 (*a*) subject to unanimous vote.

M. Lange (*Norway*) reminded the Conference that the Members of the Committee of Ministers would be responsible Ministers who would recognise that, if their views were to carry real moral weight, they should be expressed unanimously; they should be able to trust one another sufficiently to take the small risk involved.

M. Unden (*Sweden*) thought that it might be possible to reach some compromise on the proposals made by Mr. MacBride (Irish Republic) and M. Lange (Norway) or to take the expression "voeux" as suggested by M. Schuman (France) for which there was, he thought, a League of Nations precedent. He would be prepared to agree to the understanding that even those expressions of opinion by the Committee of Ministers which would only require a two-thirds majority vote might be forwarded, as such, by the Secretary-General to Governments. If the questions requiring unanimous vote, or the Articles for the amendment of which an unanimous vote was required, were to be whittled away as proposed by Mr. Bevin (United Kingdom) he was forced to ask what remained of the principle of unanimity. He could, however, agree that decisions on questions under Article 34 (Extraordinary Sessions of the Consultative Assembly) need not be unanimous.

It was agreed—

(*a*) that, subject to (*c*) below, questions under Articles 19, 21 (*a*) (i) and (*b*) and 33 should require unanimous vote;

(*b*) that, subject to (*c*) below, proposals for the amendment of Articles 1 (*d*), 7, 15, 20 and 22 should require an unanimous vote;

(*c*) that the Legal and Drafting Committee should redraft, Article 15 so as to differentiate between the methods by which the Committee of Ministers could present its conclusions, inserting in Article 20 (when redrafted to conform to (*a*) and (*b*) above) the reference to that part of Article 15 which would require unanimous vote; and

(*d*) that the Legal and Drafting Committee should meet for this purpose forthwith.

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