

Source References

It has been difficult till now to provide adequate documentation of the key Scotland-UN action at the Council of Europe in Strasbourg that finally led to the restoration of the Scottish Parliament and Government. Diplomatic secrecy has been grossly abused for party-political advantage, but the truth is now being revealed as the Council of Europe gradually makes relevant documents available. While the Scotland-UN Memorandum undoubtedly triggered the Council's programme of monitoring the democratic systems of its member states, it was the Council's own investigations, on a much broader scale than Scotland-UN envisaged, that finally enforced the restoration of democratic government in Scotland. The documents reveal that there is no truth whatever in the claims that Prime Minister Tony Blair's government took the initiative on devolution. On the contrary, they opposed it tooth and nail behind the scene and finally had to be forced to implement it by the polite diplomatic threat with dire implications that failure to do so would be "incompatible with membership of the Council of Europe". The full story will not come out until the records of the Foreign and Commonwealth Office and the Cabinet Office are available. The following report is not a Scotland-UN production, but has been compiled by an independent team of researchers in the United States. This work is still at an early stage, and is being continued. The numbers in brackets refer to the documents listed at the foot.

The Council of Europe (www.coe.int), founded in 1949, is the senior European institution, presently with 47 member states. In addition to its other functions, it is the authority that upholds standards of pluralist democracy, the rule of law and the observance of human rights throughout Europe. The CoE operates the European Court of Human Rights (ECHR). A significant part of its programme is concerned with local and regional government as one of the corner stones of democracy. The Scotland-UN Committee made its first submission on this subject to the Council in 1980 (see: Memorandum to the Council of Europe 1980).

In 1993 the community of democratic European nations was preparing to welcome the fledging democracies that were emerging from the disintegrating Soviet Union and Yugoslavia as well as the former Soviet satellite states in Central and Eastern Europe. One of the principal concerns was how to ensure most effectively that democracy and the protection of national minorities would be enshrined in the laws of these and all other European countries. To that end the major focus of the Council of Europe's Summit Meeting on 8/9 October 1993 (2) was to institute action to guarantee that pluralist democracy and the protection of national minorities would be enforced to universally high standards that would apply to all members, old and new.

In this highly charged environment, which was one of the most pivotal points in modern European history, the Scotland-UN Committee submitted a Memorandum (3) to the assembled Heads of State and Government of the majority of the European countries. The Memorandum, with impeccable timing, laid out the clear deficiencies of democracy in Scotland within the UK, in particular the 14 years of imposed minority rule in which Scotland had had no genuine voice, and equally the failure of the UK government to respect the incontrovertible fact that the Scots constituted a national minority within the UK. The Memorandum made it abundantly clear that the

introduction of proper democracy and treatment of national minorities was not simply an exercise to be directed solely at the former Communist countries, and that there was at least one of the existing Western states, namely the UK, that had serious problems in these areas that were to be addressed.

It is important to note that, had the Scotland-UN Memorandum not been circulated to every CoE member government as well as the applicant countries in Central and Eastern Europe, Scotland's case would never have been voiced. In fact, it is apparent from the minutes of the Council of Ministers meeting following the 1993 Vienna Summit (2) that the UK authorities regarded Scotland as a non-entity. There is no publicly available record that indicates that the UK delegation made any presentation on the major issues of basic democracy or a national minority on Scotland's (or Wales's) behalf.

The Declaration of Vienna issued by the 1993 Council of Europe Summit (4) signalled a complete change in how Europe would ensure that democracy and respect for national minorities would be protected from abuse and would from that point forward be actively safeguarded and nurtured as the heart of the European ideal. Key points from the Declaration are:

- I. "...to approve the principle of creating a consultative organ genuinely representing both local and regional authorities in Europe,"
- II. "...the protection of national minorities is an essential element of stability and democratic security in our continent"
- III. "...to enter into political and legal commitments relating to the protection of national minorities in Europe"
- IV. "...to draft with minimum delay a framework convention specifying the principles which contracting States commit themselves to respect, in order to assure the protection of national minorities."

Point I. resulted in the establishment of the Congress of Local and Regional Authorities of Europe (CLRAE) (5) on 14 Jan 1994. CLRAE's primary role is to ensure "the existence of a solid and effective local and regional democracy in conformity with the principle of subsidiarity (20) included in the European Charter of Local Self-Government". CLRAE was also given the teeth to make this actionable: one of the early initiatives (June 1994 & May 1995) was to conduct monitoring of prospective and existing member states to ensure compliance with these objectives (6 & 9), and in particular to ensure that they fully implemented the Charter of Local Self-Government (7). The monitoring was conducted from Nov 1994 onwards (12). Resolution 24 (1995) (21) specified that the existing member states had to be monitored also – "monitoring reforms in local and regional administration, in old democracies as well as in the new democracies of Central and Eastern Europe" – exactly the central point the Scotland-UN Memorandum had made two years previously.

The CLRAE has been instrumental in bringing about significant improvements in democratic standards within CoE member countries and monitoring members' compliance with those standards. The standards cover freedom of expression and

information, functioning and protection of democratic institutions, functioning of the judicial system, and local democracy, amongst others.

The CoE has now released a list of all CLRAE documents issued from its inception in 1994 to 18 September 1998. Most of these documents are still not publicly available, but the list does identify the countries to which CLRAE sent the documents as well as the specific standards involved.

CLRAE presented documents to the United Kingdom containing recommendations regarding 1. territorial autonomy (obviously Scotland and Wales) and 2. the general situation of local and regional democracy in the United Kingdom. The UK government has so far not released these documents, and any action taken on the basis of the recommendations has not been made public either. However, the existence of the documents supports the credibility of the work undertaken by the Scotland-UN Committee, which ensured that Scotland's voice and case were argued and considered by the CoE Council of Ministers during its meeting in November 1993 following the CoE Summit in Vienna.

Points II, III & IV resulted in the drawing up of the February 1995 Framework Convention for the Protection of National Minorities (8). The Scotland-UN Memorandum had made it clear that the Scots unquestionably had to be recognised as a national minority within the context of the UK, so that from the Vienna Summit onwards the whole European game changed completely and the UK in particular could no longer continue to flout local democracy or fail to show proper respect for and recognition of the Scottish people as a recognised national minority.

Active monitoring of existing and prospective member states was in full force from 1994. Right from the start there was an ominous official sign that the UK was already seen to have problems in respect of democracy – a June 1994 Recommendation 6 (10) pointed out: “In the United Kingdom, movements towards regionalisation and decentralisation are less clear, and within England, Scotland and Wales it is likely that one existing level of local government will disappear.”

The Report on Guiding Principles for the monitoring (13) confirms that detailed monitoring of the UK was to begin in 1996. Further details on how the monitoring was to be carried out were outlined in Recommendation 18 (1996) (14). Key highlights from this are:

- “...that local and regional authorities are one of the foundations of any democratic state and that their autonomy must be not only protected but also developed”
- “...that one of the essential guarantees of human rights and fundamental freedoms lies in respect for the rights and freedoms of local and regional authorities”
- “...the Parliamentary Assembly regards ratification of the European Charter of Local Self-Government as one of the formal commitments necessary for accession to the Council of Europe”

This latter point unequivocally established the norm – all member states of the Council of Europe must uphold the CoE's standards of local democracy if they are to remain members. Recommendation 20 (1996) (15) further details the monitoring process and contains a reminder to a number of countries – including the UK – “that

have not signed the European Charter of Local Self-Government to sign and ratify it, since respect for its provisions constitutes the Council of Europe's key legal basis of action in the field of local democracy."

By 1997 much of the monitoring had been conducted. Resolution 58 of 5 June 1997 highlights that "major problems" had been found in the United Kingdom: "Considers that major problems of local democracy exist in the following countries: Croatia, Bulgaria, Latvia, Moldova, Ukraine and the United Kingdom". So basically five former Communist countries and one existing member state were highlighted as having major problems in meeting standards of democracy. The detailed monitoring reports have not yet been released despite an official request in the House of Commons on 18 January 1999 (16):

Mr. Canavan:

"To ask the Secretary of State for Foreign and Commonwealth Affairs if he will publish the results of the examination of the United Kingdom's democratic and governmental structures which was carried out by the Council of Europe from June 1996 onwards."

Mr. Tony Lloyd:

"The Secretary General's overview of the functioning and protection of democratic institutions in all Council of Europe member states remains before the Committee of Ministers, which will resume its discussions at its next monitoring meeting in March 1999. The conclusions of the Committee of Ministers will be made public when available."

Another important factor behind the monitoring was the amount of pressure being exerted by the Council of Europe to fully and swiftly comply with the basic democratic principles that are at the heart of the European Ideal. In particular, in March 1997 (18), just before the election that brought the Labour Party to power, the Council of Europe made pointedly clear the consequences of failing to meet the required democratic standards:

"These reports are made in respect of each country separately and include a draft resolution in which specific proposals are made for the improvement of the situation in the country under consideration. The Assembly may sanction persistent failure to honour commitments and lack of co-operation in its monitoring process by the non-ratification of the credentials of a national parliamentary delegation at the beginning of its next ordinary session. Should the country continue not to respect its commitments, the Assembly may address a recommendation to the Committee of Ministers requesting it to take the appropriate action provided for in Article 8 of the Statute of the Council of Europe.

Article 8 (19) states "Any member of the Council of Europe which has seriously violated Article 3 may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it

has ceased to be a member of the Council as from such date as the Committee may determine.”

In plain language, it would be expelled from the Council of Europe. In 1998, after Scotland’s Parliament had been re-established notwithstanding the resistance of the Labour leadership, the Council of Europe issued “Recommendation 49 (1998) on the situation of local and regional democracy in the United Kingdom” (17). The recommendation states, inter alia:

“Welcoming the fact that the United Kingdom signed the European Charter of Local Self-Government [ETS 122] on 3 June 1997”

“Welcoming the fact that the British Government has taken serious steps towards devolution, in particular concerning the establishment of a Scottish Parliament with large competences, including in the legislative field”

So, after much dragging of feet, and as one of the last member states to do so, under considerable pressure, the UK eventually signed the European Charter of Local Self-Government whilst in parallel having been forced to give Scotland devolved government. Had devolution not been introduced, not only would the UK not have been in a position to sign and uphold the European Charter of Local Self-Government, but it was also on the verge of being expelled from the Council of Europe for serious non-compliance with basic democratic principles – a step that would have had dire and widespread international consequences.

That is the real reason that the Scottish Parliament was restored rather than its having been some form of largesse from the Labour Party.

Source References

1. Council of Europe home page with general information and links to its sub-organisations.
2. Minutes of the Council of Europe Summit, Vienna, 8-9 October 1993.
3. Scotland-UN Committee, Memorandum to the Council of Europe, Vienna, 8-9 October 1993.
4. CoE European Summit, Vienna Declaration, 9 October 1993.
5. CoE Committee of Ministers Statutory Resolution 94(3) establishing the Congress of Local and Regional Authorities. European Charter of Local Self-Government, Strasbourg 15 October 1985.
6. Definitions and limits of the Principle of Subsidiarity, Report prepared for the Steering Committee, Local and Regional Authorities in Europe, No. 55, undated.
7. Resolution 3 (1994) on monitoring the implementation of the European Charter of Local Self-Government.
8. Opinion 1 (1995) on the draft Recommendation No. R (95) of the Committee of Ministers to Member States on the implementation of the principle of subsidiarity prepared by the CDLR (Steering Committee on Local and Regional Democracy (CDLR)).
9. European Charter of Local Self-Government, Strasbourg 15 October 1985.
10. Declaration on Compliance with Commitments accepted by Member States of the Council of Europe, 10 November 1994.
11. Resolution 24 (1995) on the First European Conference on Local and Regional Government Studies Tampere (Finland), 26-28 January 1995.
12. Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers of the Council of Europe on 10 November 1994.
13. Council of Europe, CLRAE, Recommendation 6 (1994) on the "Conference on Regionalisation in Europe: evaluation and perspectives", Geneva, Switzerland, 3-5 June 1993.
14. Report on Guiding Principles for the action of the Congress when preparing reports on Local and Regional Democracy in Member States and Applicant States - CG (3) 3 Part II, undated.
15. Recommendation 18 (1996) on guiding principles for the action of the Congress when preparing reports on Local and Regional Democracy in member States and applicant States, 4 July 1996.

16. Recommendation 20 (1996)¹ on monitoring the implementation of the European Charter of Local Self-Government, 3 July 1996.
17. *Hansard*, Written question from Mr Dennis Canavan MP, House of Commons, about UK Democratic and Governmental Structures (Council of Europe Study). Written answer by Mr Tony Lloyd of the Department of Foreign and Commonwealth Affairs, 18 January 1999.
18. Council of Europe/OSCE Meeting on monitoring of commitments, Strasbourg, 10 March 1997.
19. Statute of the Council of Europe, London 5 May 1949.
20. Recommendation 49 (1998) on the situation of local and regional democracy in the United Kingdom.