

KAZAKHSTAN: A PARTNER FOR DEMOCRACY?

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Introduction

The decision reached in Madrid to hand over OSCE chairmanship in 2010 to Kazakhstan focused international attention on Kazakhstan's human rights record and, by extension, on the whole of the Central Asian region. This decision stirred debates about the merits of awarding OSCE chairmanship to a country with a widely-recognized problematic human rights record. However interesting they may have been, the discussions concentrated only on short-term objectives that could be addressed during the chairmanship.¹ In light of the fact that Kazakhstan has come under close international scrutiny due to the forthcoming chairmanship, one of the legitimate priorities of the international community might well have been to sustain this momentum beyond the OSCE chairmanship.

Among the European organizations, the OSCE, by virtue of its extensive membership, and the EU, due to its well-acknowledged stakes in Central Asia,² are the most natural contributors to Kazakhstan's democratic transition. However, the Council of Europe, the oldest pan-European organization active in human rights

protection and standard setting, can too add value to the overall democratization of Central Asia and of Kazakhstan in particular. While the role of the Council of Europe and especially of the Venice Commission in terms of technical assistance and cooperation with Central Asia is duly acknowledged,³ its other tools, especially the mechanisms offered by the Parliamentary Assembly of the Council of Europe (PACE), have not received proper attention. The recent initiatives launched by the Assembly demonstrate that it too can contribute to the process by offering sustainable political scrutiny of the democratization efforts in Kazakhstan, thus deepening Kazakhstan's sense of international accountability with respect to human rights and fundamental freedoms.

Below is a brief account of the relations between the Parliamentary Assembly of the Council of Europe and the Republic of Kazakhstan, which shows a considerably high level of mutual interest and potential for cooperation. It is argued that the Assembly, in tandem with other international actors, can become a valuable player, especially by providing general guidelines and overseeing the course of the reforms being

¹ See: *Security and Human Rights*, No. 1, 2009, devoted to Kazakhstan's OSCE Chairmanship.

² See: J.M. Neil, "The European Union, Kazakhstan and the 2010 OSCE Chairmanship," *Security and Human Rights*, No. 1, 2009.

³ European Union and Central Asia: Strategy for a New Partnership, Council of the European Union, General Secretariat, European Communities, 2007.

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carried out in Kazakhstan. Although, for understandable reasons, the PACE monitoring procedure, designed for the Council of Europe Participating states, cannot be applied to Kazakhstan, and therefore the Assembly's input will lack rig-

or and depth of involvement. Making use of the PACE tools of political oversight can, nevertheless, produce long-term results if linked and synchronized with the policies of other international actors.

Republic of Kazakhstan and the Parliamentary Assembly of the Council of Europe

The Central Asian region is in the Council of Europe's immediate neighborhood. The Organization, which numbers 47 Participating states and has reached its "geographical limits of expansion,"⁴ has recently been finding it more pertinent to focus on regions beyond Europe that lie in its neighborhood. At its June 2009 session, the Parliamentary Assembly of the Council of Europe resolved, during debates on the forms of association and cooperation with nonmember states, to establish, in addition to the two already existing forms of cooperation with the Assembly, Special Guest and Observer Status, a new status, Partner for Democracy, "for institutional cooperation with parliaments of nonmember states in neighboring regions wishing to benefit from the Assembly's experience in democracy-building and to participate in the political debate on common challenges which transcend European boundaries."⁵ With regard to Central Asia, the resolution specifically mentioned that all the Central Asian countries should be eligible to request the status by committing themselves to the Council of Europe values and submitting regular reports to the Parliamentary Assembly on the progress achieved.⁶

A brief overview of the Assembly's relations with the Central Asian region reveals Kazakhstan as the most active state in terms of seeking closer ties and association with the Parliamentary Assembly. This fact, undoubtedly, makes Kazakhstan the most eligible state to seek the newly-crafted status and pursue deeper cooperation with the Assembly.

Kazakhstan's interest in the Council of Europe evolved against the background of heated debates in the Parliamentary Assembly about the Organization's future expansion after the fall of the Berlin Wall and disintegration of the Soviet Union. While the European credentials⁷ of the newly independent states from Central and Eastern Europe, both geographically and culturally, raised no controversies, the Central Asian republics, in spite of their CSCE membership, were unanimously categorized as lying outside Europe. In this context, the debate concentrated almost exclusively on the political geography of the Southern Caucasus, the location of which did not appear as straightforward as in other cases.⁸ Dissent-

⁴ Resolution 1506 (2006), "External Relations of the Council of Europe," *Assembly debate* on 26 June, 2006 (16th Sitting), Text adopted by the Assembly on 26 June, 2006, available at [<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1506.htm>].

⁵ Resolution 1680 (2009), "Establishment of a Partner for Democracy Status in the Parliamentary Assembly," *Assembly debate* on 26 June, 2009 (26th Sitting), Text adopted by the Assembly on 26 June, 2009, available at [<http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1680.htm>].

⁶ *Ibidem*.

⁷ The CoE Statute stipulates that only European states can become CoE members (see the CoE Statute at [<http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=001&CM=8&DF=11/09/2009&CL=ENG>]).

⁸ See: *Information Report on the Enlargement of the Council of Europe*, Rapporteur: Mr. Reddemann, Germany, Christian Democrat, Doc. 6629, 16 June, 1992, available at [<http://assembly.coe.int/Main.asp?link=/Documents/Working>].

ing viewpoints on this matter were finalized in 1994 in the PACE Recommendation on the Enlargement of the Council of Europe, which recognized the European aspirations of the three South Caucasian republics and their right to apply for full membership, effectively setting the Southern Caucasus as the southeastern frontier of Europe.⁹

In 1997, the Kazakhstan Parliament requested Special Guest status in the Assembly (open only to European states), which was followed by a request for Observer Status (an association mechanism for non-European democracies)¹⁰ lodged by the Speakers of the two chambers of Kazakh parliament in 1999. These requests were not granted following the discussion at the meeting of the PACE Political Affairs Committee in Istanbul in May 2001,¹¹ and the Bureau of the Assembly agreed instead, within the framework of the request for Observer Status, to consider a draft cooperation agreement with the Kazakh Parliament,¹² which was subsequently signed in 2004.

Despite the failure to obtain a more advanced status in the Assembly, the cooperation agreement elevated Kazakhstan to a qualitatively new level that resulted not only in deeper interaction with the Assembly, but also closer scrutiny by the Assembly of its democratic performance.

With this agreement, the Parliament of Kazakhstan committed itself to promote the idea of introducing a moratorium on executions and abolish the death penalty, as well as explore ways of joining the CoE conventions open to nonmember states and make use of the Venice Commission expertise. Most importantly, it undertook to report every year to the Bureau of the Assembly on progress with regard to promoting the principles of parliamentary democracy, the rule of law, respect for human rights, and abolition of the death penalty.¹³ Although the reporting procedure could not be compared with the rigor and depth of the monitoring exercised by PACE with respect to 11 of the CoE Participating states currently being monitored, it, however, was a welcome development, an important step for cultivating a sense of accountability in the Kazakh leadership.¹⁴ It also resulted in extending the PACE election monitoring activities to incorporate Kazakhstan: based on the agreement, the Parliamentary Assembly, as part of the International Election Observation Mission, observed the parliamentary elections in 2004 and 2007 and the presidential ballot in 2005.¹⁵

Docs/Doc92/EDOC6629.htm]; *Report on the Enlargement of the Council of Europe*, Rapporteur: Reddemann, Doc. 6975, 13 December, 1993, available at [<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc93/EDOC6975.htm>]; *Opinion on the Enlargement of the Council of Europe*, Rapporteur: Mr. Atkinson, UK, European Democratic Group, Doc. 7148, 13 September, 1994, available at [<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc94/EDOC7148.htm>].

⁹ See: Recommendation 1247 (1994) "On the Enlargement of the Council of Europe," *Assembly debate* on 4 October, 1994 (26th Sitting), available at [<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta94/EREC1247.htm>].

¹⁰ Currently there are three observer parliaments in the Assembly: Israel's Knesset was granted observer status in 1957; the Parliament of Canada (since 1997); and the Mexican Parliament (since 1999) (see: PACE Resolution 1600 (2008), "The Council of Europe and Its Observer States: The Current Situation and a Way Forward," *Assembly debate* on 23 January, 2008. Text adopted by the Assembly on 23 January, 2008, available at [<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta08/ERES1600.htm>].

¹¹ See: *Situation in Kazakhstan and its Relations with the Council of Europe*, Report, Political Affairs Committee, Rapporteur: Mr. Tadeusz Iwiński, Poland, Socialist Group, 7 July, 2006, Doc. 11007, available at [<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC11007.htm>].

¹² See: *Progress Report of the Bureau and the Standing Committee (27 April-25 June, 2001)*, Doc. 9133, 23 June, 2001, available at [<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc01/EDOC9133.htm>].

¹³ See: *Agreement on Cooperation between the Parliamentary Assembly of the Council of Europe and the Parliament of the Republic of Kazakhstan*, Strasbourg, 27 April, 2004, available at [http://assembly.coe.int/President/InfoBase/FinalAgreement_KAZ_CoEPA_E.pdf].

¹⁴ See the first report of Parliament of the Republic of Kazakhstan at a PACE session presented by Mr. K.S. Sultanov, former Chairman of the Committee for Social and Cultural Development, Senate of Parliament, Republic of Kazakhstan, Strasbourg, 27 January, 2006, in the Progress Report of the Bureau of the Assembly and the Standing Committee (27 January-10 April, 2006), Doc. 10874, 10 April, 2006, available at [<http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc06/EDOC10874.htm>].

¹⁵ See: *PACE Report on 2004 Parliamentary Elections in Kazakhstan*, Rapporteur: Mrs Tana de Zulueta, Italy, Socialist Group, Doc. 10306, 4 October, 2004, available at [<http://assembly.coe.int/main.asp?Link=/documents/workingdocs/>]

Resolution 1526

The focus on Kazakhstan was further sustained in Assembly Resolution 1526 (2006) on the Situation in Kazakhstan and Relations with the Council of Europe adopted based on the special fact finding mission report.¹⁶ In the resolution, the Assembly identified “a number of considerable shortcomings still hindering the democratic process ... including difficulties in registering political parties, cases of criminal prosecution of opposition activists in relation to their political activity, and political and administrative pressure on the media supportive of the opposition.”¹⁷

The Assembly further encouraged the Kazakh Parliament to review, in cooperation with the Venice Commission, the legislation concerning administration of elections, political parties, freedom and independence of the media, freedom of assembly, the judiciary, and local self-government. Calls were made to seek complete abolition of the death penalty and initiate a political dialog with the opposition. The resolution stopped short of considering Kazakhstan’s candidacy for Special Guest Status as initially suggested in the report¹⁸ and only expressed readiness to develop cooperation “possibly on the basis of an observer status.”¹⁹

However, the Kazakh Parliament’s quest for either Special Guest or Observer Status again failed due to both Kazakhstan’s inadequate democratic record and the inflexible mechanisms that govern PACE’s relations with nonmember states.

The Rules of Procedure of the Parliamentary Assembly provide for Special Guest Status that can be granted to European nonmember states that have signed the Helsinki Final Act of 1975 and the Charter of Paris for a New Europe of 1990 and “have further accepted other instruments adopted at the CSCE conferences, as well as signed and ratified the two U.N. covenants.”²⁰ On the other hand, the procedure for granting Observer Status stipulates that the status is granted to national parliaments of nonmember states that meet the conditions set out in paragraph 1 of Statutory Resolution (93) 26 of the Committee of Ministers on Observer Status, namely, willingness to accept the principles of democracy, the rule of law, and enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and which wish to cooperate with the Council of Europe.²¹ While the Special Guest status specifically referred to European nonmember states and in practice implied eventual full CoE membership,²² the Observer Status “was designed for parliaments of non-European democracies willing to contribute to democratic transitions in Europe.”²³ Thus, it was assumed that the interest of the Council’s neighboring states in the Observer Status did not “arise because of their intention to contribute to the reforms in Central and Eastern Europe, but rather

doc04/edoc10306.htm] (see also the website of the Office for Democratic Institutions and Human Rights, available at [http://www.osce.org/odihr-elections/14471.html]).

¹⁶ See: *Situation in Kazakhstan Report...*, *supra* note 11.

¹⁷ Resolution 1526 (2006), *Situation in Kazakhstan and Relations with the Council of Europe*, Text adopted by the Standing Committee, acting on behalf of the Assembly, on 17 November, 2006, available at [http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta06/eres1526.htm].

¹⁸ See: *Situation in Kazakhstan Report...*, *supra* note 11.

¹⁹ Resolution 1526 (2006), *supra* note 17.

²⁰ Rule 59, Assembly Rules of Procedure, available at [http://assembly.coe.int/RulesofProcedure/2009/Reglement_2009.pdf].

²¹ See: *Committee of Ministers Statutory Resolution (93) 26 on Observer Status*, adopted by the Committee of Ministers on 14 May, 1993 at its 92nd session, available at [http://conventions.coe.int/Treaty/en/Treaties/Html/Resol9326.htm].

²² The argument that Kazakhstan should be granted Special Guest Status was based mainly on the fact that part of its territory lies within the geographic boundaries of Europe, as in the case of Russia and Turkey (see: *Situation in Kazakhstan Report...*, *supra* note 11).

²³ Explanatory Memorandum by Mr. Van den Brande, Rapporteur, *Establishment of a Partner for Democracy status with the Parliamentary Assembly*, Doc. 11913, 14 May, 2009, available at [http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC11913.htm].

because of their desire to benefit from the experience of implementing standards and democratic values and participate in the political debate.”²⁴

Resolution 1680

As a result, Assembly Resolution 1680 (2009) establishing the Partner for Democracy Status addressed this inflexibility by instituting a cooperation mechanism for those states that do not fit into either category. Moreover, the Assembly designed it in a way to engage applicant parliaments in a long-term dialogue over democratization. The resolution stated that the parliaments of countries wishing to be considered for the new status would have to enter into commitments with regard to pluralist and gender parity-based democracy, human rights, and the rule of law, as well as commit themselves to organize free and fair elections and join CoE conventions and partial agreements that are open to nonmember states. But most importantly, they would be required “to regularly inform the Assembly on the state of progress in implementing Council of Europe principles.”²⁵

The Central Asian states, and in particular Kazakhstan, which has long been seeking closer cooperation with the Assembly, became the most natural candidates for this status. This new development presents a good opportunity for Kazakhstan to deepen its cooperation with PACE, which in turn can be added to the already existing panoply of policy instruments in the hands of international organizations seeking genuine reforms and greater transparency and accountability in the country.

Conclusion

Against the backdrop of the OSCE and EU efforts to carry out democratic reforms in Central Asia with their respective strengths and different policy instruments, the role and comparative advantages of the Council of Europe remain largely unaddressed. The recent developments within the Organization, especially the increasing influence of the Parliamentary Assembly of the Council of Europe, allows us to speak about the Organization’s positive contribution to this process not only in terms of legal expertise and technical assistance, but also through the mechanisms of political scrutiny offered by the Parliamentary Assembly of the Council of Europe.

Designed as a middle-ground cooperation track between the two main forms of association with nonmember states, the Partner for Democracy status carries the promise of becoming an effective tool of the Assembly’s political oversight stretching beyond the traditional borders of Europe.

In the case of Kazakhstan, which has shown the most consistent pattern of cooperation with the Council compared with the other Central Asian states,²⁶ this mechanism, if applied, promises to invigorate and add value to the international efforts to help Kazakhstan live up to the Madrid pledges and sustain the momentum created by its OSCE Chairmanship in 2010 and beyond.

²⁴ Ibidem.

²⁵ Resolution 1680 (2009), *supra* note 5.

²⁶ With the notable exception of Kyrgyzstan, which is a member of the Venice Commission but does not have the same level of cooperation with the Parliamentary Assembly.