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# Horizontal Review between International Organizations: A Reply to Abigail C. Deshman

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## Abstract

*This short article aims to further the discussion over horizontal review between international organizations started by Deshman in her analysis of the role of the Parliamentary Assembly of the Council of Europe after the H1N1 pandemic. The article compares the historical evolution of the European Parliament to that of the Parliamentary Assembly and examines how the EP's involvement with issues such as human rights and international relations served to build its identity, to gain international recognition, and to obtain more formal powers. It suggests possible additional reasons explaining the PA's willingness to perform horizontal review over action carried out by the WHO, and potential paths for future developments.*

## 1 Introduction

Deshman's article<sup>1</sup> on horizontal review between international organizations analyses a seemingly exceptional case: the review of the World Health Organization's (WHO) management of the H1N1 pandemic by the Council of Europe's Parliamentary Assembly (PA).<sup>2</sup> According to Deshman, the PA's willingness to perform horizontal review is due to a number of factors, among which, primarily, are its composition (its members representing the legislative branch of the member States), its desire to obtain recognition for the Council of Europe (CoE) internationally, and its 'moral authority'. The PA criticized the WHO for its lack of transparency and accountability – two concepts that it understands quite differently from traditional international organizations (IOs) – and managed to engage the WHO in the process of review. In Deshman's view,

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<sup>1</sup> Deshman, 'Horizontal Review between International Organizations: Why, How, and Who Cares about Corporate Regulatory Capture', 22 *EJIL* (2011) 1089.

<sup>2</sup> Parliamentary Assembly of the Council of Europe, Res. 1749 (2010), Handling of the H1N1 pandemic: more transparency needed, adopted on 24 June 2010 (26th Sitting).

this is a unique example of horizontal review between international organizations: notwithstanding its (similar) composition, the European Parliament has been much more focused on ‘internal’ review (i.e., review of action by different European Union institutions).<sup>3</sup>

This analysis of the reasons behind the PA’s action might actually be deepened by an examination of the behaviour of the European Parliament (EP) over the years – after all, the EP has also been considered, until recently, as a global forum for political discussion, especially in the field of international relations (i.e., the EU’s foreign policy), having often dealt with issues of human rights and democratization in the world, which were outside its – and the EU’s – competence.<sup>4</sup> First, however, another issue needs to be considered: to what extent can the PA’s resolution on H1N1 be seen as a form of horizontal review between international organizations?

## 2 The Parliamentary Assembly

From a formal point of view, the PA’s Resolution is a non-binding act adopted by one of the internal organs of the Council of Europe, embodying ‘an expression of view for which it alone is responsible’.<sup>5</sup> According to the CoE’s Statute, while the Parliamentary Assembly (whose name is formally still ‘Consultative Assembly’<sup>6</sup>) is its deliberative organ, the Committee of Ministers acts on its behalf.<sup>7</sup> Thus, the PA’s decision to adopt a far-reaching resolution such as the one criticizing the WHO might have been taken also because of its non-binding nature: while the PA lacks the power to review action undertaken by other IOs, the adoption of a resolution on this issue was not barred, given its merely internal relevance. Strictly speaking, however, the resolution is not an exercise of horizontal review between IOs, since it does not express the position of the CoE at the international level. This point deserves bearing in mind, since the same applies to many resolutions adopted by the European Parliament in the field of international relations.

Another significant element is the PA’s almost complete lack of formal powers. Historically, this is a consequence of the evolution of the CoE: while it was originally envisaged that it might become a sort of ‘European federation’, and it therefore would need to be equipped with a parliamentary body, the attention soon shifted to the EEC.<sup>8</sup> The CoE’s consultative assembly was therefore left as a body with ‘hardly any power, but real moral authority’,<sup>9</sup> and it evolved into a forum for political discussion of issues

<sup>3</sup> Dushman, *supra* note 1, at 1106.

<sup>4</sup> Bieber, ‘Achievements of the European Parliament, 1979–1984’, 21 *CMLRev* (1984) 286.

<sup>5</sup> Rule 24.1.b of the Rules of Procedure of the Assembly, Res. 1202 (1999).

<sup>6</sup> On the struggle over the name of the PA see F. Benoît-Rohmer and H. Klebes, *Council of Europe Law* (2005), at 57.

<sup>7</sup> Arts 22 and 13 of the Statute of the CoE, ETS n. 1, adopted on 5 May 1949.

<sup>8</sup> Marschall, ‘European Parliaments in Transnational Organizations’, Paper prepared for the conference entitled ‘Fifty Years of Interparliamentary Cooperation’, 13 June 2007; A.H. Robertson, *European Institutions. Cooperation – Integration – Unification* (1973), at 12–17; de Búrca, ‘The Road not Taken: the European Union as a Global Human Rights Actor’, 105 *AJIL* (2011) 658.

<sup>9</sup> Pierre Pflimin, 6 May 1963, cited in A. Royer, *The Council of Europe* (2010), at 12.

of European or general interest. This new vocation has often led the assembly to deal with issues that are entirely outside the reach of the CoE,<sup>10</sup> developing a tendency to claim a 'right of control' over the activities of other IOs (especially those with which the CoE has formal cooperation agreements).<sup>11</sup> Additionally, the PA's lack of formal competences has not prevented it from acting as the real 'engine' of the Council of Europe, eventually leading it to obtain, albeit informally, many additional powers.<sup>12</sup>

My hypothesis here is that the decision to meddle with the organization's external relations might result from a combination of factors, including, in addition to those cited by Dushman, the PA's historically developed culture and a desire to reinforce *its own* external visibility and, as a consequence, internal recognition and powers. To support this hypothesis, I will examine the (somewhat similar) evolution of the European Parliament and the way in which it has been dealing with EC/EU's 'foreign policy'; this example seems to show that external visibility can be used to obtain more internal powers.<sup>13</sup>

### 3 An Analogy with the European Parliament

The EP, as the parliamentary body of the European Communities (now European Union), was long regarded as a forum for discussion more than the holder of 'real' powers; only recently has it acquired more formal powers, finally becoming a co-legislator on an almost equal standing with the Council.<sup>14</sup> Initially, and even after the first direct elections, its prerogatives were quite narrow, and it was sometimes considered as a 'fig leaf'<sup>15</sup> for the European institutions more than a real Parliament.

The EP's lack of formal powers was particularly evident in the field of international relations, where the Community itself had limited competences. Nonetheless, the Parliament managed to become a forum to reach an agreement 'on a European attitude towards the major political issues in the world':<sup>16</sup> since 1983, it has adopted annual reports on 'human rights in the world and community policy on human rights', in addition to resolutions on contingent episodes of abuse.<sup>17</sup> Although this exercise sometimes

<sup>10</sup> M. Palmer and J. Lambert, *A Handbook of European Organizations* (1968), at 128.

<sup>11</sup> Robertson, *supra* note 8, at 45 and 60; CoE Directorate of External Relations, List of Agreements concluded by the Council of Europe with other International Intergovernmental Organizations or Public International Entities, available at: [www.coe.int/t/DER/docs/List%20of%20Agreements\\_en\\_fr.pdf](http://www.coe.int/t/DER/docs/List%20of%20Agreements_en_fr.pdf). The PA also acts, in an enlarged composition, as the parliamentary organ for the OECD: P. Evans and P. Silk, *The Parliamentary Assembly, Practice and Procedure* (2008), at 315–316.

<sup>12</sup> Stegen, 'Die Rolle der Parlamentarischen Versammlung als Motor des Europarats', in U. Holtz (ed.), *50 Jahre Europarat* (2000), at 79, 79–81.

<sup>13</sup> See, e.g., Rack-Lausegger, 'The Role of the European Parliament: Past and Future', in P. Alston (ed.), *The EU and Human Rights* (1999), at 801; C.J. Bickerton, *European Union Foreign Policy: from Effectiveness to Functionality* (2011), at 70.

<sup>14</sup> See M. De La Pena Romo Garcia, *Historia del Parlamento Europeo (1950–2000)* (2001).

<sup>15</sup> R. Corbett, F. Jacobs, and M. Schackleton, *The European Parliament* (2000), at 3.

<sup>16</sup> Bieber, *supra* note 4, at 286. Also see L. van der Laan, 'The Case for a Stronger European Parliament', Centre for European Reform Working Paper (2003), at 36.

<sup>17</sup> Clapham, 'A Human Rights Policy for the European Community', 10 *Yrbk European L* (1990) 345.

led to diplomatic frictions, it was often very fruitful in terms of increased debate and pressure on the relevant government.<sup>18</sup> While the literature has focused on how the EP used its formal powers to put pressure on the other EC institutions and influence their foreign policy,<sup>19</sup> attention has also been paid to the importance of informal, open-ended discussion *per se*.<sup>20</sup> The EP's approach – strikingly similar to that of the PA<sup>21</sup> – has been repeatedly praised by NGOs, who found in it an open forum in which issues neglected by the powerful could be discussed and taken seriously.<sup>22</sup> Moreover, in some cases the EP has also directly addressed international organizations – for instance, in the case of its resolutions calling on the World Health Assembly to accept observer status for Taiwan, and of its actions with regard to the WTO.<sup>23</sup>

Scholars have tried to understand what brought the EP to act in such a manner – after all, 'there is no *a priori* reason why the EP should be so interested in foreign policy'.<sup>24</sup> First, democratization and human rights are topics on which it is easier to reach consensus: as opposed to more politically divisive issues, respect for human rights in non-member states is a topic on which the EP can easily speak with one voice. Human rights have also been an identity-building topic for the EP, which perceives itself as the defender of human rights in the world.<sup>25</sup> Structurally, it is easier for the EP (the only directly elected European institution) to pay attention to human rights: it is usually governments (the representatives of the states at the international level) that abuse human rights, while the Parliament also includes oppositions and members of minorities.<sup>26</sup> Thus, in the traditional understanding of the EC institutions, the Council focuses on national interests, the Commission on the common European interest, while the Parliament is often perceived as 'the good':<sup>27</sup> a goodwill ambassador of European values in the world, and the institution responsible for ensuring their role

<sup>18</sup> For some concrete examples see Boumans and Norbart, 'The European Parliament and Human Rights', 7 *Netherlands Q Hmn Rts* (1989) 36, at 36–37.

<sup>19</sup> E.g., Thym, 'Beyond Parliament's Reach? The Role of the European Parliament in the CFSP', 11 *Eur Foreign Affairs Rev* (2007) 109; Zanon, 'The European Parliament: an Autonomous Foreign Policy Identity?', in E. Barbé and A. Herranz (eds), *The Role of Parliaments in European Foreign Policy* (2005), at 108–109.

<sup>20</sup> E.g., Boumans and Norbart, *supra* note 18, at 36–56; Zwamborn, 'Human Rights Promotion and Protection through the External Relations of the European Community and the Twelve', 7 *Netherlands Q Hmn Rts* (1989) 11.

<sup>21</sup> Another common feature of the two bodies is their struggle over the name: the EP was only officially named so in 1987: M. Westlake, *A Modern Guide to the European Parliament* (1994), at 16.

<sup>22</sup> Boumans and Norbart, *supra* note 18, at 38 and 52.

<sup>23</sup> See the analysis in Y. Lan, 'The European Parliament and the China–Taiwan Issue: an Empirical Approach', 9 *Eur Foreign Affairs Rev* (2004) 115.

<sup>24</sup> Bickerton, *supra* note 13, at 69.

<sup>25</sup> See Zanon, *supra* note 19. An example of the self-perception of the EP as the guardian of human rights is the 'Sakharov prize for Freedom of Thought', set up in 1988 'to honour individuals or organizations for their efforts on behalf of human rights and fundamental freedoms.' See [www.europarl.europa.eu/aboutparliament/en/002398d833/Sakharov-Prize-for-Freedom-of-Thought.html](http://www.europarl.europa.eu/aboutparliament/en/002398d833/Sakharov-Prize-for-Freedom-of-Thought.html).

<sup>26</sup> Bradley, 'Reflections on the Human Rights Role of the European Parliament', in Alston (ed.), *supra* note 13, at 843–845.

<sup>27</sup> See Acosta, 'The Good, the Bad and the Ugly in EU Migration Law: Is the European Parliament Becoming Bad and Ugly?', 11 *Eur J Migration L* (2009) 19.

in formal European policies. However, foreign policy issues have also been consistently used to increase the Parliament's powers: since the EP created this field of interest for the EU at a time when it did not exist, it managed to attract it into its own sphere of influence.<sup>28</sup> Human rights have hence become an instrument on which to leverage to expand the EP's formal powers.

This analysis of the behaviour of the EP and of its reasons partly confirms Deshman's intuition, and partly adds to it.

On the one hand, the composition of the Parliament surely plays a role, since it allows it to draw attention to issues that are neglected in *fora* where debates take place according to the rules of diplomatic good manners, not of political debate. In dealing with foreign relations, the EP actually identified an existing gap in global governance and enthusiastically filled it in, incidentally also reinforcing its own relevance.<sup>29</sup> We see here, again, a trait that is common to both the EP and the PA.

On the other hand, what is particularly interesting is the way in which the EP used foreign policy issues in order to achieve more formal powers – the 'internal' dimension of its 'external' attention – and the consequences of such a change in its behaviour. As early as in 1999, an expert of the EP was calling on it to act more responsibly in the field of human rights – to do less, but do it better.<sup>30</sup> Recently, such a 'responsible attitude' has been praised on a number of occasions, one interesting example being that of the EP's approach to the World Trade Organization.

## 4 The Case of the EP and the WTO

As early as in 1996, with the Kittelmann Report, the EP had expressed its concerns regarding the international trade regime and advocated for reform of certain GATT provisions and of the WTO working methods.<sup>31</sup> In a subsequent Resolution,<sup>32</sup> the EP confirmed its concerns for the detrimental impact of WTO rules on domestic policies having non-trade objectives. These Resolutions seem quite similar to the PA's involvement with the WHO: here, too, we see a parliamentary body taking up issues that were of great concern to (European) civil society and asking for substantial changes in the structure of another international organization,<sup>33</sup> calling, in particular, for more openness, transparency, and democratic control.

The Parliament has thus engaged in a serious, long-term exercise of review of the WTO, which took place regardless of its lack of competence, and even of the different

<sup>28</sup> Rack-Lausegger, *supra* note 13, at 801.

<sup>29</sup> Bradley, *supra* note 26, at 844; Bieber, *supra* note 4, at 283.

<sup>30</sup> Bradley, *supra* note 26, at 840.

<sup>31</sup> European Parliament, Res. of 13 Nov. 1996 on the WTO, A4-0320/96, OJ (1996) C 362/152.

<sup>32</sup> So called Schwaiger Report: EP Res. of 18 Nov. 1999, A5-0062/1999, OJ (2000) C 189/213.

<sup>33</sup> For instance, the EP has supported the creation of a WTO Parliamentary Assembly. See EP, Res. of 25 Nov. 2010 on human rights and social and environmental standards in international trade agreements, P7\_TA(2010)0434, OJ (2012) C 99 E/31; Clapham, and Bourke-Martignoni, 'Are We There Yet? In Search of a Coherent EU Strategy on Labour Rights and External Trade', in V.A. Leary and D. Warner (eds), *Social Issues, Globalisation, and International Institutions* (2008), at 233, 269 ff.

position taken by other EU institutions. While the EP's initial proposals for the international trade regime were often excessively far-reaching, with calls for reform that would have completely changed its structure, its position changed over time.<sup>34</sup> Consequently, if the EP was initially considered as an 'immature' actor in the field of trade policy, its acquisition of specific expertise led it to call for more specific reforms and to play a more constructive role, which was particularly appreciated after the protests against the WTO in Seattle, at a moment where the need to improve democratic participation and popular support for international trade organizations became acutely apparent. What we see here is a process through which the EP evolved from a less responsible but more 'visionary' actor to a more ordinary international actor – no longer demanding the impossible, but limiting its requests in order to achieve some results. Such an approach was subsequently rewarded by a number of changes in the common commercial policy, with a strong increase in the role and involvement of the EP.<sup>35</sup>

## 5 Conclusions

Scholars have identified a pattern of more 'responsible' behaviour on the part of the EP either as a premise for, or as a consequence of, enhanced powers. The increase in the EP's formal competencies reduces the space for political discussion of matters on which it cannot have much influence,<sup>36</sup> allowing it to become more efficient when dealing with issues within its reach. In this perspective, the differences between the EP's and the PA's resolutions on the H1N1 epidemic<sup>37</sup> are emblematic of a divergence of paths between the two: while the EP has become an increasingly relevant EU institution, exerting some form of democratic control over the others, the PA has not seen the same increase in its functions. But, if the EP has become what the PA was originally meant to be, while the CoE has remained a purely intergovernmental organization, one might wonder what is the role of the PA, apart from its (somewhat limited) institutional tasks. Deshman's article highlights one of its important functions: providing a forum for open discussion of issues that are often neglected in formal *fora*. If the EP will slowly have to reduce its role in this area in order to deal with its increased formal competences, the remaining gap can easily be filled by the PA, which has the same advantages (as regards its composition and the relative strength of its member states), an even clearer mandate on human rights, and none of the constraints. From this perspective, the Resolution on the H1N1 can be seen as – hopefully – an additional step in this direction.

<sup>34</sup> Lalone, 'Accountability in the EU's Common Foreign and Security Policy: Lessons from the Common Commercial Policy', in Barbé and Herranz, *supra* note 19. Also see Bender, 'The European Parliament and the WTO: Positions and Initiatives', 7 *Eur Foreign Affairs Rev* (2002) 193.

<sup>35</sup> Lalone, *supra* note 34. On the changes in the common commercial policy after Lisbon see, e.g., P. Craig and G. de Búrca, *EU Law. Text, Cases and Materials* (2011), at 318–322.

<sup>36</sup> See Editorial Comment, 'European Elections – Is the European Parliament Important Today?', 46 *CML Rev* (2009) 767.

<sup>37</sup> European Parliament, Res. of 8 Mar. 2011 on evaluation of the management of H1N1 influenza in 2009–2010 in the EU, P7\_TA(2011)0077, OJ (2012) C 199 E/7.