



Convention on the Future of Europe

Contribution from
the Secretary General of the Council of Europe,
Mr Walter Schwimmer

800 MILLION EUROPEANS

Involving the Greater Europe
in responding to key Laeken questions

The purpose of this memorandum is to propose to the members of the Convention at an early stage of their work ways in which the Council of Europe can contribute to addressing certain key questions in the Laeken Declaration:

- ① by building the future European Union on the solid foundations of the Council of Europe's existing instruments and institutions;
- ② by the accession of the EC/EU to the European Convention on Human Rights as part of a coherent approach to the effective protection of human rights in Europe;
- ③ by developing pan-European responses to major challenges (terrorism, organised crime, drug and human trafficking, etc.);
- ④ by providing the forum for EU foreign policy towards its immediate neighbours.

The accession of the EC/EU to the European Convention on Human Rights as part of a coherent approach to the effective protection of human rights in Europe

2.1 Protection for 800 Million Europeans

The Council of Europe is the home of Europe's main human rights conventions, the European Convention on Human Rights (ECHR) being the prime example. Its rights and freedoms are common to all European states and its international control mechanism offers protection for 800 Million Europeans. It is significant that the ECHR was the principal reference point for the preparation of the EU Charter of Fundamental Rights as regards the human rights provisions. Social and economic rights developed within the Union were influenced by the Council of Europe's European Social Charter and the revised Social Charter.

2.2 Accession to the European Convention on Human Rights

I therefore welcome the fact that the Laeken Declaration has put the question of accession by the EC/EU to the ECHR on the agenda of this Convention. It is very appropriate that this is compared with the question of integration of the EU Charter of Fundamental Rights into the Treaties, because these issues go hand in hand. Accession to the ECHR has been repeatedly advocated by the European Commission¹ and the European Parliament². Therefore Laeken has provided the Convention with a unique opportunity to achieve a coherent mechanism for the protection of fundamental rights in the whole of Europe.

2.3 Why is accession so important?

First of all, it is vital if we are to ensure coherence and legal certainty between the legal systems of both the EU and the Council of Europe in the field of fundamental rights. In applying Community law, member states are indeed bound by both Community law *and* the ECHR. However, this may lead to genuine problems if the Community itself is not also legally bound by the ECHR and if its action is not subject to the same review by the European Court of Human Rights, as is applicable to the action of individual EU member states. Avoiding divergence between the interpretation of fundamental rights in Europe is therefore essential for the legislatures, governments and courts of Union member states, as it is, evidently, for the individual citizen. This can best be achieved by accession.

2.4 Increase legal accountability

In addition, by extending to the EU the *external* control mechanism of the ECHR to which the member states are already subject, accession would confer upon the action of the EU institutions the same level of legitimacy, credibility and legal accountability now enjoyed by the member states' authorities.

2.5 No subordination between Courts

The Presidents of both the European Court of Human Rights and the Court of Justice of the European Communities, at the opening of the judicial year in Strasbourg on 31 January 2002, expressed support for the idea of accession to the ECHR. They concluded that there was no question of perceived or real "subordination" between the two courts³.

¹ Communication on the accession of the Community to the ECHR and the Community legal order, Commission Communication of 19.10.1990, SEC(90)2087 final; Memorandum on the Accession of the European Communities to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Commission on 4 April 1979, *Bulletin of the EC*, supp. 2/79.

² Most recently in European Parliament Resolution A5-0064/2000 on the drafting of a European Union Charter of Fundamental Rights (Plenary Session, 16 March 2000).

³ The text of the speech can be found on the website of the Strasbourg Court (<http://www.echr.coe.int>).

Developing pan-European responses to major challenges

3.1 All-European challenge

Many treaties concluded within the Council of Europe have contributed to the creation of an area of freedom, security and justice which is a common goal of our institutions. They are part of the European Union's *acquis* on the basis of which closer co-operation within the Union has been developed. Meeting the challenges to our democratic societies cannot stop at the borders of the European Union. These include:

- fighting against terrorism;
- combating corruption, organised crime and human trafficking;
- preventing drug abuse and drug trafficking;
- responding to violence;
- fighting against racism and xenophobia.

3.2 Multilateral solutions

The best way of taking effective action in these areas is not by a series of bilateral agreements with each of the Union's immediate neighbours, but by the adoption of pan-European multilateral solutions which are coherent with the European Union's own internal measures. The conclusions of the European Council in Tampere rightly foresee co-operation with the Council of Europe in this area. We have already created an effective interface between Council of Europe and European Union activities, in particular through the presence of the European Commission in all intergovernmental structures, including ministerial sessions. An increasing number of Council of Europe conventions and agreements are open to accession by the European Community⁴. We should develop this further.

⁴ See my annual reports on relations and co-operation between the Council of Europe and the EU: www.coe.int/sg/e (Documents SG/Inf(2002)7 and SG/Inf(2002)12)

4.5 Develop parliamentary co-operation

The Parliamentary Assembly with its representatives of 44 national parliaments offers a unique framework for promoting the common European project. Existing co-operation with the European Parliament can be developed further. Members of the European Commission could address the Assembly much more frequently than is at present the case.

4.6 Develop CFSP within the Council of Europe

The High Representative/Secretary General of the EU Council could at regular intervals address the Assembly and the Committee of Ministers. This would be one way to promote synergies between the Common Foreign and Security Policy of the EU and the enlarged political dialogue amongst all European democracies. The Council of Europe thus provides a platform on which to develop the European Union's foreign policy with regard to its immediate neighbours.

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In conclusion

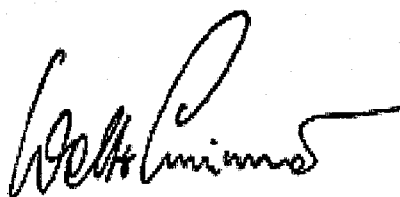
I am convinced that:

- The instruments and activities of the Council of Europe assist the EU enlargement process
- Together we need a coherent approach to the protection of human rights in Europe
- The Council of Europe provides a forum for the Greater democratic Europe

The Council of Europe is following with the greatest interest the ambitious plans for the future of the Union expressed in the Laeken Declaration and is keen to contribute, at both intergovernmental and parliamentary level, to the discussions in the Convention, as appropriate, during the completion of its important mandate.

I wish the Convention every success in its historic task.

Strasbourg, 31 May 2002.



Walter Schwimmer

Council of Europe
The Secretary General

Strasbourg, 12 September 2002

Dear Javier,

The current efforts underway in the European Union to define its position in the wider Europe are very much welcomed by the Council of Europe. The paper you and Commissioner Patten are currently preparing will be an essential signpost on this road.

Preventing new dividing lines in Europe is a key political objective of our 44 member States. In this respect, the forthcoming enlargement of the Union poses a number of challenges, which I believe the Council of Europe can help to meet.

As I stressed in my contribution to the European Convention – a copy of which I enclose – the Council of Europe offers existing, effective, instruments based on common values, for building the future Europe and promoting its inclusive character.

It offers a well-established forum for political dialogue between the EU and its immediate neighbours.

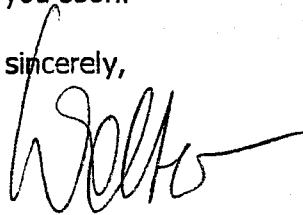
Moreover, many of today's most pressing problems, such as terrorism, organised crime, human trafficking, require pan-European responses, which the Council of Europe has been developing in recent years.

Our on-going common action in "the former Yugoslav Republic of Macedonia", as well as in the FRY are concrete examples of the use the European Union can make of our expertise.

Therefore, the Council of Europe is in a position to provide through its partnership with the various EU institutions a broad scope for increased dialogue and active cooperation between representatives of the whole of Europe.

I look forward to discussing this issue further with you soon.

Yours sincerely,



Walter SCHWIMMER

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Council of Europe
The Secretary General

Strasbourg, 12 September 2002

Dear Chris,

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As I stressed in my contribution to the European Convention – a copy of which I enclose – the Council of Europe offers existing, effective, instruments based on common values, for building the future Europe and promoting its inclusive character.

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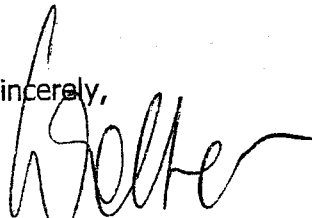
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Therefore, the Council of Europe is in a position to provide through its partnership with the various EU institutions a broad scope for increased dialogue and active cooperation between representatives of the whole of Europe.

I look forward to discussing this issue further with you at the forthcoming Quadripartite meeting in Strasbourg on 25 September 2002.

Yours sincerely,



Walter SCHWIMMER

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